

In compliance with the Open Public Meetings Act of the State of New Jersey adequate notice of this meeting has been mailed to The Daily Record and posted at the municipal building.

ROLL CALL:

Members Present: Joe Fleischner, Rene Gadelha, John Mania, Nelson Russell, Jim Staszak, Scott Van Ness, Howie Weiss (7:42 p.m.)

Members Excused: John Cavanaugh, Mayor David Scapicchio, Dan Nelsen

Members Absent: Steve Bedell

Professionals Attending: Chuck McGroarty, Planning Consultant, Eugene Buczynski, P.E., Edward Buzak, Esq., Catherine Natafalusy, Planning Administrator

Professionals Excused: Tiena Cofoni, Esq.

APPROVAL OF MINUTES

June 16, 2011 Public Meeting

Motion: Joe Fleischner
Second: Nelson Russell

Roll Call:

Joe Fleischner - yes
Rene Gadelha - yes
Nelson Russell - yes
Jim Staszak - yes

RESOLUTIONS FOR APPROVAL

Resolution #PB 11-16 – Toll NJ II LP - (Block 4410, Lot 3)

Motion: John Mania
Second: Jim Staszak

Roll Call:

Rene Gadelha - yes
John Mania - yes
Nelson Russell - yes
Jim Staszak - yes

Resolution #PB 11-18 – David & Marigrace Koptyra - (Block 2001, Lot 12)

Motion: Jim Staszak
Second: Nelson Russell

Roll Call:

Joe Fleischner - yes
John Mania - yes
Nelson Russell - yes
Jim Staszak - yes

Resolution #PB 10-30 – Edward & Christine King - (Block 7702, Lot 32.01)

Motion: John Mania
Second: Nelson Russell

Roll Call:

Joe Fleischner - yes
John Mania - yes
Nelson Russell - yes
Jim Staszak - yes

COMMITTEE REPORTS

MS. GADELHA: Okay committee reports, the Mayor is not here this evening, John anything for Council?

MR. MANIA: No Council report at this time.

MS. GADELHA: Nelson Environmental Commission?

MR. NELSON: We meet Wednesday.

MS. GADELHA: Meeting Wednesday okay.

(Howie is in attendance at this time - 7:42 p.m.)

MR. STASZAK: Ordinance has no report.

MS. GADELHA: Ordinance no report. Street Naming Committee Howie just in time?

MR. WEISS: Nothing.

MS. GADELHA: Nothing to report, and Open Space did not have a meeting in August.

DEVELOPMENT MATTERS

APPLICATION #PB 11-05 – MT. OLIVE CENTER ASSOCIATES / MT. OLIVE MEWS

MS. GADELHA: So moving on to the development matter I will pass the gavel to the Chair.

MR. WEISS: Thank you. Okay before we start tonight's development matter which is PB 11-05 Mt. Olive Center Associates / Mt. Olive Mews, which is a conversion of age restricted units to a non age restricted family units at Block 4100, Lot 80, 83 & 84 on Route 46. Before we do that just a quick message to the Planning Board I know we have a lot of testimony this is our only application on the agenda tonight so I'm going to ask if you can respect the gavel. If I feel that we're going off on a tangent I'm going to bang the gavel. Let's please try to respect it and let the applicant have as much time as he needs and with that I'll turn it over. Welcome back gentlemen . . .

MR. STASZAK: Mr. Chairman?

MR. WEISS: Yes sir.

MR. STASZAK: Just for the record I certified that I have read the transcript and Catherine has a copy of it.

MRS. NATAFALUSY: I was just going to say you have a copy okay? He can vote on this application.

MR. VOGEL: Fine not a problem.

MR. WEISS: Excellent so this is our second hearing Mr. Vogel and maybe if you'd like maybe you want to just recap where we were in it was May I think right?

MR. VOGEL: Yes, uh June.

MR. WEISS: June thank you.

MR. VOGEL: If you recall at the last meeting when we commenced the testimony application the only witness who has testified thus far is Mr. Simoff who indicated on the record that he is both the principal in the applicant and a professional engineer. And he had done the site plan which was approved by the resolution granting preliminary approval to the age restricted community. And that Mr. Simoff did also undertake to put together the package for this application for the age conversion. And then we went through the various requirements of the Statute and I specifically asked Mr. Simoff questions related to the statutory criteria and we had an exchange, the Board and myself with respect

to the criteria. Mr. Buzak went through the aspect of the Statute that relates to the negative criteria and with respect to the negative criteria we had some discussion if you'll recall about school children. And I indicated that we would have a witness this evening who is here Mr. David Zimmerman the planner who will testify. But what would appear to have been the rather considerable focus at the last meeting was the question of traffic and whether or not the traffic emanated from a non-age restricted community would have an increase that would substantially detract from the public good which is the negative criteria under the Statute. And there was some questions asked about intersections, about the volume of traffic, about whether or not the counts that had been utilized were the counts done by Mr. Simoff himself or by the State and he indicated they were not his counts but State counts. And the question was whether or not they were reasonably up to date and Mr. Simoff indicated at the end of the meeting that he would go out and actually do counts and come back with a report. We have . . . Mr. Simoff has since done that, he has prepared a report and we are prepared now to supplement Mr. Simoff's testimony with respect to traffic based upon his study done between the last meeting and this evening.

MR. WEISS: The only thing I would add to that Mr. Vogel is I know we presented two exhibits A-1 which was the December 11, 2008 original resolution and then Mr. Simoff presented exhibit A-2 which is an aerial photo of the rendering and those were the exhibits.

MR. VOGEL: Okay Mr. Simoff reminds me there was another issue that we touched on and which I neglected to mention and that was the recreation. The issue being of course, and the Statute recognizes it, that the recreational amenities for an age restricted community may indeed be somewhat different for a non-age restricted community in that there would obviously be children who might reside within the community. Notwithstanding the fact that we indicate that there aren't going to be that many of course. But as a result of that Mr. Simoff also has undertaken to provide a design for, or a redesign for those amenities. So perhaps since traffic I think will take more time and maybe engender more questions we'll touch on those amenities for the conversion to a community that might have children with it and do that first and then get to the traffic. Unless the Board feels to the contrary.

MR. WEISS: Sure that's fine you wanted to start with the recreation aspect then?

MR. VOGEL: Yes.

MR. WEISS: That's fine with us.

MR. VOGEL: All right now Mr. Simoff you recall that you were placed under oath at the last meeting?

MR. SIMOFF: Yes.

MR. VOGEL: And you understand that you continue to be under oath?

MR. SIMOFF: Yes I do.

MR. VOGEL: Now as a result of the last meeting did you undertake to review the recreation facilities that were proposed as a function of the age restricted community and how they might be revised with respect to this application for a conversion to a non-age restricted?

MR. SIMOFF: Yes we went back and we took another look at the recreation plan that we submitted with the revised application and what we did is we submitted a revised recreation plan as part of the . . . that was submitted to this Board and basically what we did . . . I guess I'll mark this A-3.

MR. BUZAK: Yes and can you explain what that is?

MR. SIMOFF: I've marked in the upper right hand corner A-3 this is the same as A-2 except what we did is we added the recreation, we plotted the recreation plan which is what was submitted to this Board. And basically what we've done is we added a swimming pool adjacent to the clubhouse, we added a sand volleyball court, the walking/jogging trails have been were as part of the original application or the previous application, and then we added three outdoor exercise stations along this jogging trail and along the loop road. And I might also add that the plan always had sidewalks going out to Route 46 and continuing east to the Board of Education property so that the . . . we have access to the public recreation facilities on the Board of Education property which are municipal facilities.

MR. WEISS: Mr. Simoff just correct me the original application had a swimming pool didn't it?

MR. SIMOFF: Yes. It had a larger clubhouse and a swimming pool.

MR. WEISS: So has that swimming pool changed at all?

MR. SIMOFF: It's a little bit smaller.

MR. WEISS: Okay.

MR. SIMOFF: And then it had some bocce courts which we converted to a picnic area, it didn't have the volleyball and it didn't have the exercise stations. And then over in the area where the affordable housing is located we added a basketball court. Because the affordable is going to generate, 54 affordable units are probably going to generate more school age kids than the total development and you'll hear from Dave Zimmerman on that.

MR. WEISS: Rene you have a question?

MS. GADELHA: Yes these 215 townhomes correct they were one bedroom?

MR. SIMOFF: Two bedroom.

MS. GADELHA: Two bedroom.

MR. SIMOFF: They're all two bedroom.

MS. GADELHA: Okay so they're two bedroom and that might mean that young families who are starting out are moving into these because they're not you know three or four bedroom, and so what kind of facility do you have for very small children? I didn't catch anything other than you know perhaps the pool with the parent but there's exercise stations and the volleyball and the basketball but do you have anything for a different class of child in terms of their age?

MR. SIMOFF: Well my discussions with builders and operators of these developments suggest that this although it's not age restricted by deed and requirements, what they intend to do a lot of the people we've been speaking to is to market them towards empty nesters and people that perhaps go to Florida for the winter. So we intend to market it in that direction. If you put in a tot lot and everything else then you're marketing plan changes. As I said the intention, now I propose this recreation plan and I'm open to suggestion as to what the Board feels appropriate and Chuck and Gene as your professionals because we're here just for preliminary.

MR. VOGEL: Let me address myself to that because I made a comment bearing on that issue at the last meeting and it's kind of like the tail wagging the dog in a sense that the basic aspect of the application is for age conversion. And if we get past that issue and there is a desire by the Board for some other amenity in the recreation area then certainly that's something that can be addressed. Our proposal is this if the Board feels that a tot lot is more appropriate there certainly is area to put that in, I don't concede that would be a reason for a denial it would be a reason for you to put a condition on it. But as to whether or not this project should be converted to non-age restriction, whether or not it has a tot lot or doesn't have it or some other amenity I don't think bears upon the essential issue. But I want at least you to understand what we have projected is an attempt to satisfy the change here but if there's some feeling by the Board that the change ought to be something more or less or different we're amenable to that.

MS. GADELHA: I appreciate that and I remember your asking for input and so I know that you're open to that. Ed could you just assure me that we can come back to that if this moves forward? Because at the end of the day I respect the marketing plan but once it's built if it doesn't sell that way it can flip so I just want to protect and have the best thing to offer for whom ever might end up living there.

MR. VOGEL: Yeah the Board is really reactive in its sense. We have an obligation as the applicant to come before you with a plan you don't tell us how to design it we tell you what we're applying for and you either approve or don't.

MS. GADELHA: Sure.

MR. VOGEL: I don't believe that the nature of the recreation facility is a matter of life or death for whether it gets converted.

MS. GADELHA: I agree.

MR. VOGEL: It's an amenity.

MS. GADELHA: I'm just asking because that's what we're talking about.

MR. WEISS: Go ahead Gene?

MR. BUCZYNSKI: Yeah just an item just so you know they can't build under preliminary.

MS. GADELHA: Right.

MR. BUCZYNSKI: So I think what they're suggesting makes sense in a way that between now and when they come in for final they'll probably have a developer in mind for this project at that point. And when they come in for final before they get final approval they might come up with a different idea of what they think is proper based on what they think their marketing plan is going to be and they might ask for tot lots and they might ask for something else. So I think it makes sense to wait for that issue to be finalized later on.

MS. GADELHA: Okay thank you.

MR. WEISS: John? I think John and then Jim you had something.

MR. MANIA: You indicated that the pool was made smaller? Did I understand that correctly?

MR. BUZAK: Excuse me Mr. Mania I'm sorry I had noticed the Chairman and Ms. Gadelha asked me a question and wanted to answer it. I apologize because we're getting off the subject of what

MR. MANIA: Oh sure I'm sorry I apologize.

MR. BUZAK: And I have some disagreement here so that's why I wanted to put it out there. While I understand both what Mr. Buczynski said and Mr. Vogel said I think Ms. Gadelha's point is well taken. While this is a conversion application and we're focusing on conversion we're focusing on an amended preliminary, what had been approved with a pool and whatever else was part of that development is what's on the books. We have no ability to change that, the applicant can change it come in and seek an approval to change it but we can't affirmatively say to the applicant we don't like this we want you to put tot lots in. He can come to us and say he wants to do that and we can react but we can't tell him. So therefore, as you know from other applications the final approval, the standard of whether one is entitled to final approval is whether he met all of the conditions and satisfies the preliminary approvals. So the preliminary approval really sets down the ground rules for the development itself. So I think the Board needs to be satisfied that this configuration and these amenities that are being proposed are satisfactory because that's what you will be approving. That doesn't mean the applicant can't come and change that, it doesn't mean I suppose that the Board can suggest to an applicant subsequently gee maybe you ought to do this but the suggestion is just that. So in terms of the reactivity if you're not satisfied with this then given the fact that we said to the applicant look we're not designing this you are come in, the applicant took those words to heart and came in and said here's what the proposal is. I think at some point tonight we need to look at that then if that's satisfactory that's fine, if it's not if you think there ought to be a tot lot or two tot lots or this or that I think now is the time to put that in. Now I recognize that may be a problem for the applicant because of what he just said in terms of how they market it but as you've said marketing is marketing if it works it's fine if it doesn't work there's another market. And what we are all approving remember is if the conversion is approved it's a non-age restricted development so that's what we have to keep in mind as we do this.

MS. GADELHA: Thank you.

MR. VOGEL: I'd just like to say one thing. My view of the whole process is not adversarial I believe a Planning Board and an applicant process of going through a site plan is a collaborative process. And we went for a long time on the site plan on the age restricted community with a lot of give and take

and a lot of Boards don't like to do that, a lot of attorneys for Boards don't like to do that. I on a personal basis find that to yield something that becomes a more acceptable to a municipality because its thoughts get across and it's good for the applicant to know what those thoughts are. And I don't really ever take the position that if some member of a Board suggests something that it's unreasonable or untoward it's everybody in the collaborative process shares thoughts. And in sharing those thoughts we have an area for a tot lot if it's necessary so maybe Mr. Simoff can tell us about that.

MR. SIMOFF: Yeah we can, I'll go to A-3 we have two picnic areas south of the volleyball which one of them could be converted to a tot lot. Or we can show a tot lot alternative so that once it's built we have that alternative.

MS. GADELHA: Okay, great.

MR. WEISS: Jim did you have a . . .

MR. STASZAK: Yeah I was just going to concur with what Rene said that you know for a non-age restricted the amenities seem to be lacking in that. Even with empty nesters they have grandchildren too and they do like to visit and stay over. So that would have been a concern of mine too.

MR. SIMOFF: I can . . . clearly I was just looking as the discussion went on one of the picnic areas could be converted to a tot lot. As I said or we could show it as a . . . whatever the Board is more comfortable approving, show it as a tot lot alternative so that once the marketing plan is done we can . . . or we can put the tot lot in at the beginning.

MR. STASZAK: My preference would be to see the lot in.

MR. SIMOFF: Okay.

MR. WEISS: I think John had a question for you.

MR. MANIA: How big is that picnic area for the tot lot?

MR. SIMOFF: Well it could be approximately 80 feet by almost 80 feet so it could be 6,000 square feet.

MR. MANIA: 80 by 80?

MR. SIMOFF: It could be that large.

MR. WEISS: I think that's fair enough for this conversation.

MR. MANIA: Next question, you had indicated that the pool is smaller how much smaller and why was it made smaller?

MR. SIMOFF: Because what we did is we originally had a I think it was a 5,000 or 7,000 square foot clubhouse, we did some research I went back to my architect and for 215 conventional units we put in a 2,800 square foot clubhouse. Because the clubhouse is no longer a focal point of a development, age restricted they spend more time in the clubhouse. So the demand for a large clubhouse just wasn't there and accordingly the architect gave me what they've done in many comparable developments. So the pool is 50 and at one end its 30 feet wide and at the other end its 20 feet wide.

MR. MANIA: And he feels that sufficient for 215 units?

MR. SIMOFF: Yeah the architect that testified on this application before or the first time is Tom Barton who has done hundreds of projects of this caliber and I gave him cart blanche and I said give me a recreation plan.

MR. WEISS: Mr. Simoff I have a question for you. I don't want to put the horse before the cart but you've mentioned and I heard at one of the . . . Planning Board mention a marketing plan. I don't recall you actually giving us a marketing plan.

MR. SIMOFF: No. Am I going to? No. I have spoken to different builders and as I've stated in this previous meeting nobody will even talk to us until the age restriction is lifted.

MR. WEISS: Well, and here's why I ask the question because I don't know anything about this and you mentioned about that marketing plan and I kind of wrote down what you said when you talked about perhaps these homeowners will be empty nesters or those who go to Florida for the winter. And I'm just looking at this exercise equipment is this appropriate, do you feel it's appropriate this exercise that you're recommending? Because I'm trying to figure who is the customer, who is buying this house and is this the appropriate recreation needs for the customer. So I went back to my original question you mentioned the marketing plan, you mentioned the marketing plan.

MR. SIMOFF: I've spoken to about four or five different builders, two of them have suggested to me that they would market this as to empty nesters and to people that want to sell their houses and move into a townhouse. But we have the flexibility of putting in these exercise stations because I'm not going to guarantee that it's going to be all empty nesters and people that go to Florida for the winter. These are outdoor exercise equipment that are standard for exercise locations.

MR. WEISS: You know I ask because I've seen them around town and I don't see anybody ever using them. I don't know if it's appropriate that was my question.

MR. SIMOFF: Well I don't know if they're appropriate either but I had to come up with a recreation plan.

MR. WEISS: Okay.

MR. FLEISCHNER: Mr. Chairman?

MR. WEISS: Joe.

MR. FLEISCHNER: Hal question, you said you've spoken to two builders that would market to empty nesters, wouldn't they then be just as happy for age restricted because most empty nesters are you know 55 and older are empty nesters in many cases.

MR. SIMOFF: They can't finance it.

MR. VOGEL: Well I think testimony last time Mr. Fleischner was one, you couldn't finance it and two the market is so limited and age restricted is under the Fair Housing Act 55 and older, restrictions on the number of . . . the way you configure the whole development. So actually as I think I indicated this to you if a project age restricted could be financed and it would be built. But it can't be and that's the reason. All one has to do is look at the Statute that the legislature adopted for age conversion and the language that it uses is very clear. It said that there is no need number one and that too many applications have been made and past and there are too many approved age restricted units within the State and therefore they adopted the Statute. So I mean that's the reason we're here we went back, why would we be here if we could build it and market it why would we avail ourselves of the conversion Statute except for the fact that the very basis for the legislature adopting the Statute is the reality of the marketplace. But the major hurdle is financing the banks won't finance it if it has that restriction.

MR. WEISS: Okay so it looks like with the recreation plan Mr. Simoff you've note, you've commented that part of that northern area, the area north of the picnic area is suitable for a tot lot.

MR. SIMOFF: South the top is south.

MR. WEISS: The area north of the volleyball and I just folded by map sorry. The area that's currently marked as picnic area . . .

MR. SIMOFF: Well I have two picnic areas I can convert one to a tot lot.

MR. WEISS: Okay perfect that's what I was saying.

MR. MCGROARTY: Mr. Chairman I do have one other question.

MR. WEISS: Sure Chuck go ahead.

MR. MCGROARTY: Hal on the first plans I think it would be appropriate also to work in a tot lot down by the basketball court if COAH units . . . your original plans you actually did have, you had swing

sets and a tot lot at the COAH units with a bocce court. So again if conceptually if everyone is comfortable with it I don't think the details matter as much at the moment but the basketball court itself should this thing be built the way it's indicated would probably be better if it's shifted a little bit further away from the units because the bocce court and the swings sets were going to be a little bit further away than 20 feet. And some place within there I think you could fit a tot lot.

MR. SIMOFF: Fine.

MR. MCGROARTY: That's really all I'm getting at.

MR. SIMOFF: Fine we don't have a problem.

MR. MCGROARTY: So that would be a second tot lot down by the COAH units.

MR. WEISS: Perfect I think we can move on with that.

MR. VOGEL: Okay if we've exhausted that aspect of it we will move on to the traffic. Mr. Simoff as a result of the last meeting there were some questions that were raised about the traffic counts that have been done, the volume of traffic and the effect of converted this to a non-age restricted community upon the traffic counts that had been submitted for the age restricted community. Do you recall that?

MR. SIMOFF: Yes.

MR. VOGEL: And would you describe to the Board the process that you went through and the conclusions that you reached.

MR. SIMOFF: Yes what I did is as part of the original application we submitted a traffic impact study. We used DOT counts, we used our own traffic counts and we used other consultant's counts so we had a mix of traffic counts. The original traffic analysis that was submitted to this Board was dated; it was revised April 3, 2007 its part of the record. The trip generation that was used in that report for age restricted I presented in the table on page 3 and I assume that the Board members have my traffic memo?

MR. BUZAK: Yes that's been distributed I believe.

MRS. NATAFALUSY: Yes.

MR. SIMOFF: Okay so on page 3

MR. WEISS: Do we note this; do we mark this as an exhibit?

MR. BUZAK: Yes we can do that. You want to mark your traffic report as A-4?

MR. SIMOFF: A-4 - August 2, 2011 Traffic Impact. Okay so what the original process was we submitted a plan for 224 units and 56 affordable units and we submitted a traffic study with that. Through the process of the Planning Board review it was reduced to 215 and 54 but these were the numbers that were analyzed and calculated in our original traffic study. So what you can see is that during the morning peak hour the total trip generation to direction was 85 trips and it was 122 trips for the afternoon peak hour. These numbers are taken directly from the previous traffic report. On page 4 what we did is we went back and we changed the calculations to 215 unrestricted townhomes. And what I used to do that was the Institute of Transportation Engineers Trip Generation Study which was last updated in 2008 and it's the accepted criteria for projecting traffic volumes from different land uses whether it be a shopping center or single-family or townhouses. And so what I did is I changed the 215 count to unrestricted trip generation so the number goes up to 124 in the morning and the number goes up to 146 in the afternoon to the directional traffic. And on page 4 of my report I delineated the additional traffic that would be expected from the comparison of these two trip generation rates. And as you can see it's an additional 49 movements in the morning and 24 movements in the afternoon. The question that was raised by Mr. Van Ness at the last hearing was what happens at the intersection of Woodland and Route 46 the jug handle? We went back and we looked at those numbers I did additional counts in June of this year and I found that

MR. VOGEL: Excuse me when you say additional counts you actually physically went in the field to do counts rather than take counts supplied by the NJDOT.

MR. SIMOFF: Yes. We found that our traffic counts that we did this year were about 20 percent less than the projected numbers that we had. So because of changes in traffic flow, unemployment, the increase in gas costs the Federal Government has done studies that I've seen that suggest the traffic volumes have been going down every year in the last two or three years anyway. So what I did is I went back and I used the higher volumes. The highest volumes that I found at the intersection and I re-did the capacity calculations and so on table four you can see the difference in levels of service which we traffic engineers categorize as quality of traffic flow. The intersection of Woodland and Route 46 the total delay is 18 seconds when it was approved as age restricted and the delay goes to 18.9 seconds for both level of service B and then I also delineate the increases . . . there's an increase from Woodland Avenue southbound goes from 57.6 seconds to 66 seconds and that is existing level of service E and its proposed level of service E and I also delineate the delays for each approach on Route 46 east and westbound. As you can see the traffic, the DOT has set the signal up so that Route 46 operates at level of service B but the side street operates at level of service E and that's the DOT's choosing because they regulate the signal timing at that intersection. And then we also calculated the queues at the intersection, I used the no build queue which is 201 feet for Woodland Avenue. The age restricted queue that's the back up from the intersection the 95th percentile queue is 282 feet and if we use the volumes from the converted development the 95th percentile backup is 311 feet. Those numbers are presented in Table 5. So the difference between 282 and 311 is approximately is 29 feet or the equivalent of one additional car on the queue. We would be adding as I stated on the bottom of page 4, the traffic signal cycles 40 times per hour it's a 90 second cycle. Based on these numbers we would be adding .35 vehicles per cycle or approximately 1 additional car per every three cycles of the traffic light. And again if you put these numbers in perspective we've got a two directional volume on Route 46 of about 3,200, 3,400 cars and we're adding 24 cars in the afternoon. So I would suggest that the daily variation that one sees in the 3,000 cars an hour which . . . the variation between a Monday and a Tuesday is greater than what you see as the increase that would be assigned to the conversion. And then I added to the memo all of the capacity calculations using the signal timing that the DOT has set up and I also have a computer model that I'd like to show the Board that these numbers come from. I used a program entitled Synchro which is a pretty sophisticated computer program which analyzes the traffic flows and simulates the turns of a traffic signal and the flows of the intersection. So I did . . . the model will show you the simulation of the two scenarios, the age restricted scenario and the non-age restricted scenario. And what I did not analyze the morning peak hour because the site has a right turn in and right turn out movement. So we projected and we used the same assumptions that 60 percent of the traffic would be destined to the east. Now what you see here is the compilation of a traffic volumes that's shown in the back of the report . . . what I did is there's a picture that shows in the upper right hand corner it says peak P.M. No-Build, which I didn't put on the screen, then I have peak P.M. Age Restricted which is what you have on this chart. So as you can see the age restricted, and these are the projected numbers that were part of the original report, have 220 cars coming and making a left to go back east on Route 46 and there's 318 cars that head down Netcong Road, 130 of those turn left come back through the intersection, 232 continue further west. So what you will now see is a simulation of these traffic volumes. So as we can see what this program does is it inputs all of the traffic based on the signal timing, based on the traffic flow, based on the turning movements. The program simulates the flows and the age restricted has a westbound traffic flow of 2,012 vehicles and then the eastbound flow is almost 1,300 cars. This is 1,300 cars, this flow is 2,012 and this flow is 220 movements.

MR. BUZAK: This is p.m.?

MR. SIMOFF: This is the p.m. I didn't do the a.m. because 60 percent of the traffic just heads east to Route 80.

MR. VAN NESS: What were the hours for the p.m. peak for that study?

MR. SIMOFF: 4:30 to 5:30 and as you can see Woodland where that yellow car is now approaching is a stop configuration and then there's another stop configuration in the northbound direction and Netcong flows westbound. So this is a 90 second cycle so you can see the queues that accumulate on Route 46. There are times when the traffic does, and it's noted in the report, when the traffic does back up in the northbound direction past the Woodland traffic backs up past Netcong Road and then that back intersection does experience some stop and go. But as I stated these, when we add these numbers that are shown in this report this is what we come up for the age restricted configuration and then I can show you the . . . so as I say these are the numbers for the age restricted configurations and then the converted configuration that left turn goes from 220 to 238 right here. And so the difference is that this number goes from 318 to 368 and then this number is appropriately increased and then it turns into 238 vehicles and there's additional traffic headed eastbound on Route 46 towards the

development. So I can show you this configuration and it doesn't change much. If we watch this for a while we'll get some backups on Woodland.

MR. RUSSELL: This is p.m.?

MR. SIMOFF: Yes.

MR. MCGROARTY: Is this the non-age restricted then?

MR. SIMOFF: This is the converted . . . I call this the converted integration. There are backups in both scenarios but the addition is about 1 car in this back up. The program has to run to compile the backup but there you can see that there is somewhat of a back up but it doesn't reach Route 46 and it doesn't block the other Woodland approach. So we would be adding 1 car to that back up. Right here we saw some additional backup but based on the volumes and the criteria it's a minimal impact. And then in the report I also added . . . so I added the results of the report and I added the . . . there's a backup but if you look at the page that says p.m. peak age restricted build, that's the age restricted configuration in the build the next sheet is the capacity calculations and then you can see 95th percentile queue is 282 feet for the age restricted and that queue changes to 311 feet.

MR. BUZAK: Where were you reading from Mr. Simoff in your report I'm sorry I couldn't follow . . .

MR. SIMOFF: I'll point to it, age restricted this is no build, age restricted build . . .

MR. MCGROARTY: Is it after no build?

MR. SIMOFF: I didn't compare the no build to the converted build because we have the right to build the age restricted. So I made the comparison between the age restricted and the converted.

MR. VOGEL: We would like to mark as an exhibit the simulation; I don't know how you want to accomplish that.

MR. SIMOFF: It's limited to my computer I have one license.

MR. WEISS: I don't know how we can accept that as an exhibit though.

MR. BUZAK: Yeah well I have some concerns just about . . . I mean we don't really know anything about the program and you're representing certain things you didn't write the program that is producing what we're seeing here. It's a program that was purchased there's been no testimony with regard to the development of the program or its validity so I have some difficulty adding it as an exhibit when we don't have anybody to testify to it.

MR. SIMOFF: If I may, the Synchro output that has been submitted to you is what NJDOT requires when you have multiple intersections and you have multiple you know a more complex configuration. And this is not a simple configuration as you can see from the chart so what I've submitted in my memo is the computer output from the Synchro calculations. It's based on the Highway Capacity Manual it's an accepted version of the Highway Capacity Manual. The animation is an animation of what you have in front of you.

MR. WEISS: So I suppose rather than accepting the animation as an exhibit we just have to take this for what it was worth.

MR. BUCZYNSKI: I mean you already accepted it as an exhibit the report so . . .

MR. WEISS: I would agree Gene it's awfully nice to add an animation for some numbers that . . . I'll be nice it's kind of overwhelming, I think the animation supplements your presentation and maybe we can leave it at that. But we have to accept that the document that's a part of this.

MR. VOGEL: Well there is no way to mark it as an exhibit in a conventional manor.

MR. WEISS: Short of you giving us a disk of what we're looking at otherwise let's just ignore that request.

MR. SIMOFF: So if somebody else has this program I can give you the disk, I can give you the results of

MRS. NATAFALUSY: We don't have the program.

MR. WEISS: If is a little word with big implications and so let's just leave it at that we don't need it as an exhibit.

MR. SIMOFF: Okay. But as you can see there is 2,000 cars an hour going westbound on Route 46, there is a little bit more than 230 cars coming out of the jug handle, and this is what it shows.

MR. WEISS: Scott?

MR. VAN NESS: I do have to say that this, what we're looking at on the street is pretty accurate. I can't say accurate as far as numbers but as far as a personal experience representation of what happens at that intersection with that traffic that we're looking at it's pretty good of what we see every day there including the backups that it's showing. I mean I've never used the program, I've never seen it before but it does seem to be producing a result of what we see on a daily basis today at that intersection including the backup on the jug handle on Woodland or coming out of Netcong Road as well as on Route 46. The backup is pretty accurate as to how far back it stops during the peak rush hours it usually just makes it to Kennedy's going westbound like it's showing right on that screen there.

MR. WEISS: And the backup you're talking about Scott is on Route 46.

MR. VAN NESS: On Route 46 at the backup that goes to the jug handle every few cycles or so like it's been showing does backup to Netcong Road and then beyond even to What happens is that when the backup on the jug handle, let's call that Woodland section to where it meets Route 46, so on the Woodland/Route 46 intersection the backup that has been showing on this simulator, what happens is that the cars that want to continue left turn onto that section of roadway they have to stop and wait for the light to change and empty that out and that's what causes the backup on Netcong Road in both directions. Because the people on Netcong now have to wait to enter that jug handle and that does happen a few times every several cycles during rush hour, even sometimes during lunch hour but for the most part this is I'm not going to say that it's good or bad I'm just saying that it seems to be accurate. I don't like the intersection today so I don't like the intersection today I don't like how it handles traffic today. How it would handle later is a concern obviously to all of us including I imagine yourself as a developer.

MR. VOGEL: Okay that's his comment.

MR. SIMOFF: But as I stated the increase is one car in the queue.

MR. VAN NESS: Its one car in the queue compared to . . . I guess we have to compare it to the age restricted when it's almost two cars for the non-build.

MR. SIMOFF: Right its one car in the maximum queue so you don't get the maximum queue with a recycle.

MR. VAN NESS: Right I agree with that.

MR. WEISS: I just have one question, not so much about the animation, you mentioned it a while ago and I'm looking at your report page 3 versus page 4. You talked about a.m. peak hours the age restricted numbers versus the unrestricted and you showed us two numbers 85 trips in an age restricted a.m. peak hour and then you jumped over to a.m. peak hour unrestricted at 124 correct? Those were the totals that you're projecting.

MR. SIMOFF: I'm having trouble following you.

MR. WEISS: Okay I'm looking at the number on page 3.

MR. SIMOFF: Yes.

MR. WEISS: The total trips a.m. peak hour is 85.

MR. SIMOFF: Correct.

MR. WEISS: Flip the page same scenario a.m. peak hour total 124.

MR. SIMOFF: Yes.

MR. WEISS: All right and I've heard, I know you try to minimize it, when I look at the difference, I'm not a math major but it's like a 46 percent increase in traffic.

MR. SIMOFF: Well the numbers are presented in table 3 of this report right there underneath. In the morning we increase the ingress traffic by 5 cars for the total development and we increase the exit by 44.

MR. WEISS: I understand for a total increase of 49 cars.

MR. SIMOFF: Right.

MR. WEISS: On the original 85 so my number is right so it's a 46 percent increase.

MR. SIMOFF: But it's not significant, not substantial because they're all right turn in and right turn out and it's

MR. WEISS: I'm not sure how to process that data I hear you I don't know if it's clicking.

MR. SIMOFF: Well I would suggest that we have . . . and I have attached it to the memo, we have a DOT permit for the access.

MR. WEISS: Okay.

MR. SIMOFF: At the last hearing the question came up from Mr. Van Ness what about the intersection of Woodland and Route 46 and that's what you see and that's what we analyzed. Two thirds or 60 percent of the traffic is going to head east in the morning and then approach from the east in the afternoon. So the critical movement is this jug handle because two thirds of the traffic will be coming say from Route 80 and make this U-turn. In the morning there's 2,000 cars an hour going eastbound on Route 46 we're adding 44 to that. So the question really is is it substantial in the context of what we're introducing to existing traffic? And my suggesting to you that's the test, the negative criteria. And the fact of the raw number being something greater than what the raw number was for age restricted is something that you can look at but whether or not it's a substantial impact to the public good you have to take that in the context of the traffic that's on the roadway. If you add 44 cars to the number of cars that are already on the roadway it is not substantial.

MR. VAN NESS: If I can interrupt for a moment?

MR. WEISS: Sure Scott go ahead.

MR. VAN NESS: If you look at the screen, that's the backup that we have there occasionally.

MR. SIMOFF: The other point is that this property is zoned, for Hovnanian was zoned 6 units per acre. Hovnanian had an application for almost 400 units so if you compare what it was zoned for as part of the Hovnanian proposal that was apartments and not townhouses this conversion is probably pretty close to that same number. It was 400 . . .

MR. WEISS: Would you say 330?

MR. SIMOFF: 380 I think.

MR. WEISS: Because I happen to have a traffic study in front of me from that project of 330 so I'm not sure what phase this was in.

MR. BUZAK: But that was not approved that application.

MR. WEISS: No, no I mean Mr. Simoff brought it up.

MR. SIMOFF: What happened is Hovnanian came to the township and got the property rezoned and it was rezoned for 6 units per acre.

MR. BUZAK: But I guess my point is this, I recognize what you're saying but that's an application that never came to fruition. There may have been off-tract improvements that would have been necessary had that application been before the Board, or had been approved by the Board to accommodate perhaps what you are suggesting is happening or can happen. So I think that it becomes a little specious to look back at that and try to justify (inaudible).

MR. WEISS: I agree Mr. Buzak because the comparison at that time was between

MR. VOGEL: Yeah I think the comparison is an appropriate one but not to the application. If you make the comparison to the zoning ordinance, the zoning ordinance would permit 380 to 400 age restricted apartments which would generate the nature of the traffic this un-age restricted projected would. So we don't have to compare it to some application that never went through but we compare it to your existing zoning ordinance you could get 6 units per acre under the existing zone.

MR. BUZAK: But that does not suggest does it Mr. Vogel that the Board when the application came before could not impose off-tract improvement requirements despite the fact that the property is being zoned in that way.

MR. VOGEL: No but I just wanted to put it into some context by saying if you're concerned about the difference between the amount of traffic generated by an age restricted community of 215 units to a non age restricted community of 215 units even that increase is not any greater than what you've already zoned the property for under the zoning ordinance for 6 units an acre. So it's just another factor that you may want to consider or you may want to reject but I suggest to you it's not an inappropriate one.

MR. WEISS: I guess I'm not understanding the use of the word minimal. I understand your comparing it to the total number of cars on the highway, I don't see it that way maybe I'm . . .

MR. SIMOFF: I suggest that one additional car to this jug handle every three cycles of the light is minimal. I suggest that 24 additional cars in the morning and 49 additional vehicles in the afternoon when you compare to 3,500 cars passing the site is minimal.

MR. WEISS: But isn't the exercise to compare it to what it was versus an age restricted? This is what was approved and now we're looking at . . . you're asking us to approve so in my mind a comparison is what was versus what's going to be.

MR. SIMOFF: Correct.

MR. WEISS: And when I do that it's 46 percent increase.

MR. BUCZYNSKI: Howie if I could just interject if I could. I think you're looking at the percentage but it's not . . . you're not looking at percentage of the traffic on the main highway. The main highway is still working at Level B. The increase is really related to development coming out onto Route 46. So there is a delay at 46 percent increase in delay of traffic from the development getting out to Route 46 but as far as your traffic on the main roads it's not a big problem. But you know it's up to . . . it's the developer's concern.

MR. VOGEL: Let me put it in another context for you and see if I can see what's fair. If the other 44 cars on this site have no effect, they're on the site they have no effect on the public, they have no effect on the Township of Mt. Olive, has no effect on the zoning scheme or plan, has no effect on the public good if you look at it. When it does have an effect is when it gets out into the public into the roadway. So now the question is there is certainly more cars obviously 44 and what does the Statute say, does it substantially affect the public good. And my suggestion to you is that 44 cars introduced into the number of cars the thousands that are going by does not substantially affect it. Obviously any change is going to increase the number of cars.

MR. BUCZYNSKI: One other way we can look at it too is and I can't put my hands on it now but what's the level of service of that driveway between the two different scenarios?

MR. SIMOFF: I did not analyze that but the previous I can give you an estimate.

MR. BUCZYNSKI: Because that would give them a little idea at least based on level of service.

MR. SIMOFF: With the lower volume the intersection, the site driveway operated at Level of Service B in the morning and A in the afternoon. So even if it drops down one Level of Service it's still acceptable. The goal is to get to Level of Service C.

MR. BUCZYNSKI: Not to rain on your parade but I guess part of that is the fact that the backup will be relieved once the light becomes red on Route 46 and these cars are just going to shoot right out in the intersection.

MR. SIMOFF: Right the site driveway is just on top of the simulation and so there are gaps created by . . . you can see the gaps are created by the signal.

MR. VOGEL: Maybe I can make it the most elemental way. Let's suppose there was a 100 percent increase, it doubled, the question is not is there more the question is whether or not having doubled it affects the residents of the township, whether it affects their quality of life, it affects the operation of the roadway. So the question is if there are 100 cars that come down the street and you introduce 100 cars that's substantial it has an effect. But if there's 2,000 cars, 3,000 and you introduce 44 nobody feels it.

MR. STASZAK: But what happens Counselor if you introduced 100 cars coming out the driveway and then you introduce another 49 coming out the driveway, aren't you substantially causing a delay coming out possibly onto Route 46?

MR. VOGEL: Let's suppose there's a delay for people waiting to get in.

MR. STASZAK: Let's not worry about Route 46 let's worry about the driveway.

MR. VOGEL: That affects nobody except the residents of this project because they're queuing up not on a public street they're queuing up on their own driveway coming out. Much the same as anybody at a single-family house has if somebody is coming down their street in a private residential area. You wait until the traffic goes.

MR. STASZAK: But don't we have to give consideration to both Route 46 and the driveway?

MR. VOGEL: Only the effect on the driveway on the traffic on Route 46.

MR. STASZAK: So we don't worry about the effect of the traffic on the driveway.

MR. SIMOFF: And plus this driveway is under the jurisdiction of New Jersey DOT which we have a permit for.

MR. BUZAK: Well I think what Mr. Staszak is saying is that while you may think that the Board doesn't have to be concerned about that the residents of that community when they're sitting there and waiting to get out and now you've done something that has doubled or increased by 25 or 35 or 45 percent those people look to the Board and say how did you allow that to happen? Why did you do that? So I don't think Mr. Staszak is far off the mark and while that may be the developer's problem in the end the developer's problems when the developer is no longer there and out somewhere else it becomes the township's problem and the Board's problem. I think the public good is a neighborhood the neighborhood is not just Route 46, the neighborhood is as much this created entity.

MR. VOGEL: I'll make it very plain to you. I mean the members who have been on the Board when we got the original approval you know over several years got to know me and I'm as candid and straight forward as I can be. If you want to deny this application based on the fact that we have 44 more cars going out in the morning into a street that has 2,000 or 3,000 people that would be unreasonable on your part. That's my position and you may feel to the contrary and if you react that way I just want to let you know that as far as I see it from a context of the law and what the negative criteria are that's really simply where we're coming from and we can beat this to death.

MR. WEISS: Mr. Vogel I agree with you I think the unreasonable thing to do would be to not ask the question when there's . . .

MR. VOGEL: Oh I don't mind.

MR. WEISS: And so Mr. Staszak and myself both have questions that we just wanted further testimony.

MR. VOGEL: Howie I've been here too long I know.

MR. WEISS: I understand so no one is suggesting anything except that we had additional questions. I agree with you I don't think there's anything else you need to say about traffic whether we agree or not you have testified certainly on your page 5 that the level of service is not going to increase.

MR. SIMOFF: And let me also state I went back to the original report with you know with the lower number we're increasing by 44 cars the exiting volume, the 95th percentile queue. That means 95 percent of the time it's less than this and 5 percent of the time it's more than this but the 95 percentile queue was .28 vehicles. So if we double the traffic that queue is not going to go higher than 1 or 2 vehicles.

MR. WEISS: You know what I think my opinion here is that, and I've sat on the Planning Board a long time not nearly as long as Mr. Mania, but I can tell you that from my experience there's nothing more frustrating than traffic testimony.

MR. SIMOFF: You don't like my simulation?

MR. WEISS: Your simulation does help and I thank you for that but as we sit here and listen to volumes of testimony week after week I think everyone here understands what we're listening to but traffic testimony is confusing. I think it's I don't see reality and I'm not saying your testimony is not realistic, as a Planning Board member I have trouble with traffic testimony.

MR. SIMOFF: And candidly that's why I brought my simulation.

MR. WEISS: We appreciate it and that's so the fact that we're kind of slow on this is not uncommon. Joe did you have a question?

MR. FLEISCHNER: Well I have I guess it's a question of Gene because we sit here through the years and we always say well we rely on our experts. So therefore I'm going to rely on my expert to my left . . .

MR. BUCZYNSKI: I always thought Scott was your expert.

MR. FLEISCHNER: Well he is on my left but then there's my expert on the right since you're the engineer. I would like to hear your opinion of what this traffic situation is.

MR. BUCZYNSKI: Well let me talk about the concern we're bringing up right now regarding the in and out of the driveway from the development. Even when you talk about increase of 49 cars, for saying what it was before is okay and now an increase in 49 cars you're talking about an hour. Okay the light cycles what every 2-1/2 minutes?

MR. SIMOFF: It's a 90 second cycle so it's 40 times an hour.

MR. BUCZYNSKI: 40 times an hour so that means every time it cycles you're asking for one more cars to come out of that intersection basically. Which to me is negligible it really is. I mean when you look at percentages I think you can't look at it from a percentage standpoint based on what's physically happening out there. You've got 40 cycles in an hour; you've got 49 additional cars that means one more car has to get out of that intersection to be cycled basically. So I think it's minimal.

MR. WEISS: Okay.

MR. FLEISCHNER: Thank you.

MR. WEISS: Let's end it then we've heard from our engineer, Mr. Vogel we could (inaudible) this all night long. I think we're satisfied with the testimony.

MR. VOGEL: I looked at the minutes from the last meeting and I said we beat the horse to death last time but . . .

MR. WEISS: Being thorough is okay in this application.

MR. VOGEL: You know the real problem with traffic testimony as you say you're trying to take people's experience on the road and to quantify it by numbers and a chart and that's what . . . you know how do you do that?

MR. BUCZYNSKI: Well Level of Service F is F but it's still okay for a traffic engineer you know.

MR. WEISS: Well let's do this let's . . . I take it your done with your traffic testimony.

MR. SIMOFF: Yes.

MR. WEISS: Let me open it to the public if anybody has any questions for Mr. Simoff based on the testimony he's given tonight on traffic. Seeing none I'm going to close that to the public and let's move forward.

MR. VOGEL: My next witness is Mr. Zimmerman. Do you want to take a break now before we start with him or do you want to keep going?

MR. WEISS: I don't want to break at all unless anybody from the Planning Board does.

MR. VOGEL: Fine with me.

MR. WEISS: Let's continue.

MR. VOGEL: May I have the witness sworn please?

(MR. P. DAVID ZIMMERMAN SWORN IN FOR THE RECORD)

MR. BUZAK: Please state your name and business address for the record spelling your last name.

MR. ZIMMERMAN: P. David Zimmerman (Z-I-M-M-E-R-M-A-N) I'm a license professional planner in the State of New Jersey I have an office at 21 Western Avenue in Morristown, New Jersey. I represent several municipalities as their Planning Consultant and from time to time I appear before Planning Boards and Zoning Boards as an expert witness.

MR. WEISS: I think we're keeping it moving we've all been (inaudible) Mr. Zimmerman he's been in front of this Board many times. I have no reason not to accept Mr. Zimmerman as a professional planner.

MR. ZIMMERMAN: Thank you.

MR. WEISS: You're welcome.

MR. VOGEL: Mr. Zimmerman you previously testified before this Board on the age restricted application did you not?

MR. ZIMMERMAN: That's correct.

MR. VOGEL: And you provided testimony in a report to the Board on that occasion.

MR. ZIMMERMAN: That is correct.

MR. VOGEL: And since that time you have been requested to undertake an additional study based upon this application to release the property from the age restriction.

MR. ZIMMERMAN: That is correct.

MR. VOGEL: Would you describe to the Board the process that you went through and the conclusion that you reached.

MR. ZIMMERMAN: The initial starting point from my perspective as a planner was to brief myself on the Statute that was enacted by the State. And I recognize that Mr. Buzak gave a very thorough analysis of that, but very briefly the applicant . . . the Statute requires the applicant to meet seven criteria and we went through them or Mr. Simoff in particular went through them at the last meeting but very

briefly. Number one the site meets residential site improvement standards for parking and actually this site has more parking than is required by the site improvement standards. Recreation improvements and other amenities may have to be revised and that was the starting point for the discussion (inaudible) and it seems to be we've come to a consensus between the applicant and the Board as to what's needed. The water supply system is adequate Mr. Simoff testified to that point, the capacity of the sanitary sewer system is adequate similarly Mr. Simoff testified to that point. If additional water supply or sewer capacity is needed we have adequate sanitary sewer and water supply to this project no additional systems are needed. If additional parking is needed we've provided more than enough parking on the site and lastly if additional parking is provided and increases the amount of impervious cover by more than one percent the stormwater calculation improvements have to be revised. Actually the modest change in the site increases the impervious coverage by significantly less than one percent so the applicant satisfies that criteria. Now lastly and I guess this is the reason I'm here is the Statute also requires the following: If the approving Board determines that the requirements of the Act, which I just mentioned before items one through seven have been satisfied and the conversion can be granted without substantial detriment to the public good and will not substantially impair the intent, purpose of the zone plan and zoning ordinance the application for the conversion shall be approved. So you've all heard those words before that's the typical negative criteria for applications before the Board. Now what I'd like to do is something a little low tech I can't follow Hal's act as far as simulations and things like that but I just briefly want to put before the Board some information regarding the first prong of the negative criteria. Is there substantial detriment to the public good, and if it pleases the Board I'd like to introduce an exhibit.

MR. WEISS: That exhibit will be A-5?

MR. BUZAK: Yes.

MR. WEISS: What would you call this exhibit?

MR. ZIMMERMAN: Is there a substantial detriment to the public good.

MR. WEISS: I guess I asked a technical question you gave me the answer. It's a presentation on the explanation

MR. VOGEL: On the negative criteria.

MR. WEISS: Okay.

MR. ZIMMERMAN: One aspect of an analysis of the negative criteria now that we've dealt with traffic is the relationship of the project to the surrounding land uses. So on page one you see a tax map and superimposed on that tax map is the plan of the project, the outline of the property in yellow and the abutting properties color coded into various land use categories. And if we were to for example start at the upper right the eastern end of Route 46 there's a little stem of the project that goes out to that local road and then there's a single-family home and a business that abut the subject property. But you can see from the plan that there's no development in that area whatsoever. Now if we go further west on Route 46 we see the Board of Education property and obviously there are some buildings that are approximate to that property but I don't think and the test here is will the fact that these buildings and these townhouses now have a market population rather than an age restricted population have any detrimental impact on these surrounding properties. And I don't think that having a market population next to the Board of Education property is going to have any impact. If we go further along west on Route 46 there is at the end of our property a single-family home and the Enterprise Rent-A-Car business again that and we have Chamberlain Lane and we have some two houses on Chamberlain Lane that abut the property and lastly colored in green is Township of Mt. Olive piece of property. But there's no change to that area of the project because that area of the project was the affordable housing when it was age restricted and it's today according to the plan going to be affordable house with the conversion. Then we return again in back of those two homes we return again to the property, now we have market townhouses and as opposed to age restricted townhouses and they abut vacant property. And lastly rounding the corner you have seven dots those are seven homes which front I think Connelly Road and they abut the subject property but they don't abut any townhouses. And the large green area is Mt. Olive open space property. To give you another picture literally and figuratively of what I explained the next illustration is the plan superimposed on an aerial photograph of the area. And again my conclusion is that there is nothing about the change in the population of the townhouse units from age restricted to a mixed population as I call it that will in any way, shape or form in my opinion have any effect on the surrounding land uses or even have any effect on the neighborhood itself. So normally we would consider this I think the acid test so to speak of whether there would be an impact on the

public good namely the neighborhood and the abutting properties to the subject property and I think hopefully as I explained it there will be no impact on the public good. The second part of the negative criteria is to ask the same question is there a substantial impairment to the zone plan or Master Plan or the zoning ordinance. And similarly I'd like to introduce some similar type exhibits on that point which can be circulated to the Board and would be an additional exhibit.

MR. WEISS: And we're going to mark this A-6, Catherine what does that say?

MRS. NATAFALUSY: It says is there a substantial impairment to the Zone Plan, Master Plan or Zoning Ordinance.

MR. WEISS: Substantial Impact to Zoning Plan. Okay.

MR. ZIMMERMAN: The difference between the aerial photograph that I just recently discussed and what was presented by the applicant is the aerial photograph and my exhibit is the entirety of the property where the aerial photograph that you see in front of you mounted on this Board is the developed portion of the property. So the next question is is there a substantial impairment to the Zone Plan or the Master Plan or the Zoning Ordinance. And for that I am presenting to the Board several items of information. The first is going back to the last Master Plan that was prepared for the Township of Mt. Olive in 2003 Master Plan Master Plan Re-examination. And in that document you will see an illustration of the Land Use Plan that was in that Master Plan and hopefully you can find the subject property but the subject property is in the category of Senior Citizen-Extended Care. And the other property around it are shown in various categories, various land use plan categories. The next illustration is taken from the

MR. WEISS: Just one second Rene has a question for you.

MS. GADELHA: Just one . . . this has 2003 and Chuck didn't we amend the Master Plan last year or something?

MR. MCGROARTY: There had been some amendments to it yes.

MS. GADELHA: But I just want to make sure that this

MR. MCGROARTY: This is certainly the Land Use Plan, there have been amendments to it but yes . . .

MS. GADELHA: Okay I'm not familiar with the . . . okay thank you proceed I just want to make sure we had the right thing.

MR. ZIMMERMAN: Your question segways into the next page thank you. The next page is the 2010 periodic Re-examination Report of the Master Plan adopted June 17, 2010. And under the heading of residential the fourth paragraph talks specifically about the subject property. In addition Mt. Olive created two other zone districts for age restricted housing which targets households 55 years of age and older. The R-6 zone district was established in 1998 on the undeveloped land encompassing the Mt. Olive Board of Education offices the formal Budd Lake School on Route 46, preliminary site plan and major subdivision approvals for 254 age restricted units and 54 low and moderate income unit households non-age restricted was approved by the Planning Board in 2008. That is a statement of fact that is included in the periodic Master Plan. My conclusion looking at these two documents the 2003 Master Plan and the statement in the periodic Re-Examination 2010 leads me to conclude that the conversion is not going to have any impact on the Master Plan. The Master Plan already identified this piece of property for multi-family housing; obviously the Master Plan identified it for age restricted as opposed to a market project. But what happened after 2010 or after June 2010 the State Legislature trumped everything that we were doing up to that point, not only what the applicant was doing but also what the Planning Board was doing in terms of its Master Plan Amendments and periodic Re-examination. So that is the reality of the Statute and its impact on this particular zone and the 2008 approval and the Master Plan. The Master Plan essentially has been trumped but I don't think the fact that this project is now a market project has any detrimental impact on the Master Plan. It's not as if we're proposing a multi-family housing project on something that was identified in your Master Plan as a one acre single-family or commercial or some other use. We're essentially in the same ballpark. Lastly the next illustration is geared to give us some assistance in evaluating would the approval of the conversion have a substantial impact on the zone plan. And all I've done here is to duplicate the zone district map and outlined in yellow the R-6 zone district and frankly it's my conclusion that conversion from age-restricted on this piece of property in this R-6 zone is not going to have any impact upon the

surrounding zones or surrounding properties. And I say that basically because the surrounding properties, and you go back to what was the aerial photograph I did, they're all developed so it is my opinion that what happens on this property and I considered what's being proposed is a relatively modest change in terms of population or as Mr. Simoff said in terms of traffic or in terms of any change to the site plan itself. In my opinion the conversion is not going to have any impact upon these zones which are almost universally already fully developed. So it's not going to set a precedent in my opinion and it's not going to have a substantial impact, I don't think it will have any impact on the zoning in the immediate neighborhood of the subject property. So in terms of the negative criteria frankly I feel that the applicant has satisfied what the Statute requires namely for us to take a look at that and in my opinion I think that the conversion can be approved because we satisfy all seven items in the Statute and in addition we satisfy the negative criteria.

MR. VOGEL: In that context there are no physical changes to the approval previously granted. For instance the buffers remain the same do they not?

MR. ZIMMERMAN: That's correct.

MR. VOGEL: The access remains the same to the property.

MR. ZIMMERMAN: That's correct.

MR. VOGEL: The units that were approved remain the same.

MR. ZIMMERMAN: The number of units remain the same, the townhouse units for the market and the apartment type units for affordable housing and the style of housing remains the same.

MR. VOGEL: And essentially is it not true that the conversion Statute to which you refer creates a non-age restricted community as previously granted preliminary site plan approval a permitted use?

MR. ZIMMERMAN: That is correct.

MR. VOGEL: I have no further questions of the witness.

MR. WEISS: Joe I figure you had a question about this because I'll follow up as well.

MR. FLEISCHNER: Actually I had two questions. My first question is by converting this from age restricted to non-age restricted will there be taking into account at this point work force housing? Because the whole concept I mean when it's age restricted I understand the low and moderate income but one of the concerns that I've always had is how do you provide housing for teachers, police officers just starting out and it's my understanding, and I may be wrong and I'm going to rely on Chuck if he can help me here, isn't there somewhere in the Statutes that we're supposed to have made available work force housing?

MR. ZIMMERMAN: You're absolutely correct you're paraphrasing what the Statute says. The Statute talks about housing for teachers, nurses, police officers, fire fighters in the general work force population. It also talks about the fact that there's a significant over supply of age restricted housing and it talks about the current deteriorating national economic conditions all of which contribute to the adoption of this Statute. But in my opinion I think what is being provided is number one, I think interestingly enough a type of housing which is not readily available in Mt. Olive. And the reason I say that is I took a look at the Housing Plan Element of September 17, 2009 and I was really struck by the fact that under the category of single-family attached which are townhouses, you have single-family detached which is about 60 percent of the housing in Mt. Olive that's your single-family on a single-family lot. But the single-family attached is less than 2 percent of all of the housing in Mt. Olive and this is the type of housing that is being provided by this application.

MR. FLEISCHNER: So will that limit the pricing of the homes? I mean what restriction is there to prevent, and I mean I don't know I don't set prices

MR. VOGEL: Price is not an issue though Mr. Fleischner what it is when you call it work force housing?

MR. FLEISCHNER: Right.

MR. VOGEL: Are you supplying work force housing when it is age restricted? Are you not supplying more work force housing when it is not age restricted? I would suggest to you that the later is more accurate than the former.

MR. FLEISCHNER: Right but if you set the price at \$400,000, \$500,000 how does work force if let's say they're a teacher that starts at \$45,000 and we tend to start our teachers now in Mt. Olive at step one whether they have ten years experience or not because of the environment, how do they afford that house?

MR. VOGEL: Well of course we have the affordable housing component here, that is one aspect of it. The other aspect of it they're certainly . . . whatever prices they're at they're more available to the work force if they're not age restricted than they would be if they are age restricted.

MR. BUZAK: I'm going to just stop here for a second Mr. Vogel. I appreciate your answers to the questions but you are Counsel for this applicant and I think the answers ought to come from the applicant or from Mr. Zimmerman or whatever.

MR. VOGEL: Understood.

MR. BUZAK: So I would ask that question be posed or you can pass that on perhaps to Mr. Zimmerman or Mr. Simoff we'd be happy to hear from them.

MR. ZIMMERMAN: Okay well I think a strong point is the recognition that housing, a type of housing is being provided, not only the 215 market townhouses but also the low and moderate income housing. But reflecting on the 215 single-family attached or townhouse units there are very few of those types of housing units in Mt. Olive in comparison to 3,000 apartments and 5,000 single-family home out of a total of 9,000 housing units in a township so I think we're providing a . . . we're expanding the variety of housing. In terms of the work force, the work force is, and Chuck correct me if I'm wrong here because I'm going by memory, is defined I think as 80 percent to 120 percent of the median income. So if the median income is about \$70,000 in the Morris County region that is what the State has more or less identified as work force household income and work force housing. I don't know if anyone knows at this point what these homes with these townhouses will be priced at. I would make a guess and say given the area that we're in they would probably be in the low \$300,000 category. And I think that's the category that is work force type housing. It will be housing that will be available to entry level homeownership situations, entry level homeownership households. Households that have you know a young child and they want to come in to Mt. Olive, they want to come in this area maybe they work in the area or something like that. And then they will stay here for a certain period of time 4 or 5 years and they will move into a single-family house when they have more children and need more space. And the other end of the spectrum is that this housing will be available to those that feel the single-family home is too much of a burden and the children have moved out and they want to downsize. So that's primarily the market that these homes will be sold to. And I think that addresses in my opinion I think that addresses your concern.

MR. FLEISCHNER: You did raise an item which would be my second question. Additionally there was concern in your original application for age restriction because I've been sitting here for these about school buses picking up kids. Now that we have children, would have theoretically throughout the entire complex, would you testify to the fact without changing the roads the school buses will be able to go through the entire site?

MR. SIMOFF: I'll handle that one.

MR. FLEISCHNER: Okay.

MR. SIMOFF: I'll refresh your memory from mine; the original plan had contemplated school children in the affordable units out front.

MR. FLEISCHNER: Correct.

MR. SIMOFF: And so we had discussions back and forth as to where the bus would stop and the way they would pick up, whether the bus would stop on Route 46 or in the . . . so what we did is we designed this cul-de-sac in the front which I left the same for a bus to make 180 degree turn. So this cul-de-sac has been left the same. The main circulation roadway will handle fire trucks, will handle a school bus, it will handle a moving van. Now some of these, obviously some of these cul-de-sacs you know are .

. . . .

MR. FLEISCHNER: Right I understand that.

MR. SIMOFF: Are constrained but if the Board of Education and there was discussion as to where they pick up and how they pick up, but if the Board of Education desires to enter into the site they can.

MR. BUCZYNSKI: Just one more item on that too just for the record, the cul-de-sac on the . . . I guess the north of the cul-de-sac that's designed for buses to correct? Buses and emergency vehicles?

MR. SIMOFF: Yes because it was way down at the end it's a greater diameter than RSIS.

MR. BUZAK: Can you just point that out on the map there? Thank you.

MR. FLEISCHNER: Thanks.

MR. WEISS: I have a question. Joe were you done?

MR. FLEISCHNER: Yes thank you.

MR. WEISS: I'm a little troubled by some of the testimony. We talked . . . Mr. Fleischner asked you about work force housing and part of your answer was well we're providing COAH and I'm going to turn this to Mr. Buzak, it's almost like you want your cake and eat it too. You can't say that COAH addresses work force housing can we?

MR. BUZAK: No I think that work force housing is different. I think Mr. Zimmerman's definition is one that's been generally accepted, that is it's above the low and moderate. So I think the Act talks about a third type of housing which is this, I think you're correct the low and moderate is a different category of housing.

MR. ZIMMERMAN: Yeah I would not include low and moderate income housing as work force housing as the State is discussing the issue.

MR. WEISS: Okay it sounded like you did okay. And then the other thing I'm kind of sitting here and having trouble with and I'm going to ultimately agree with you but disagree on the way you got there is that you presented A-6 and you talked about no detriment to the Master Plan and I think things outside of all the control the Legislation trumps our Master Plan. And so I think it's a tremendous impairment to our Master Plan but it's one that you can control, we can't control it the Legislation gives you the ability to trump our Master Plan. And so although you're saying there is no deviation or I'm not sure the word you said, I think it's a tremendous . . . it says right here on the 2010 Examination Report it clearly says that this is an age restricted piece of property. But the Legislation says that you don't have to develop under that and so I'm not blaming you for it I'm not criticizing you for it but I'm disagreeing with the way you presented it. I think it is a substantial impact to our Master Plan but one that we have to understand that the Legislation takes our control away. And so like I said I'll agree with you I don't agree with the way you went there I think that there's a tremendous deviation from our Master Plan that this project brings but it's one that I understand you don't have to control because the Legislation is on your side here.

MR. ZIMMERMAN: I understand your point Mr. Chairman.

MR. WEISS: Okay.

MR. BUZAK: If I could follow up on that question?

MR. WEISS: Sure.

MR. BUZAK: Mr. Zimmerman was it your testimony . . . well let me not go through it that way. Let me put out for the record that the Statute that we're talking about was adopted in July of 2009. Our Master Plan Re-examination was adopted in June of 2010 so the reality is that we did adopt a Master Plan and Mr. Zimmerman's testimony at least I inferred from his testimony that did the plan and then our legs were cut out from under us because the Legislation passed. And in fact in sequence that's not true. The Legislation passed before and we were aware of the Legislation because it had been already in effect for a year when we adopted the Master Plan. So I think that this was not an inadvertent inclusion in our Master Plan it was a deliberate inclusion in our Master Plan because that's

what we had there at that time and in fact we had a project as is pointed out there that was approved for that at that time. So I think that that was all considered we did not know that there would be an application for a conversion, that's elected that's not mandatory. So I tend to not necessarily agree with again the manner in which it was presented in terms of sequence.

MR. ZIMMERMAN: I accept that correction thank you.

MR. WEISS: Ultimately we can't use that as a I don't think that would be, I don't want to say a double negative negative but I understand that it's not a negative impact based on only because the law says that's the way it is. Anybody else have a question for Mr. Zimmerman? Chuck did you have anything?

MR. MCGROARTY: I don't.

MR. WEISS: Before you leave I was going to open it to the public if anybody has any questions for Mr. Zimmerman on the testimony presented this evening?

MR. HALBUR: Tim Halbur Hackettstown technically though Mt. Olive. What was the calculation used for the number of children that the development would generate?

MR. ZIMMERMAN: There is a publication by Rutgers University it's entitled Who Lives in New Jersey Housing, something of that nature and they present ratios and information for school age children for population, for number of persons 0-4, 5-17, etc., etc. up the latter for a wide variety of housing that ultimately comes from the census that they've analyzed. This information is published in that publication I've indicated and it is relied upon rather substantially by planners like myself, Mr. McGroarty to I assume, to generate the number of school children or generate the number of persons that are expected to reside in particular types of housing.

MR. HALBUR: Agreed. I guess my question is is the number that was stated at the June whichever meeting was that there would be 22 children generated.

MR. ZIMMERMAN: Yeah 22.6 school age children that would be generated from the conversion of the 215 units from age restricted to market units.

MR. HALBUR: 22 additional?

MR. ZIMMERMAN: Well there was none with the

MR. HALBUR: So there were none before and there's 22 total now.

MR. ZIMMERMAN: Let me hopefully state it as factually as I can.

MR. HALBUR: Okay.

MR. ZIMMERMAN: Focusing just on the 215 age restricted units there obviously were no school age children generated from those units. Converting those 215 units to market units there will be as Rutgers figures calculate out will be 22.6 school age children from those 215 units. There will also be school age children from the affordable units but that always was the case.

MR. HALBUR: Okay so is there a number that this development is expected to generate as a total?

MR. ZIMMERMAN: I didn't have a number in my report but I thought someone might ask me that question.

MR. WEISS: Well would it be fair to say that the 54 units remain the same from where it was before?

MR. ZIMMERMAN: Absolutely yes.

MR. WEISS: Of course that's nothing that's going to be

MR. VOGEL: That doesn't answer his question though.

MR. HALBUR: I do have a reason for that question but it is somewhat different. The second question that I would have on that is you stated that it would be 22.6. The Rutgers study does it based on the . . . first off is it based on the 2000 census which is obviously 11 years old so my question is is there newer data in the 2010 survey that has been generated.

MR. ZIMMERMAN: No.

MR. HALBUR: Is there data that is representative of a . . . it's for New Jersey so is there data representative for Northern New Jersey which is obviously a different demographic than Southern New Jersey.

MR. ZIMMERMAN: The Rutgers study is for New Jersey.

MR. HALBUR: Right. And the third thing would be is part of the calculation is based on the median price of the house and I'm curious if you don't know what the price of the buildings are going to be how you can use value .16 or .18 or .92 whatever.

MR. ZIMMERMAN: I don't remember the exact price categories but they really fell into two categories. I think it was \$225,000 home cost, one category was more than \$225,000 and one category was less than \$225,000.

MR. HALBUR: I believe that's correct yes. So my question is but they're different numbers depending upon which one it was.

MR. ZIMMERMAN: Well I used the higher

MR. HALBUR: You used the higher of the two?

MR. ZIMMERMAN: Yes.

MR. HALBUR: Okay.

MRS. NATAFALUSY: Excuse me can I have you're . . . I didn't get your name.

MR. HALBUR: I'm sorry Tim Halbur.

MRS. NATAFALUSY: Thank you.

MR. WEISS: That actually led me to my question, line of questioning was about the number of school age children, 22.6. My follow up question was going to be this Rutgers report, and I am familiar with it it's a quite a large I think you once gave that to me Mr. Simoff it was really a big packet. Isn't it fairly large report?

MR. SIMOFF: It was David Listekin right?

MR. WEISS: Yeah I think the first time I saw that you actually gave it to me I once asked you that question. But it's dated 2000 you said right?

MR. ZIMMERMAN: Well the information is from the 2000 Census.

MR. MCGROARTY: The report was September 2006.

MR. ZIMMERMAN: I'm sorry Chuck.

MR. WEISS: Prior to 2000 Census.

MR. MCGROARTY: The report, the updated report is November 2006.

MR. WEISS: Okay.

MR. MCGROARTY: Listiken did do one earlier but David, Mr. Zimmerman is correct this replaces it.

MR. WEISS: I know that Mr. Buzak is familiar with this as well and I believe that when I reviewed this there's a caveat in this report and it basically says although the data that we're using it might not be accurate for your community. Is that Mr. Buzak do you remember that?

MR. BUZAK: Yeah I think that that's correct I think that this is data that is as Mr. Zimmerman has testified to it's from the Census and it's Statewide and the actual Who Lives in New Jersey Housing Report provides as follows, and I have the section here. And I'll read from it it's in their executive summary actually on how to use the report on page 8 Roman VIII and it reads for best results the State level data presented here should be supplemented by local analysis such as, they have conducting I assume you mean conducting case studies of the actual population and especially public school children generation of occupied housing developments comparable in character i.e. type size, price and tenure and location to the subject development and being considered by the analyst. For example in quantifying the likely public school children generation on a three bedroom townhouse priced at \$300,000 per unit proposed for Princeton Township and analyst should first consider the quick guide Statewide data and the average number of public school children .24 in housing of this type single-family attached size three bedroom and twice the level of the median value. The analyst should then identify comparable townhouses e.g. three bedroom units priced at \$250 to \$350 that are occupied in Princeton and nearby communities and then should ascertain these developments actual public school children generation from public school data e.g. busing and other information. The combination of these documents multipliers and local analysis provide comprehensive framework for answering the question Wilmington, New Jersey Housing Authority (inaudible). So yes.

MR. ZIMMERMAN: I don't want to fall into the category of traffic engineers and dealing with you know how many school children are on the head of a pin here but actually I probably could make the case that that number using 2010 Census might even be lower. Because the size of families and the (inaudible) term trend the size of families are getting smaller and smaller.

MR. WEISS: Here's where my frustration comes in, and I have to eat crow when it comes to traffic because it's a different breed. But when it comes to this data that we're looking for and it says that the caveat basically says we should look at multiple numbers, why can't we look at the similar neighborhoods? On the top of my head I'm thinking of Flanders Crossing which is about 220 homes and granted those are four bedrooms so it will be twice as much but why can't we take testimony based on real life situations that currently exist in Mt. Olive?

MR. VOGEL: Can I interject here for a moment? I want to take a legal position. The number of school children generated by non-age restricted development under this Statute is not a relevant consideration. You may not consider whether or not a conversion to non-age restriction generates more school children or not. The Legislature has said that these types of developments that meet the criteria will not be restricted by age. Not being restricted by age means that whether or not those school children are school age or any other age is not to be a consideration within the context of whether or not we meet the negative criteria.

MR. WEISS: And I agree with you 100 percent I think everyone on the Planning Board understands that that's not an issue but you brought up some testimony. I don't know if I agree with it I just was . . . we're relying on a document from 2006 that has a caveat that suggests that we could look at numbers of existing . . . for whatever the purpose, and I'm suggesting have you done that. We're trying to isolate who is this work force consumer, who is the consumer here? Let's identify that person or how many children do they have? I'm trying to put it all together and I just was asking the question have you considered looking at the real numbers rather than a number off of a computer program, a report?

MR. ZIMMERMAN: Given the context of the legal parameters within which I think both sides of the table have to use to examine this project and the fact that I offered that number as more or less a courtesy to the Board. And the question was asked and I offered the number and I used something that Planner's throughout the State rely on just like Engineer's rely on the I.T.E. and other valid texts. I think that we have given you the information appropriate and necessary for you to evaluate this project.

MR. WEISS: I appreciate that and I wasn't going to bring it up but it was brought up.

MR. VOGEL: Well I'd just like to . . . I made a judgment early on that we would not have direct testimony on the number of school age children because my position that I stated what Mr. Zimmerman gave was in response to a question by a member of the public.

MR. WEISS: And I followed up.

MR. VOGEL: Thank you.

MR. BUZAK: But it is in his report.

MR. WEISS: It's in the report.

MR. BUZAK: Correct.

MR. WEISS: We saw that number.

MR. BUZAK: Okay just for Mr. Vogel I mean yes he was responding to the public but that was presented as part of the (inaudible).

MR. VOGEL: I understand.

MR. BUZAK: For the reasons that Mr. Zimmerman gave.

MR. ZIMMERMAN: Again as a courtesy I would fall off the chair if I didn't think the question would have been asked.

MR. WEISS: Anybody else have a question? Go ahead Rene.

MS. GADELHA: From our last meeting in June I have this down as a question and it came up I don't think we ever answered it and I had conditions as to the maximum number of residents per dwelling. I understand it's a two bedroom I don't even know if there's anything we can do with that but we had talked about how many people, you know I guess what the suggested number of people living in there. I don't know if that's for them or if that's for us, if there's an ordinance if it's irrelevant but I know that it came up and we talked about it a little bit but

MR. VOGEL: That would be a function I believe, and I stand corrected by Counsel, of your municipal ordinances the State Municipal Land Use Law nor the Statute talk about occupancy. And I don't know what your local ordinances require with respect to that.

MS. GADELHA: Just wanted to bring it up because I had it down. That's all.

MR. FLEISCHNER: Mr. Chairman?

MR. WEISS: Yes.

MR. FLEISCHNER: My question is of Chuck because I go back to our planning expert. Do you have any comment as to what Mr. Zimmerman has testified to?

MR. MCGROARTY: No I don't.

MR. FLEISCHNER: Any issues with it?

MR. MCGROARTY: No I don't. I mean I think that the overriding reality of it is the Statute limits what we can do. If we were not . . . we probably have a much . . . I think I would have more questions and thoughts and perhaps the testimony would be different even from Mr. Zimmerman if the Statute were not in place. But it is, I don't disagree with the analysis about the zoning I mean it's age restricted versus non-age restricted, it's still residential, it's still at a density but clearly non-age restricted will have impacts and consequences or potentially anyway with regard to the school system traffic reports address separately. But that's not a factor that we . . . at least as I read the Statute that we even take into account here. It's not going from a very different type of use, that is it's not going from commercial to residential so in that respect I don't think it's that dissimilar in terms of the type of the character of the land once it's developed and the intensity of the land once it's developed.

MR. WEISS: Anybody else from the public have any other questions for Mr. Zimmerman? I'll close it to the public. Mr. Buzak?

MR. BUZAK: Yes Mr. Zimmerman is it your view that the negative criteria as we were so short handed it or short termed it as set forth in the age restriction or the conversion Statute is the same

negative criteria that is utilized in the Land Use Law with regard to variances even though this is clearly not a variance it's so stated in the Statute.

MR. ZIMMERMAN: Well I guess we can certainly agree that the words are the same I don't know how to evaluate those words in context.

MR. BUZAK: Okay well let me give you a suggestion.

MR. ZIMMERMAN: Okay.

MR. BUZAK: We talked a little bit earlier about the fact that the purposes of the act are set forth and Mr. Fleischner talked about work force housing, affordably priced work force housing and you correctly pointed out that the act itself makes reference to that, it makes reference to creating jobs for Policemen and Firemen and teachers and so forth. And can we agree that that is one of the purposes of the act based upon the Legislation?

MR. ZIMMERMAN: I think that's one of the purposes of the act.

MR. BUZAK: Do you think that in evaluating whether there's substantial impairment of the zoning plan or zoning ordinance or substantial detriment to the public good that a measurement of that should be based upon what the purposes of the act are? That is what was intended to occur as a result of this conversion.

MR. ZIMMERMAN: Well obviously the Board can analyze what we presented in any way that they think appropriate and any way that you feel you would like to direct the Board legally to evaluate. The overriding factor as I see this Statute is basically to encourage what we're here tonight before you. This is a Statute which is seeking to promote the conversion of age restricted housing which there's an oversupply in the State, recognizing economic conditions that we're in and we'll probably be in for the next couple of years as well, and they've set up certain criteria which I would evaluate as pretty minimal criteria and criteria which rather can be satisfied rather easily.

MR. BUZAK: Could you speculate as to a situation where you have an application such as this where an approval was granted for age restricted development which is typically multi-family as opposed to single family detached. Where there would be a substantial detriment to the public good or there would be a substantial impairment of the zoning ordinance and the zoning plan?

MR. ZIMMERMAN: Where there may be a situation where that hypothetical may arise or may have to be evaluated. I think it's probably . . . I think its most . . . and this is not the first conversion project I've been involved in. Those that I've been involved in, those that I know of and those that there are certain cases dealing with conversion projects in what I read. They all seem to be able to satisfy the criteria as I said earlier without much difficulty and so those that I'm familiar with and those that I've worked on, those that I've heard about do not raise substantial issues which would rise to the level of possibly being denied.

MR. BUZAK: I have a question I think of Mr. Simoff as opposed to Mr. Zimmerman. And I'll ask the question and certainly anyone, either of you can answer it. And it was asked to some extent earlier and that is do you have an idea based upon the people that you have spoken with Mr. Simoff who are interested in this product as to what the prices would be the price is would be for non low and moderate income units. Mr. Zimmerman testified in response to a question that was asked by simply setting a number I think he said you know let's assume \$300,000 and then went through what it was.

MR. SIMOFF: I think you're asking about the 215 not the low and moderate.

MR. BUZAK: Yes I'm sorry yes I mentioned 215 I said . . . I was supposed to say not excluding the low and moderate. If I didn't say that then I apologize I'm talking about the market units.

MR. SIMOFF: No we don't know, the market is going to drive that. Five years ago, eight years ago you could get \$400,000 or \$500,000 for a townhouse you can't get that now.

MR. BUZAK: So in terms of this Board evaluating whether there's going to be work force housing created there's really you haven't been able to provide testimony as to what the cost of those units would be therefore the Board really doesn't have anything before it to evaluate whether there's any workforce housing creating. We know there's going to be housing created we know there's going to be low and moderate income housing created which is controlled through regulatory schemes and such.

MR. SIMOFF: I think it would be a reasonable condition to suggest that we have to sell the units at a certain price. We've taken the exact same site plan and we've converted it, we've applied for the conversion. And let me just back up because I'm sitting here in the second row listening to the questions that you were asking of Dave Zimmerman. One of the issues on the negative impacts of the conversion have already been addressed because the Planning Board granted approval for this exact same layout. So if the layout change there may be a possibility of a negative impact but this application is the exact same layout so the distances between the buildings, the heights in the buildings, the parking well that's RSIS but the setbacks, the buffers everything is exactly the same as what was approved. So I could envision as an engineer and a planner that there would be negative impacts if somebody came in with a changed, a substantially changed layout or a substantially lessened buffer or those issues. And those issues are even addressed by the previous approval it was a determination that it was a proper layout. But I mean work force housing issue I think that what's going to drive the price of the units is the market. There may be, you know they could be selling for \$250,000 which I guess would fall into that category but they're surely not going to sell for six or seven hundred thousand dollars because that market has left town.

MR. VOGEL: May I respond to the question that you asked Mr. Zimmerman about whether or not . . .

MR. BUZAK: As long as it's not planning testimony.

MR. VOGEL: No it's a legal position and you asked him the question whether or not he thought that the language with respect to the negative criteria in this Statute is the same as the language in the Municipal Land Use Law. And I would suggest to you the following, that the Statute commences within Section I stating that no application for amended approval to convert will be considered a "d" variance and then sites 40:55D-70 which we both know is the Municipal Land Use Law. The language with respect to substantial detriment to the public good and substantially impair the intent and purpose of the zone plan and the zoning ordinance comes specifically from the Municipal Land Use Law and a body of law has grown up in the interpretation of that and I might suggest to you that the only appropriate interpretation of that language generally denominated as the negative criteria would be that body of law that has grown up as a function of the courts review of the Municipal Land Use Law. That that was obviously intended by the Statute and that is how the Statute ought to be interpreted. That would be my position.

MR. BUZAK: Fine. You raise a couple of interesting points. One is it's interesting that this Statute is not an amendment to the Land Use Law it's an amendment to something else.

MR. VOGEL: That's curious I wonder why they did that. Maybe you have a better feel for that.

MR. BUZAK: Secondly the reference . . . while the reference to the "d" variance refers obviously to the Municipal Land Use Law there's no similar reference, as I recall anyway, when they talked about the negative criteria. They didn't say the negative criteria as set forth in 40:55D-70(d). Third as I mentioned at the previous meeting I think we need to appreciate the fact that the Legislation that we are dealing with now as adopted went through a number of iterations and went through a conditional veto and that language with regard to the substantial detriment to the public good and substantial impairment and the zoning ordinance and the zoning plan was added. So the Statute was initially written based upon the fact that as Mr. Zimmerman has suggested you need to satisfy the seven criteria and you get an approval. It was Governor Corzine who conditionally vetoed it and said well no there's got to be more than that. And what I guess I'm struggling with and why I'm asking the questions that I'm asking is that the language has to mean something and if it is satisfied simply because the development had already been approved as an age restricted development and the criteria and the Statute is very clear that essentially you can't change it a lot then what does that language mean and it's almost superfluous and I can't . . . I'd like to not believe that the Legislature just puts in, or the Governor at the time puts in language that is meaningless.

MR. VOGEL: And that comes from my suggestion they certainly didn't put in language that was meaningless because there was a body of law that has evolved as to what substantial detriment to the public good means and what will not substantially impair the intent and purpose of the zone plan and zone ordinance. So when they put that in they had a specific understanding from the interpretation of that language under the Municipal Land Use Law as to what they were giving back to a Board. And you asked the question of Mr. Zimmerman about whether or not there could be instances where there would be. And you could denominate many. I mean even instances where there was no change to the

site plan as was suggested by Mr. Simoff, there could be conversions of a nature previously approved that would impair the public good from a number of standpoints.

MR. BUZAK: I hear the generic words but I can't . . . I haven't heard somebody say this is an example of that, this is what could occur. And I . . . look I recognize this takes time to think about and I don't expect people to have these answers but I've been struggling with that for a while here and I haven't been able to come up with a situation because your starting out with the proposition that this has already been approved, it's been in a multi-family form all of the roads, all of the configurations all of that's been subject to scrutiny and approved and now all your doing is essentially eliminating an occupancy restriction as opposed to anything else. And I'm trying to put some meat on the bones of substantial detriment to the public good in this context. And it seems that when you apply the traditional MLUL standards to that it doesn't make any sense to me. The words I understand but the meaning I don't. But that's maybe my (inaudible).

MR. WEISS: Jim?

MR. STASZAK: Mr. Buzak the workforce housing is that a requirement or is that a suggestion within the Statute?

MR. BUZAK: Well that's interesting and again the answer is no it's not a requirement, the Legislature started out with the purposes of the act and went on and on and on in various subparagraphs of the purposes to say that we need workforce housing, that we have housing restricted or age that is not being utilized and we need to generate some workforce housing. And then they go on to (inaudible), never mention the word workforce again only mention low and moderate income housing. The other aspect of this that's interesting is that Legislation as anything else, and you know it from looking at some of the Legislation that we get from the municipality when we're drafting ordinances or whatever. It's drafted in a context we all work in a context we don't work in some abstract way we all have something in mind when we start out. And the Legislature had something in mind I think when they started out here and one of the things I think that they had in mind was that when a development is converted what's the quid pro quo for the municipality? What are we going to give the municipality in return for telling them that an approval that they've granted for age restriction is now no longer going to be age restricted. And what they did was to say a developer has to set aside 20 percent of the units for low and moderate income families. That was the bone that they threw, and I say that not disrespectfully to the municipalities to say okay we're going to change something that you have done and you've approved and we're going to Statutorily do that and we can supersede what you do locally. But what we're going to do to appease that in some way or mitigate is we're going to put a set aside in and we're going to make sure that you get COAH credit for it, etc. and they say that. What they didn't think about I think was well what if that development already had a COAH component, already had a set aside as this one did. We were getting 20 percent set aside that we were providing housing for low and moderate income families, the developer was setting that aside so when it's converted nothing changes with that. The municipality doesn't benefit from that we don't get that bone. They hadn't thought about that you know they don't say that but it's interesting.

MR. VOGEL: That's wrong. That's a wrong analysis okay because you're not getting the 20 percent set aside because the Legislature recognized that there's too much age restricted so if you have an age restricted community approved with a set aside you're not going to get that set aside because the age restriction is never going to be built because there's too many of them. So you're losing that 20 percent set aside that you have here because the project will never be built so what the Legislature said was okay since it's not going to be built as an age restricted because we recognize that there's too many age restricted let's take the age restricted off and then we'll get the 20 percent set aside. If you look at this project if it's not built you don't get that 20 percent. It's doesn't help you with your low and moderate income quotation. So I disagree with that analysis.

MR. BUZAK: Well I like your analysis except it has one flaw and the flaw is that's not what the Legislature said in the purposes. Had they said in the purposes that what we're doing is what you just said that there's low and moderate income housing that is not being built because the projects with which they are associated are not being developed because they're age restricted and we have to get that market moving so we're going to remove the age restriction so we get the 20 percent low and moderate income housing I'd agree with you. But that's not what they said, what they said was we need workforce housing, we need housing not low and moderate there's not low and moderate mentioned as I recall in the purposes they talk about workforce housing. So I think while it's interesting

...

MR. MCGROARTY: Can I say one thing to that too? If the age restricted isn't built their CO's don't count to the growth share which of course is obsolete at this point and therefore the affordable housing may or may not even be necessary. But in any event this project did have the 20 percent set aside as Mr. Buzak said so it had it going in as opposed to another development in town like the Toll Brothers developments which have nothing to do with age restricted of course. But that had no age restricted and if that were ever to come to the town we don't have the opportunity to require them to do age restricted. Here if this did not have that component we could have but we already have but we already have because we thought about it in advance, put it in the ordinance and so on. So I don't think this reflects this well at all in the Legislature myself this stuff because they talk about all of these wonderful things about workforce housing if they meant it they should have put a requirement in but they didn't.

MR. VOGEL: I was anticipated by Mr. McGroarty, if the State wanted to make that a criteria of an age conversion they listed seven aspects, they would have had an eighth one in there they didn't put it in that may have been one of the conversations or one of the salutary aspects they thought that the Statute might address if there was a conversion but they did not make it a prerequisite to the conversion. And without that being in there it's not a statutory mandate in this process.

MR. BUZAK: Well that's where we get to the substantial detriment to the public good or the zoning ordinance we'll see.

MR. WEISS: Mr. Vogel do you have anything else?

MR. VOGEL: No thank you. I thank you for the opportunity that is the context of our application.

MR. WEISS: At this point I'm going to open it to the public, if anybody from the public has any questions about the application in general now will be the time to ask that question and we have a question from Mr. Halbur again.

MR. VOGEL: May we have the gentleman's address?

MR. BUZAK: Can we get the spelling of your name as well sir?

MR. HALBUR: Sure can my name the spelling is Halbur (H-A-L-B-U-R) and the address is 34 Saunders Lane mailing address is Hackettstown but its Mt. Olive.

MR. BUZAK: Thank you sir.

MR. HALBUR: No problem. There are two bills currently pending that would actually change the definition of detriment affect. Now I grant you they are not (inaudible) but in it does indicate that school, the impact to the school is considered one of those criteria or should be considered one of those criteria that is used to determine whether or not there is a detrimental effect. The fact that this was passed by the Legislature and then later somebody decided to try to clean it up seems to me to make sense that maybe we should consider that. I grant you it is not legal precedent and I understand that but it is something that I feel should be considered by the Board as well to try to consider what was the good faith attempt by this bill.

MR. WEISS: Anybody else from the public? Seeing none I'll close it to the public. Any closing comments Mr. Vogel?

MR. VOGEL: Yeah I'd just like to take a few moments I've talked enough, maybe I've talked too much I got stopped here and there but it's my nature to intrude I guess and I apologize for that. I look at this as a straight forward application pursuant to a statutory authority that was given not only to a property owner but given to a municipality. All of the salutary features of the Statute were not considered by the State for the purpose of bailing out developers from an economic circumstance. I mean that unfortunately from some of the comments that people make about the Statute and some of the thoughts that passed by us at the last meeting if not this evening is that this is some kind of an opportunity for developers to escape a bad market. That's not what the Statute is directed to, the Statute is directed to a very straight forward stated fact that there is no longer a need for age restricted housing and it gives the ability to both a municipality and a property owner to remove from a previously approved project, preliminary approval having been granted to this, the age restriction so that that project which was previously considered and approved may move ahead provided certain criteria set forth in the Statute. Specific criteria not other contemplations that might have been had in the history of the consideration of whether or not to adopt a Statute, whether or not there are some effects of the

Statute that might be beneficial to society in general but there were specific criteria and if you meet those criteria and you didn't have a substantial affect on either the public good or the zoning scheme and plan or the zoning ordinance and therefore the Statute doesn't say may, the Statute is mandatory it directs it says shall, the municipality shall grant the application. We've been before you for any number of years with respect to this piece of property. The site plan that was approved, the preliminary approval considered a host of aspects of how this property fits in to the surrounding area. The buffers, the driveways, the school buses and how they would take care of picking up the children, the sewer, the water all of those aspects were considered and as a result of that you came to the conclusion that you would grant preliminary site plan approval. So the question really comes down to if the age restriction is taken off how is that site plan that you spent so much time with us going through, how is that site plan changed to any great extent? And I suggest to you that there is no change, the only change that you could really even look at is that the number of cars that will be generated, the number of trips that will be generated from the site increases to some extent. And the question is irrespective of whether or not the negative criteria is the same, gets the same interpretation as you have that same language in the Municipal Land Use Law but the language is the same. And the key note to that is substantial in the Municipal Land Use Law the work is substantial; in this Statute it's substantial. So whether you use the old criteria that the law has been set and courts have looked at or not you still have the word substantial. And the question is is there substantial effect on traffic because you would change this project from age restricted to non-age restricted. And I suggest to you that it's diminimus the effect of the traffic on what exists on Route 46 or any of the intersections. That's the test if it's not substantial under this Statute no matter how you interpret it the Statute mandates that if we meet the criteria which we clearly have by the testimony and no testimony to the contrary you are unfortunately, and I don't like telling Boards this, you are obligated to grant the application. I don't suggest to you by saying that you're obligated to do it that the process that we've gone through is merely a rubber stamp it's not intended to be that. It's intended to be the thoughtful process that we have, the exchange of ideas, the exchange of whether or not there should be changes to the plan, whether or not the traffic that it increased it substantial, whether or not there is some negative aspect of this that is substantial. Whether or not what you've approved in the site plan has any affect upon the greater of Mt. Olive because the people who live in 215 units will not be 55 and older. I think it's a rather simplistic Statute unfortunately it doesn't have the broad discretion that you have under the Municipal Land Use Law. But in any event it's incumbent upon the applicant; we have the burden there is no question about that to come forth and supply you with the basis upon which we suggest that we've met the burden of the Statute. And I can't conceive that there is any aspect of this application, anything that has come up in the testimony or indeed any person who has appeared in opposition to this application which would indicate that we have not sustained a burden under the Statute. And on that basis I respectfully request that you act in the affirmative as the Statute requires.

MR. WEISS: Thank you Mr. Vogel. Here's what I'd like to do at this point Mr. Buzak I know you've made some notes. If a motion is made would there be some conditions of an approval that you have noted? I know off the top of my head I know we spoke about the recreation area that the application will add . . .

MR. BUZAK: Two tot lots one by the picnic area and one by the proposed basketball court. Those I'd add Mr. Chairman and I'm not sure I had any others specifically but let me look.

MR. WEISS: And then I don't know if you feel the need to respond, I would think maybe not?

MR. BUZAK: Mr. Chairman I would think that the exchange that we had between the questions I asked of Mr. Zimmerman and the exchange I had with Mr. Vogel is sufficient. Certainly if the Board has any questions regarding the Statute I'll be more than happy to answer it.

MR. WEISS: So what I'd like to do then is here's how I'm going to proceed at this point. I'm going to ask for a motion and look for a second.

MR. FLEISCHNER: Is there any further discussion?

MR. WEISS: We'll come back to that Joe I'll just tell you how I want to go. Once we have a motion out there I'd like to have comments and then a vote rather than having open dialogue and then come back to a vote. So for example we'll start with Jim I'm looking at you if you have a comment I think you'll have your opportunity and then cast your vote. Before we do that and before I even ask for a motion Joe did you want to have other conversation?

MR. FLEISCHNER: The only conversation I wanted to raise was if anyone is aware of what is taking place in Robbinsville in central Jersey in Mercer County. Because there was . . . an applicant came

before the Board for a conversion and the only reason why full public disclosure I know about it is because my youngest son happens to live in Robbinsville. And they basically presented what you presented this evening and their Board voted it down. The developer has since I believe filed a lawsuit against the Board and that has not been resolved yet. But I was wondering if there were any other cases that we know of which are under litigation from other towns that have dealt with a conversion and for whatever reason the Board voted yes or no, are we aware of any? Again I'm aware of Robbinsville but other than that I'm not.

MR. BUZAK: I'm aware of three cases all of which are unreported of decisions that have been made in challenges to denials. And I am aware and in fact participating in a case in our neighboring Washington Township where an application was made and it was denied without prejudice because of an issue regarding traffic coincidentally. The three cases that were decided they were all in Middlesex County in three different municipalities as I recall. Two of the three reversed the denial of the Board of the conversion. You know the applications are always fact specific you know one of them had a whole series of changes in the ordinance; another one was more straight forward. But some of the issues that we discussed here were in fact discussed in the cases but the bottom line was the denials were reversed. There was one of the three where the denial was sustained. But the facts in that case and the development were different than the traditional one and certainly different from the one that we have here. That case dealt with, or that development dealt with a redeveloper and a redevelopment process is a different animal where a municipality makes a determination that an area is in need of redevelopment, is blighted and they go through a process through the Planning Board and ultimately they select a redeveloper to redevelop the area that they declare in need of redevelopment. And as part of that there's a contract that's entered into and that contract involved the construction of age restricted housing which also then was implemented in the zoning ordinance. And the court found that while the Statute talked about conversion and allowed conversion because there was a contract effectively between the development or redeveloper and the municipality that this act could not undermine the contractual relationships between the two. So that's the extent of the cases and those are all law division cases all trial courts I don't know if any of those have been appealed. I know there are a number of other pending ones I believe there's one in Cranberry, there's the Robbinsville one that you mentioned and I suspect that there are a number of them out there. That's the best information I can give you at this time.

MR. FLEISCHNER: Okay thank you.

MR. WEISS: Any other issues you want to talk about? All right so let me open it up to the Planning Board let me ask for a motion.

MR. VAN NESS: Let's go back one second.

MR. WEISS: Go ahead.

MR. VAN NESS: The traffic issue is obviously the primary sticking point for most of us and the project has basically been let off the hook with the Village Green intersection light because the State through an epiphany of their own decided after 100 years that they were going to finally do something over there a very simple restriping scenario and some signalization of course. Basically they got off the hook for that.

MR. BUCZYNSKI: But they didn't do everything that was originally planned.

MR. VAN NESS: No not everything but . . .

MR. BUCZYNSKI: Regarding the roadway profile it wasn't dropped down.

MR. VAN NESS: Right and I don't think we'll see that in our lifetime.

MR. BUCZYNSKI: No.

MR. VAN NESS: And I'm actually surprised we saw what we did see in our lifetime. With that said the sticking point is really the opposite direction it's the Woodland Avenue/Route 46 intersection and I would think that this developer should consider some research as to what improvements to this intersection could be made, this jug handle. I don't know what the purview, we can't make them do anything obviously but they certainly can make this a more viable scenario. So anyway I mean what can be done in this intersection I mean right-of-ways are probably used to their max who knows some turn lanes, some change in striping, there's some potential changes that could probably happen with nearly

existing infrastructure maybe not enough but what can happen there? What changes can happen at that intersection, that jug handle that's what I ask.

MR. WEISS: I don't know if I want to continue with . . . I think Scott's vocalizing a concern we've closed the testimony, we could go on all night I think Scott is simply vocalizing a concern we've addressed the traffic, we've come this far though Mr. Simoff I just changed my mind you had something to say.

MR. SIMOFF: Well when we take this project on the road, no pun intended, we always represented that we had to make those improvements to Village Way and Old Budd Lake Road that intersection that the State has done. So the pro forma has that . . . I'll call it the pro forma but the commitments have, we made those commitments and we would commit to a comparable I'll call it a contribution as part of this approval.

MR. WEISS: Okay.

MR. VOGEL: I was going to answer before Mr. Van Ness finished because I didn't think it was an unreasonable request and I recognize that.

MR. WEISS: Well thank you I'm glad I . . .

MR. VOGEL: If something can be done within the existing right-of-way because that's what was done you know at Village Way and Old Budd Lake Road so we're not stuck purchasing right-of-way we're willing to work with you.

MR. VAN NESS: Whatever can be done it's got to be a better improvement than what we have today or what we would have without any improvements.

MR. WEISS: Is that a realistic thing Scott is that the State controls these right-of-ways or are you talking about . . .

MR. VAN NESS: It's the same as the Route 46/Village Way/Old Ledgewood Road intersection that's a State controlled scenario. And yes this is going to be a State issue that they'll have to deal with the State overall in the long run. Right-of-ways and . . . we probably shouldn't get our hopes up too high because right-of-ways are probably maxed out in some areas.

MR. BUCZYNSKI: But it still can be pursued with the State I'm not sure what you're going to really get done at that intersection it took us I don't know probably 15, 20 years to get something done at Village Green you know?

MR. VAN NESS: So it can't hurt to look at it.

MR. WEISS: Okay so I see Mr. Buzak has added that as a condition of approval.

MR. BUZAK: I have.

MR. WEISS: Okay that being said would somebody like to make a motion?

MR. STASZAK: I'll make a motion we approve the conversion I guess we're calling this?

MR. WEISS: Yeah your making a suggestion we approve Planning Board 11-05 approve the conversion from age restricted to non-age restricted Jim?

MS. GADELHA: I'll second that.

MR. WEISS: Seconded by Rene. And so as I said earlier we have a motion that's been seconded as Catherine goes through roll call I would like if you have any comments please give your comments at that point then cast your vote. Catherine?

MRS. NATAFALUSY: Joe Fleischner?

MR. FLEISCHNER: I came here this evening in my mind in all honesty to vote no. Because I do have concerns on issues that don't maybe directly deal with the seven portions of the I guess what the Legislature has done. The reality of the situation is I think this applicant has going back to the original

application bent over backwards to try and accommodate the Township of Mt. Olive and I think under the current situations that we have I think the applicant really has done everything that we have asked them to do. And whether we like it or not, and we all have concerns whether it be traffic, number of extra children which really is not part of this application or should not be considered part of it, we really don't I don't think we really have a choice here. So I'm going to vote in the affirmative, yes.

MRS. NATAFALUSY: Rene Gadelha.

MS. GADELHA: Like Joe I obviously have concerns but none that I can use to vote in the negative. So what I'd like to do in voting yes is just make this the best that it can be for the future residents that live there. And so I appreciate the accommodations that you're willing to make to do that so I vote yes.

MRS. NATAFALUSY: John Mania.

MR. MANIA: I just find it hard to believe that you're going to produce only 22 children. I know it has no bearing on this, but unless you sterilize all of the people that buy there you're going to have more than 22 kids. Reluctantly I'm going to vote yes.

MRS. NATAFALUSY: Nelson Russell.

MR. RUSSELL: I'm a little upset that the promise that we had of age restricted housing gave us tax revenue without the corresponding (inaudible) on our schools. I know we can't consider that but that was one of my reasons for voting on the prior application in the affirmative. I'm also concerned about the traffic at an inadequate intersection at Woodland but at the same time I feel we have really no choice and reluctantly vote in the affirmative.

MRS. NATAFALUSY: Jim Staszak.

MR. STASZAK: My concerns aren't concerned by the applicant but by the great State of New Jersey. I think this is an ill conceived Statute I mean it left hanging the question of workforce housing without any answer to that, without any commitment to that. If they didn't want to make a commitment to it why raise that issue at all? Having said that my vote is yes.

MRS. NATAFALUSY: Scott Van Ness.

MR. VAN NESS: Very good point on the workforce housing and you know the concerns that any of us have they are really just few. (inaudible) the burden on our schools which are already overburdened, the burden on our infrastructure which is already subpar in my opinion, and the burden on the services that the community is able to provide. 215 more houses is going to require more services, more services that are already hard enough to provide to our existing residents. But again the State of New Jersey has and does continue to fail communities like Mt. Olive through its politically motivated Legislation and say what you want to say about the purpose of the law obviously it is what it is and it's disappointing as usual. But that said the law is pretty clear at this time and I will vote in the affirmative.

MRS. NATAFALUSY: Howie Weiss.

MR. WEISS: Well I guess I should congratulate you gentlemen it's really always a pleasure to spend so much time with an applicant you've always been very professional and very thorough. It doesn't mean I'm going to give you an approval and I'm going to explain why. I understand at this point it doesn't really matter what I say but I have a couple of points I think the reality that brings us here for the last couple of evenings this is Statute and without the Statute you wouldn't have been here, you would not have had the ability to come before us. And so I look at the Statute and I look at the general concept of the Statute and you're hanging on to the seven criteria and I know your simplifying it because that's what you're supposed to do and I respect that and I look at it and say well I'm going to have to hang on to something too. And I'm hanging on to the necessity that you have to provide affordable workforce housing and I don't think you did that. And I think that we got, like the Statute itself, you left that you didn't address it I don't think I'm going to go back to some of my notes and again I don't want to waste anybody's time but you were never able to define who this person is. You were actually quite contradictory Mr. Simoff earlier this even before 8:00 you said that this is a buyer that's an empty nester, someone that's going to go to Florida in the winter, Mr. Zimmerman in his report talks about these homes are to attract young professionals and that's a contradiction in my eyes. I don't know if you identified the workforce housing occupant. The price of the homes you really couldn't say and I think that's important, I think the Legislation I think the Statute wants you to be able to tell us who is going to move into these homes. And for reasons maybe you can't control I don't think for one second

you were holding back but I don't think you proved to us who that workforce occupant is. I don't think you identified the needs of our community. I disagree with a lot of the things that you said in your summation Mr. Vogel but we don't always agree and some of the things that we talked about you had said there's no longer a need for age restricted housing and I don't understand how you can say that when just a few months ago we approved an age restricted housing in Mt. Olive and I don't know if I think you said this is not an escape hatch, maybe it is maybe you realize hey I have a better chance in selling it and this gave you the out. And if so well you have the benefit of the law to give you that. You had said we're obligated, I don't think we are, I don't think that the fact that, well let me get my note because I thought this was important, you had said the layout doesn't change therefore there is no negative criteria and I think negative criteria runs a lot deeper than just the change or non-change in the layout. So although I'm no scholar in negative criteria in whether you met it or not I'm going to hang my hat on your inability to provide affordable workforce housing and I think that's what the intention of the Statute is in my laymen's term and my layman's ability to understand this. So I'm going to stop talking and vote no. But I congratulate you on your approval and like Rene said I certainly hope and I know that you will do what's best for the Township of Mt. Olive.

MR. VOGEL: Thank you.

MR. SIMOFF: Thank you.

MR. WEISS: Catherine anything else?

MRS. NATAFALUSY: No.

MR. WEISS: So it approved . . .

MRS. NATAFALUSY: 6 to 1.

MR. WEISS: Again congratulations. I would say thank you to the Planning Board for hanging in there and working without a break and finishing this one up tonight. Any other business for us?

MS. GADELHA: I'll save that for the next meeting but I want to thank Ed for your guidance early on in answering that question I appreciate it.

MR. VOGEL: I just want to make one comment. Mr. Buzak and I spend a lot of our time going before Board's, sitting with Boards and whatever and I say this after the vote has been taken and not because it was in the affirmative but I've spent a lot of nights here over a period of several years and I really appreciate not just Catherine, Chuck and Gene as the staff and they're very professional but I do appreciate the opportunity with the Board it's always been kind of relaxed and we've had the opportunity as I've always indicated before a Planning Board to try and do it on a collaborative basis and I appreciate that and I appreciate the thoughtfulness and I even appreciate the fact Howie that you disagreed with us.

MR. WEISS: Until next time Mr. Vogel thank you for the kind words I appreciate it. Anybody have a motion to adjourn perhaps?

MR. MANIA: So moved.

MR. WEISS: All in favor?

EVERYONE: Aye.

(MEETING ADJOURNED AT 10:35 P.M.)

Transcribed by:
Lauren Perkins, Secretary
Planning Department

