

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: John Cavanaugh, Joe Fleischner, Rene Gadelha (7:35), Nelson Russell, Jim Staszak, Scott Van Ness, Dan Nelsen, Steve Bedell, Howie Weiss

Members Excused: Mayor David Scapicchio, John Mania

Professionals Attending: Eugene Buczynski, P.E., Edward Buzak, Esq., Lauren Perkins, Secretary

Professionals Excused: Tiena Cofoni, Esq., Chuck McGroarty, Planning Consultant, Catherine Natafalusy, Planning Administrator

APPROVAL OF MINUTES

April 14, 2011 Public Meeting

Motion: Joe Fleischner
 Second: Scott Van Ness

Roll Call:

John Cavanaugh	- yes
Joe Fleischner	- yes
Nelson Russell	- yes
Jim Staszak	- yes
Scott Van Ness	- yes
Steve Bedell	- yes
Howie Weiss	- yes

APPROVAL OF RESOLUTIONS

Resolution #PB 11-02 – Wicklow & Laurano – Block 6800, Lot 11

MR. WEISS: Okay resolutions on this evening’s agenda the first one is PB 11-02 Wicklow & Laurano.

MR. STASZAK: I make a motion we approve PB 11-02.

MR. WEISS: Thank you Mr. Staszak. Second?

MR. RUSSELL: I’ll second.

MR. WEISS: Thank you Mr. Russell. Question Mr. Buzak?

MR. BUZAK: Yes I just want to call the Board’s attention to two provisions in this resolution related to the size of the outdoor storage area. You will recall that during the course of the discussion they were talking about an 8,000 square foot area of outdoor storage. When the plans were revised although were not put on the record at the second hearing that area turned out to be 9,600 square feet as opposed to 8,000 square feet. When I saw that and was . . . again was requested to make it 9,600 square feet I didn’t think that was consistent with the representations that were made before the Board or consistent with the testimony. Mr. Buczynski has pointed out that the map did in fact; the revised plans did in fact show this 9,600 square feet. So what I did was Mr. Buczynski took the position and he can certainly speak for himself since he’s here that because the width of the area between the two fences was 120 feet that if . . . what they did was they made it 9,600 because they ran it back 80 feet, 80 times 120 is 9,600 and Gene felt that well since its 120 feet from fence to fence you know to make it 100 feet although that was the testimony that was given it was around 100, 110 feet it really doesn’t make a lot of sense. So what I did was rather than reduce the width of it from 120 feet I simply reduced the length of it and utilized the 70 feet, 70 times 120 is 8,400 so that’s how I got to the 8,400 here. I related that to the applicant the applicant’s attorney and said you know let me know if you agree with that because that’s not what the testimony was although certainly that’s what the map reflects. In the resolution we say 8,400 feet and say that the plans should be revised to show 8,400 feet. The attorney wrote back to me and said the following; “while my client does not agree with this limitation in order for the development to proceed without any further delay they are accepting the proposed language in the revised resolution. Please arrange for the resolution to be considered and hopefully adopted by the Board at the next meeting.” So I throw that out to you I changed from 9,600 to 8,400 because of the

fact of the representations. If this Board is happy with 9,600 you can put that back, the attorney has and their client apparently is willing to accept 8,400 square feet. So I throw that out to you to decide how you want to handle it if you want the resolution as it is and just adopt it it's not to exceed 8,400 square feet they've accepted that and we're done with it. If you want to call out 9,600 you know that's the Board's choice or if you wanted to go down to 8,800 which is what the initial testimony was that's your choice too but that then creates that issue because the width is 120 feet.

MR. BUCZYNSKI: I think what Ed said to the engineer was kind of wishy washy I guess as far as he said . . . I think his testimony was 100 to 110 feet that width, it actually was 120. I mean the testimony was always 80 feet back from the property line and they want a whole rectangular piece but his testimony definitely said he thought it was 110 and I don't know why he couldn't scale it at 120 but . . .

MR. VAN NESS: Width means north south, the north border south border of the premises?

MR. BUCZYNSKI: North south yes.

MR. VAN NESS: Or east west?

MR. BUCZYNSKI: North south is going towards Route 80 okay? That's north south so it's the east west is the 120 feet.

MR. VAN NESS: Okay so it was the width of the lot . . .

MR. BUCZYNSKI: The lot the width of that lot right there.

MR. VAN NESS: The raised area the width was the issue. But where the fence went out it's the same.

MR. BUCZYNSKI: It was the same spot 80 feet correct.

MR. VAN NESS: Then what's beyond that fence? Who cares? That's where the extra space could be . . .

MR. BUCZYNSKI: I don't disagree I hear you. So you're saying give them 9,600?

MR. VAN NESS: That would be my . . . does there need to be a motion?

MR. BUZAK: You discuss it and again I did it based upon the testimony.

MR. VAN NESS: Well my opinion is because the fences and the area is demarked for you know parking and storage and such aren't changing it just happened to be the width of the property was the discrepancy. I don't see why they should just continue to use the property as planned.

MR. STASZAK: If they agree to it what's the problem with leaving it at 8,400?

MR. VAN NESS: Does he have to do the recalculation of putting in maybe an alleyway or cutting off the back . . .

MR. BUZAK: Oh no, no, no.

MR. BUCZYNSKI: No.

MR. VAN NESS: Then how are you going . . .

MR. BUCZYNSKI: He was going to still use the 120 but instead of making it 80 feet back it was only going to be 70 feet back.

MR. VAN NESS: It's his property I think he should have the opportunity to use it as he sees fit.

MR. WEISS: I recall a conversation I know it was a concern of mine is that we wanted to control the storage area to prevent them from getting into the storage of stuff business for lack of a better word. And I don't know it's certainly not fair to assume that that's what they were doing but I think they were not extremely happy that we were looking to control this area. Because you remember the first meeting it was a small little area and then the small little area became 8,400 feet then 9,600

feet and because of the fact that I think the smaller we make it the more control we have or the less they can use it for I think is probably better.

MR. STASZAK: I think the less it can get out of control.

MR. WEISS: Probably better said Jim the more control we have the less it can get out of control.

MR. VAN NESS: But we have control through zoning and you know we have people that have a job to do and if . . . that's our job too. I don't know I feel that we can be a little restrictive sometimes when we don't need to be. Especially on a property that is really out of sight out of mind and it will never be built around because of the wetlands that are around it.

MR. NELSON: I agree let them have the larger storage area.

MR. WEISS: Does anybody else have any comment? We'll make a motion and see.

MR. BEDELL: I wasn't there so can I add?

MR. WEISS: Sure you heard the applicant testimony though.

MR. BEDELL: I'm not sure I wasn't able to vote on the resolution.

MR. WEISS: Sure we can take an opinion.

MR. BEDELL: Okay. Yeah I kind of agree with Scott to some degree I mean if it's kind of out there and just maybe a little bit more room just for expansion otherwise will they come back and ask for a little bit more space? You know I think I kind of agree with Scott a little bit. I see where Gene is coming from but . . .

MR. WEISS: I'm concerned personally that the 9,600 doesn't become 10,000 and Scott you're 100 percent right it's our job to enforce but I'd like to be realistic as to what's really enforceable and what's not.

MR. BEDELL: Well if they wanted it to be 10,000 they would have to come back and ask for more.

MR. WEISS: They have to come back before us Steve you know that.

MR. BEDELL: Yeah.

MR. WEISS: But I hear you. If I take a motion Mr. Buzak the motion would be to accept this resolution as 9,600?

MR. BUZAK: Well why don't we do this, why don't we if you'd like vote on that issue whether it should be not to exceed 8,400 or 9,600. Somebody should make a motion it should be 9,600 and you can vote on that you know if that passes then you'll vote on the resolution with 9,600 in it.

MR. WEISS: So let's do that somebody make a motion if they would on the amount of space they feel is appropriate.

MR. VAN NESS: I make a motion that we allow the applicant to use the expanded to 9,600 measurements.

MR. RUSSELL: I'll second it.

MR. WEISS: Okay so Scott makes the motion Nelson seconded it the fact that we're going to vote on the resolution to show a storage area not to exceed 9,600 square feet. Okay Lauren if you would roll call? I'm sorry any other conversation? Okay now with that roll call.

MRS. PERKINS: Rene Gadelha - yes
Nelson Russell - yes
Jim Staszak - no
Scott Van Ness - yes
Howie Weiss - no

MR. WEISS: So it's three to two it sounds like

MRS. PERKINS: Yes three to two it passed.

MR. WEISS: Okay.

MR. BUZAK: Okay so now we should vote on it and the resolution will be slightly revised obviously from what you see here but it will be the 9,600 versus the 8,400 otherwise the resolution is as you see it.

MR. WEISS: Okay and Gene again you don't have a problem with it.

MR. BUCZYNSKI: Not at all.

MR. WEISS: Okay that being said with that revision to 9,600 square feet as the change would occur on page 3 it will show that the Board is acceptable, and then again on page 6 which is already yellow highlighted for us it will show 9,600 square feet as it will on page 7 which will refer to 9,600 square feet twice and those changes being made and added I guess we'll revise it and I'll sign that after it's ready.

MR. BUZAK: Correct.

MR. WEISS: Make a motion?

MR. VAN NESS: I make a motion that we accept the revised ordinance?

MR. WEISS: That's resolution PB 11-02.

MR. VAN NESS: Right.

MR. GADELHA: Second.

MR. WEISS: Seconded by Rene. Any conversation? Seeing none Lauren roll call.

MRS. PERKINS: Rene Gadelha - yes
Nelson Russell - yes
Jim Staszak - yes
Scott Van Ness - yes
Howie Weiss - no

Resolution #PB 11-04 – 350 Clark Drive, LLC

Motion: Joe Fleischner
Second: Steve Bedell

Roll Call:

John Cavanaugh - yes
Joe Fleischner - yes
Rene Gadelha - yes
Nelson Russell - yes
Jim Staszak - yes
Scott Van Ness - yes
Steven Bedell - yes
Howie Weiss - yes

Resolution #PB 11-09 – Deer Path Montessori School

Motion: Joe Fleischner
Second: Scott Van Ness

Roll Call:

John Cavanaugh - yes
Joe Fleischner - yes
Rene Gadelha - yes
Nelson Russell - yes
Scott Van Ness - yes
Steve Bedell - yes
Howie Weiss - yes

COMMITTEE REPORTS

MR. WEISS: Committee reports this evening obviously the Mayor is excused, Mr. Mania is excused we'll go to Mr. Russell on the Environmental Commission report.

MR. RUSSELL: Yeah we met last night and discussed the results of the well testing program that was the end of last month the first of this month we got 38 kits sold and tested. The lake is being treated with a comparable herbicide rather than Soma this year at about a third the cost of the prior three years.

MR. WEISS: Thank you. Ordinance committee Mr. Staszak?

MR. STASZAK: Nothing at this time sir.

MR. WEISS: Nothing for street naming. Open Space Committee.

MS. GADELHA: Nothing from . . . other than my report last week and just a reminder that we're working on trails this Saturday if anybody is available to work on just the maintenance of Phase I trails. And then also an invitation was sent out, and I don't know did everyone on this Board get it?

MR. WEISS: No it was just a (inaudible).

MS. GADELHA: Okay do you have it?

MR. WEISS: I have it.

MS. GADELHA: Thank you so much. Kathy Murphy sent out an invitation and the Land Conservancy and Mt. Olive Township are hosting a press event and a tour to go over the newest addition to the Southbranch Preserve its next Thursday the 26th from 4:00 to 6:00. It's what we got back from Rezamir and Land Conservancy put a lot of money in and restored it, brought it back to its natural condition. And so it's a celebration of that so everyone is invited to attend, again that's next Thursday from 4:00 to 6:00 20 Shop Lane in Flanders. And it's a walking tour and we can really just see what we've gotten back and its here Howie brought it but I'll forward it if anyone is interested so everyone is welcome to come.

MR. WEISS: I noticed that on Kathy's memo to us that for those that would like and if it makes a difference there's food and beverages. Light refreshments so that might make a difference whether you attend or not.

MS. GADELHA: Thank you.

MR. WEISS: Any other business Gene?

MR. BUCZYNSKI: No.

MR. WEISS: Mr. Buzak?

MR. BUZAK: Nothing thank you.

MR. WEISS: Lauren do you have anything?

MRS. PERKINS: No.

MR. WEISS: Please tell Catherine we hope she is feeling better.

MRS. PERKINS: I will thank you.

APPLICATION #PB 11-12 – NORRIS, ADAM & JANINE

MR. WEISS: Our first development matter this evening is PB 11-12 Adam & Janine Norris a variance for encroachment within the rear yard setback at 47 Woodsedge Avenue Block 3511, Lot 3. This evening tonight I take it we have Mr. Norris?

MR. NORRIS: Yes.

MR. WEISS: Welcome this evening Mr. Norris. I'm not sure if you're familiar with the process. What we'll do is we'll swear you in and we're going to create a record we have a copy of your plans, we have some drawings and we'll just talk about that and make a record. So Mr. Buzak will swear you in.

(ADAM NORRIS SWORN IN FOR THE RECORD)

MR. BUZAK: Please be seated and state your name and address for the record just spelling your last name please.

MR. NORRIS: Adam Norris (N-O-R-R-I-S) address is 47 Woodsedge Avenue, Budd Lake, New Jersey.

MR. WEISS: Adam so what we'll do tonight and again everybody will already have a copy of the survey and kind of a summary of your plans. But for the record why don't you tell us why you're here, what you need to do and why you need an approval from this Board.

MR. NORRIS: Okay I'm here because I'd like to extend my deck to my pool connecting the two structures. I need a variance for that because of the rear setback which was given to me for the existing deck in 2005 its 19 feet off of the rear lot and I believe that I need to have 35 feet so I need a variance to connect the two.

MR. WEISS: So by the construction of this deck you'll end up at 19 feet from the rear?

MR. NORRIS: It will stay 19 feet I'm just going to extend the existing deck out. Its 19 feet right now and I just would like to extend it.

MR. WEISS: Tell us a little bit about your property Mr. Norris perhaps . . . obviously you have an existing pool correct?

MR. NORRIS: Yes.

MR. WEISS: And there's already a deck.

MR. NORRIS: Yes.

MR. WEISS: And so this addition to the deck obviously is sensible rather than relocating everything in your yard.

MR. NORRIS: Oh yes.

MR. WEISS: So moving it to another part of your yard doesn't make a lot of sense.

MR. NORRIS: No.

MR. WEISS: Because of the preexisting condition that's there.

MR. NORRIS: Correct.

MR. WEISS: Okay and tell us a little bit more about your property. Is there a steep slope, is there any other reason that it ended up there?

MR. NORRIS: The pool ended up there?

MR. WEISS: Yeah.

MR. NORRIS: It's just because of basically the set up of the property and the setback so the way a pool has to be set away from the house and the side and the back of the house.

MR. WEISS: Would you say based on just you've lived in the house a few years I take it?

MR. NORRIS: Yes.

MR. WEISS: Compared to some of your neighbors are there other pools and decks in the area?

MR. NORRIS: Yes.

MR. WEISS: So the construction of this additional deck would not be out of ordinary out of the realm of what's in the neighborhood?

MR. NORRIS: No.

MR. WEISS: So I see no negative impact on the neighbors and Lauren for the record you have noticed the neighbors?

MRS. PERKINS: Yes notice has been received and they're fine.

MR. WEISS: And I suppose I'm making assumption, is there anybody from the public who is here for this application? So for the record will show that there's no neighbors who have received your notice that have objected to this application. John I'd like to turn to you again as Chairman of the Board of Adjustment for many years is there anything else that you would normally ask of an applicant who is requesting such a relief?

MR. CAVANAUGH: No I think you covered it.

MR. WEISS: Mr. Buzak anything else?

MR. BUZAK: Just one other item Mr. Norris I understand again for the record that the existing shed is going to be removed is that correct?

MR. NORRIS: Yes.

MR. BUZAK: And that would otherwise be sort of in front of the deck?

MR. NORRIS: It's behind the deck, between the deck and the rear setback.

MR. WEISS: Right according to that plan it's between the back of the deck and the neighbor's back . . . your backyard.

MR. NORRIS: Correct.

MR. BUZAK: And the other question I have is what is . . . are there any trees along your rear property line between you and your neighbor?

MR. NORRIS: Yeah it's about . . . it's not trees but they're shrubs, bushes about 10 feet high.

MR. BUZAK: Okay and about how wide a distance is it before you get to the cleared area on your neighbors lot?

MR. NORRIS: I'd say about a foot or two.

MR. BUZAK: Okay.

MR. BUCZYNSKI: There will be no trees removed as part of this?

MR. NORRIS: No not as part of this.

MR. BUCZYNSKI: The only item for the Board if you look at your plan the distance is incorrect where it shows 25'11" that should be 19.

MR. WEISS: Right I figured that was in error. And of course I guess because this is a little bit interesting I'm looking this way because that's the way it is on the computer. Because there's already a deck and a pool you're not building any new structures so my question ultimately would be by building such an addition you don't believe that you're going to negatively affect the neighbor and the quality of his life and the view from his backyard?

MR. NORRIS: No.

MR. WEISS: I have no other questions. Anybody from the Planning Board? Gene?

MR. BUCZYNSKI: No.

MR. FLEISCHNER: I move we accept PB 11-12 with any stipulations that the attorney sees fit to insert.

MR. RUSSELL: Second.

MR. WEISS: Nelson that was your second?

MR. RUSSELL: Yes.

MR. WEISS: Thank you Joe, thank you Nelson. Any conversation? Actually I should back up a little bit is there anybody from the public that has any comments for Mr. Norris? Seeing none we'll move right to roll call, Lauren?

MRS. PERKINS:	John Cavanaugh	- yes
	Joe Fleischner	- yes
	Rene Gadelha	- yes
	Nelson Russell	- yes
	Jim Staszak	- yes
	Scott Van Ness	- yes
	Dan Nelsen	- yes
	Steve Bedell	- yes
	Howie Weiss	- yes

MR. WEISS: So Adam what happens now is in about a month we'll have a resolution drawn up. Once it's presented like you've seen a few minutes ago then you can pick up a copy of your approval from the Planning office where Catherine will get that for you.

MR. NORRIS: Okay.

MR. WEISS: Have a good evening good luck with your project.

MR. NORRIS: Thank you very much.

APPLICATION #PB 11-11 – PETSMAST

MR. WEISS: Okay next development matter PB 11-11 which is Petsmart where they want to utilize a portion of the existing store for a pet adoption center for overnight stay of animals, located at 50 International Drive, Block 4100, Lot 9.01. And I guess we should say that this is now a use variance application?

MR. BUZAK: That's correct.

MR. WEISS: And if you recall obviously a use variance would need a super majority and not just a simple majority. And so that being said I'll turn the meeting over to you.

MR. FLANNERY: Yes good evening Mr. Chairman, members of the Board Peter Flannery of the law firm of Sills Cummis & Gross here on behalf of the applicant Petsmart Inc. Proper notice was

provided and I ask the Board to take jurisdiction of this matter. As the Chairman mentioned this is the property located at 50 International Drive in Flanders it's an existing large shopping center there's an existing Petsmart retail store there it's approximately 19,799 square feet includes retail sale of pet supplies, pet training, pet grooming it's a small adoption facility there right now located in the C-LI Commercial/Light Industrial District. Some Board members may recall in 2005 there was an approval by the Planning Board of this Petsmart store and a veterinary facility was approved approximately 2,000 square feet for at least 15 animals and no overnight stays were permitted except in emergency cases. Tonight the applicant is proposing to take that same space that was approved for the veterinary clinic which was never used as a veterinary clinic and make it into an adoption facility which would include incidental overnight boarding of certain animals. This is a charitable use they're going to be an outside nonprofit agency Eleventh Hour Adoptions which is going to be staffing and running the facility that's in Petsmart under the supervision of Petsmart employees. And there's no rent paid it's just part of the Petsmart charities program. We're requesting a D-1 use variance approval for this facility. I have two witnesses tonight, one Matthew Croker a Petsmart representative the other John McDonough the professional planner. Unless the Board has any more questions I'll call my first witness Mr. Matthew Croker.

MR. WEISS: Well before you do that Mr. Flannery everyone understands obviously that the use that the applicant brings us tonight is not permitted in the original resolution as Mr. Flannery said and so you'll be testifying strictly to the overnight boarding.

MR. FLANNERY: Correct. I think also in Mr. McGroarty's report mentioned that pet adoption isn't necessarily permitted either so I think that combined use is being approved by the Board.

MR. WEISS: Okay so I suppose what we could do . . . you said you have two witnesses let's swear them in.

(MATTHEW CROKER SWORN IN FOR THE RECORD)
(JOHN MCDONOUGH SWORN IN FOR THE RECORD)

MR. BUZAK: Thank you, you could each state your name when you come up for testifying.
Mr. Flannery?

MR. FLANNER: Mr. Croker?

MR. CROKER: Yes I'm Matthew Croker I am the Pet Products Manager at the Petsmart in Mt. Olive.

MR. BUZAK: Could you spell your last name sir?

MR. CROKER: Oh sorry (C-R-O-K-E-R).

MR. BUZAK: Thank you.

MR. CROKER: I have been working there for 4-1/2 years at this specific facility.

MR. WEISS: Matt you know I might have missed, what was your position with Petsmart?

MR. CROKER: I am the Pet Products Manager and previously the full time pet trainer for the store.

MR. FLANNERY: Mr. Croker if you would just briefly describe the current uses of the Petsmart store?

MR. CROKER: Currently we handle mainly just retail operation we do have an active grooming salon, an active pet training program and the sale of small pets.

MR. FLANNERY: If you could describe the proposed pet adoption center?

MR. CROKER: Yeah as you said before it is currently a non-active area we do hold weekend adoptions on Saturdays and sometimes Sundays where we bring in dogs. Currently our adoption group was Purrs & Pups they bring in anywhere from about 60 to 100 dogs estimated adoptions is about 12 to 20 a weekend currently.

MR. FLANNERY: And Eleventh Hour Rescue would be the organization that would be using this facility if approved?

MR. CROKER: Yes.

MR. FLANNERY: And Petsmart would screen all animals there's a Petsmart policy that would have you up to date on all their shots, vaccinations and you know the veterinarian would check the animals before they would enter the facility?

MR. CROKER: Yes there's a strict policy for adoption partners for the Petsmart store currently that we have. It wouldn't change with the adoption center you still have to meet a certain standard of veterinary records before the animals are allowed in the store.

MR. FLANNERY: The hours of operation will they be the same as the retail store?

MR. CROKER: Yeah from 9:00 a.m. to 9:00 p.m. on Mondays through Saturdays and then 10:00 a.m. to 6:00 p.m. on Sundays.

MR. WEISS: And that's your existing hours now correct?

MR. CROKER: Yes.

MR. FLANNERY: There will be no outside facilities associated with this facility correct? Everything will be internal?

MR. CROKER: Yes it will be internal.

MR. WEISS: May I go back I'm going to ask a question, Matt you talked about records are kept for these animals. Where are these records are they

MR. CROKER: Well our adoption agreement is kept with us at the store and with our Corporate office and then all adoption forms that they bring in for all pets are kept with the adoption group unless needed by a store associate or a manager.

MR. WEISS: So you'll have those records on site.

MR. CROKER: Yes they bring the records with them every time. So every animal that's adopted out all of their records are actually given away with the owner obviously and they keep a copy.

MR. FLEISCHNER: How many other stores have adoption centers where they board?

MR. CROKER: I think five now, I think we'll be one of the first five being built. This is a pilot program a lot of the Banfields, I think currently there's only 72 Banfields in operation. And aside from hotels that are built like East Hanover would be the closest pet hotel to our store a lot of these go unused. And considering we've been doing adoptions for so long I think this was an idea for because we're one of the top adopting stores in the country currently, the Mt. Olive Petsmart. So I think they want to test it out with one of the more active stores.

MR. FLEISCHNER: When you do adoptions now and it's a Saturday and a Sunday does the group take the the organization that provides the animals do they now currently take these animals with them and then they bring them back the next day?

MR. CROKER: Yes.

MR. FLEISCHNER: Okay.

MR. FLANNERY: In terms of the current adoption activities there are adoption programs at a lot of Petsmarts correct?

MR. CROKER: Oh every Petsmart has an adoption program.

MR. FLANNERY: And at some of these adoption programs do involve overnight boarding in certain stores?

MR. CROKER: This is a very . . . well there is the 7 day program with cats so actually almost every Petsmart has what's called a 7 day program where cats are kept in the store. This will be I think the first time the dog's part of it is really kind of being tested out. But I know almost every Petsmart has the cat 7 day program so the cats stay overnight, adoption group comes in three times a day morning, afternoon and night and takes care of the animals tends the animals and then they you know leave.

MR. WEISS: Is that something that's currently being done in the Mt. Olive stores?

MR. CROKER: Yes.

MR. WEISS: Is there an approval for that?

MR. FLANNERY: No actually it is part of the reason why we're here before the Board. Apparently there was a miscommunication and Petsmart didn't know that it needed approvals for overnights so we're coming to rectify that situation.

MR. WEISS: Nelson?

MR. RUSSELL: Currently you sell other animal's rodents, fish, reptiles, etc. correct?

MR. CROKER: Yes.

MR. RUSSELL: So the boarding of animals overnight is part of the general operation of the store is it not?

MR. CROKER: Oh yeah I mean it is yes of course.

MR. FLANNERY: In terms of the Banfields operations and the pet hotels that are in New Jersey, North Jersey include East Hanover and there is overnight boarding correct?

MR. CROKER: I'm not positive with that store because again I don't really work too closely with them but yes pets are (inaudible) East Hanover, Newark, New Jersey the two in our district that's part of our company that I know operates a pet hotel.

MR. FLANNERY: In terms of keeping animals overnight, cats especially, they don't travel very well right?

MR. CROKER: No cats actually a big reason why cats are . . . we try not to have to bring cats in and out is they can cause a lot of stress on the animals. Number one when we have to adopt them out to an owner they're taking a stressed animal home already, and with our facility and how it's taken care of it kind of helps them they have hiding areas they can kind of stay out of sight and it's run really well so far I think in our store we haven't had a major issue.

MR. WEISS: Scott you had a question?

MR. VAN NESS: Well one is the cats is probably an issue right now that needs to be cleared up. Two the idea of pet adoption, beyond the pet adoption and the keeping the, I guess we're talking about dogs is that correct?

MR. CROKER: Yes and cats I assume.

MR. FLANNERY: It will be dogs and cats.

MR. CROKER: Yeah this facility would have I think its cats and dogs in this new facility.

MR. VAN NESS: Cats and dogs living together.

MR. BUZAK: Excuse me if I might. Are we limiting this to dogs and cats because we need to be, let me just start this off because I'm the one that has to draft the resolution in the end. We need to be specific about what you're asking. If it's dogs and cats then its dogs and cats for adoption and for overnight, if you're going to you know have adoptions for some other kind of animal you need to set that forth because what the resolution will do is limit you to whatever it is the Board approves. And it's not you know open season on adoption and you can bring in anything you want. And again I say that

because I don't want you to limit yourself and then wind up being cited for doing something that you thought you could do and you can't. So I want to put that on the table right away and I apologize.

MR. WEISS: I think there was a point raised what about, I don't know whether you were joking or not (inaudible) but it says in the first resolution the original resolution did call for small animals.

MR. FLANNERY: This will be strictly limited to dogs and cats correct?

MR. CROKER: I mean

MR. FLANNERY: And the (inaudible) and boarding overnight.

MR. VAN NESS: No pot belly pigs? No

MR. CROKER: The organization that we're bringing in Eleventh Hour doesn't work with any other animals.

MR. VAN NESS: Okay so to continue with my question, so your plan currently is for adoption and you're going to bring animals in for overnight stays if they're not adopted the day that they're there will they stay the remainder of the time until they are adopted? Or maybe just for the weekend what's the idea there?

MR. CROKER: They have a turnover program I think

MR. FLANNERY: I believe the program is it not, usually a one to six day stay?

MR. CROKER: Yeah currently our cats are in and out. The one thing I know we do currently is if the cats are in for over maybe about a week they're usually foster cared after that so that they're not forced to stay in that setting for too long.

MR. VAN NESS: And the use of the facility for the adoption and the storage of animals who haven't been adopted yet, is there a plan to use that same facility for boarding of private owners pets?

MR. CROKER: No. The room will be a hotel which is what I think what you're speaking of where a private owner bringing an animal, no we wouldn't. This will be strictly a charity run program.

MR. VAN NESS: Strictly a charity run program and the storage facilities for these animals will be used for an adoption program only.

MR. CROKER: Right.

MR. WEISS: I want to kind of . . . my point about what you're saying is I have a concern similar to where you were going that today as you sit here you have what seems to be a very wonderful relationship with Eleventh Hour, two years from now your relationship breaks off you have an approval for overnight hotel for lack of a better word. What will stop you from going into the open market of boarding animals?

MR. CROKER: I think strictly on a Corporate . . . I don't know if you want to

MR. FLANNERY: We welcome any sort of restricted language in the resolution limiting this strictly to . . .

MR. WEISS: Thank you for that I think it has to be there because if you have a portion of your business, and Matt I'm not sure how many square feet you say the veterinary clinic that's already approved is.

MR. CROKER: I think 1,800.

MR. WEISS: If you have 2,000 square feet of un-used retail space it's expensive so you know we want to prevent you from saying oh we have a good approved use that's taking private boarding and we want to make sure that that's not going to happen.

MR. CROKER: Absolutely that would not occur.

MR. WEISS: That was a concern. Steve?

MR. BEDELL: Yeah I guess with this veterinary clinic it looks like in 2005 they were you know granted I guess that 1,900 square feet for the veterinary clinic, you now want to use that space for this adoption program. If they decide to put in the veterinary clinic in four years from now they're okay to do that or do they need to come back and get new approval?

MR. RUSSELL: They have approval for . . .

MR. BUZAK: You know I believe that that was a variance that they got is that correct?

MR. FLANNERY: I think a vet is a permitted use in the zone but you know certainly if the Board wants to restrict it to just an adoption facility we would be . . .

MR. WEISS: You know I tend to agree with you I think you know I reviewed the resolution I think that it was an approved use and I don't think it was a variance.

MR. BUZAK: I think you may be right.

MR. WEISS: It was an approved use so I don't think again I ask Ed to give a better opinion but I don't think that this vacates that use. I can't imagine, they're not asking to vacate that use they're just not using it.

MR. BEDELL: Sure I was just asking okay.

MR. CROKER: Rockaway is actually getting a veterinary service so I don't think we're ever going to actually have one in the Mt. Olive store.

MR. WEISS: John?

MR. CAVANAUGH: So just to be clear then the old resolutions had a capacity for a veterinary clinic of 16 animals. And I know we've had veterinary applications in the past and there is some design criteria of how many square feet you need per animal to be properly serviced. So if you're not going to do a veterinary use then perhaps it might be clearer for us and any future Board to say you'll give up that use but you'll take that space and use it for this adoption purpose. So that there's no co-mingling in the future in you know a now half veterinary and half adoption.

MR. WEISS: You know John that's a good point maybe we could turn that into a question and saying are there standards that say you need "X" amount of square feet per dog or per animal that's being boarded? Do you know if there's such a standard?

MR. FLANNERY: I don't know of any standard I mean certainly we would comply with any standard as a condition of any approval. I believe that the (inaudible) year plan that was submitted to the Board as part of the application shows you know cat condos and rooms for animals.

MR. WEISS: Because John if I hear you right why not keep the veterinary clinic and then maybe make a corner where there's dog food for example and make that you're boarding.

MR. CAVANAUGH: Yeah I mean I think for boarding purposes you know you've got a spot for the animal to stay and then you have some feeding and walking area. But for a veterinary clinic you have to have tables and prep areas and different things.

MR. FLANNERY: Yeah I don't think that use would be introduced unless we were going in for you know a total retrofit of this proposed space. We're going for building permits to do interior improvements and that sort of thing and it's going to be designed solely for an adoption facility. Is that correct?

MR. CROKER: Yeah. It's being redesigned.

MR. WEISS: Anybody else have any other questions for what we spoke about? Rene?

MS. GADELHA: So just to be clear the maximum you would accommodate a pet would be six days cat or dog is that right?

MR. CROKER: I don't know if we . . . that's the average one to six days.

MS. GADELHA: I'm just . . . what's the worst case because I'm thinking of the space and I'm wondering if you have a big dog where is the run for that? And maybe you're going to get into that but how are these . . .

MR. FLANNERY: I think maybe on the seventh day it goes to a foster parent is that right?

MR. CROKER: I mean it's not like again that would be like up to the adoption group. I mean I think the adoption group has the best interest of the animal at heart and I really don't think they would . . . I mean I don't know if there is a limitation. That would be up to the actual company itself I guess if it was being set in but as of right now again it's not like we have like a rule that says at 7 days they have to go to foster care, as of right now. But again you know the adoption group is only looking out for the animals so I think if they felt like they needed to they would send them out into foster cares. I think the only thing would be is if this is being used as a boarding facility setting that limitation to like 6 days or something. What would happen is if there wasn't a foster home ready what would happen to that animal then that's now in that care.

MR. FLANNERY: It may be euthanized correct? I mean depending on . . .

MR. CROKER: I mean I don't know the terms of that but again I don't know . . . I just don't know if it was . . . I don't think that company has one for that reason that we wouldn't want to force them to take the animal out if they're using that facility for boarding. Say like a cat currently in our cat facility, if we set that standard at that six day if there's no foster care what happens to that cat?

MS. GADELHA: Right and I understand but I also am curious, how long can an animal potentially stay in the facility thinking about the surrounding area and the lack of property that you know I have big dogs I know that they have to get out so I'm just curious what the end game is there. I think Eleventh Hour is a no kill shelter that's why we thought that that would . . .

MR. CROKER: Yes but I know . . . I don't know if you have actually . . . have you seen the designs yet?

MR. FLANNERY: They were the designs submitted as part of the application I'm sure . . .

MR. CROKER: The area for them to be in I guess they have separate areas but I really don't think they would be staying longer than probably about a week. Again I don't know.

MR. FLANNERY: It's a fairly high turnover probably like 20 to 35.

MR. CROKER: Yeah a lot of dogs going out and I think mainly the facility, and I don't think Eleventh Hour plans on using this as their only facility for animals. So again I think there will be a very high turnover rate and then animals that aren't adopted, this is really I think just for . . . especially for animals that are going to be already have been had shown interest for them to stay overnight. Again this necessarily is kind of small for what I think they're looking at this is just for the fast turnover rate especially on Saturdays if we're having our National Adoption Weekend that runs Saturday and Sunday. Instead of having them bring them all on Saturday like we've been doing and taking them all home, bringing them all back on Sunday you know and then taking them all home again. This is to avoid that kind of repeated overnight you know traveling. This is mainly just for that use I don't think this is meant to become like a permanent boarding facility for animals.

MR. WEISS: Is there a cost associated to the adopting family?

MR. CROKER: Yes usually.

MR. WEISS: Okay.

MR. FLANNERY: I guess part of the problem I mean we don't have all of the particulars from Eleventh Hour I mean because there's an adoption (inaudible) of that I think.

MR. STASZAK: Isn't it refundable if they get them spayed or neutered?

MR. CROKER: There's usually . . . that's part of the . . . if they're altered it's cheaper so they're pre-altered. If they're un-altered they usually more expensive because then that fee gets returned to

them once they're altered and I know that's part of the fee, and then obviously for the shots and all of the care and transportation.

MR. FLANNERY: Eleventh Hour Rescue it's a non-profit 501C.

MR. NELSEN: You said that this location is the most successful adoption site in the Country?

MR. CROKER: It was in the top ten last year.

MR. NELSEN: Okay is there a need to change how you're doing it now if your that highly regarded?

MR. CROKER: I think this is going to become kind of like a hub for like adoptions for the State I think because we have a high adoption rate in this area this would increase that number.

MR. NELSEN: Okay and I'm not sure if this question should go to you but is it zoned for grooming is that an acceptable . . . because I don't see . . .

MR. FLANNERY: I believe it is a permitted ancillary accessory use, a customarily incidental accessory use to that retail pet store operation.

MR. NELSEN: Is it? Okay.

MR. WEISS: Excuse me did you notice that was omitted in the resolution from 1995.

MR. NELSEN: I don't see anything about grooming in the resolution. I'm curious I know they do it there but I just didn't see anything.

MR. WEISS: I think what we can do is summarize essentially so far that we've come to an agreement that a condition of approval if the Board is to go that way would definitely have no outside boarding that would not be allowed.

MR. CROKER: Okay.

MR. WEISS: The only boarding of animals would be through The Eleventh Hour the pets are there for adoption and at no point will you go out and advertise the fact that you have vacancy for boarding hotel, caring for outside animals.

MR. FLANNERY: Correct just to clarify The Eleventh Hour or a comparable non-profit adoption agency.

MR. WEISS: I'm just going on my example, next year you don't have such an agreement and now you have the space and the approval for boarding not to be taking it outside . . .

MR. FLANNERY: Absolutely if there are no adoption agency department it would just remain empty.

MR. WEISS: Okay. So go ahead I'm sorry Mr. Flannery you can continue with your line of questions.

MR. FLANNERY: A few more points if animals become ill they are quarantined in isolated rooms with separate ventilation correct?

MR. CROKER: Yes.

MR. FLANNERY: There are measures in place for that? I think that's pretty much it for my questioning unless the Board has any additional questions of this witness.

MR. WEISS: Dan go ahead.

MR. NELSEN: To just piggyback on to how we were saying there, when you say there's not going to be any boarding could that possibly be used for any kind of day care?

MR. FLANNERY: No I don't think you have any sort of . . . A) it's a separate program that Petsmart would be an additional pet hotel it's a different layout and I mean we'd make that a condition of approval as well if you know doggie day care.

MR. NELSEN: Okay and do you have any kind of facilities or ability to clean up after the pets if . . . I know you have dogs coming and going but are there any hoses out there or anything like that? I know it says in the resolution that the pet owners are responsible for the cleanup of their pets waste.

MR. FLANNERY: I think there are oops stations outside?

MR. CROKER: Yeah there's an outdoor station and then there's . . .

MR. NELSEN: A what station?

MR. CROKER: A clean up station, an oops station it contains disinfectant that's safe for dogs, it contains bags for people's use and paper towels and two caution signs. And is located . . . well there's no caution signs in the outside one, the inside one there's I think six of them throughout the store. And then we obviously, I have to say I've been working there so long I have cleaned up enough of my own that we have mops, we have disinfectant obviously we can . . . we have taken care of . . . I think I have taken care of my fair share in my 4-1/2 years of cleaning there.

MR. NELSEN: So for the outside area though you have a disinfectant?

MR. CROKER: The outside doesn't actually I'm sorry. Okay the outside just is a bag and a receptacle.

MR. NELSEN: I'm just thinking of the proximity of the children store next door to you and the restaurants if something were to get dirty would you have the ability to hose it or anything like that?

MR. CROKER: There is an outside hose hookup that we use currently for our power washing of our sidewalks. I don't know if we needed to I think we could but I know I certainly go out there and clean up. I personally go out there and help clean up stuff too so we try to keep that area clean and it is to the right hand side so the Babies R Us is to our left hand side. The oops station is on the right hand side of our store so it's fairly far away from the Babies R Us that's next door. And I know employees on a regular basis go out there and spend a lot of time cleaning up.

MR. WEISS: I'm sorry Gene?

MR. BUCZYNSKI: That wasn't part of any original approval that they have an outside waste area. Because the original approval was just for people to bring their own dogs inside and outside they're responsible to take care of their own waste. There's nothing in the original approval about stations indoor or outdoor.

MR. VAN NESS: By stations you mean simply there's a post with a thing on it that you can get a bag out so people can clean up their dog's waste.

MR. CROKER: Yeah essentially like a trash can or waste . . . yeah the fact that knowing that people will . . . their dogs will make a mess that there had to be some system for them to . . .

MR. STASZAK: It's more of a pole with a container on it.

MR. WEISS: Well maybe we can speed it up, will there be testimony as to the operational end of how this will work? Because obviously we're having a conversation about waste on the outside which I normally would think is appropriate for what you're asking for but will we hear testimony on how you operate on a daily basis about waste removal from the inside?

MR. FLANNERY: I can go through that really quickly now. You'd clean the cat condos and the rooms and I understand there's this industrial toilet that they use you know there's no going outside with you know waste?

MR. CROKER: Yeah, yeah no.

MR. FLANNERY: You have regular cleaning schedules and that sort of thing?

MR. CROKER: Yeah. If for some reason adoption doesn't show up we're all trained, every single member of Petsmart is trained to actually clean the cat one that's currently there. And that goes for like in case there was a power outage or something we know where . . . like no one is going to come in we're always there to keep cleaning up and stuff. And everything is . . . you know I mean we have a pretty good system of keeping clean I think.

MR. WEISS: And now you're looking to board "X" amount of dogs in this 1,800 square foot space. So is there a system in place on how you go about keeping that clean?

MR. CROKER: I believe Eleventh Hour Rescue provides on staff members to monitor . . .

MR. WEISS: And is that true only on the weekends? Or what happens Tuesday . . .

MR. CROKER: Seven days a week.

MR. WEISS: Okay let me before we . . . is there anybody from the public, seeing none anybody else have any questions for Mr. Croker? I just have one more and it's a little bit of a concern of me that again these animals could be there for say six days and we'll just use that as a number, you haven't said you were providing any kind of exercise area I know Rene touched upon it. But are these animals supposed to just sit in a cage all day? I mean a normal boarding facility I would think and I don't necessarily board my dog but I would imagine if I took my pet to a board facility there would be an exercise facility. And if I'm away for the same six days the dog won't sit in a crate for six days. So what's going to happen at Petsmart in this boarding facility for the six days that they're there?

MR. FLANNERY: Is there a room in the actual facility to walk around could you use the training area or walk around the store?

MR. CROKER: Well yeah they would have full access to the store if need be but they have 187 square foot play area that will be used.

MR. WEISS: Where is that?

MR. CROKER: It's right towards the front of the building in this drawing.

MR. FLANNERY: I don't know if you want to enter this as an exhibit.

MR. WEISS: I see we'll look on that one there.

MS. GADELHA: Is that the existing pet training area?

MR. CROKER: No our training facility is off to . . . as you walk in the building it's on the right inside.

MS. GADELHA: Right.

MR. CROKER: This is a completely separate, being built. This is a play area that's being built with the adoption center; it's actually in the adoption center.

MR. NELSEN: It's in the back.

MR. CROKER: I mean it's in the front of the adoption center, this is all . . . I'm going to talk about the adoption center. This is in the front end of the adoption center.

MR. FLEISCHNER: Could someone pass down the drawing because we don't have it on our computer.

MR. WEISS: I think one other thing that I don't think you've testified to is how many dogs would you say will be boarded for this adoption process in any given time? Is there a maximum that maybe we want to . . . you know we want to you know like (inaudible) and I understand that The Eleventh Hour Rescue Shelter is looking out for the best interest of the animal but we also want to prevent that you know overnight on Sunday you don't put 50 dogs in there because hey listen we have an approval. So do you have a number?

MR. FLANNERY: I think I averaged 10 dogs and 8 cats.

MR. CROKER: Yeah that's what we were looking at.

MR. FLANNERY: That's average I don't know . . .

MR. WEISS: I'm just struggling because I don't know you know in the world of humans we have standards you know when you need "X" amount of square feet per a certain project. In this case I don't know if there's an answer, how many dogs can you put in 1,800 but now the 1,800 square foot area now has a play area.

MS. GADELHA: A meet and greet areas and there's a lot of different sections.

MR. WEISS: So how many dogs can we kind of hold you to that you'll be boarding at any given time?

MR. CROKER: I think there was a certain amount of cages that was allocated.

MR. FLANNERY: I think there are . . . if you look on the picture plan I believe there are a total of 19 rooms and 16 cat condos and I believe the rooms are for dogs is that correct?

MR. CROKER: Yes.

MR. BUZAK: Mr. Flannery what are you looking at?

MR. FLANNERY: This is a fixture plan, I'm sorry that was included as part of the application.

MR. BUZAK: Okay I don't recall having seen that but perhaps I missed it. We have the larger plans.

MR. BUCZYNSKI: It's the same plan isn't it?

MR. BUZAK: Is it?

MR. BUCZYNSKI: It's the same drawing.

MR. BUZAK: Okay.

MR. BUCZYNSKI: Unfortunately the drawing, the drawing I have anyhow I can't read the number of rooms. It shows a total rooms is 19, small rooms 11, large rooms 8, cat condos 16. I think the plan you have in front of you you can't read that.

MR. CAVANAUGH: What are you looking at Gene?

MR. BUCZYNSKI: The lower right hand corner.

MR. BUZAK: We'll mark this A-1.

MR. WEISS: So the big sheet is A-1 then Gene? And maybe the smaller or is it the same?

MR. BUCZYNSKI: It's the same sheet it's just that you can't read the plan.

MR. WEISS: Okay so we'll call this A-1 will be the rendering of the layout to show the adoption center. Mr. Flannery all right we'll call it A-1 that would be the rendering of the proposed facility?

MR. FLANNERY: Yes thank you.

MR. WEISS: So okay total rooms of 19 that's 11 and 8 right, 11 small, 8 large?

MR. FLANNERY: Correct.

MR. WEISS: Plus 16 cat condos?

MR. CROKER: Yes.

MR. FLANNERY: And that's at maximum capacity.

MR. CROKER: Yes I would assume 19 dogs is maximum capacity for that center.

MR. VAN NESS: And it's one dog per cage or room?

MR. CROKER: Yes.

MR. VAN NESS: And the same with the cats?

MR. CROKER: Yes.

MR. VAN NESS: And nothing is allowed to be doubled up or tripled up or more than that or anything like that?

MR. CROKER: No.

MR. VAN NESS: All right so the maximum amount of dogs or cats you have would be one per available unit.

MR. CROKER: Correct.

MR. BUZAK: So it's 19 dogs and 16 cats would be the maximum that we're talking about?

MR. CROKER: Yes.

MR. BUZAK: Okay.

MR. WEISS: We also want to make sure that we're protecting you if the day comes that you want to get out of the cat business you then turn around and make those 16 cat condos like a dog area. Is that an option for you?

MR. FLANNERY: I'm sorry I don't think so at this time. Would there be a possibility of a change in configuration?

MR. CROKER: That would be up to I think my Corporate, I mean again I'm only . . .

MR. FLANNERY: If the Board would like us to we could come back if that were the case.

MR. WEISS: Well here's what I'm concerned about if we're agreeing today that you have 19 dogs and 16 cats but then your company says cats aren't profitable we're going to do away with cats we want more dogs, the resolution is going to say that you're only allowed 19 dogs.

MR. FLANNERY: Right but there's no profit involved but you're correct, absolutely correct I mean if the adoption agency were to change its policy yeah.

MR. WEISS: If the business trend shows that you're not adopting cats and that you want to get more dogs in there you might be limited to 19 dogs.

MR. FLANNERY: Right. I don't know we can certainly agree to a total number.

MR. WEISS: Maybe . . . is it I'm going to guess and say 2 cats equal 1 dog which means 8 . . .

MR. FLEISCHNER: Mr. Chairman I don't think you can do that. I would rather see a set number I mean if you say "X" number of cats then its "X" number of cats, if it's "X" number of dogs it's "X" number of dogs that's it.

MR. VAN NESS: And my opinion is that we should allow the available facilities to determine how many animals they're allowed to have. As long as they have built their property to the plans specified that amount of space should dictate what they're allowed to have. If they have to take out cats, they decide they want to take out the cats and want to put more dog cages in then they have to come back here to change that. That would be a change in my opinion that would be a change in the use or the plan of the store. Is that not . . . is that one way that would work?

MR. BUZAK: Yes and again you know that would be the same as . . . I think it would be the same as placing a limit on the number of animals 19 dogs, 16 cats and since each had their own cage that's what we would be setting and if they want to do 20 dogs they'd have to come back to do 20 dogs and 16 cats.

MR. VAN NESS: Well I guess here is kind of how I'm thinking about it. Is that when they build this and they find there's a problem with the design somehow and they have to . . . they have room to add or room to subtract one or two you know that's why it's an available appropriate use of space and it's designed and provided to the engineer and the town. I don't know it doesn't need to get over complicated either.

MR. STASZAK: Another question, we're talking about the number that they can board overnight so they can have 19 dogs in there but if they want to have 35 dogs they got to take out . . . that number down to 19 for overnight okay.

MR. WEISS: Steve?

MR. BEDELL: What's the size of each dog area and cat area? Are they both 3 by 3 or 4 by 4? Because you know if it's the same size if you know if you want to get rid of 3 cats and board 3 more dogs why come back? As long as you have that proper space like make it retrofit it internally but as long as . . .

MR. CROKER: I this is very . . . I think cat condos are very . . . the current ones we have now are very like fixated. Like their designed like they have ramps going up and stuff so they're supposed to be kind of . . . they're designed just for cats I can't imagine . . .

MR. BEDELL; Yeah but let's say the cats aren't moving off the shelf and you want to you know you want to like you know make that smaller and add more dogs you know instead of them coming back and say okay well if each dog area was 3 by 3 remove as many cats as you can as long as you have a 3 by 3 space for each individual dog.

MR. WEISS: You know I don't mean to interrupt Steve but I think Scott's comment is probably the smartest. Let's . . . a definitive number right now its 19 dogs, 16 cats any deviation of that they will need to come back and explain why they're doing it differently. I suppose that's the cleanest . . .

MR. FLANNERY: Right, for the overnight boarding right.

MR. WEISS: Dan?

MR. NELSEN: I'd like to just language wise I'd like to remove the word boarding out of this because supposedly we're not boarding anything. And in the . . . do you have that drawing in front of you?

MR. CROKER: Yes.

MR. NELSEN: Okay if you look at the I guess the dog runs in the back area I'm just wondering how you would access the corner one.

MR. FLANNERY: I'm sorry what? To what area are you referring to?

MR. NELSEN: The runs that are there for the dogs do you see those? There's one in the corner there's no way to access it unless you put them in over the top.

MR. FLANNERY: These might be cages or rooms?

MR. NELSEN: That's what I'm thinking they are cages or rooms.

MR. CROKER: Like right behind the four by sixes? Like it goes along an "L" shape? I think the corner is like vacant space I don't think it would be a cage.

MR. NELSEN: The numbers don't add up if that corner one is not a useable run then I got 17. Do you follow what I'm saying? Unless they're stacked.

MR. WEISS: I know it's a bad time to make this suggestion but perhaps somebody from Eleventh Hour probably should have been here with these questions because they seem to be operational and I don't want to put you guys on the spot. I mean obviously it's not your area your bringing in somebody else but this is adding to a little bit of my confusion that we understand these aren't questions that you can answer but certainly questions that should be answered. So I don't want to put you in an uncomfortable position.

MR. CROKER: Well I just think, I'm just trying to figure out again Eleventh Hour this is mainly all Petsmart.

MR. FLANNERY: Yeah I believe this is a fixture plan Petsmart has prepared and Eleventh Hour is just going to come in and . . .

MR. CROKER: Eleventh Hour is not that involved they're just a group that will be using our space within the rules set.

MR. WEISS: Okay. Dan I don't know if the question was answered but we're going to move on.

MR. NELSEN: Okay.

MR. WEISS: Does anybody else have a question for Mr. Croker?

MR. BUZAK: I have a question. If I understand the testimony the pets that are coming in for adoption would be cared for by the agency that provides them. You mentioned at some point I believe that currently the cats, you have cats there they stay overnight for up to seven days and the agency comes in and takes care of them I think you said three times a day someone comes in and does whatever they have to do. And in the event that they do not . . . that someone from the agency does not show up the Petsmart employees are trained or know what to do so that the area remains sanitary and clean.

MR. CROKER: Yes.

MR. BUZAK: Now with regard to this larger operation is it your testimony that the same kind of thing will happen? That in this case Eleventh Hour will have staff members come in three times a day, once a day, once every two days do we know how they're going to handle that whole aspect of it since you're not going to be doing that you're only doing it in an emergency.

MR. FLANNERY: I think you have two different agencies there's a different agency other than Eleventh Hour right now handling the adoptions correct?

MR. CROKER: Currently we have two adoption groups running (inaudible) adoption partners. I think for your question I think from what I understand and what I've heard Eleventh Hour will be there the whole time that our store is open. This will be a different situation, like they are going to have a non-stop staff member there during operations of the store.

MR. BUZAK: Let me reiterate perhaps the Chairman's concern, he's correct the questions that we're asking are not necessarily questions that you can answer but they are really questions that need to be answered. When this Board is being asked to approve an adoption operation, and as you've stated this is intended to be sort of the model I mean it's a prototype and it's expected to be you know the prototype of others that will happen, I think that we need more definitive testimony and perhaps you as the manager need some more definitive understanding from those people of exactly how this is going to work because this . . . all that this Board is familiar with is the in and out adoptions. You bring the agencies come in for the day they do what they have to do they're out of there by the end of the day and that's it. Now we're talking about a whole different kind of situation where it's much more permanent and it's got to be, people have to think about and know exactly what's going to happen and not just leave it to chance. And again I'm not critical of your testimony but not just leave it to chance as to well they know what they're doing and they're going to do it and . . . because sometimes when you take all that for granted and you find out no one has got a plan here as to how this is going to work and it becomes chaotic. And that's the last thing you want to have happen in this facility or any other one. So Mr. Chairman I think it is important and maybe we can focus on whatever Mr. Croker can testify on we can have the expert testify with regard to the use aspects of it and then perhaps we can carry it for another meeting and have . . . and how you do it is up to you but it probably would be worthwhile to

have someone from the agencies who are going to be operating this thing to explain what they do. Because they control that you don't control it. You know they have to get the staff people, they have to get the people driving from wherever they are up here, they have to have the commitment to do it this is all volunteer kind of thing from what I understand so we need to know that that's what's going to happen and candidly I think you need to know that that's going to happen so it doesn't become you know a situation that gets out of control.

MR. WEISS: And I think that advice really should be taken seriously. Obviously the Planning Board if you ask us to vote we're going to have to weigh, you know certainly it would be a shame on your part if all the other testimony seems to very convincing but we're not really sure about how the day to day operational end goes. And there's no reason why we couldn't carry this meeting after the testimony is given. Come back for a short abbreviated opportunity for us to discuss the operation of Eleventh Hour or an operator as Mr. Buzak said and we can kind of . . . because I see myself making notes and I'm looking down the line a lot of people have questions that I kind of stopped you before. I know you can't answer them and I know you're trying but those aren't the questions where . . . my questions I know would be for Eleventh Hour. Scott?

MR. VAN NESS: I think that it's crossing my mind that we're over thinking this. Because the reality in my head is that Petsmart is here, wants to use the facility for the temporary housing of pets that they want to bring in for adoption. It's Petsmart's responsibility to make sure the pets are cared for, that the designs are appropriate and brought to the township and approved to the Construction Official or Zoning and Gene and so on and Chuck, and how they want to conduct adoptions for pets I don't know that we have a say in it. I don't know that we have a say that they can have the animal in and out of there in three days, five days or ten days. You know they're representing that most animals are out of there within a week ish, well actually they're representing right now that the animals are out of there every single day but that most pets are adopted within a week. And do we need to look beyond what they're asking for? Are we kind of digging a bigger hole here than we need to?

MR. WEISS: I mean I brought it up you know because I see a lot of questions being raised. I want to give them a fair opportunity.

MR. VAN NESS: We are raising questions I agree but is it because we're going down a broader path than we should.

MR. WEISS: Maybe but I think in my case and certainly I can't speak for everybody else, I think the questions are coming for a lack of understanding of how things are going. Joe?

MR. FLEISCHNER: I would like a clarification, can someone explain to me, that's you Ed, exactly what a use for the benefit of the entire Board, what exactly is a use variance because that is what they are asking for. Then maybe that will define what questions we should be asking and what really is the responsibility of the Board to the applicant?

MR. BUZAK: And I think your question was the way I was going to answer Mr. Van Ness' comment. The reason that I think the Board needs to get into this is because this is a use variance. A use variance is a request by an applicant to allow them to utilize property in a manner that is not permitted in the zoning ordinance. Since it's not permitted in the zoning ordinance there are not standards that are established in the ordinance, bulk standards, performance standards, any other kind of standards that you would normally have for this particular type of use. So when an applicant comes before a Board seeking that use variance and as because there are no standards anywhere that we can point to that they would have to comply with we need to flush those standards out, we need to think about what they should be, what criteria we need to be looking at and then establish standards for them. In order to do that we rely largely upon the applicant to present their use in a very specific way so that all of those kinds of standards that we're delving into now have already been thought about and we have definitive answers. These are the standards this is why we're asking for it. Use variances are very specific approval that stays within those four corners that we grant it. If we say its 19 dogs, it's not 20 dogs it's 19 dogs. Whereas in a regular use that's permitted under the zoning ordinance there's usually broader standards that would apply. Now if an applicant wants to come in and say these are the standards that I want you to approve, they're certainly welcome to come in here. If they want to say as your suggesting look we have 1,800 square feet it takes 9 square feet per cage and we have an area of you know 36 square feet so we'll put four cages in there and we want to have the ability to put either dogs or cats in there, we could have four dogs, we could have four cats. All of that's fine but that's not for us to think of that's for the applicant to think of and present that to us. When they don't it becomes very difficult because then we have to do things like, well you can only have 19 dogs. Well why can't we have 20 dogs and one less cat, or two less cats as somebody mentioned. Well that's probably a better

way to do it but that's not for us to do that's for them to present to us. If they don't present it then they're going to be stuck with these kinds of standards that make it very difficult for them to operate.

MR. VAN NESS: I think they have presented though. They have presented in their plan that they have space for 19 animal's total?

MR. STASZAK: 19 large I think . . .

MR. WEISS: 11 small, 8 large.

MR. VAN NESS: 11 small and 8 large and then however many cats and that's based on the infrastructure they intend on putting within the building. And I had another point I wanted to bring up along that line and now it eludes me.

MR. WEISS: Well when we come back we'll certainly open that back to you but an example that I can think about that we've asked that we talked about waste removal.

MR. VAN NESS: Oh I remember.

MR. WEISS: Oh go ahead Scott because I have my note.

MR. VAN NESS: Well then the other question I have is that are we going to be creating a set of regulations for the resolution that we may not have the ability to enforce. How are we going to enforce them having, and who is going to enforce . . . how are we going to enforce the resolution if they have 20 dogs or they have too many cats? Or they are there longer than any one of us our opinion is that the dogs should be allowed to stay there, or someone didn't clean up properly, or that the volunteer person didn't show up that day. You know I mean they did testify that all of their employees are trained to take care of the animals as they need to be. But are we going to be creating something that we're going to . . . who's going to enforce it do we have to now assign our Animal Control Officer to go and inspect? Or are we going to have to send our Zoning Officer in there to count dogs?

MR. BUZAK: I think that what it does . . . and your point is well made I think that what the resolution will do will establish the standard and be the measuring stick in the event that there are problems. As we all know you know we're not going to have somebody there inspecting it every day, we're not going to know whether if the volunteers are supposed to come in three times a day and they come in once a day or they miss a day, we're not going to know that. But if we start getting complaints from the neighbor you know the store next door or patrons come in and say my God what's going on there you know or there's an odor in there or whatever, we can't go in and say well there's an odor in here. You know but if we have it in the resolution and the resolution says you can have 19 dogs and you have 37 dogs well now you have to have 19 dogs. So that's the way it's done I understand what you're saying but that . . .

MR. VAN NESS: I'm with you.

MR. BUZAK: It sets the standard.

MR. VAN NESS: I get you.

MR. WEISS: Nelson go ahead.

MR. RUSSELL: What differentiates dogs or cats from lizards and birds and guinea pigs and all of the other animals that they have in the store?

MR. WEISS: Besides the obvious.

MR. RUSSELL: Well I mean we're looking at cruelty to animals you can get cruelty to guinea pigs you can overcrowd guinea pigs too. I mean it's a . . .

MR. VAN NESS: If I may? I believe that's a legal definition of what's considered a domestic animal. And I'm only going from my side of the building as to what we have to take reports on and what we don't have to take reports on. If you run over your neighbors guinea pig or bird or snake it's not required by law to be reported. But if you run over your neighbor's cat or dog you have to report it legally because it's considered a domestic animal. That's what I'm thinking might be the difference.

MR. WEISS: So I think I was just going to say one last example and give you an example of what I find to be troubling me is we touched upon waste removal. And you carefully talked about how you clean up the waste (inaudible) but now you're talking about 19 dogs that are there for a week. We understand how you clean it up but now where do you put it, what do you do with it? We haven't heard that and I don't think that Eleventh Hour is responsible for that. That could be a major problem, that's a good question I mean what do you do with it?

MR. CROKER: Well I think we have . . . we get a lot I mean we get probably on a Saturday we probably have 200 or 300 dogs coming through the store that we're cleaning up . . .

MR. CAVANAUGH: I think that's the key when we say 19 that's at night when the store is closed. But during the day your hearing they could have hundreds of dogs.

MR. WEISS: Yes so what do you do with them?

MR. BEDELL: Are those dogs just from . . .

MR. CAVANAUGH: But that's really to Scott's point right? I mean it's beyond our per view at the moment because it's an existing operation. All we're trying to do is establish a use, granting of a use variance because there's no Statute that our professionals can rely upon. So it falls to this Board to say is it within rational means and our ability to grant the use. That's it.

MR. VAN NESS: Well they did testify that they have a giant sanitary system. What's the name of the system?

MR. CROKER: What was that?

MR. VAN NESS: The sanitary system you had testified to before?

MR. CROKER: The oops stations?

MR. VAN NESS: No inside the building.

MR. FLANNERY: There's like a large toilet in the back.

MR. CROKER: Oh um I mean for our clean up mainly it's disposed of in the trash.

MR. VAN NESS: Oh that's not how I understand what you were saying before.

MR. STASZAK: I heard something about a toilet before.

MR. VAN NESS: I heard something about a large industrial toilet that he had.

MR. CROKER: I think that was from him. Personally I mean the adoption group the cat adoption group I notice sometimes use . . . they just mainly as far as I know anyway from what I've seen we only, we have pick up waste bags to pick up the poop, tie it and throw it in the trash can. That all gets taken put in the dumpster and removed that way. And it would be the same way I think with this . . .

MR. WEISS: Dan would you know how to answer that question how a private facility that would board pets dispose of pet waste after a week or for the weeks worth? Is it common to throw it in the garbage?

MR. NELSEN: Well I have such a facility and our cat stuff or the cat litter, cat droppings go into the garbage it's picked up by Waste Management and they just dispose of it. With the dogs I have a set up where I think I have three EDU's that I pay for and it goes right into the sanitary system, the Budd Lake Sanitary System. I don't know if they do everything in their trash or if they use the sanitary system. I thought you mentioned before you use an industrial flusher or something like that?

MR. WEISS: They don't. I think he just cleared that up they don't.

MR. CROKER: No I thought that was a design coming in maybe but currently we don't have anything like that in the store.

MR. VAN NESS: One of the two of you made that comment.

MR. CROKER: Yeah I think I got the misunderstanding like this was coming in maybe with the design.

MR. FLANNERY: Right I had asked him a question thinking a lot of Petsmart stores have the EDU and I thought that there was one in this store as well and apparently there isn't.

MR. CROKER: Currently we just use . . . for mainly again this is customers doing this themselves they pick it up, throw it away and then we have disinfectant that we clean our floors with obviously.

MR. WEISS: Okay well I think we've spent enough time here. Anything else?

MR. FLANNERY: That's all I have of this witness and I will certainly at the Board's request come back, carry it and have someone from Eleventh Hour testify. However if the Board will allow us my planner feels comfortable enough to give his testimony tonight.

MR. WEISS: Yeah I would agree your planner is here there's no reason not to give planning testimony and I'm sure we'll have plenty of time we won't have to cut you short and you wouldn't have to come back.

MR. FLANNERY: Okay thank you.

MR. WEISS: Just for the record and although no one from the public has commented I'll open it again to the public. Seeing none we'll close it to the public thank you Mr. Croker.

MR. CROKER: Thank you.

MR. FLANNERY: My next witness is Mr. John McDonough professional planner previously sworn. Mr. McDonough could you just briefly state your name and qualifications?

MR. MCDONOUGH: Yes my name is John McDonough (M-C-D-O-N-O-U-G-H) qualifications I am a licensed professional planner in the State of New Jersey, also certified in all 50 states as a member of the AICP. I carry a landscape architecture license as well, I've testified before hundreds of boards throughout the state and New Jersey Courts as well as both a landscaped architect and a planner. And I have been before this Board in the past.

MR. WEISS: You have okay.

MR. MCDONOUGH: Yes.

MR. WEISS: Does anybody have any questions for Mr. McDonough? We'll accept Mr. McDonough as a professional planner.

MR. MCDONOUGH: Thank you.

MR. WEISS: Well you're not planning as an architect.

MR. MCDONOUGH: No testimony as a landscape architect no.

MR. WEISS: Welcome Mr. McDonough.

MR. MCDONOUGH: Thank you.

MR. BUZAK: Mr. Flannery why don't we just for the record mark Mr. McDonough's report that has been submitted dated May 9, 2011 as A-2.

MR. FLANNERY: Absolutely I was just about to get to that thank you.

MR. MCDONOUGH: Okay I'll save you the trouble. Mr. Buzak I have a signed and sealed copy if you need one for the record.

MR. BUZAK: Why don't you do that Mr. McDonough that's fine if you would mark that A-2 with today's date 5/19/11 and the Board does have copies of your report you can give that to the secretary thank you.

MR. FLANNERY: Mr. McDonough you heard the testimony of Mr. Croker, you're familiar with the Mt. Olive Township's Zoning Ordinance, Master Plan, exhibits and you've been to the site?

MR. MCDONOUGH: Yes I have.

MR. FLANNERY: If you could just very briefly describe the proofs of the use variance?

MR. MCDONOUGH: I certainly will. The first thing I'd like to do we know that neighborhood context is certainly a key component of any variance and site condition as well. I'm very familiar with the site, I live ten minutes away I frequent the site many times over the past five or six years since the facility has been opened. And what I've done is put together a photo exhibit to photo document my findings with respect to the site and the surrounding neighborhood. And I think I brought enough copies of my exhibit so that we can hand them out to the Board.

MR. WEISS: Okay let's mark that one A-3 with today's date and we'll call it a photo exhibit of the existing site.

MR. MCDONOUGH: And Mr. Chairman the exhibit A-3 will actually be comprised of three pages, I don't know if I need to mark them individually?

MR. BUZAK: No we'll mark it all A-3.

MR. MCDONOUGH: And Mr. Chairman if I may A-3 is actually submitted A-3 is actually submitted as a supplement to my report this specifically speaking to my discussion on page two of the report where I run down the existing conditions. And the key points here just for orientation purposes Route 206 would be just to the left off of this photograph running up and down the page, Route 80 would be running left to right at the bottom of the page again for orientation purposes. So north for the purposes of my presentation will be down as we're looking at this photograph so north is pointing down. The key points of course we're dealing with a large tract of land 46 acres a developed piece of property, a very large scale shopping center. The building that you see to the left the larger building is occupied by Lowe's the building to the right with the white top roof is WalMart, we have a number of name brand tenants in there as well and we've indicated in the photograph where the Petsmart facility is and has been since the facility opened five or six years ago. Again large scale shopping center, generous parking right in front of the subject building and the front door, I've been there on many occasions and can attest to the fact that there is a generous supply of parking I never have seen a problem in all of the years that I've been there. Bearing in mind of course that we are dealing with an operation here that is not expanding the building, not adding additional employees, not increasing the hours of operations we are simply converting an interior within the existing space not expanding the existing space. The other key point here is given the size of the property and the location of the unit within the property the neighborhood is really the shopping center itself. We're not dealing with anything outside of the shopping center so what we consider neighborhood context we really look at the impact on the shopping center which is exactly what you did when you went through the resolution back in 2005 considered the overall impact on the shopping center as well. So we'll come back to that as we run through the proofs. Flipping over to page two these photos were taken about a week or so ago by myself. Just again to familiarize ourselves with the building it's the familiar Petsmart logo on the front the appearance of that store is not going to change. Once we're in the building that's actually my dog there you see in frame number two we've walked around and my dog loves it and obviously it's a store that's open to animals to populate the facility as well. So I think it's important from a planning standpoint when we're dealing with the overnight stay of animals that animals are already within the facility and I believe one of the members actually brought up the fact that there are animals kept overnight already. And we show those in photographs three and four the smaller creatures the birds, the reptiles, there's hamsters and smaller mammals in other cages as well and then of course the fish and related water creatures within the tanks that you see in frame number four. Frame number five we're now working our way over to the subject part of the pet store and this is a head on view of the proposed adoption location which is now in fact the grooming area. Actually the grooming sign is there but to my knowledge it's not occupied by any utilization right now. It was contemplated for the Vet. Clinic which it has not been occupied so the overall intent is to take an underutilized space within the building and put it back into functional use. That's an efficient use of land and one of the requirements under our Municipal Land Use Law which we'll come back to. But again you get a sense of the scale of the unit that we're dealing with it's at the extreme rear portion of the building so we're not looking at

what I'll call a centerpiece or a dominant portion of the building. Certainly from an area standpoint this is 2,000 square feet using round numbers of a 20,000 square foot unit so not a substantial component within as well. We're not altering substantially the overall use of the property which still remains a retail pet store. Frame number seven we look at I'll call it the temporary setup where there is now a pet adoption center in the facility. This is not in the same location where the proposed adoption center would be this is off to the left if you're in the store. You get a sense of the cages where the only cats are kept at this time, and of course frame number eight we're looking at what I'll call the meet and greet area and the administrative component of that adoption center. That gives a little background of the site itself, the proposed conditions as I said this is simply a conversion no additional employees the hours of operation are to stay the same. The buildings you've heard the testimony we're looking at a spacial occupancy that's been defined. Again the exact number 1,864 square feet so we are defining a particular space here. There are no additional infrastructure improvements that are needed as part of this, increased sanitary facilities, water, utility systems or the like. Amenities it's a generously supplies site with landscaping and lighting and no additional amenities are needed as part of this operation as well. Importantly there are no external dog runs being added to the facility, no additional external waste facilities or the like we're told that the animals are kept inside, they are not walked outside so this is a completely enclosed facility. Certainly when you're dealing with overnight stay of animal's noise would be a concern but we're dealing with fire proof walls within the unit, a solid building noise will not be a factor beyond the building walls. So to that extent as we go through the negative criteria we don't see a substantial detriment. In terms of the actual use, and I apologize but my lap top did just die I actually had the definitions that I see in your ordinance not under the Zoning Code but under your Chapter 106 which pertains to dogs and cats. And one of the Board members asked what actually is a dog or cat and there is actually a definition in the ordinance and again we're not dealing with the zoning ordinance we're outside of the zoning ordinance we're dealing with your general ordinances in Chapter 106 where a dog is defined and a cat is interchangeable with the definition of dog as a pet. In terms of the actual use that we're dealing with here I would categorize this under 106 as a pet shop which is defined and is distinguishable from a kennel. And a pet shop is certainly what we're doing here which is the keeping of a dog . . . here we go I'll give you the exact definition I just wrote it down. A kennel is defined as the boarding of or selling dogs or breeding dogs for sale . . . strike that. 106.1 is any establishment wherein or whereon the business of boarding or selling dogs or breeding dogs for sale is carried on except a pet shop. So a pet shop is exempted out of your definition of a kennel so we're not dealing with a kennel here. A pet shop is defined as any room or group of rooms, cage or exhibition pen not part of a kennel wherein dogs for sale are kept or displayed. And again elsewhere in your ordinance the definition of dogs and cats are interchangeable so I think that's right on point for the purposes of a resolution, what the applicant is looking to do here as well. I know the Board has concerns about the numbers that take place within that defined space of 1,800 square feet but I think you do have protections under that Chapter 106 which does and does not . . . which does control what an operator can or can't do within that facility. That being that under 106.5 the use as a pet shop is limited to the license requirements under 106.5 which is under the guise of the Health Department. So much like any other applicant would come before you and you make it condition of the license adherence under the requirements of 106.5. I think you have controls within that defined space now if the Board still chooses to hear more testimony towards the negative criteria that's certainly within you're per view but I bring out for the Board's attention that there is a built in protection under 106.5 what an operator can or can't do within that defined space. It's a two step process you get your zoning approval, this applicant still has to get a license to operate as a pet shop within your community from the Health Department.

MR. BUZAK: Let me if I might interrupt Mr. Chairman. I'm a little bit confused here. The application that came in was based upon an adoption facility and we've heard the testimony initially from the Petsmart representatives that this is going to be an adoption facility and they've gone through some great pains explaining how this thing works. Now I understand that some members raised some questions about what's a dog, what's a cat you know how is it controlled. Now are you changing the application here to say there's an application for a pet shop? Because candidly I didn't look at it from that perspective I don't think the engineer did and certainly the planner did not. If we're going to call this a pet shop then I think we need to have a revised, and again I'm not trying to make this bigger than it is but if we're going to talk about a pet shop then I think we need a revised report and we need to have our planner look into it because candidly this is all a surprise to me. I thought we were coming in talking about an adoption facility and a very defined use as has been testified to.

MR. MCDONOUGH: All I'm trying to do Mr. Buzak is fit this within a category within your ordinance. Pet adoption is not defined anywhere and if . . .

MR. BUZAK: Why don't we leave it that way it's not defined your coming in seeking a pet adoption use.

MR. MCDONOUGH: We can certainly do that.

MR. BUZAK: And explain to us what you want to do because I think if you're going to get into the pet shop thing we need to . . . you can do that and you can present it but I would recommend to the Board that any action be postponed until the professionals can look at that from that perspective.

MR. BUCZYNSKI: His report doesn't talk about pet shop as you said it talks about an adoption center.

MR. BUZAK: Right.

MR. BEDELL: It's already a pet shop though Petsmart.

MR. FLEISCHNER: I mean there's so many animals there.

MR. MCDONOUGH: Well again I don't want to over talk this but a pet shop pertains specifically under your ordinance to the overnight keeping of dogs and cats. That's what a pet shop is under the definition of the ordinance and as I saw the Board struggling here I was just trying to come up with an umbrella a use category to keep this within.

MR. WEISS: Okay.

MR. BUZAK: I appreciate that I understand but my suggestion would be that you ought to stay with the report as you've done it or change the application.

MR. MCDONOUGH: I'll stay in my lane.

MR. BUZAK: I think that may be a better way to go.

MR. WEISS: Is there an agreement though that the supervision of this use will be through the Health Department? I know Mr. McDonough said that control if you will is done through the Health Department.

MR. MCDONOUGH: You have a Section 106 that regulates the keeping of animals yes.

MR. BUZAK: And that could well be.

MR. WEISS: Because I can tell you and I kind of like that you said that if that's the case then who are we to micromanage how the waste is disposed of and all of those other questions.

MR. MCDONOUGH: That was my point.

MR. WEISS: We have a Health Inspector and if you're not disposing of waste properly, if you're not housing these animals properly our Health Inspector has Codes set for him.

MR. BUCZYNSKI: Just on that can I just mention something because Catherine hasn't been around for two days but like two days ago before she ended up leaving she told Chuck and I that there was a concern of the Health Officer that this really should be considered a kennel and he was going to come up with items and issues regarding that but we have not seen any report. But his position as of two days ago, it might have changed, but two days ago the last we heard from Catherine is that he felt the overnight boarding would result in this being considered a kennel and he was going to get back to her with restrictions. We have not seen that report.

MR. BEDELL: Yeah but it's not operated as a kennel I mean it's

MR. BUCZYNSKI: I'm just a messenger okay? I'm just telling you what she said.

MR. WEISS: We already have on the record that the applicant has agreed not to kennel animals so I think that might be a mute point that it's not a kennel. So you make a very good point about perhaps our conversation earlier might not need to happen. If we have somebody to . . . if there's jurisdiction in place who are we to . . .

MR. VAN NESS: It certainly answers a lot of our regulatory questions.

MR. WEISS: Yeah and same with me Scott it answers a lot of questions.

MR. FLANNERY: We certainly have no problem making that a condition of any approval.

MR. WEISS: Okay so let's continue to . . .

MR. MCDONOUGH: Mr. Chairman I have right here in my notes the use as a pet adoption center so we're going to stay down there before my attorney kicks me here.

MR. WEISS: Perfect.

MR. MCDONOUGH: And I do have what this is not it's not a dog day care which is not, also not defined in your ordinance but it's something we commonly see in Land Use. It is not a Vet Clinic although we are not giving up that right to operate a Vet Clinic as I've heard the testimony. It's not a kennel, it's not a pet hotel which is something you may or may not be familiar with the Petsmart down in East Hanover they have a pet hotel where you can take your pet and leave it there while you go on vacation. That's akin to a kennel okay? That's not what we're doing here. I talked about the occupancy, we talked about the rooms, we've talked about the parking and utilities. The zoning, we are in the C-LI commercial zone there are 19 categories including Vet Hospitals so the question about whether that was or was not a Land Use variance I think is answered that while certainly a Vet facility is contemplated within the zone. So we are here for a use variance for a pet adoption and also ancillary to that the overnight keeping of animals. Our report I won't go through point by point, word by word but in general on the positive side this is a use from a particular suitability standpoint it's customarily associated with pet supply and retail stores it's certainly a trend that we see in the industry. In some jurisdictions it is actually considered an accessory use I know we're not dealing with that here but in some instances it is a relatively small occupancy within a larger facility. And again the site condition makes this particularly suitable for this use it fits within the confines of an already established demising wall within the unit. Special reasons we cite three in our report. First we cite purpose A the promotion of the public welfare, four million health animals as statistics show are euthanized every year. Four million otherwise healthy animals this is a facility that the name says it all The Eleventh Hour they come in and they rescue them offer them for adoption to a loving family. The demand for pets remains high 63 percent of American families have some pet in the house either a dog or a cat 63 percent. This is an opportunity to expose those animals to a greater public, to a greater audience you know that the Petsmart is a popular pet store, a popular facility and to have this nexus between the two uses I think is an ideal arrangement. Purpose M is the reuse as I said before of an underutilized space so we're putting something that's not productive now and putting it into productive use. And then finally Purpose I the promotional of the desirable visual environment is no change to what you already see as an attractive site. The landscape grounds for having dogs coming in and going out is not dirty as I've observed it over the years it's been well maintained and lawns are not dying, the landscape is not dying so again I think the promotion of the desirable visual environment through no alteration of the site is maintained here. On the negative side the first prong of the negative criteria for a use variance what will be the negative on the neighborhood and as I said the neighborhood essentially is the shopping center itself within a confined unit here we are not causing any detriment to the surrounding units or the overall vitality of the center. In terms of the health impacts, impacts on public health we do have a Code you've heard about the oops stations the sanitary facilities you heard about what's done with sick animals and the quarantining of those animals and it's actually got a separate ventilation system so whatever is ailing the animal doesn't tie into humans or shoppers as well or other animals. Impacts on public safety, the animals are caged within a secure area they don't get the run of the store or the facility they're never let run lose. Impacts on public welfare as I said this is an inside only facility no noise we have sort of a built-in sound wall and as you've heard the animals one to six days is the general pattern that we see here. I don't know if we actually did put a time restriction on it but again we've given you a general sense of how critically that turn-over is. Finally the last prong of the negative criteria looks at the impact on your zone plan and ordinance and as I run through the permitted uses again this is a permissive zone, 19 different categories of Land Use within the C-LI zone it is certainly commerce oriented and I think this has a positive nexus with the image and identity of the Petsmart facility. It's akin to an existing use, it's a pet oriented facility as the picture show you're allowed in now, pets are allowed in now, pets are allowed overnight now. It's akin to a permitted use such as a Vet Hospital which allows for overnight care of animals and it's akin to the approved use the Vet Facility that's the same as the Vet Facility that I mentioned above as a permitted use. Overall with a use variance we look at whether the use represents a substantial departure from what's contemplated by your Zone Plan and Ordinance. This is a departure but I don't see that as a substantial departure by any means. It causes no impairment to the neighborhood and certainly no impairment to the zone plan or ordinance. Those are the standard proofs for a Medici application I believe the Statutory criteria are met the Board can decide within it's per view whether they want to hear additional testimony with respect to the negative criteria. But I

think you're pretty well protected again by that Health Code that I referenced under 106-5. All things said I think this is a good application I think it's good for Mt. Olive, good for the center and warrants approval from a Planning standpoint.

MR. WEISS: Thank you Mr. McDonough. Anybody on the Planning Board have a question? Rene.

MS. GADELHA: Yeah based on the photos you submitted I have a question about five and seven. So the grooming area is going to be taken out and refitted for this adoption center? Because this says view of the proposed adoption location and grooming area.

MR. MCDONOUGH: It's a good question and I have to admit the screen was down and I can't remember in my visits to the site if actual grooming takes place in that room that's been approved for Vet services. I know the room to the right if you're looking at that grooming facility is operational that light is on every time I'm in the store and I see the animals getting groomed. But I can't tell you if the center piece . . .

MR. FLANNERY: Mr. Croker?

MR. WEISS: Sure Mr. Croker can answer that.

MR. CROKER: Yeah the grooming side for some reason, I don't know when they put it in, just put it like right in back of the wall. So it's like right in the center of the building back wall, the grooming is actually to the right. This room the one that has the screen down that you're speaking of and all that that's all of the pre-Vet service.

MS. GADELHA: So the grooming area will remain.

MR. CROKER: Yes that's off to the right. The grooming sign is up above the actual where the adoption center would be and I think they're going to move that.

MS. GADELHA: Okay and then a second question to number seven, will you still keep this temporary set up just for display of animals or will this be coming down, this is going to stay.

MR. FLANNERY: Mr. Croker the temporary adoption facility will that be removed?

MS. GADELHA: No change to that?

MR. CROKER: I imagine there's no changes. This? Yeah I think . . . the cat one you mean?

MS. GADELHA: Yes.

MR. CROKER: That would be staying as part of this yeah.

MR. BUZAK: And where is that located in relationship to the . . .

MR. MCDONOUGH: Okay I think I can walk you through that. In frame number five I've just walked through the front doors of the building of the unit rather past the cash register. You can see . . . that's probably why they put the grooming sign there because it's the first thing you see when you walk in the door and leads you to the back although the actual operation is to the right of that sign. The pet adoption facility would be to the left it's on the left wall. So you walk down that hall and then take a left.

MR. CROKER: I can make a phone call I'll ask my boss if they plan on taking it out.

MS. GADELHA: No I was actually more curious about the grooming facility that question about the . . . that was just more of a curiosity.

MR. CROKER: Okay.

MR. WEISS: Any other questions for Mr. McDonough? Scott?

MR. VAN NESS: Yes the cat adoption center that you have in there now you're already keeping cats overnight correct?

MR. CROKER: Yes.

MR. VAN NESS: I think that's a violation of our existing resolution. Is your plan to empty these cages at night and put the cats back into the adoption room?

MR. CROKER: That's a separate . . . currently that is run by a separate organization the Pet Adoption League.

MR. VAN NESS: So in other words we're going to be increasing the amount of cats beyond . . . because of the existing cats in the building today are not approved by resolution so not only are you going to have the amount of cats that are on the plan, is this the only cats these 8 units?

MR. CROKER: Let me make a phone call because I don't know if they're keeping that. I would imagine it's staying because it's already been there six years and running six years.

MR. VAN NESS: My point is that this could conceivably mean there's 8 more animals that are in the plan and then you would again be in violation of your resolution.

MR. CROKER: Yes so let me go make a phone call and double check on that? I'll be right back.

MR. WEISS: That's interesting Mr. Buzak how do we handle such a thing we can't sit here and approve . . . the applicant's telling us that he's going to keep a non-conforming use.

MR. BUZAK: No we'd have to grant a variance for it or it would have to be removed or it would get a zoning violations for it. And I think that's what was Mr. Van Ness' direction here, what are we doing with this, if you're going to keep it then we need to have the variance include not only the new adoption area but this one as well. If they're not going to keep it then they ought to remove it.

MR. WEISS: Okay and we'll wait for that from Mr. Croker. Does anybody else have any questions for Mr. McDonough? Dan.

MR. NELSEN: Mr. McDonough you mentioned something about sick and quarantined areas? Sick animals in quarantined areas?

MR. MCDONOUGH: Yes.

MR. NELSEN: Can you go over that?

MR. MCDONOUGH: Yes and this is based on my interview with Petsmart prior to the hearing that Mr. Croker had testified very briefly as well regarding an isolated room for quarantined pets.

MR. NELSEN: I didn't pick up on it.

MR. MCDONOUGH: But there is an actual separately ventilated room for a sick animal. And I asked that question as part of my interview process with Petsmart, what do you do with sick animals and they keep them in a separate isolation room.

MR. NELSEN: Are the animals that are brought there are they checked by a Veterinarian prior to coming there?

MR. WEISS: Dan I think we heard that from Mr. Croker that they come with their papers showing their immunization record and it stays with the animals it stays on site with the animal.

MR. NELSEN: You know but I was just wondering about that quarantined area that he was talking about sick animals quarantine them.

MR. CROKER: The hamsters and stuff?

MR. NELSEN: No the dogs and cats.

MR. FLANNERY: Just recall Mr. Croker here he can maybe clarify some of these questions.

MR. CROKER: So as I just talked to my boss the store manager the cat adoption, the temporary cat adoption is still staying that will not be leaving due to the new facility.

MR. WEISS: That's a bad answer.

MR. CROKER: I just, that's what

MR. VAN NESS: It's a bad answer because that cat adoption center as it exists today is in violation to your existing resolution.

MR. CROKER: Yes. As far as he found my boss knows currently I mean this is all from Corporate and that as he knows as of right now that was staying up. If they're removing it he doesn't know but as of what he found out it was staying so I mean if they're changing it

MR. FLANNERY: That's up to the Board I mean if the Board wants that removed as a condition of approval we will accommodate. If the Board will allow it to be subsumed within the request as noticed for a pet adoption facility.

MR. WEISS: Mr. Fleischner?

MR. FLEISCHNER: I'd like to make a suggestion I think that every time we ask a question there seems to be another question and I know you want to move forward on this but I think it might make sense if you guys go back, you speak to the manager, get this other organization here get it all squared away come back to us with really more of a defined this is going to stay, this is not going to stay rather than us say well if we approve this, and I say if, then you have to take this out, you don't have to take this out. I think it's very confusing and I'm getting a sense to be honest with you that you guys are just as confused as we are up here. I know we're all trying to get to one place but . . .

MR. WEISS: I'd like to clarify that obviously Mr. McDonough's testimony isn't really so much included in your comment because he was kind of cut and dry.

MR. FLEISCHNER: Right but I mean you know we keep raising these other questions and I think you know why risk, and I'm not saying that's the case, but why risk a negative outcome when we just need more of a little clearer focus I think would help the Board immensely.

MR. WEISS: Right because what's happening now you have your adoption center as you walk in the front door to the right, oh but this is to the left and now your adoption center that's 1,800 square feet isn't really 1,800 it's now 1,800 plus this temporary unapproved use and we can't sit here and give you the blessing when we have an unapproved use going on. So let's stay course though, does anybody else have any questions for Mr. McDonough?

MR. NELSEN: I just wanted to go back over that sick animal and quarantine area. And I asked if the animals were checked by a Veterinarian before they came.

MR. WEISS: Okay Dan I'm going to interrupt and pardon me for doing so. Excellent point Mr. McDonough brought it up but I do think it's probably more of an operational than a planning question. Granted he brought it up I don't think that's really planning testimony so if you table that question I'd like to finish up with Mr. McDonough.

MR. NELSEN: Absolutely.

MR. WEISS: And if anybody has any questions for the testimony that we heard. Gene did you want to go over Chuck's report?

MR. BUCZYNSKI: Well Chuck's report basically says he has no comments to Mr. McDonough's report and he had two review comments. One I think was kind of discussed as part of the testimony in Item 4.2 was just questioning as far as any State certifications or licensing required for the pet adoption center.

MR. MCDONOUGH: Yes and there's no State licensing it's done on the local level and that's I refer back to 106 of your ordinance and Mr. Buzak you're the one who has to frame the resolution how you tie that to 106 I'll leave to the Board.

MR. WEISS: Jurisdiction will fall under the Health Department.

MR. VAN NESS: Mr. Chairman?

MR. WEISS: Yes.

MR. VAN NESS: Mr. McDonough did you discuss the existing cat enclosures with the applicant? That they may not have conformed to the existing resolution?

MR. MCDONOUGH: I did not question that I was aware . . . honestly being in the store many times I was not even aware it was there until I took my photographs this past weekend. That said I didn't question whether it was part of an approval or permits were issued or . . . that's why I put the word temporary in there I assume that it was there on some sort of temporary permit basis.

MR. FLANNERY: It was understanding that it was going to be removed we obviously need some clarification from Petsmart as to exactly . . .

MR. WEISS: Well obviously more than maybe we thing, it needs to either be removed or addressed through a variance.

MR. FLANNERY: Correct.

MR. WEISS: I think that's the direction that (inaudible).

MR. BEDELL: Or just relocate it in the new facility.

MR. FLANNERY: Yeah exactly right.

MR. WEISS: And if it stays perhaps the Planning Board would like all of the adoption activities in one center rather than spread throughout the store.

MR. BUCZYNSKI: And they may have to revise the application to include that and request a variance for the existing facility if in fact it's going to remain.

MR. FLANNERY: Correct.

MR. WEISS: Right and that certainly wouldn't require planning testimony. Okay that being said so that's Chuck's report I think we've answered 4.2 (inaudible) Health Department that was one question. Anything else from Mr. McDonough? All right I'll close it to the Planning Board, is there anybody from the public. There is no one here so we'll close it to the public. And so we'll turn it back to you Mr. Flannery and I suppose you have no other witnesses I take it?

MR. FLANNERY: I have no other witnesses tonight obviously the Board has raised some excellent points regarding additional testimony they needed at a future hearing to clarify some of these points.

MR. WEISS: Okay so just so we can be efficient as we go forward obviously we think maybe a store manager who can answer the questions and perhaps a representative from The Eleventh Hour who can . . . any question that might come up although you know maybe not Scott because I think didn't we talk at the operational end to fall into the jurisdiction of the Health Department but it might not be a bad idea.

MR. VAN NESS: It couldn't hurt.

MR. WEISS: Yeah it might not be a bad idea to bring someone from Eleventh Hour to talk.

MR. VAN NESS: If they're going to come back and bring people with them then why not.

MR. WEISS: It certainly doesn't have to be long testimony I think there's some very specific questions that we need to address this use that's currently improper. Dan?

MR. NELSEN: One other question, I'm not sure if this should go to the attorney or Mr. Croker. But the adoption fee that is paid by the adoptive parents, does that go to Petsmart or to The Eleventh Hour?

MR. CROKER: No actually the adoption fee goes right to the organization and actually then after there's a release forms obviously and stuff signed by Petsmart because again this is through them. For every adoption they do I don't know exactly how much but actually Petsmart then donates more money back to the organization. So we never get a dime from any adoption ever done and actually if anything we . . . for every animal they donate we donate more money to the adoption group if the animal goes out.

MR. WEISS: Rene?

MS. GADELHA: Just to piggyback on that, so really the only benefit to you other than you know warming the cockles of your heart you're having traffic in your store.

MR. CROKER: Yeah.

MR. BEDELL: Well hopefully they'll come back and buy more food from you guys too.

MR. CROKER: Yeah of course but . . .

MR. WEISS: Dan I don't want to forget your question your question about sick animals. It's probably a logistical question, your question was where are these animals kept?

MR. NELSEN: Well and I want to know if . . . how would a sick animal get there are they checked by Veterinarians before they come to your facility.

MR. CROKER: Well currently our quarantined room is for our small animals I mean current use obviously we don't have . . . cats that get sick leave the building. So currently from what goes on at the cat adoption group is when the adoption group sees that an animal is sick they take it bring it to the Vet and then it's cared for through foster care. It's not brought back to the store sick obviously. Our quarantine room currently is used for small animals that get sick hamsters, fish and such and those are cared for, actually even our hamsters any animal that gets sick hamster, lizard actually are brought to the Vet and paid for by Petsmart.

MR. NELSEN: I'm thinking the dogs, what are your plans with the dogs?

MR. CROKER: I would imagine . . .

MR. WEISS: Well maybe that's to be addressed . . .

MR. FLANNERY: That's something that will be . . .

MR. WEISS: That's another question that's going to come up. Steve?

MR. BEDELL: The current adoption center you guys run on the weekends now correct?

MR. CROKER: Yes.

MR. BEDELL: That's just like a weekend thing.

MR. CROKER: Yes.

MR. BEDELL: So is that Friday, Saturday, Sunday or just Saturday, Sunday?

MR. CROKER: Saturday . . .

MR. BEDELL: So if you bring in how ever many animals those animals all go home Saturday or do they all spend the night Saturday night into Sunday?

MR. CROKER: Some spend the night.

MR. NELSEN: And these are all from a shelter?

MR. CROKER: Yes.

MR. WEISS: I think Mr. Croker you might want to stop testifying because you're testifying to more unapproved uses of the property so I think we should end it here and . . .

MR. BUCZYNSKI: Just one thing before we end it. Maybe prior to the next meeting you get us more copies of the . . . either the reduced plan or something we can more legible for a large plan because you showed us a plan tonight that had the table in the corner. The plan we have here doesn't have the table.

MR. BEDELL: This is the A-1.

MR. FLANNERY: We'll provide new plans, legible plans.

MR. BUCZYNSKI: So just get us new plans.

MR. FLANNERY: Absolutely.

MR. WEISS: And again you know just to (inaudible) Mr. Flannery on that last bit of communication we had even though we talked about say 19 dogs if you're going to bring in 200 for a Saturday event there has to be an understanding that all but 19 leave because we're going to come to an agreement that 19 get to stay.

MR. FLANNERY: Yes.

MR. WEISS: Mr. Croker you just made an interesting point, sometimes they stay. That's not an approved use and if we go forward with this you're going to get an approval for 19 dogs so again if you bring 200 there

MR. CROKER: No dogs stay. Oh no you thought the cats? I was talking about that temporary.

MR. BEDELL: Where the current adoption center is.

MR. CROKER: Yeah that current little small thing they're the only ones staying only in that little unit. No other animals ever stay in the building.

MR. WEISS: So on a Saturday today if you bring in 200 dogs they all . . .

MR. CROKER: Every single one goes home.

MR. WEISS: Okay.

MS. GADELHA: And just for the record because I'm new at this, what is the penalty for the violation?

MR. BUZAK: Zoning violations I believe under the Township Ordinance are either \$1,000 or \$2,000 per day it could be up to \$2,000 per day. So there are substantial penalties.

MR. BUCZYNSKI: But I don't think anybody ever issued a violation as far as I know.

MR. WEISS: There's been no complaint but we want to avoid that whole process.

MS. GADELHA: Right okay thank you.

MR. WEISS: So Lauren let me turn to you do you know the schedule?

MRS. PERKINS: I don't know the calendar I just have the meeting dates.

MR. WEISS: Okay and of course Chuck is not here either.

MR. BUCZYNSKI: The next meeting in June was going to be I believe Mt. Olive Center Associates – Simoff.

MR. WEISS: Right that's going to be a long meeting.

MR. BUCZYNSKI: Right yeah. I'm not sure what else you've got on the agenda.

MR. BUZAK: Is that the first meeting in June?

MR. BUCZYNSKI: Yes it is.

MR. WEISS: I think it would be improper for us to try to schedule that without Catherine here so perhaps we can do that on the telephone.

MR. BUZAK: But what we would have to do is for notice why don't we schedule it now for the second meeting in June and in the event that we're not going to go forward we'll announce at that meeting the new meeting. This way then you don't have to re-notice.

MR. FLANNERY: Excellent yes thank you Mr. Buzak.

MR. BUZAK: All right so we'll set it for June 16th. June 16 is that the right date?

MR. BUCZYNSKI: Yes.

MR. BUZAK: June 16 at 7:30 no further notice and we'll just make sure it's on the agenda and if you're ready fine you know assuming we can work it out. If not we'll work out a different date but we'll keep the June 16 date we'll announce the new date, let's say it's in July we'll announce that in June.

MR. FLANNERY: Great thanks so much.

MS. GADELHA: One more thing. Would it be appropriate to put it out there right now to not have cats overnight between now and June 19th? You know what I mean or no.

MR. BUZAK: Well I think that they run a risk and please understand this I think you run a risk now that you're doing something that's not supposed to be done that you may be subject to penalties. So you may want to . . .

MR. BUCZYNSKI: The Zoning Officer could be there tomorrow and issue violations.

MR. BUZAK: Right and that's not the intent but you know you should know that now it's out and . . .

MR. CROKER: Yeah I'm going to see my store manager in about 10 minutes I'll let him know.

MS. GADELHA: And also in good faith I mean you know I'm struggling with this and I want to help you because I think this is a good cause. I also want to know that you're going to follow the resolution and currently you're not and now it's very obvious so now that it's black and white just to make sure that going forward it's followed to the letter that nothing is staying overnight.

MR. FLANNERY: Yes.

MR. CROKER: Okay.

MS. GADELHA: Thank you.

MR. WEISS: Go ahead Dan.

MR. NELSEN: Mr. Croker you mentioned before sometimes you have like 200 animals on the weekend?

MR. CROKER: Not 200 about 80 to 120.

MR. NELSEN: I heard 200 about something.

MR. BUCZYNSKI: Your testimony was 200.

MR. NELSEN: Thank you.

MR. CROKER: Mine was 200? Oh I'm sorry 80 to 120 I would say then I'm sorry.

MR. NELSEN: Okay but is that dogs for adoption or just dogs coming in and out of the store?

MR. CROKER: Oh, oh we have 200 dogs that come I mean I was very guesstimating; those are 200 dogs that come in and out of the store.

MR. NELSEN: Just customers okay.

MR. CROKER: Our adoption dogs are at 80 to 120. Yeah and they're brought in and in about I know our average has been 12 to 20 are adopted out that weekend and then they go back to foster care or back to Purrs and Pups our current one has their own kennel and those are being cared for there and then they come back the next day or the next weekend and are (inaudible).

MR. NELSEN: Sometimes you have 120 dogs there for adoption? Are they all at one time?

MR. CROKER: I mean it can be not all at the same time. Like usually at foster care it's tiered so like some will come in the morning then they'll go home, some will come back in the afternoon and go home. So it's like a six hour event I don't know if anyone has ever been there on the weekend. It's a tiered event and we have a lot of dogs but a lot go home.

MR. FLANNERY: We'll certainly clarify all of this at the next hearing as to what the numbers are.

MR. BUZAK: I would suggest Mr. Flannery and Mr. Croker that you have prepared a plan as to exactly what you . . . I mean here's a question so you know generally what we're talking about. And not just come in here to answer the questions but to set forth a plan on how you're going to handle things I think that would be helpful.

MR. CROKER: My store manager will be here next time.

MR. FLANNERY: Yeah I apologize to the Board at the last minute we had a substitution.

MR. WEISS: Okay so we'll carry this to June 16 no further notice and we'll see you on that evening.

MR. FLANNERY: Thank you.

MR. WEISS: Okay thank you gentlemen.

DISCUSSION MATTER

CONVERSION LEGISLATION – AGE RESTRICTED HOUSING TO NON-AGE RESTRICTED HOUSING

MR. WEISS: Okay we have a discussion matter real quickly to talk about with Mr. Buzak regarding the conversion legislation that's going to be in front of us next month. Age restricted housing going to non-age restricted housing and I know that the Planning Board did receive a bunch of different case studies and I know Ed wanted to talk to us and I had some questions. So Ed perhaps you wanted to maybe open up the conversation as to what's going to be in front of us.

MR. BUZAK: Yes and I will try to be brief given the hour. You do have an April 4 letter that I sent to the Board outlining in general the conversion legislation. It's an act that was passed in 2009 under certain circumstances age restricted developments that were approved at a certain time could come in to seek to remove the age restriction and become a non-age restricted development. They are required to satisfy seven criteria which are the basic criteria that one would look at in any site plan. Parking requirements, water supply, sewer supply, parking, etc. those kinds of things we need to make sure that the development as approved and now is converted complies with the requirements. And in addition the price so to speak that an applicant pays for conversion of a development is that they are required to set aside 20 percent of the units in that development for affordable housing half low and half moderate. Now I'm not familiar with the Simoff application if there was an affordable housing component to it.

MR. BUCZYNSKI: There was.

MR. BUZAK: If there was and it was a 20 percent there's nothing then that the township is necessarily gaining by this. Some of the thought was in the original legislation that there was not an affordable component to these developments and therefore that the municipality would gain some benefit by having those units go to satisfy their affordable housing obligation. That's obviously not the case here. The legislation in its development and ultimately in its passage went through a number of iterations and because of that it's not necessarily consistent. What the law says and we've heard testimony tonight about a use variance and that's really apropos to what this is, this is not a use variance says the law so despite the fact that the ordinance says this property is to be utilized for age restricted units, since they have a statute now that lets them convert that we cannot look at that as if it were a use variance request i.e. a market development as opposed to an age restricted development. However in getting the legislation through the legislature after a conditional veto the Governor added and the legislature adopted some language a standard of proof that the applicant must meet that sounds strikingly familiar to us and is strikingly similar, in fact verbatim, the negative criteria that you heard Mr. McDonough go through. That is the, and let me get the language specifically,

MR. WEISS: Conversion would propose a substantial detriment to the public good or substantially impair the intent of the municipality's zoning plan.

MR. BUZAK: That's correct. So that's the standard that has to be met and when the applicant comes before us they need to produce proofs that the negative criteria has been met. And I think that when you review this after you look through the objective kinds of things whether they meet parking requirements, whether they've met those criteria that are set forth in the statute the negative criteria become a little bit more subjective. Now the fact that this is creating the possibility of more school children when age restricted development would not be creating school children has been found at least thus far to not be a criteria that this Board can utilize to reject a conversion application. The concept is that the legislature thought about that and they didn't put that in the legislation as a standard of proof that needs to be met by an applicant. So therefore I would implore the Board to not get into that area because I think that's an area that is non-productive in terms of reviewing an application. And not only that I think it gives an applicant an opportunity to argue that the Board's views were tainted by looking at that as opposed to looking at the criteria that are in the statute. The other thing I think that the Board needs to be aware of is that in looking at this development application since it will now not be an age restricted development the amenities particularly the recreational facilities can be looked at to be converted into something other than what's there. So typically these types of developments, and again I wasn't here when this was approved, have amenities that are tied to an age restricted development. When you eliminate the age restriction you're talking about having children there, the types of recreational facilities, amenities are different you know there's ball fields, there's other things that would not normally be ball fields and other kinds of amenities, that would not necessarily be needed for an age restricted kind of development. That is something that you can look into. The one other benefit that a municipality has is that the affordable units can be reserved or 50 percent of the affordable units can be reserved for persons who or households who have members who work or reside in the municipality currently. That kind of preference for people who work or reside in the municipality was rejected by the Supreme Court several years ago and now affordable housing in general cannot have a residency preference. Under this legislation under this development there can be a residency preference for people who work in the municipality or reside in the municipality now that meet the current standards for low and moderate income housing. So that is a benefit for the current residents or workers within the municipality. Other than that I just ask you to look at the application, I'd ask you to review the legislation, review the letter so that you just facile with the kinds of things that the legislature is looking at and what you have to look at and again I would implore you to focus on those things. I will try to keep you within the confines of the statute and I do that for the purposes of the record because we want to make sure that if we approve it its fine, if we deny it that we don't deny it for reasons that cannot be sustained.

MR. WEISS: You know I had a question Ed and I raised it in my letter. Oh Joe go ahead.

MR. FLEISCHNER: Ed could you comment on the Robbinsville case and I will say I am very familiar with it because number two son lives in Robbinsville and I understand where they're going with . . . Sharbel has said that they are going to sue the Township of Robbinsville.

MR. BUZAK: Yeah I don't

MR. FLEISCHNER: I know you sent us that.

MR. BUZAK: Yeah all I sent you you know and all I have on that is the press releases that were done as a result of the denial that was made and again they were looking at the school issue as I recall the school children.

MR. FLEISCHNER: Right because at Sharon School and there's another school they have trailers.

MR. BUZAK: Right.

MR. FLEISCHNER: They don't have a facility to . . . they're schools cannot physically hold the children now so children are in trailers and that was I believe was where they were headed with detriment to the community.

MR. BUZAK: And that's right what they tried to do was to tie the school issue into the negative criteria which I give them credit for because as I said that's what we have to focus on. But my reaction is that it's sort of a transparent attempt to do that which you can't do. And I'm not so sure they're going to be sustained on that.

MR. FLEISCHNER: Well the attorney's are going to do well.

MR. WEISS: I had a couple of questions that I think Ed I sent to you on an April 26 note and I noticed in the language, in the legal language that you sent us the following words it says posing a detriment to the public good and it seems like that's very vague. I'm just wondering is that argument holding up do you know? Like is there any other history . . .

MR. BUZAK: There's not a lot the couple of cases that have come down at least one of them has indicated that you're looking at that language the same way you would look at negative criteria, negative criteria under a variance because the language is there. And I think that that gives us the ability, gives us more flexibility to be looking at broader items.

MR. WEISS: Okay and the other question I had for Mr. Buzak was that I kind of gave Ed the background of what happened with this property going back when Mr. Simoff came up on behalf of Hovnanian a long time ago through the Master Plan process. He kind of presented to us why this land is best used for age appropriate development and now that he's backtracked my question was, and I'm going to try and paraphrase it, that the original intent of this zone was zoned commercial but the applicant came in and showed the township why it's better to be age restricted parcel and now that he's pulled that off can't we make the applicant prove to us why it's now different and I guess the answer is yes.

MR. BUZAK: That's correct.

MR. WEISS: We can request that the applicant now sit here and tell us that what he said last time isn't true this is now the answer. And so he's going to have to . . .

MR. STASZAK: Basically he's going to have to tell us why it should stay . . . go to commercial to . . .

MR. FLEISCHNER: No, no, no why age restricted to residential.

MR. STASZAK: As opposed to going back to commercial.

MR. FLEISCHNER: Commercial has sailed that's done.

MR. WEISS: I guess you know that was an original question of mine if this original intent of the zone was commercial but that's over once the Master Plan changed it the old . . .

MR. STASZAK: But isn't he asking us to go back?

MR. WEISS: Not to commercial he wants to convert it to regular market value homes, regular market home. Nelson?

MR. RUSSELL: One of the reasons I voted for it is because the age restriction wasn't going to impact the traffic on Route 46. Now that we've got regular people there for lack of a better term that are going to jobs and everything else and contributing to rush hour we're going to have a traffic mess.

MR. WEISS: Russell and without getting into too much testimony before we've heard it I think the answer is that's testimony he's going to have to provide. He's going to have to prove that this project, that we don't know what it is, will not cause a detriment to the community through excess traffic or whatever he has to present so let's not talk specifics. Scott?

MR. BUZAK: Yeah and I want to reiterate what the Chairman said, this is not the public hearing my purpose was to give you a general idea of the law and then you need to keep that in mind as you go forward and look at the application.

MR. VAN NESS: And the comment about not being able to use school children and brought into our schools I understand what you said about that. But if we take into consideration the public good and I know that you said that was kind of a transparent approach. But I'm looking at it is that it's an actual issue for public good. And the reason I say is that, one is that what is the detriment that it's going to have number one on the municipal tax rate for existing residents, how is the 2 percent cap going to make that effect, how is that going to affect where it's going to become a significant you know slashing of services within the school system in and of itself. And would bringing the Board of Education into testify to that detriment that would occur to the school by bringing in so many students or potential students have on . . . because of all these new tax rules to me it's a different story than just when you didn't have the cap then there's no issue there. But because we now have this cap if you can only do a 2 percent tax increase how are we going to fund putting more classrooms on, how are we going to fund hiring more teachers, how are we going to fund bringing all of these extra kids in the school, I mean who knows how many there are at this point without looking at a changed plan, but you know isn't that a different criteria or different impact on the community as opposed to just we don't want more kids so we don't have to pay for more teachers? But it's bigger than that now it's because of the different changes that we've had to experience.

MR. BUZAK: Well I think you also have to remember that the 2 percent cap applies to us. Right the municipal 2 percent cap it does not apply to the school board so you know their budgets are approved by the voters and then that is simply folded in. We're the collection agency for that.

MR. FLEISCHNER: And don't we also have to be careful when one takes into the history of Toll Brothers? Because I mean the Township fought Toll Brothers for years with the concern that there would be this many more children in the school system, and the taxes would go up, etc. and it wallowed in the courts and eventually I mean it cost the Township a lot of money just in court, it went to the Supreme Court and Toll Brothers is selling a lot of houses. So I mean this is . . . we've been down this road.

MR. BUZAK: Well I think you're right but the difference here is this feeling of betrayal that I think one may have from the legislation itself. That is that a Board approves an application for age restriction or a municipality changes zoning to create an age restricted zone. Not a multi-family high density zone that has non-age restricted development but specifically an age restricted development and there are certain benefits from that that impel the municipality or encourage the municipality to do that. And we had the same thing happen in Washington Township where we had a commercial property and the planner came in and said . . . an applicant came in and said you know we'd like to use it for an age restricted development and the planner said we need some more age restricted development in the municipality let's change this commercial use, not dissimilar to apparently what happened here to an age restricted development because we need that. We approved it and then the conversion legislation comes in which the town had nothing to do with neither Washington Township or Mt. Olive in this case the legislature passed it and all of a sudden these people can come in and say well guess what I'm going to change this to a market development. Well that was never the intent and it's likely the property would never have been rezoned in the first instance had the application been simply for a non-age restricted high density development. Yet that's what happened. So there's a sense of betrayal I think that is sort of inherent in these kinds of applications and I think that that puts it in a different category than the Toll Brothers where you know they've done what they've done it was zoned in that fashion they got their approvals and then it just took them a lot longer to build and protections ran out the property was rezoned and we got into that kind of battle. I think there's less of a betrayal issue there than there is in these kinds of cases.

MR. WEISS: We have to kind of just swallow the betrayal because I used that same word in my note to you. We all feel betrayed that's just the way it is. Steve?

MR. BEDELL: You know the applicant comes in and they hold over that it's age restricted it won't affect the schools but then when they want to come back it's like we can't kind of put that back at them. You know it's like you know you dance and said oh this is great it's not going to affect the schools

and now that it may come back and affect the schools we can't throw it back at them and say well hey screw you it's going to affect the schools but you know?

MR. FLEISCHNER: However I want to correct you, unless you were sitting in some of these hearings that took place our Town Council was pushing the applicant to go from commercial to age restricted. And the Council people were, "oh that would be great, that would be great" so there's wrong on both sides.

MR. BEDELL: Yeah but that's neither here nor there the fact is is that they got . . .

MR. STASZAK: They said that because they knew it wasn't going to increase the schools.

MR. FLEISCHNER: Right, right.

MR. BEDELL: Yeah but it's irregardless of in the fact that they got the age restriction and now they want to get it lifted and now you can't say well . . . now you can't hold it in their face that's all.

MR. BUZAK: And that's the betrayal aspect and that's where the legislature has affectively overruled all of the local entities that did that. You know and it's frustrating but we're stuck with it.

MR. BEDELL: Sure.

MR. VAN NESS: I don't know, I don't know the answer but is there a legal action that necessarily can we take?

MR. BUZAK: No.

MR. VAN NESS: Okay.

MR. WEISS: I think if anybody has any questions or if you further read that Robbinsville information you certainly feel free to send the notes to Mr. Buzak.

MR. BUZAK: Yes and I'll be happy to talk to anybody.

MR. WEISS: But I would suggest not send them to Catherine.

MR. BUZAK: If you have legal questions please feel free to call me or email me or whatever and we can understand what's going on.

MR. WEISS: Make sure we have an understanding of what can happen.

MR. BUZAK: Because you need that parameter to work under.

MR. WEISS: Yeah we have to understand what we can do and so with that being said I will . . .

MR. VAN NESS: I make a motion for adjournment.

MR. WEISS: Scott that's a lovely suggestion.

MR. STASZAK: Second.

MR. WEISS: All in favor?

EVERYONE: Aye.

(MEETING ADJOURNED AT 10:00 P.M.)

Transcribed by:
Lauren Perkins, Secretary
Planning Department

