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**ROLL CALL:**

**Members Present:** Joe Fleischner, Brian Schaechter, Henry Fastert, David Koptyra, Nelson Russell, Frank Wilpert, Jr., Howie Weiss, Kim Mott, Sandra Stotler

**Members Excused,** John Mania

**Members Absent:** Dan Nelsen

**Professionals Attending:** Edward Buzak, Esq., Chuck McGroarty, Planning Consultant, Eugene Buczynski, Township Engineer, Catherine Natafalusy, Planning Administrator/Secretary

**Professionals Excused:** Tiena Cofoni, Esq.

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**Roll Call:**

Joe Fleischner	- yes
Brian Schaechter	- yes
Henry Fastert	- yes
David Koptyra	- yes
Frank Wilpert	- yes
Kim Mott	- yes
Sandra Stotler	- yes
Howie Weiss	- yes

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**COMMITTEE REPORTS**

MR. WEISS: Before we get into the agenda tonight I have a couple of quick announcements. First item, PB 15-02, Waterloo Road Development Company has been pulled from the agenda tonight. If anybody is here for that application, that will not be heard tonight. It will be carried until July 9 and there will be no further notice. So if anybody is here for the Waterloo Road Development Application they will not be heard and it's carried to July 9 and no further notice. Just as a matter of order, if anybody has a copy of an agenda, we are going to move a couple things around. We have a discussion matter noted as "G" on the agenda; we're going to move that until after "H". Let's let the applicant come in, make their presentation and get on with their evening. No reason to keep them here. So we're going to the development matter and then we'll end up with our discussion matter. So let's move on back to our agenda, we're going to go to the approval of the minutes, the first is April 9, 2015 public meeting. We've gotten copies of those minutes. Does anybody have comments or would like to make a motion?

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**APPROVAL OF MINUTES**

**April 9, 2015 Public Meeting**

Motion:	Brian Schaechter
Second:	Joe Fleischner

MR. WEISS: That motion, I have to assume is to approve those minutes.

MR. SCHAECHTER: That is correct.

MR. WEISS: Joe?

MR. FLEISCHNER: Yes. Thank you.

MR. WEISS: Any comments? I see none. Catherine, roll call please.

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**Roll Call:**

Joe Fleischner	- yes
Brian Schaechter	- yes
David Koptyra	- yes
Frank Wilpert	- yes
Howie Weiss	- yes

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We have two resolutions on the agenda. The first is PB 15-09 Rajdeep Mohapatra. I apologized then and I'll apologize now for messing up his name but Resolution 15-09. I will entertain a motion to approve such a resolution.

MR. FLEISCHNER: I'll move that we approve PB 15-09.

MR. WEISS: Thank you, Joe.

MR. SCHAECHTER: I'll second that.

MR. WEISS: Thank you, Brian. Any comments? Questions? Seeing none. Catherine, roll call.

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**Roll Call:**

Joe Fleischner	- yes
Brian Schaechter	- yes
David Koptyra	- yes
Frank Wilpert	- yes

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MR. WEISS: Ok. The second one.

MR. FASTERT: Catherine, I think I'm eligible to vote on that.

MR. BUZAK: Yes. Oh, no, sorry. Yes, you are.

MRS. NATAFALUSY: I'm sorry, I didn't think you were going to be here tonight. I blanked you out.

MR. FASTERT: Just cross me off the list. Yes.

MR. WEISS: Thank you. Second one, PB 15-10, Vincent Piacente. I'll entertain a motion.

MR. SCHAECHTER: I'll make the motion to pass PB 15-10, Vincent Piacente.

MR. WEISS: Thank you, Brian.

MR. WILPERT, JR.: I'll second it.

MR. WEISS: Thank you, Frank. Comments? Seeing none. Roll call.

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**Roll Call:**

Joe Fleischner	- yes
Brian Schaechter	-yes
Henry Fastert	- yes
David Koptyra	- yes
Frank Wilpert	- yes
Howie Weiss	- yes

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MR. WEISS: I thought I couldn't vote on one but that was the first one. Ok. Let's move to Committee Reports. Mr. Mania, I take that back, Mayor.

MR. FASTERT: Nothing for the Mayor tonight.

MR. WEISS: And John's not here so we'll have nothing from the Council. Nelson's not here so we'll nothing from Environmental Commission. Ordinance Committee, Joe?

MR. FLEISCHNER: Yeah, the meeting is scheduled for the end of the month to discuss electronic signs.

MR. WEISS: Excellent. I have nothing from Street Naming Committee. David, anything from Open Space?

MR. KOPTYRA: No.

MR. WEISS: Ok. Well, that concludes the very interesting part of the meeting. Let's move right into our first application which is PB 15-07 Toll NJ I, LLC, Amended Subdivision 100' Landscape Buffer on Sovereign Drive, Marcin Way, Block 4401/6-23. We're all eligible to vote and obviously we have in front of us Mr. Selvaggi representing Toll Brothers.

MR. SELVAGGI: Yes. Good evening, Mr. Chairman. I am here tonight on behalf of Toll Brothers. I think Mr. Weiss kind of accurately described what we're trying to do. In 2002, the Board, on the recommendation of Dr. Keller, the environmental consultant at the time for this section of the Morris Hunt project had suggested or recommended that a 100' easement or buffer area, not easement, be placed in the rear yards of these 17 lots, 8 of which front Marcin Way and the other 7 front Sovereign. So what happens is, in the rear yards of all of these lots there's a 50' landscape buffer area. Interestingly it was not made an easement, there's nothing recorded except there is a note in the file map that shows this. In fact, in the application, we included that. We'll get into, I'll have Mr. Fultz testify in a moment, Toll Brothers, as it is required, disclosed that to the property owners who bought and at this point, 15 of the 17 lots have been sold and there has been a tremendous outcry about this landscape buffer. In fact, several of the neighbors, property owners, excuse me, are here this evening. But what I'd like to do is rather than me testifying, have representatives from Toll Brothers kind of offer that first hand information.

MR. BUZAK: Before we get, Mr. Selvaggi, you referred twice to 17 lots and I thought it was 18 lots. Because it's 6 through 23 and if, well the difference is 17 it's actually 18 lots if you count 6 and 23.

MR. SELVAGGI: I think the actual number is....what it is is there...the 200 foot property owner list picks up that many. The landscape buffer though (inaudible).

MR. BUZAK: Well, the application says lots 6 through 23 which would be 18 lots.

MR. SELVAGGI: Yeah and it's really, it's one less. We'll show you that (inaudible).

MR. BUZAK: Ok.

MR. MCGROARTY: I think its 15 lots.

MR. SELVAGGI: Well it's 15 lots that actually have it, the question is these two end lots. (Inaudible).... see it or be made aware of it.

MR. BUZAK: So the testimony will be clear as to which lots are affected....ok.

MR. SELVAGGI: Yes, we'll clarify on that.

(DAVID FULTZ IS SWORN IN FOR THE RECORD)

MR. SELVAGGI: I'll start with Mr. Fultz to my immediate right. David, I know you've testified in front of the Board before but what is your relationship with the Morris Hunt development?

MR. BUZAK: Could we have your name and business address?

MR. FULTZ: My name is David Fultz. FULTZ. I'm an Assistant Vice President for Toll Brothers. Two Heaton Street, Budd Lake, NJ.

MR. SELVAGGI: Ok. And you're familiar with the Morris Hunt development?

MR. FULTZ: Yes.

MR. SELVAGGI: How many years have you been involved with the Morris Hunt development?

MR. FULTZ: Since 2010.

MR. SELVAGGI: Ok. Now you've been involved as well with the marketing and the closing of these lots, have you not?

MR. FULTZ: Correct.

MR. SELVAGGI: Ok. The landscape buffer, if you could describe it...and how it impacts these properties.

MR. FULTZ: So like Mr. Selvaggi said it's 50 feet on each side of the rear property line...

MR. SELVAGGI: I'm just going to interrupt. I'm going to distribute, is this a drawing that Toll Brothers prepared?

MR. FULTZ: Yes.

MR. SELVAGGI: Ok. And what does this purportedly show?

MR. FULTZ: This is showing the subject properties that are affected by the meadow grass area. It's showing a strip 100 feet wide down the center of the backs of the properties.

MR. SELVAGGI: Ok. Now we had, we'll mark this as Exhibit A. With the application we submitted this landscape and lighting plan. Correct?

MR. FULTZ: Yes.

MR. SELVAGGI: And is Exhibit A a smaller of version of the landscape and lighting plan?

MR. FULTZ: Yes it is.

MR. SELVAGGI: And the only difference is you actually identified the addresses of the properties?

MR. FULTZ: Correct.

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

MR. SELVAGGI: Now, for the record, the landscape buffer area was created by a recommendation....or how did it come about? Let me ask you that.....

MR. FULTZ: Well it was part of the original plan that was submitted. As I understand it was a recommendation from a landscape architect and that's how it ended up on the plans.

MR. SELVAGGI: Your landscape architect or the Board's?

MR. FULTZ: I believe it was the Board's.

MR. SELVAGGI: Ok. And in fact on the plan that we had submitted, Mr. Buzak, if you look above the signature lines you'll see revisions...various....not on that one, on the larger one. In fact, I don't know if everybody got these....

(Inaudible)

MR. WEISS: I think we all have the right....

MS. NATAFALUSY: (Inaudible)....submitted with the application.

MR. SELVAGGI: Yes and that's what I have here...and above the signature line the landscape, you'll see revisions 1 through 10 and number 9 is Habitat by Design which is Dr. Keller's firm and that review letter of September 20, 2002 was the one that incorporated the landscape buffer.

MR. WEISS: I happen to have one that only has three revisions.

MR. SELVAGGI: Ok. Here then let's mark this Exhibit B.

MR. BUZAK: A-2.

MR. WEISS: Mike, what should we call A-2? Landscape Lighting Plan

MR. SELVAGGI: Yeah. Revised through November 7, 2002.

MS. NATAFALUSY: Mr. Chairman, what I did was, I took a copy of the final that really shows the hatched area. And that's what I put before you, rather than this one. It wasn't as clear.

MR. WEISS: Ok. Well we have it. I only raised the questions because my revisions.....Ok but everything is the same. Michael, you said that design is nine?

MR. SELVAGGI: Yes.

MR. WEISS: Ok.

MR. SELVAGGI: So, Mr. Fultz, Toll Brothers based on that recommendation drew in this hatched area showing the landscape buffer. What was to be planted in there?

MR. FULTZ: The schedule is actually on A-2. It's the meadow specifications is a combination of short grass, upland meadow and it calls out a certain specific amount per acre and it has like a wild growing grass. A tall growing grass.

MR. SELVAGGI: Ok. Now this landscape buffer was, you noted this to potential buyers, correct?

MR. FULTZ: Yes.

MR. SELVAGGI: The number of lots affected by this landscape buffer, can you clarify how many lots are actually there and affected? We're going to refer to A-1 which identifies the actual addresses.

MR. FULTZ: Right. So 15 are actually impacted by the planting of the grass.

MR. SELVAGGI: So for the record, it is 15.

MR. WEISS: And Lot 16, real minor affected. Greg?

MR. MCGROARTY: We're calling it 16.

(Inaudible)

MR. WEISS: So you're including Lot 16 in part of your 15?

MR. SELVAGGI: Yes. Correct.

MR. WEISS: So the numbers flow. I have the same number.

MR. SELVAGGI: Now of those lots how many have been sold?

MR. FULTZ: All of them. Let me clarify, sold in my world is an agreement of sale. We actually still hold title to, what is it, two of them or one of them.

MR. SELVAGGI: Which one is that?

MR. FULTZ: That would be this one on my plan which is 17.

MR. SELVAGGI: So that's the, on A-2 it's Lot 17 which is fronts on Marcin Way. Now, subsequent to closing of title with these lots, in your efforts to establish the landscape buffer, what was the reaction or the response of the property owners?

MR. FULTZ: Overwhelmingly negative.

MR. SELVAGGI: What were some of the concerns that were told to you?

MR. FULTZ: There are some homeowners that have actually installed improvements, like fences, right to their property line. There are others that have done landscaping, some of them sod which looks really nice. Some have done just seeding and allowed it to germinate and it's a green lawn just like the front

yard. So the concern is, especially with people that have fences, we're going to come 50 feet inside the rear of their property line with this rather unsightly buffer in comparison to the efforts and improvements that they have done.

MR. SELVAGGI: Is this the only section of Morris Hunt that had a landscape buffer requirement?

MR. FULTZ: Yes.

MR. FLEISCHNER: Mr. Selvaggi, excuse me, you said "overwhelmingly". Out of the number, what is "overwhelmingly"?

MR. FULTZ: All but two have signed the petition. And those two as I understand, one is out of the country and unavailable and the other, I do not know the reason the other has chosen not to sign.

MR. SELVAGGI: Ok. Thank you.

MR. WEISS: Maybe it's because it's the one that you own still.

MR. FULTZ: We signed that one for his...

MR. WEISS: Ok.

MR. SELVAGGI: So there's no other requirement in the Morris Hunt project for this landscape buffer?

MR. FULTZ: Correct.

MR. SELVAGGI: Now you, in terms of actually establishing this, the cost is what?

MR. FULTZ: Ballpark, anywhere from \$5,000-\$10,000.

MR. SELVAGGI: In the scheme of things, you're not petitioning this because it's going to make or break the bottom line for Toll Brothers?

MR. FULTZ: Not at all.

MR. SELVAGGI: What's prompting you, I probably cost you more, what was the...what's the reason that you guys feel compelled to do this even though you technically own one of these lots?

MR. FULTZ: It would be the response from the people that it will affect. The negative response from the people it will affect.

MR. SELVAGGI: Ok. And as I represent, some of those people are here this evening?

MR. FULTZ: That's correct.

MR. SELVAGGI: And you've had some fairly frequent and regular conversations on this topic with those neighbors have you not?

MR. FULTZ: Yes we have.

MR. SELVAGGI: Ok. As far as you can tell and in your review of the project and the resolution, the landscape buffer was really more of an aesthetic requirement, correct?

MR. FULTZ: Correct.

MR. SELVAGGI: Is there any sensitive environmental areas in that...within that 100 foot buffer?

MR. FULTZ: There's storm drainage that would be there...no not sensitively environmental.

MR. SELVAGGI: Well let me ask you this, not having the landscape buffer, will that negatively impact the functioning of the storm drain?

MR. FULTZ: No.

MR. SELVAGGI: I don't really have....we could belabor it but that's really the sense of where we are with it, Mr. Chairman.

MR. WEISS: Do you remember Michael, why did we ask you to do that? Do you remember?

MR. SELVAGGI: Well, in 2002 my review of the notes and I think this was handled by one of my former partners. It was a request that Mr. Keller had included in his report. I think Toll Brothers at the time, and Dave you weren't employed yet, but the sense I got was "ok, well if it makes things go faster and everybody likes it, we'll do it." His understanding at that point this was just lines on a survey.

MR. BUZAK: I think at the time he was looking...what does this thing, area looked at prior to the development. There were trees at both ends of that. I think that's why he probably felt he wanted to get something still natural between that area.

MR. SELVAGGI: Yeah. It was contained in the report but beyond that....and I don't....looking at even some of the older minutes I don't even think there was a lot of discussion on it so....

MR. FASTERT: Did the property owners have any way of knowing that this was on their property?

MR. FULTZ: Yes.

MR. FASTERT: How?

MR. FULTZ: It's disclosed on the site plan and also I believe it's disclosed on the plot plans.

MR. FASTERT: So it is on the plot plan?

MR. BUZAK: It wasn't disclosed on the deeds though, was it?

MR. FULTZ: That I don't know.

MR. SELVAGGI: There's nothing...what's interesting is in today's day and age, Mr. Buzak, and what's become more common would have probably required this to be in an easement or in some other recorded fashion. But in 2002 it still wasn't as much in vogue so it's really, it's really only in the chain of title in so far as it's referenced to the file path and Toll Brothers is here to testify between the disclosures to the homeowners or potential buyers it was shown there.

MR. BUZAK: How is it labeled on the Final Plat....just as a hundred foot buffer?

MR. SELVAGGI: Yeah. The note, the filed map shows, I mean this language is a little tougher to read within that hashed area that's on the plot.

MR. BUZAK: I don't have that.

MR. SELVAGGI: Yeah what it says is "Hundred foot wide strip to be planted with meadow mix. See meadow mix specifications on this sheet".

MR. BUZAK: Is that a final plat?

MR. SELVAGGI: I think that's what it...yeah.

MR. FASTERT: So when someone went for a building permit to put up the fences, why wasn't this caught then?

MR. WILPERT: There probably was no permit pulled for the fence.

(Inaudible)

MR. WILPERT: Also, residents are advised that if there is an easement and they do put anything (inaudible) on the permits that the applicant is advised that the fence is to be entirely constructed within their lot lines of their property and if they're in any easement they're not to be placed in any easements without crossing the pass where they put them in easements and we say

MR. FASTERT: Well in this case it isn't an easement

MR. WILPERT: I understand that but

MR. BUZAK: What I don't know is, we don't have, excuse me Frank but we don't have the final plat in front of us. That's not a final plan. I was just asking what does the actual final plat show? Cause usually they don't show a buffer on a final plat. It might show nothing on the final plat.

MR. SELVAGGI: Yeah. We're not entirely sure. I don't know on the final map. This file is so big, I don't know if I brought that part of it.

MR. FASTERT: Catherine, do we know if there were building permits were applied for fences that are..

MS. NATAFALUSY: Excuse me?

MR. FASTERT: Do we know if there were building permits were applied for fences that were built in the area?

MS. NATAFALUSY: I couldn't tell you. I'd have to go back through the files.

MR. BUZAK: Probably. It's not an easement. Mike, probably, it's not an easement.

MR. SELVAGGI: I know this much, we all do all the closings. This does not present as called out on the title work as (inaudible).

MR. BUZAK: Ok. Fair enough.

MR. WEISS: I heard you clearly say that there's no...it's not going to affect any storm water management...there's nothing like that. Gene, did you review the situation and have anything to report?

MR. BUZAK: Yes, from a grading standpoint there's no problem. It's a drainage.

MR. WEISS: Chuck, I would mention that you have no opinion on this...

MR. MCGROARTY: I went out in the field when this first came in and quite frankly, I think if the meadow were in there now it would be out of place given the way that the streets are developed and the way the homes are developed within.

MR. WEISS: Ok. That's good input. Joe, you made an interesting point I think maybe we should share that but I'm going to hold off for one second and just see if anybody from the Planning Board has any questions for David or Michael. Not Mr. Selvaggi but David, any of the testimony that he just gave us.

MS. STOTLER: Well I'm a little confused on what is the actual....what are they wanting to do? Take the whole thing down?

MR. WILPERT: There's nothing there.

MR. FULTZ: The improvement hasn't been done.

MS. STOTLER: But isn't there a big mound of dirt?

MR. FULTZ: No, it actually looks like flat, manicured lawn.

MS. STOTLER: It's just flat? Ok.

MR. WEISS: It was earmarked for a landscape buffer.

MS. STOTLER: Ok.

MR. SELVAGGI: If anything was going to change it would be, we'd take established lawn and this meadow mix would be planted, the property owners wouldn't touch it and the grass would grow and what would it?

MR. FULTZ: Various heights and it would be noticeably higher than a manicured lawn.

MS. STOTLER: Ok.

MR. WEISS: Essentially taking 50 feet from each of the properties.

MR. FULTZ: Exactly.

MR. FASTERT: I have one more question....when were the houses involved completed? Roughly. A range possibly.

MR. FULTZ: That was in, that's something that's been ongoing for probably two years at least a long time. Our sales and marketing efforts are structured such that we don't build down the road so we may grab a sale in the affected area and then we may get four that aren't anywhere near it. So we opened for sale back in February, 2010, I would say the first home had closed after that second opening....was maybe ten months later...so right around the end of the year and then we've actually continued to build through that area up until today. We still have homes that are what we call back-log homes that are sold but not closed. We still hold ownership. They'll close between now and the last one I think closes in November. I know it does.

MR. FASTERT: Oh. All homes here are built and except one lot you currently own?

MR. FULTZ: Right. Well we hold ownership to a handful of lots, seven that are sold and one that is not sold but is under construction. We're building it as a quick delivery home or spec home. It's the last one in the community and our efforts are to close the backlog, sell that last home, do the final improvements on the roadways this July and be done.

MR. SELVAGGI: And by the way, I mean just in case people are asking, you would not customarily do something like this until all the units are sold.

MR. FULTZ: Frankly, if we had done it prior to now, I'm sure that the majority of homeowners would have cut it down.

MR. BUZAK: But even, also early in time period you didn't want to do it because there's a lot of earth moving in that area, while you're building the homes.

MR. FULTZ: Correct.

MR. SELVAGGI: It's not like something you've been avoiding doing.

MR. FULTZ: It's something that would take very little effort on our behalf and also not, relatively speaking, not a lot of money.

MR. WEISS: Ok. You know what, I see that there's members from the public here and Joe made a good point, those from the public, I'm going to open it to the public. Is anybody here from the public opposed to the removal of this hundred foot setback? I'll let anyone speak. I'm trying to hear if there's any opposition. I see there's no opposition. I'll keep it open to the public but I don't want to take away anybody's thunder. It doesn't seem like there's a lot of objection from the Planning Board. It doesn't seem like our professionals have objected. I can't make any promise of how the vote is going to go but if anybody has any comments from the public. Michael are you going to bring up your other expert?

MR. SELVAGGI: Barry is here as kind of a prophylactic.

MR. FULTZ: Barry runs the day-to-day operations at Morris Hunt.

MR. WEISS: With all due respect, Barry, we perhaps maybe don't need more testimony yet. Let me open to the public. If anybody from the public has anything they'd like to add or comment on the testimony of Mr. Fultz had? Excellent. Seeing none. Oh ok, go ahead sir. What you'll do sir is, you'll state your name and address.

MR. BUZAK: Sir do you have a question or do you have a statement?

MR. WONG: I have a statement. And I have my opinion about this whole issue.

MR. FLEISCHNER: Excuse me. One second. I have a question. Is the person who hasn't signed the petition and the person who's in a galaxy far off would say, "I want the meadow" and this Board would say the people who don't want it they have to have it. Would you be prepared for their fifty feet of property?

MR. FULTZ: Absolutely.

MR. FLEISCHNER: Ok. Alright. Thank you.

MR. WEISS: But there's really no action on Toll Brothers part, correct?

MR. FULTZ: Well, we have to install the improvement.

MR. SELVAGGI: If a project owner can't forward the project plan.

MR. WEISS: But right now the improvement is really just kind of wiping it out

MR. FULTZ: Wiping it out nice grass and planting

MR. WEISS: Ok. That's what we're saying (inaudible). Ok. We're on the same page. Sir.

MR. BUZAK: We need to swear you in if you're going to make a statement. So just raise your right hand please.

(JOSEPH WONG IS SWORN IN FOR THE RECORD)

MR. WONG: I live at 36 Sovereign Drive. When you look at your map it's Lot 17. Ok. I bought this property in year 2009. I moved in about year 2011. When I purchased the property the representative from Toll Brothers and project managers never mentioned anything about the potential that the Township or Toll Brothers is going to put some kind of buffer in my property and we paid a premium on the lot. All the lots along the 15 lots we all paid premiums, from \$5,000, \$10,000 to maybe \$20,000 the latest. We paid a premium for the lots and if you look at that the proposal is fifty feet in my back yard. Do you know how much is fifty feet? Fifty feet times hundred feet long which is 5,000 square feet. I was born in Hong Kong. I came to this country. I enjoy this country. I love this country but I tell you a story. In Hong Kong, now people can rent an apartment for four people living in 100 square feet apartment. This 5,000 square feet in my backyard, almost can live 50 families in Hong Kong. Ok. It's a lot of land. A lot! And I purchase it, I have no idea. The ladies I talked to, the agent that sold my house I even mention to her, do you know anything about this buffer? She said no. I talked to two representatives that sold my house which I'm very close to. I have no idea. And my lawyer looked at the documents where no idea that were going to put 50 feet on my property. That's one of my... I'm present about the situation that I bought the property and I have to give up 50 feet of my land that I cannot use forever. Forever. I tell you why I'm saying forever....because I did intensive research, a lot of report from the department of (not discernable), from other states. It mentioned something about all these buffers, ok. If you build it, minimum, as this gentlemen say 50 feet to 100 feet minimum for (not discernable) ok. Why do you bother to say it costs nothing. Yes, it cost nothing because it's cheap way to handle the issues. So they just put the seeds and you walk away and the homeowner has to deal with it down the road 20, 30 years down the road. And when I have to resell the property, the people look at that and "what kind of place is this?". It's ugly. If you guys drive around the highway and see tall grass like...this kind of grass has to grow 6 to 10 feet...taller than me in order to take effect. So it's going to be ugly in my backyard for 50 feet. Terrible. If you drive around and see all the dirt trapped in between those grass. So if you can imagine in fall, the leaves fall down your backyard look ugly because all the leaf going to trap in the bushes, everywhere. You have to spend a lot of time to clean it up. This is, imagine, ok, you have about 10 feet tall grasses 50 feet, 100 feet wide and then go all the way from along the 15 properties. It's terrible, terrible proposal. This is one thing, I'm very unhappy about this proposal. This is the research if you guys want to read about it. Of course there's pro and con for everything in life. Everything you propose has pro and con. Pro is of course, it's the cheap way to stop the water running down, topsoil erosion, all these thing. But there are a lot of downsides about these problems.

MR. WEISS: Mr. Wong, I really appreciate your passion. I do. I think you may be a little confused in that Toll Brothers is not here to request....

MR. WONG: I know. I know that. But because the Township is...because last time this gentlemen say two owners didn't sign the paper. Because one of the owner, Mr. Lee, right over there, he was in China.

Another gentleman, Mr. Ma he's not understanding the whole issue. I know Toll Brothers (not discernable) be sending us (not discernable) about this proposal.

MR. WEISS: Obviously, Toll Brothers is coming out tonight to help eliminate this....

MR. WONG: I hope, yeah but I'm trying to tell the Board that because right now I receive a letter from this Township telling me that because we don't have 100% ...people disagree, because (not discernable) in the summer.

MR. WEISS: I would say that even if 100 percent of the people disagreed it wouldn't change the approval. This, is it a petition? There's no bearing to a petition in this, in front of this Board. You could all decide you want to paint your grass purple, it's got nothing to do with us. We have an agreement from the...between us and the developer. That agreement will be in place until this Board makes an action to break that agreement.

MR. WONG: Right.

MR. WEISS: A petition by the 15 homeowners, with all due respect, is meaningless to the Board. It might be helpful for us to determine an opinion but we also have an open forum for people to come and speak. Someone who signs a petition and doesn't speak is without voice in this room. So, I understand that the majority of folks support the removal of this buffer and that's very helpful but we're going based on the testimony and just based on what I've heard from Mr. Fultz, Toll Brothers is here to help you get rid of the buffer.

MR. WONG: I understand that but I'm trying to represent myself to raise my concern if you guys decided to build it and there's a lot of downside for the homeowner because the grass is basically going to trap a lot of animals...snakes, rodent, rats, rabbit all kinds of animals going to get trapped there. It's a perfect place for predators like fox, bear, you know, coyotes. It's a reality. We saw fox in our back yard. A gentleman saw bears in our back yard.

MR. WILPERT: Welcome to New Jersey.

MR. WONG: I understand that but I'm not going to allow the Township to build something that I won't let my daughter walk out in back yard and I cannot see anything inside the grass and something jump out and going to hurt my daughter. That is part of the potential dangerous that why I'm trying to raise my concern that if you decide to build something like that it's definitely going to downgrade my (not discernable) of the house and potential buyer is not going to like it what they see in my back yard for fifty feet, 10 tall high. It's impossible.

MR. WEISS: That is why we give you the opportunity to voice your opinion and we hear you loud and clear.

MR. WONG: Yes.

MR. WEISS: And we certainly appreciate your comments.

MR. WONG: Yeah and I hope you know, I don't know whether you guys know what you're planning or what you understand about you know, whether you did any research on these kind of grass. If you look at the research, you know, you go to the computer you find a lot of pros and cons. I strongly....

MR. WEISS: Mr. Wong, I can tell you that in the next five minutes or so, we'll have this resolved.

MR. WONG: Ok. Thank you.

MR. WEISS: You're welcome.

MR. WEISS: Sir, again, you can just come to the podium and you'll state your name and again we'll ask you the same question and if you have a question it's ok if you have a comment...

MR. MA: My name is Zhuomiao Ma. I live in 34 Sovereign Drive.

MR. WEISS: Could you spell your last name please?

MR. MA: It's M A. Michael, apple

MR. WEISS: M A, Mr. Ma. Ok.

MR. MA: Actually, I think I stand for the residents of the Toll Brothers. We don't like the fifty feet meadow grass but we still has the issue for this place. Because the, he is my neighbor, the has (not discernable) the big rain days, you know, hurricanes or stuff...right. So the, all the soil is wiped out.

MR. BUZAK: Sir, we're going to have to swear you in first because you're making a statement....so can you.....

MR. MA: Actually, you see the back yard here

MR. BUZAK: Yeah, before you continue we need to swear you in just like we swore in Mr. Wong.

MR. MA: Ok.

(ZHUOMIAO MA IS SWORN IN FOR THE RECORD)

MR. BUZAK: Ok. Please continue.

MR. MA: I think the Toll Brother have, didn't handle the landscaper well. At least on my, on few lots my back yard and my neighbor's back yard....my residence is 34 Sovereign Drive and my back yard continues towards (not discernable) the back yard is flooding. That's (not discernable) the big rain day, rain days or hurricanes, the hurricanes, right?

MR. WEISS: We got you. Hurricanes

MR. MA: Hurricanes come in right. All this flooding and the soil is gone, day by day....you see all these stones. Before has grass then all these stones show up. It's almost like (not discernable) in my back yard so his back yard too. All this stone show up right. All the soil is wiped out. So that I think the solution for the meadow grass is not a good solution probably the Toll Brothers need to doing something for the back yard to.... The back yard look like this it's no good, you know. You look at it. Ok. The whole back yard they put all this stuff like this. I needed a crowbar. The landscaper is not a professional. We need to do something at least to cover (not discernable)...

MR. WEISS: We're going to go back to that product that you just brought up. Frank asked a question.

MR. WILPERT: No, they're mats. They're jute mats for stabilization in swale areas or there's going to be heavy runoff. They use them to....

MR. FULTZ: Like Frank said, they're spikes, they're pins for jute mat and what it does is when you have an area that's a swale which is designed for water to run through, those pins hold the seed mat or stabilization mat in place until the grass has an opportunity to germinate.

MR. FLEISCHNER: Excuse me; is that within this area that we're talking about or outside this area?

MR. FULTZ: I can't speak to where he pulled those but there are swales all over the property. I don't have his particular grading plan. That's existing grading.

MR. MA: Especially landscaper (not discernable) deeper, the level you know (not discernable) and the back yards of property. So in front (not discernable)....

MR. WEISS: Mr. Ma, first of all, you need to stay by the microphone but I also want to just remind you that this might be an issue that you're talking about to deal Toll Brothers not with the Planning Board. If there's an engineering problem, Toll Brothers will deal with the Engineering Department of the Township but for right now, at least for right now, so we can all get home later, I just want to hear how you feel about the fifty foot buffer that's in your back yard and you've been very eloquent to tell us that it's not good.

MR. MA: I know that, the landscaping is I think that the back yard landscaping is no good. All the soil is gone you know. That's (not discernable) right? So what's the purpose to put the meadow grass? That's to try to keep the.....

MR. WEISS: Let me try to help you with the dilemma. Is that, if this Planning Board is to approve the removal of the buffer, Toll Brothers is going to come in and take that away. Correct?

MR. FULTZ: Yeah.

MR. WEISS: And they will make it nice and flat and level for you to plant as you see fit....so that's the positive of what's going to happen here and if the Planning Board...

MR. BUZAK: Just to clarify to this Chairman, the buffer's not in there now. The buffer's not in.

MS. NATAFALUSY: Right.

MR. FULTZ: It will stay the way it is.

MR. BUZAK: It will stay the way it is.

MR. WEISS: But the homeowners will be allowed to treat it in their own way. That's kind of where I was going.

MR. MA: I mean, that's basically where I tried to (not discernable) that Toll Brothers having to finish their landscape. I mean try to use something like a meadow grass to cover this issue. The meadow grass I tried to say, the meadow grass fifty feet meadow grass is not the way to solve the issue. Right? Move this agreement to Toll Brothers. Toll Brothers not going to do anything for us.

MR. WEISS: So Mr. Ma, Mr. Ma let's do this. Our engineer just made a nice recommendation, why don't we ask Mr. Fultz to explain to everyone what has been done.

MR. FULTZ: Right, so in the rear of properties, we seed and hay or seed and stabilize the property to give it an opportunity for the grass to germinate. I'm not intimately aware of his particular property but with cross referencing these numbers because we have our Toll Brothers numbers and talking Township block and lots, so I don't know exactly the condition of his property looks like. I can tell you that my time driving around the community, I don't see anything that's egregious with respect, but I would be willing to visit his property under our warranty program or our Toll guarantee which is what we live and die by. I'll take a look at his property and see if there are, in fact, any grading issues if there are spikes left from the jute mat, we'd be happy to pull them. That stuff is there until the grass germinates, perhaps a little handwork needs to be done to get it to the point that it's acceptable.

MR. MA: Actually it's not only my property, it's my property and his property. Maybe a couple other properties. Those landscape never been done. Never been done before. Never did it before, you know. It's not damaged, never did it before. That's the issue. If you move this buffer and let Toll agree you don't do any meadow grass you guys going to go away. You're not going to take care of this.

MR. FULTZ: That's not true.

MR. MA: Not true?

MR. FULTZ: That's not true. One has nothing to do with the other.

MR. MA: I give you example. I give you example. A very good example. So Toll Brothers when they built his house, they just put a hot line, the electric, the hot line and ground line together, right, in my house.

MR. WEISS: Mr. Ma, I'm going to ask you one more time. This is not an issue for the Planning Board. If you have a concern, I clearly heard Mr. Fultz say he will come to you and you guys work it out. Keep us out of it. It's not a Planning Board issue. Not a Planning Board issue.

MR. MA: I do understand you, right? I told you I agree with you...since the meadow grass is relate to the landscaper right.

MR. WEISS: Enough, enough, enough. This issue is between you and Toll Brothers and I just heard Mr. Fultz say he will come and speak to you about it. So the issue in front of this hearing tonight is real simple. Let's talk about the fifty foot landscape buffer, do we remove it or do we force it to stay? That's it. You've heard your neighbor, Mr. Wong tell us his opinion that he thinks we should remove it.

MR. MA: I think we shouldn't remove the buffer. We need an additional condition to remove it. I mean...

MR. WEISS: We can't have an additional condition.

MR. BUZAK: Can I ask two additional questions? Mr. Fultz, in anticipation of putting this meadow area in, did Toll Brothers not do anything that you would otherwise have done. In other words, would you have sodded or put lawn in this area?

MR. FULTZ: No, we did exactly what we would have otherwise done to the rest of the property which is to fine grade it, rake it, seed it and hay.

MR. BUZAK: Ok, so it wasn't that you held off doing whatever the final improvements were, you just took the risk that you might have to pull those out.

MR. FULTZ: Correct.

MR. BUZAK: Ok so, and if the Board decides tonight that the buffer does not have to...the meadow strip does not have to go in....there's nothing left for you to do to fulfill your obligation to finish the lots with respect to where this buffer lies against the rear, is that correct?

MR. FULTZ: That's correct. With the exception of one home site that is still under our ownership, that we still have to fine grade and that happens (inaudible) the fifty feet (inaudible).

MR. BUZAK: Before the bonds are released we want to make sure there is not a grading problem still there.

MR. FULTZ: Correct.

MR. MA: I mean if you move the meadow grass, they're going to (not discernable), right? We cannot make a decision. Without the meadow grass, the few lots going to (not discernable) that's the issue. We do not the fifty feet, the meadow, so (not discernable) the issue combination right? Listen, I'm talking, I'm going to talk about the meadow grass tonight. I'm not going to talk anything about.

MR. BUZAK: I think sir, what you have to understand is that the only issue that this Board can deal with is the meadow grass and as the Chairman said it's either whether we require that the meadow grass be installed...that buffer... or that we remove that condition from the Planning Board. That's all that's before us. It's either going to be installed or it's not going to be installed. Other issues that you're referring to that you're saying can be solved together, they can't be solved by this Board as part of this. I understand the logic of what you're saying but we're a governmental board and there's only so many things we can do, so we can't combine those two things, even though you believe logically they can be combined. This Board does not have the right to do that so all we need to know is what you've already told us and that is you are not in favor of the installation of the buffer.

MR. MA: Ok. So, I understand the government has a limited right to force anything to do this but I think the government would make a decision to say we need 100% of homeowner to sign the agreement. Alright, so that is (not discernable) because I think that is a good statement that 100% homeowner...

MR. BUZAK: So, is it your position, sir, that you will not consent to the removal of this buffer unless your problems that you are referring to are resolved?

MR. MA: Not my problems, it's a community problems.

MR. BUZAK: Community problem, however... The problems that you have testified to are resolved. Is that your position?

MR. MA: Sir, I think that we should be standing like this, it's not my own problem, it's an entire community problem because of the lots are flooding the entire community will be damaged in a house manner. It's not my own problem.

MR. BUZAK: Ok. I understand. I understand. Let me put it a different way, if the community's problem that you're referring to could be resolved, if this Board could demand that it be resolved, would you be in favor of eliminating the meadow grass?

MR. MA: Yes.

MR. BUZAK: Ok. Thank you.

MR. WEISS: Anybody else from the public? Sir? Again if you have a question you can simply ask the question, if you have a comment, we'll swear you in. Just state your name and address.

(LARRY SWANSON IS SWORN IN FOR THE RECORD)

MR. SWANSON: I own a property at 3 Marcin Way which I believe is identified as Lot 29.

MR. BUZAK: Thank you, sir.

MR. SWANSON: I'm here tonight in opposition of this installation of the meadow grass buffer very simply for a couple of obvious reasons. Number one, and I'm familiar with all of the residents in the neighborhood that are impacted by this and I've been able to speak with a lot of them first hand. I think it's fair to say that we're all in agreement that the installation of this grass will diminish the value of our property. No one has really been able to explain to me the purpose of installing this grass and why they are doing it. Are we installing it as a buffer between the properties or we installing it as a way of controlling water runoff and soil erosion. Nobody has ever really made that clear. That's number one. Number two...

MR. WEISS: Mr. Swanson, I want to just interrupt real quick. You have Lot 19?

MR. SWANSON: 29, sir.

MR. WEISS: I don't see a 29.

MR. BUCYNSKI: It's on a different plan.

MR. MCGROARTY: It's numbered differently on those plans.

MR. WEISS: Ok.

MR. SELVAGGI: 23. Number 23.

MR. SWANSON: It's identified as 23 on the plans? Ok. I'm sorry. Lot 23. If it pleases the Board, this is a picture of my back yard. It shows the...

MR. WEISS: Wait. Hold up, hold up.

MR. BUZAK: We need to mark this S-1 for Swanson 1.

MR. SWANSON: Sure.

MR. BUZAK: If you don't mind sir, did you take that photograph?

MR. SWANSON: I did.

MR. BUZAK: And does it reflect exactly what you saw when you took the photograph?

MR. SWANSON: It does.

MR. BUZAK: Thank you, sir.

MR. WEISS: Tell us a little about the photograph.

MR. SWANSON: What the photograph shows really is a picture of the rear of my property line that would be potentially be impacted by this meadow grass. And as you can see it's perfectly flat. I don't have some of the slope issues and water issues that some of the people in this room have. And clearly there are two issues here but I do understand tonight we're here to oppose the installation of the meadow grass and I'll stay on that point. Toward the northern end of the street where the back yards tend to slope together they do seem to have some water runoff issues but as far as the meadow grass is concerned and as far as I'm concerned to ask a homeowner to give up potentially 5,000 plus square feet

of usable property is unreasonable. And I'm not going to go in the direction of whether or not that was disclosed but most of the people that I talk to and I'm a reasonably intelligent person, and I tend to read things, nobody was really very clear when I went to contract on that property and said, "oh by the way when you close, when we get around to it and when the project nears completion, we're going to come in and steal fifty feet of your back yard. Because if that were the case, I think a lot of people in this room wouldn't have bought those properties or would have complained about buying them or maybe would have gone someplace else or negotiated a different deal. I'm not here to really determine that tonight and I really don't think that's the issue. But I think it's fair to say that for this Board to allow this grass to go on and potentially diminish people's property....not only are you diminishing the property value, it's going to look like a swamp. This grass is going to grow higher than this bench. It's going to be 100 feet wide and it's going to be several hundred feet long and it's going to make it look swamp-like. But not only that, and it was said earlier by Mr. Ma that it could potentially draw wild life, bird life, trap water and create all kinds of potential health issues going forward. It adds no value whatsoever. As a matter of fact, it diminishes value. On the subject of property taxes, I bought in that community and paid a lot of money because I wanted a bigger piece of land. There wasn't a developer in this community and I wanted to live in Mt. Olive when I decided to move here from Denville. There wasn't another developer at that time offering a large piece of property other than Morris Hunt and Toll Brothers. And that was one of the reasons why I bought there is to be able to enjoy a larger piece of property and as you can see by that picture I've already installed fencing, I have a swimming pool project underway, all of that by the way has been approved by the town and to install that grass is going to ruin my back yard completely so and for those reasons I oppose it. I don't think it's a fair situation to ask people to give up that much usable property whether they intend to develop it or not is not the point.....it's what we paid for it and we don't have the benefit of the use of what we paid for....so that's really the argument. That, and the fact that if this meadow grass is planted and it stays there, potentially, and especially on the northern side of the property as you go down or up Marcin Way on my side and down Sovereign Drive on the other side, that could potentially become a wetlands....over time, with that type of grass growing and trapping water where, everybody on this Board knows that once something becomes wetlands you can't do a thing with the property which would really diminish everybody's value so, for all those reasons I....

MR. WEISS: Mr. Swanson, thank you for that because I have a feeling that the Planning Board agrees with you 100%. I'm not seeing much of an objection and your comments are extremely sensible. You started your comments with a question and although Dr. Keller is not here and this was many years ago, I think the explanation from our engineer was simply, at the time of this concept, this was put in as a maybe a potential, this might be a potential problem, let's put it in and so the process that we're going through is a very productive process. Ok we didn't need it, the question....let's take it out. I think, I don't know how better to answer your initial question but I think we're on the same track here.

MR. SWANSON: I agree. Ok. Thank you.

MR. WEISS: Thank you.

MR. WEISS: Does anybody else from the public have any questions?

MR. MA: My neighbor take some pictures so that we, I think 100 percent of the residents don't like the meadow grass.

MR. WEISS: Ok, sir. Let me ask you a question. Mr. Ma, you just handed me a series of six pictures. These are taken from your back yard?

MR. MA: The back yard between me and Mr. Li.

MR. WEISS: Who took the pictures?

MR. MA: He took the pictures.

MR. WEISS: Ok. I'm not going to accept these pictures. Let Mr. Li testify again.

MR. MA: You testify again.

MR. WEISS: Mr. Ma, my personal opinion is that it's not necessary. I believe it's not necessary. My personal opinion. It's not necessary to enter those pictures. We understand. We have a very good understanding. My suggestion to is to just leave it. It's ok.

MR. MA: Ok.

MR. WEISS: I would....you can sit back down. Thank you. Thank you anyway, Mr. Li. Ok. Any other questions from the public? Ok. Mr. Li.

MR. WEISS: I'm going to do the same thing. Our attorney is going to swear you in and you'll state your name and address for the record.

**(SHIJIE LI IS SWORN IN FOR THE RECORD)**

MR. LI: LI is a family name and I live in 32 Sovereign Drive. The lot number is 15. I'm sorry first and my English is very poor so I even don't exactly understand what you are talking about but I know that the key tonight we are here and from right now, you know, and beneficially is sitting here in the room and our properties we tried to make our properties beautiful and then it will make it a worse increase and your tax is increase and Toll Brothers will think that they did a great job but right now we have a problem because the design for the landscape in our back yard is the steep. The slope is very steep. So in that case I suppose we need the meadow grass. That's why we need the meadow grass. If the (not discernable) is very plain we need the meadow grass but right now the slope is very steep. That's why the design has the meadow grass in the back yard.

MR. WEISS: So Mr. Li are you saying that it should stay there?

MR. LI: Yeah.

MR. SCHAECHTER: Not that it should stay there, you should say that they should install...

MR. WEISS: That Toll Brothers should install the meadow grass?

MR. LI: Yes. Uh...no, no, no. I don't like the meadow grass but I need solve the problem first. If they do not solve the problem the (inaudible) I would rather, I would rather have the meadow grass there.

MR. WEISS: A couple of things though....we can't assume a problem and this potential problem is not on the table tonight.

MR. LI: Ok, I understand.

MR. WEISS: So the developer has bonds that they must make sure that they deliver a piece of property that doesn't flood and based on my relationship with Mr. Fultz and Toll Brothers, I have tremendous confidence that it won't flood.

MR. FULTZ: Right, I'm going to be happy to visit both of these gentlemen at your convenience and inspect the issue and if it is in fact a grading issue or a stabilization issue we can address it at that point but I think that's a separate issue of the meadow. But I will be happy to meet you at your home.

MR. MA: Ya, I think....

MR. WEISS: No, no. Mr. Ma I can't pick you up that way and here's what we're going to do. We're going to take that conversation offline. Dave, I'm sure you'll give your phone number to these gentlemen and you'll take it out of this Planning Board.

MR. FULTZ: Sure.

MR. SELVAGGI: Just for the record too, Mr. Li and Mr. Ma were the two people, the two homeowners that we could not....we wrote letters, there were attempts, we could not communicate with....and unfortunately I think if we had been able to I think some of their concerns would have been addressed. Six months ago we could have addressed. That's not their fault, I'm not blaming anybody but for the record.

MR. WEISS: The good news, and we just heard from Mr. Selvaggi, is that Toll Brothers is willing to communicate with you outside of this Planning Board to make sure that your personal and individual situations will be addressed. I can't pick you up from the audience. You need a microphone.

MR. FLEISCHNER: Just close it.

MR. WEISS: Ok. Mr. Li, thank you very much.

MR. LI: I would just like to suggest that the slope....

MR. WILPERT: That's a problem that you have to take up with Toll Brothers. We're not here to discuss slopes.

MR. LI: That's why we need the meadow grass.

MR. WEISS: I hear you. That's your opinion. I asked you for your opinion. Thank you. Listen, folks, please. This is a very, very simple thing. I understand. Sir. I'm going to close it to the public. And in five minutes you're going to be very happy. Ok. I'm closing it to the public. Michael, I got to imagine you have nothing else to say.

MR. SELVAGGI: Uh, no.

MR. WEISS: Planning Board do we have any comments?

MEMBERS OF THE PLANNING BOARD: No.

MR. WEISS: I see none. Will somebody make a motion?

MR. WILPERT: I'll make a motion.

MS. STOTLER: I'll second.

MR. WEISS: Hold on a second. Motion.

MR. WILPERT: I'll make a motion to approve the dismissal of the potential landscape buffer. Yes.

MS. STOTLER: I'll second that.

MR. FLEISCHNER: And I would like to add to that motion that if for some reason a homeowner still wants meadow grass in their fifty feet on their property, they get meadow grass, if they want.

MR. WEISS: Is that acceptable Mr. Fultz?

MR. FULTZ: Yes. Yes. I would hope they would notify us prior to our going off of the performance bond.

MR. WEISS: Is it too much to ask, hold on a second Chuck, that maybe if there's fifty homeowners, you can send a letter just to memorialize this that here's what's happening and if anybody wants to contact me, give your phone number.

MR. FULTZ: Absolutely.

MR. SELVAGGI: What I would suggest is when the Board acts on Mr. Buzak's resolution, we would submit that along with an explanation as to what that means.

MR. WEISS: Great idea. Put something in layman's terms. Chuck?

MR. MCGROARTY: Mr. Chairman, we don't know if it's on the filed plat, probably not since it hasn't been....can we get at least a revised sheet from Toll Brothers...properly identified, you know (inaudible).

MR. WEISS: We'll make that a condition. But I appreciate that Dave. Ok. We have two conditions of approval.

MR. BUZAK: And I'm going to add one more and that is the inspection of the properties as Mr. Fultz has indicated he would undertake.

MR. WEISS: Ok. No problem with that. Ok. So we have a motion that has been made and conditions added. Sandra?

MS. STOTLER: I second that.

MR. WEISS: Ok...and so....let's just review, a yes vote allows Toll Brothers to not go forward with a landscape buffer. Ok. Are we clear on how we are voting? Ed are you good with that?

MR. BUZAK: Yes.

MR. WEISS: Ok. Catherine, roll call.

MS. NATAFALUSY:

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**Roll Call:**

Joe Fleischner	- yes
Brian Schaechter	- yes
Henry Fastert	- yes
David Koptyra	- yes
Nelson Russell	- I wasn't here for the beginning of the application. Please let an alternate vote in my sted.

MS. NATAFALUSY: Ok.

Frank Wilpert	- yes
Kim Mott	- yes
Sandra Stotler	- yes
Howie Weiss	- yes

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MR. WEISS: Member of the public, I know it's maybe confusing but at the end of the day the landscape buffer will not be installed and you will be able to use your property as you see fit.

MR. WEISS: This is still a meeting. Please take your conversation outside. Thank you. Have a good evening.

MR. WEISS: We do have a discussion matter scheduled on the Council of Affordable Housing that was a Supreme Court decision and I know Ed wanted to educate us a little bit and give us some background as to what's going on. It's a fairly complicated issue and I hope that you're going to give us some clarification and find some clarity to what's going on.

MR. BUZAK: Look all I can say is that I brought a large coffee so I stay awake for my presentation. I will try to be brief. You've all heard of Mt. Laurel and Mr. Laurel Concept and very briefly, that started in 1975. Forty years ago where the Supreme Court decided that a municipality has an obligation when it exercises its zoning power to provide a realistic opportunity for the construction of its fair share of the region's low and moderate income housing needs. That's the doctrine. That was established in 1975 and is a constitutional obligation. The courts dealt with that for about a ten year period or an eight year period and it was bedlam. It was chaos because a court is not equipped to handle these kinds of issues, like you see here. In 1985, the legislature finally decided that they were going to create what was known and is known as the Fair Housing Act and created an administrative process. That administrative process is operated by a Council on Affordable Housing that the COAH acronym that we all talk about. And what that did was, it gave municipalities a forum to voluntarily comply with their obligations. So instead of being sued and spending thousands and thousands of dollars in court... sometimes hundreds of thousands of dollars in court the legislature created an administrative process where you can go through it and ultimately satisfy your obligation at a much lesser expense and with you, the municipality in control. In order to implement that the Council on Affordable Housing adopted regulations. And they adopted regulations that covered, initially, a 6 year period of time in which they determined what the obligation, the Affordable Housing obligation was for each municipality in the State. They did it over a 6 year period of time because that was the time period that master plans had to be reviewed. Your master plan had a 6 year life at the time. And they figured they'd tie the two together. That first set of regulations came out in 1987 lasted till 1993. They then came out with a second round of obligation which included anything that was not done in the first round and a new obligation prospectively. That lasted from '93 to '99. In '99, they embarked upon creating the third round and the third round they decided to change their direction. Rather than demand that municipalities have to meet an obligation, a numeric obligation, they said, "Look, why don't we do this. Why don't we just let municipalities grow they way they would normally grow but as they grow, make sure that they set aside through a zoning mechanism a reasonable amount of affordable housing units". So they created what was known as Growth Share. So every time four units of residential housing would be built, the municipality would have an obligation to have zoning to allow for one affordable unit. One for every five, one of every five units would be affordable. And they also tied it to non-residential growth depending upon the jobs that

were created. It took the Council on Affordable Housing almost 5 years to come up with that concept and put it into a regulatory form. It was adopted by them in 2004; five years after the end of effectively the second round. And it was immediately challenged.

MR. FASTERT: What consti, you know, so you have this one out of four, one out of five, what constitutes an affordable building zone? Just the size of the piece of property?

MR. BUZAK: No, typically they would be done on inclusionary....

MR. FASTERT: We have no control on what builder charges to build a house on a piece of property.

MR. BUZAK: No but we would require that in a development, such as Morris Hunt, did Morris Hunt ever set aside?

MR. MCGROARTY: No. Regency which is now being built does. Woodfield does.

MR. BUZAK: Twenty percent of the units had to be made affordable. And they subsidized by the other 80% and that's why they have a higher density. So 2004, as soon as these regulations were adopted they were challenged. Municipalities proceeded to file their Housing Elements and Fair Share plans which was the form, the mechanism that they used to move forward in the administrative process. Three years later in 2007 the court invalidated the Growth Share regulations and told COAH to go back and come up with different regulations. COAH went back and in 2008 came up with a second iteration of Growth Share trying to plug the holes that the court found in it. Those were immediately challenged in 2008. In 2010, the Appellate Division invalidated those regulations. That was all appealed to the Supreme Court and in 2013 the Supreme Court affirmed that invalidation. So, we've gone from 1999 to 2013 without regulations that are valid. In 2013 when the Supreme Court made its decision it directed COAH, the administrative agency, to adopt regulations again and this is now the fourth time they had to adopt them but they said you can't use Growth Share. You have to go back to coming up with a fixed number for the municipalities. COAH went back, they came up with a plan. The regulations were proposed, there was a public comment period and in October of 2014, less than a year ago, COAH deadlocked on the vote for those regulations. They deadlocked 3 to 3 to adopt them, they deadlocked 3 to 3 to postpone them to come up with revised regulations. So they did effectively, nothing. That prompted another action in the Supreme Court which resulted in the decision that is in this article that was distributed in March of 2015 where the Court said "Enough". COAH, you've had 15 years in which to come up with regulations, you've made an effort, it's been unsuccessful and we're going to take all of these cases that are pending before COAH, which is about 315, including Mount Olive, and we're going to create a process to transition those to the Court. So we're going to bring all of these cases back to the Court and....

MR. FASTERT: Come full circle.

MR. BUZAK: So we come full circle from going from the court in 1983 to COAH and now we're back to the chaos that the Fair Housing Act was intended to eliminate and for a 25 year period or 20 year period eliminated the chaos and created the administrative process. Now why do you need to know any of that? You need to know that because Mount Olive is one of those municipalities that are before COAH that will be transitioning to the court. And what has to be done is the plan that's before COAH that was based upon these Growth Share regulations needs to be revised to reflect some other methodology. You can't use Growth Share. So, this municipality and eventually, this Board will be looking at a revised Housing Element and Fair Share plan which is a component of the Master Plan. This Board adopts the Master Plan. Governing body doesn't adopt the Master Plan. Governing body has nothing to say about the Master Plan. You create the Master Plan and this Housing Element and Fair Share Plan is an element of that Master Plan. So, sometime over the next several months you're going to be looking at and considering a revised Housing Element and Fair Share Plan that the municipality that will be putting forth in the court to try to get protection from third-party builder lawsuits. The action in the court has to be commenced between June 8<sup>th</sup>, which is coming up in the next 3 or 4 weeks, and July 8<sup>th</sup>. So there's a short window in which, in this case, the Township attorney will be filing an action in court in Morristown to transition this whole matter from COAH to the court.

MR. FASTERT: Ed?

MR. BUZAK: And sometime after that between July, June and July 8<sup>th</sup> and probably November, you will be looking at a revised Housing Element and Fair Share Plan. So, that's the transition.

MR. FLEISCHNER: Chuck, are you doing the revised with who?

MR. MCGROARTY: With who?

MR. FLEISCHNER: Yeah. You just sit down and you work...

MR. MCGROARTY: Just me.

MR. FLEISCHNER: Just you?

MR. MCGROARTY: I did four of them for the (inaudible).

MR. FLEISCHNER: I'm not....I just want to make sure

MR. MCGROARTY: Yeah. No. No. I will prepare it but I will certainly bring it here. You obviously have to be part of that as I just described.

MR. FASTERT: I assume this, in no way, changes our Highlands obligation?

MR. MCGROARTY : We don't assume anything anymore.

MR. FASTERT: Let me rephrase that....as of now this does not supersede our Highlands requirement?

MR. MCGROARTY: We don't think so. Obviously, with experts like Ed we'll be, the Town has an advantage that whether or not we are able to use Ed's experience in this but obviously he's one of few in the State that fully understand what's going on with this. With Highlands, because 80%, 79 or 80% of the Town is in the Preservation Area it's not clear how we're going to account for....it gets very messy. But we will make the....I know it's tough to listen to but ultimately you guys are going to have to listen to it but what we're going to argue is that the land, we'll have to do this analysis to show the land is unavailable for development. But we already know, Ed didn't talk about this but we certainly can explain to you, that the opposition, I'll say there's a whole organized effort on the other side as of where fighting against the rules saying they're not strict enough. And just in a nut shell to give you a sense of what it is, the last numbers that COAH came out with for Mount Olive, for their obligation for the third round with the plan that we did under Growth Share, calculated that the Affordable Housing obligation for Mount Olive for 10 years was 505 units and we did a plan to address that. The new numbers COAH came out with as they're described and did not adopt the rules and the numbers were part of the rules, that obligation had dropped down to 140 or 147. The opposition is of the mind that Mount Olive should have a 1,000 unit obligation. So, there's the battlefield...if that's the right word.

MR. WEISS: Let's take a real life example like the Regency project. There's 54 or so Affordable units...

MR. MCGROARTY: That's a 20% site. That's why in that project the R-6 Zone, the R-7 Zone, the Simoff Zone and that zone. That's why when we drafted the zoning we automatically built in a 20% set aside and those are not age-restricted units and the idea was that they would help us meet that 505 unit obligation.

MR. WEISS: So in this period of uncertainty, can Toll Brothers come back and say I want a regular?

MR. MCGROARTY: No.

MR. WEISS: Toll Brothers can't change?

MR. MCGROARTY: No. That approval, well they can ask but, no. The answer's going to be....I mean, why would you ever release them from that requirement?

MR. WEISS: That's why I'm confused but I'm asking with this period of uncertainty....

MR. MCGROARTY: No. No, Howie, cause that's part of the ordinance. That's part of the zoning that was created by the Township for good reason and I think we have, it's certainly defensible, Ed, right?

MR. BUZAK: Yes. Absolutely.

MR. MCGROARTY: And so they're, they proceed on the basis, then they got the higher density, as Ed mentioned a moment ago too, you get higher density in order to help subsidize those Affordable units as well.

MR. FASTERT: Chuck, as just a rough number, you know, within the Highlands restrictions any rough idea how many building lots are available left in this town?

MR. MCGROARTY: I know that answer but I don't know it off the top of my head but we did find that out. We also have...

MR. FASTERT: Just rough. Just roughly. Just you know.

MR. MCGROARTY: I don't remember the build, Highlands did a build out analysis. Let me say it this way, Highlands did a build-out analysis, again, which I don't have. We can get that information to you. I can write it up and circulate it. Just bullet points. And Highlands does a build-out for all the municipalities, particularly if you're in the Preservation Area. Two factors, we're in the Preservation Area and the land is forested. You can build one lot or one septic system for 88 acres.

MR. FASTERT: 88

MR. MCGROARTY: Eighty eight acres. If it's unforested, if it's farmland or undeveloped, not a forest I guess, it's one unit per 25 acres and if it's a mix there's a combination. So that gives you a sense of the drastic reduction in densities under Highlands that's permitted.

MR. FASTERT: Did that increase in my absence from the Planning Board? I seemed to recall that number used to be 10 acres. Did that number increase?

MR. MCGROARTY: These numbers had nothing to do with local zoning. They superimposed .....

MR. FASTERT: No. No. The Highlands restriction? So, it's actually, for farmland it's actually 25 acres?

MR. MCGROARTY: You might be thinking of our local zoning but under the Highlands Preservation, under the and I'm not sure if it comes from the Act itself or ultimate DEP regulations that were developed. I'll defer to Gene in advance but that's what the standards are and so that's why the development capacity or land in the Preservation Area dropped so much.

MR. FASTERT: Yeah.

MR. MCGROARTY: Coupled with the fact that you really virtually cannot create new water and sewer systems in the Preservation Area except under some very extraordinary circumstances.

MR. WEISS: So those COAH units that we have in the bank, if you will, nothing is going to change with those.

MR. MCGROARTY: Correct.

MR. WEISS: Even if our number goes from 500 to 100

MR. MCGROARTY: Right. Then we get a surplus which is a good thing.

MR. WEISS: Ok. I was thinking there was a "time was of the essence" to go protect ourselves so that Toll Brothers doesn't come back and say "I want out".

MR. FLEISCHNER: Ed, can I ask you a question?

MR. BUZAK: Yes.

MR. FLEISCHNER: Realistically, so they come back, somebody comes back and says we want 10,000 affordable houses. Mount Olive and 20 other towns now go back into court and they bring a lawsuit and this...how many lawsuits till it can end? Or is it one of those things that in reality, you know, I'll probably be dead. I mean, you know, even if I live another 25 years I'll still probably be dead. This could, in reality, this is really an exercise and I'm all in favor cause Chuck does a great job, on the record, and he's going to go through all these things until he's ready to retire and then somebody else will go through our records. Is it conceivable that this goes on another 20 years?

MR. MCGROARTY: Yes.

MR. FASTERT: This keeps Chuck gainfully employed. There's a happy ending here.

MR. BUZAK: When you hear the numbers that Chuck just talked about, you have 100 versus 1,000, you know...

MR. FLEISCHNER: Right. So in other words...

MR. BUZAK: The trial courts, the appellate division, then the Supreme Court sending it back again so....Somebody will be sitting in this chair.

MR. FLEISCHNER: Right.

MR. FASTERT: Given the numbers that Chuck just said, I doubt there are 1,000 building lots in the entire town.

MR. WILPERT: We're going to build a hotel or a high rise.

MR. BUZAK: No matter, no matter because, remember this, you know, we all here think about Mount Olive and think about single family lots as Mr. Wong said he bought this property and Mr. Sampson... Swanson, said he bought this property to have all this property. Mr. Wong also said in Hong Kong 5,000 square feet could house 50 families.

MR. WILPERT: I wish it would go that way.

MR. BUZAK: There are people who say we don't have a land problem in NJ, we have a mental problem. Go up. You can go up. You don't need ground level stuff. Go up. So when we sit here and we say we don't have, we have 200 building lots in Mount Olive, you don't have 200 building lots folks, you have so many acres of land that could support 8, 10, 12, 40, 50 story buildings like the city. Ok. That's not what people come out here for but that's what some of the housing advocates look for. So that's what you're faced with and that's why Joe's comment is correct. This isn't going to end.

MR. FASTERT: Have any of the court decisions or rulings involved in this or when it got started or now....have any of them vacated a maximum height requirement zonings in towns?

MR. BUZAK: Oh, absolutely.

MR. FASTERT: Absolutely?

MR. BUZAK: I can tell you, suburban town, the town I grew up in has single family, one-story bungalow type homes has five-story apartment building going up at the end of a dead end street. It's not even a cul-de-sac. This is old school. Just dead end the street.

MR. FASTERT: So they had a 30, I forget what ours is now...32 or 33 feet. So they vacated that and up it went?

MR. BUZAK: Oh yeah.

MR. FLEISCHNER: Well, thanks Ed.

MR. WEISS: I think that...as we prepare to close this meeting I just want to remind the Planning Board that next Thursday we have potentially two use variances coming in front of us. So if you can't make it, please let Catherine know as you know, use variance, the number of people who can vote is important to the developer so if you can't make it and haven't reported in to Catherine....I won't be here next Thursday, I know we're definitely starting one use variance and potentially a second. So it's important to let Catherine know the attendance so we can share that with the applicants.

MR. FLEISCHNER: And I would encourage everyone to attend. I have to be home by 10:00 so we will adjourn by....my wife doesn't like me out after 10.

MR. WILPERT: Well this one went too long so...

MR. FLEISCHNER: Yeah this went way too long.

MR. WILPERT: I should have just stayed home today. You told me. I know.

MR. FASTERT: Chuck I've heard anecdotally, at least that the population in New Jersey is in decline. Is that correct?

(Inaudible)

MR. FLEISCHNER: Actually, no. Actually that is false.

MR. WEISS: Motion to adjourn.

MR. WILPERT: I'll make that motion.

MR. WEISS: I'll second. All in favor.

(MEETING ADJOURNED AT 8:35:16 P.M.)

Transcribed by:  
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