

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

ROLL CALL:

Members Present: Joe Fleischner, Brian Schaechter, Mayor Greenbaum, David Koptyra, John Mania, Dan Nelsen, Nelson Russell, Frank Wilpert, Jr., Kim Mott, Henry Fastert, Howie Weiss

Members Absent: None

Professionals Attending: Chuck McGroarty, Planning Consultant, Eugene Buczynski, Township Engineer, Tiena Cofoni, Esq., Catherine Natafalusy, Planning Administrator/Secretary

Professionals excused: Edward Buzak, Esq.

MR. WEISS: Thank you Catherine, maybe just for the record I want to note that in attendance this evening too is our Council President, Joe Nicastro, who told me he was going to be here to learn a little bit of the process, so Mr. Nicastro, welcome, hopefully it's a good evening for you. That being said, let's move into our agenda tonight. The first item on the agenda is the approval of the Minutes of the September 10, 2015 meeting. We all have a copy. If somebody would please move these Minutes.

MR. MANIA: So moved, Mr. President.

MR. WEISS: Thank you John.

MR. RUSSELL: Second.

MR. WEISS: Second Nelson. Thank you very much. Any comments? Seeing none. Catherine, Roll Call.

ROLL CALL:

Brian Schaechter	-yes
David Koptyra	-yes
John Mania	-yes
Dan Nelsen	-yes
Henry Fastert	-yes
Nelson Russell	-yes
Frank Wilpert	-yes
Howie Weiss	-yes

MR. WEISS: We have four resolutions on the agenda. The first one, PB 15-02 Waterloo Road Development, LLC., for the minor sub-division. There's been no changes since the copy we have submitted Tiena? I know there was some conversation.

MS. COFONI: Yeah, but it doesn't involve that one.

MR. WEISS: Okay, I'll ask that question before each one. So the copy that the Planning Board has is the copy that we are going to vote on?

MS. COFONI: Yes. Yeah, there haven't been any changes on this one. It's dated 12/15/15, let me just see why. There may have been a change actually from Mr. Polussas on that one. I think it's a minor revision.

MR. MCGROARTY: A minor?

MS. COFONI: I think so. Here it is, let's see. Oh, in paragraph one he added a reference to, that a small portion of the property is located in the FTZ-4 zone. That's the only change on this one. So that one is, the last revision date on that one is 12/15/15.

MR. WEISS: Catherine was that originally on the agenda for November 12th?

MRS. NATAFALUSY: Yes it was. And then we moved it.

MR. WEISS: I just wanted to make sure. Okay, that being said, will somebody please move Resolution 15-02.

MR. FLEISCHNER: I'll move the PB 15-02 Waterloo Road Development LLC., minor sub-division.

MR. NELSON: Second.

MR. WEISS: Thank you Mr. Fleischner. Nelson, that was you? Dan Nelson, thank you very much. Is there any comments?

MRS. NATAFALUSY: Dan or Nelson?

MR. WEISS: That was Dan Nelson. Seeing no comments, Catherine, Roll Call.

ROLL CALL:

Joe Fleischner	-yes
Brian Schaechter	-yes
David Koptyra	-yes
Dan Nelsen	-yes
Nelson Russell	-yes
Howie Weiss	-yes

MR. WEISS: Okay, the next item is PB 15-02 Waterloo Road Development LLC., for the d-1 variances amended preliminary and final phase one. Same thing Tiena, are there any noted changes, anything else?

MS. COFONI: Yes, paragraph two, the first sentence was amended to read: the applicant seeks d-1 use variance approval in connection with the use of the property for a Class B Exempt because of the limited volume of materials to be processed, was added. And then also later in that paragraph Class B Exempt, and then later the sentence was added: in addition the volume of materials to be processed is limited as a Class B Exempt facility reducing potential environmental impacts. I'm going to read to you a revised paragraph seven. Catherine, I can't remember did the Board get the, I think they got the black lined version right?

MRS. NATAFALUSY: Yes.

MS. COFONI: Okay, paragraph seven now reads: On April 8, 2010 the Board granted the applicant second amended preliminary site plan approval phases one two and three and final site plan approval for phase one only, which was memorialized via the adoption of a Resolution on May 13, 2010. The applicant now seeks amended preliminary and final site plan for phase one of the development. The current plans include only two phases. Phase two consists of the conversion of the existing steel and masonry office building, 15,768 square feet, to a flex warehouse with an adjacent parking area. All of the improvements are included in phase one. Once the phase two improvements are ready to be constructed, the applicant shall seek approval for these improvements from the Board. And then in paragraph eight, there was a portion of three sentences that were struck and then conditions. This is where we get into an issue that the applicant who, I am surprised but is not here. The issue comes down to H, condition H. The outdoor storage area 1.83 acres at rear of site must be paved and demarcated with posts with such frequency and in such locations as were reviewed and approved by the Township Engineer. Prior to use of this outdoor storage area it must first be paved and the posts must be installed. Okay, so that's H. Then it says: All areas for storage of vehicles and equipment adjacent to the buildings must be paved and enclosed with fencing. The paving and fencing must be completed within six months from the date of the adoption of this Resolution. The issue that was raised by the applicant, although not here, is that they thought that all of the outdoor storage areas would be in accordance with H, so all of them would be demarcated with posts and not fenced, and it was the professionals' recollection that that was not true, it was one area that was going to be demarcated with posts.

MR. BUCZYNSKI: The large area, the 1.93 acres.

MS. COFONI: Yeah, and then the rest of them were going to be fenced in and I think some of them already are fenced in.

MR. BUCZYNSKI: Yeah, adjacent to the building.

MR. WEISS: You know what, I've got to be honest, we have discussed it, we've had a copy of this in front of us, no one on the Planning Board has picked up any deviation from how we remember it. We had a conversation yesterday, I'm very comfortable, unless anybody from the Planning Board has any comments, to just accept the version that they have and we'll take Roll Call off of that.

MS. COFONI: Okay.

MR. WEISS: I don't even really want to get into a debate because there is nobody to debate it with.

MS. COFONI: Yeah, I mean, they're not here so.

MR. WEISS: I am comfortable with the version that we spoke about yesterday, you're telling me that that's the version that we're going to vote on?

MS. COFONI: Yes. That's the one that's before the Board.

MR. WEISS: I am asking, we did have a motion, it was seconded.

MRS. NATAFALUSY: No, we didn't have...

MS. COFONI: No, I don't think we had a motion.

MR. WEISS: Okay, would somebody please make a motion to move PB 15-02 Waterloo Road Development LLC., d-1 variance amended preliminary and final site plan phase one.

MR. SCHAECHTER: I'll make that motion.

MR. WEISS: Brian, thank you very much.

MR. RUSSELL: Second.

MR. WEISS: Nelson, thank you. Any comments? Seeing none. Catherine, Roll Call.

ROLL CALL:

Joe Fleischner	-yes
Brian Schaechter	-yes
David Koptyra	-yes
Dan Nelsen	-yes
Nelson Russell	-yes
Frank Wilpert	-yes
Howie Weiss	-yes

MR. WEISS: Third one is PB 15-02 Waterloo Road Development LLC., a variance for a buffer. We have a copy. Tiena is there anything that we need to discuss?

MS. COFONI: This one again, in paragraph one just had the addition of Block 7 Lot 1, and noting that that's in the FTZ-4 zone district. Reference to the fact that it's 2.78 acres. And then just a change to condition G, and condition G now reads: the relocation of the existing soil stockpile to achieve a 50 foot setback. Installation of the super silt fence, installation of intermittent boulders, planting of 24 trees and the stabilization and seeding of the soil stock pile shall be completed within six months of the adoption of this Resolution.

MR. WEISS: And that is how we have it in front of us?

MS. CONFONI: Yes.

MR. WEISS: That being said, would someone please move PB 15-02 Variance for buffer?

MR. RUSSELL: I'll move it.

MR. WEISS: Nelson, thank you very much.

MR. NELSON: Second.

MR. WEISS: Dan, thank you very much. Any comments? Seeing none. Catherine, Roll Call.

ROLL CALL:

Joe Fleischner	-yes
Brian Schaechter	-yes
David Koptyra	-yes
Dan Nelsen	-yes
Nelson Russell	-yes
Frank Wilpert	-yes

MR. WEISS: The final Resolution on the agenda tonight is PB 15-32 Michael Murr. Would someone on the Planning Board please move, hold on, withdraw that, any changes?

MS. COFONI: No, nothing.

MR. WEISS: Okay.

MR. MANIA: I'll move that Mr. Chairman.

MR. WEISS: Thank you John.

MR. RUSSELL: I'll second it.

MR. WEISS: Nelson, thank you very much. Any comments, questions? Seeing none. Roll Call, please.

ROLL CALL:

Joe Fleischner	-yes
Brian Schaechter	-yes
Mayor Greenbaum	-yes
David Koptyra	-yes
John Mania	-yes
Dan Nelsen	-yes
Nelson Russell	-yes
Kim Mott	-yes
Howie Weiss	-yes

COMMITTEE REPORTS

MR. WEISS: Moving to some committee reports. Mayor, do you have anything for us tonight?

MAYOR GREENBAUM: No.

MR. WEISS: John, anything from Council?

MR. MANIA: No.

MR. WEISS: Nelson, environmental?

MR. RUSSELL: No report.

MR. WEISS: Joe?

MR. FLEISCHNER: No.

MR. WEISS: Ordinance Committee. Nothing from me for Street Naming Committee. Kim anything from Open Space?

MS. MOTT: No, not at this time.

MR. WEISS: Okay, just give me one second, let me catch up on some of these. Since nobody had a report. Okay, we'll move our meeting now into the Public Hearing. Tonight we are holding a Public Hearing for an Amendment in the Land Use Plan Element of the 2003 Master Plan. What I will do at this point is turn the hearing over to Chuck McGroarty, who can outline the amendment and the proposal, and Chuck we'll just let you take it from here.

MR. MCGROARTY: All right, thank you Mr. Chairman. I have one exhibit if we need it I'll, we'll I'm going to put it up anyway and if we need to use it, we'll refer to it. I bet we won't need it. Tiena I marked, it's an aerial. Do you want me to move it, I don't know if the Board can see it.

MR. WEISS: I think that's pretty good. I think we have a copy.

MR. MCGROARTY: Tiena, I marked it as Planning Board Exhibit 1.

MS. COFONI: Thank you.

MR. MCGROARTY: With today's date of course, and what it is, is an aerial of a portion of the Foreign Trade Zone, the International Trade Center, and also areas in proximity to that which we'll be talking about tonight as well, which is currently zoned LI. You don't see the zoning on that, but if we need to use that for references purposes we will. So the Master Plan Amendment that the Board has and the Master Plan Committee has worked on it proposes to do four things. But they're all inter-related and they are in the same area of the Township. First, the majority of the parcels that are located in the Foreign Trade Zone -4 zone, not all, but most of them would be modified to permit residential use, and that would be permitted at a density of, the suggested density in this Master Plan amendment of four to five units per acre. The second thing that this proposes to do is to take, we just talked about it a moment ago, it's the very narrow rectangular piece of property that is coterminous with Ken Kaplan's property, Folding Box. It's right along Continental Drive. It's presently in the FTZ-4 zone. And the proposal here, as we've talked about in the past is to take it out of the FTZ-4 and make it General Industrial which will be consistent with the rest of his property and it makes no sense that it's in the FTZ-4 at this point. Then we also will take another property in that area that Mr. Kaplan sold at some point to the, I guess the Rockefeller Group or some entity therein. It was presently zoned General Industrial, and it's undeveloped, and that would be rezoned to FTZ-4. And that will be one of the parcels that actually will be permitted to have residential. Lastly, having nothing to do now with the Foreign Trade Zone, moving over to Waterloo Valley Road, the entire area over in that vicinity by Givaudan if you can sort of orient yourselves, is presently in the Light Industrial zone, the proposal is just to change that over to the General Industrial zone. The only two developed parcels out there at the moment are the parking lot which Givaudan got approval from the Zoning Board of Adjustment to use, it's actually on the opposite side of the road, that's why they needed the use variance, and further down or further in, if you will, I guess it's west, am I going in the right direction? West on Waterloo Valley road, there's a cell tower on a small parcel. So, those are the four proposals. I guess Mr. Chairman, I will just for a moment if you don't mind, I'll just identify the properties that I just talked about.

MR. WEISS: Please do Chuck.

MR. MCGROARTY: I don't want to belabor any of this because it's really (inaudible). The Foreign Trade Zone properties we're talking about, and the block and lot information is listed in the Master Plan amendment, I don't know Tiena, if we need to put that on the record tonight as part of the document.

MS. COFONI: No, it's part of the document that we're looking at.

MR. MCGROARTY: Okay, because it can get a little old after a while. But, it's this parcel here and Love Lane borders it to the East and of course there's the Stanhope Cemetery here, so this entire tract of land is owned by the Rockefeller Group and owns the property known as the Knoll and Ridge site, but it's one parcel. Secondly, is this parcel up here, which is in the FTZ-4 zone and that too will be modified to permit residential. Over in this area, I think you are familiar with the BASF complex, the existing facility, something in the order of 930,000 square feet of building space that's in place today, and adjacent to it is the 57 acre tract undeveloped. These two parcels will likewise have the same residential use. Again,

the suggested density being four to five units an acre. That takes care of the Foreign Trade Zone. Now this parcel here, which is actually lot 2 of block 106, this is the one that is presently zoned General Industrial, here's Mr. Kaplan's building, the building Waterloo Development that we've been looking at recently. So you can see where this parcel is, by switching this from General Industrial to FTZ-4, it matches up with this parcel, and again, it allows potential for residential development on these contiguous parcels. And one other added benefit is right here, I guess when I was younger I didn't shake it as much, there's a well for Stanhope and I feel like if we're taking the General Industrial uses away from that particular well and of course that's a tier one well area, that that's a good thing. Certainly it's still to be developed and the FTZ-4 list of permitted uses but the residential presumably would be a less intensive use. So, Mr. Kaplan's property also, you can't even see it from where you are, but you can see on the exhibit, it's this very narrow strip of land right along the street, which just, apparently it might have been sort of a holdover when Continental Drive was created, I don't even know. But that's the one that's going from FTZ-4 to General Industrial, and it will be part of his development. And then, Waterloo Valley Road over in this vicinity, and of course this is the rail line that comes along there, this entire area would be rezoned and the block and lot information is in the document you have in front of you, and this will be changed from light industrial to general industrial. I mentioned the cell tower, its right over here and the parking lot for Givaudan is right here. The purpose there specifically is, given the proximity to the highway system, Interstate 80 and Route 206, given the character of the Foreign Trade Zone and the similar kind of uses and also, we've had some interest from owners of property in there to do warehouse, shipping and receiving and a Light Industrial zone permits that to an accessory use. So we had quite a bit of discussion about changing the Light Industrial zone so that we would allow that kind of a use to become the principal use, and therefore someone coming in wouldn't need to get a use variance and so on. That became needlessly complicated because we have other light industrial zones in town, the benefit here is that there's no residential around it, the closest thing really is the county recycling facility out in here, and of course the uses of the Foreign Trade Zone. So, we think it's a good match and that's in a nutshell the changes.

MR. WEISS: Anybody from the Planning Board have any questions for Chuck?

MR. NELSON: Chuck on page 12, the first paragraph, provide adequate year rear buffering. I'm not familiar with the term.

MR. MCGROARTY: I'm sorry, can you tell me where you're looking again? Page 12?

MR. NELSON: Page 12, fourth line.

MR. MCGROARTY: That should say year round. Thank you, that's obviously a mistake.

MR. NELSON : Year round buffer.

MR. MCGROARTY: So that should say year round buffer. So page 12, thank you very much. That would provide adequate year round buffering.

MR. WEISS: Thank you Nelson. Henry?

MR. FASTERT: Chuck would any of these units help us meet any potential affordable housing requirements?

MR. MCGROARTY: How did I forget, thank you so much.

MR. FASTERT: Okay.

MR. MCGROARTY: Yes, absolutely. The recommendation is that any residential development that's proposed out there, and again, it could occur in different locations, different phases and so on, but we would recommend that 20 percent affordable set aside. That keeps the town in good standing with its affordable housing situation, which we are, at present, we don't know yet what the new numbers will be, but if we feel that that's a prudent way to approach it, in fact the town has done that with the two most recent multi-family zones, the R-6 and the R-7. Marveland Farms which is under construction at

the Regency at Flanders, 20 percent set aside and Mr. Simoff's property which may or may not develop in the near future, likewise 20 percent. Thank you, I forgot to mention that.

MR. WEISS: Chuck, can you give us an update, I know that the housing plan was due this month originally and then there was an extension.

MR. MCGROARTY: Yes. The plan wasn't due, well, it may have been, so much has changed, but what we have done is provided a status report, Judge Hansberry is, we here in Morris and Sussex County answer to Judge Hansberry over in Morristown. We have provided a status report to the court and within the next day or two the report by the expert that's been hired by a consortium of municipalities including Mount Olive is due out. We've already looked at a draft, which we can't talk about in open session, but we will have a better sense in the next month I guess as to what the number will be and then it will be up to the court. So we're not doing a housing element until we know what the number is obviously but as we go forward the fact that we can represent to the Court, Mount Olive Township is continuing to provide affordable housing, that obviously helps a great deal.

MR. FLEISCHNER: Chuck I have a question. Some months ago when we visited up by BASF, there was a little bit of a discussion in front where the road is where it kind of butts to Interstate 80, and it was my understanding we talked about building a residential strip there.

MR. MCGROARTY: Well, not me but, I may have represented that that was mentioned by the owner of the property. That may or may not happen, but right now we are not looking at any particular site plans, we're just saying...

MR. FLEISCHNER: No, I understand that, but my concern would be that thin strip. I have no problem with BASF former BASF building being residential but I do have a concern that the small strip that runs right along Route 80 because the sound was deafening of cars going by, and then it becomes up to the State. If the State is willing to put up the barriers, to me, I'd have a real problem.

MR. MCGROARTY: Well right now, and your concern is certainly valid and noted. Right now of course, you're just considering whether you would allow the change in the use category. The ordinance, should that go forward, then the ordinance next year in 2016 would be drafted and all of those kinds of details would have to be worked out. Would there be distance requirements from Interstate 80 or other roads and buffers et cetera. So, right now it's just sort of allowing the use to be considered as a permitted use, and if that goes forward, as I said the ordinance can be drafted.

MR. BUCZYNSKI: Joe, you were talking about the area, next to the garages, correct? That strip there?

MR. FLEISCHNER: Yeah, right, yeah, because it is like right on top of Route 80, and that was the concern, I fully understand the general concept of residential, but I think you have to have a minimum, a significant setback from that highway, and I don't even know if that'll affect the sound coming off that road was huge.

MR. WEISS: I guess we'll keep that in mind....when we review an application.

MR. MCGROARTY: Well, if and when the time comes to draft an ordinance, there'll be concerns about, work out the mechanics of that too.

MR. FLEISCHNER: I'd rather do it in the ordinance phase than a potential applicant thinking they can do something, make an investment and then...

MR. MCGROARTY: I mean it may work, I mean it's one of the many things to look at when the time comes, if an ordinance, and again if we get to that stage.

MR. FLEISCHNER: Okay, thank you.

MR. WEISS: Henry.

MR. FASTERT: Chuck, at the proposed density, what's the most likely type of construction?

MR. MCGROARTY: Well, we've had conversations with the owners (inaudible) so that as you see in the document there's some flexibility built in there in fact, there's a lot of flexibility. It can range from single family to townhouse to other kinds of multi story or multi-family configurations. Of course, in the BASF building complex, former BASF complex, it lends itself obviously to re-purposing itself to residential and other uses within, so those would be, we wanted to keep it, to as great an extent as possible to have flexibility in it now and then fine tune it again when the ordinance starts to develop, but this way, there's different options available.

MR. WEISS: Mayor.

MAYOR GREENBAUM: Chuck, correct me if I'm wrong, based upon our conversations in terms of moving forward with Master Plan amendment that in fact it's really not binding at all with respect to any type of teeth that might be put in the Master Plan, it's simply a guideline by which the ordinances can be given some legal affect that are drafted. Isn't that right?

MR. MCGROARTY: Well, yeah, it's right in the sense that the governing body can always deviate from a Master Plan. I think the language the Courts have used is substantially similar. You can deviate, the governing body can as long as there, with a majority and put their reasons on the record if they deviated from those standards.

MAYOR GREENBAUM: Right, so even if we give a density, the governing body is still able to change the density as they see fit consistent with whatever leeway the Master Plan amendment gives them.

MR. MCGROARTY: Yes, I mean there can be, they're not bound by, the governing body is not bound by this recommendation. It'll be contingent on infrastructure and water, sewer and roads.

MAYOR GREENBAUM: Likewise, the governing body, the governing body actually is the entity which adopts the ordinances that have the teeth in terms of development in conjunction with a review by the Planning Board.

MR. MCGROARTY: Yes.

MAYOR GREENBAUM: Okay, so really what the Planning Board is doing here is giving the governing body some direction in terms of ultimately what this Board believes is the right way to go with this particular area in general terms.

MR. MCGROARTY: Yes, and again, if an ordinance is adopted, it ought to be at least substantially similar to this, unless there is some drastic reason why that would be inappropriate.

MAYOR GREENBAUM: Substantially similar, would that include an increase in terms of density if that's what the governing body felt from, you have four to five, and if the governing body decided that five to six were more appropriate density for this area for whatever reason, is that something that would be substantially similar?

MR. MCGROARTY: Well, this is one of those times when I get to say I'll defer to the attorneys. But I would think it's substantially similar, yes because the Planning Board is considering, you are considering this evening residential use. And when we get to a point where an ordinance is drafted, again, the density has to make sense in terms of, that it can be sustained out there in terms of water, sewer, road system, infrastructure and so on, but I think the short answer is yes. I think it would be.

MAYOR GREENBAUM: So then the governing body likewise could come in and say you know what, we think four to five is too high, we think three to four or two to three is a better density. Not that I'm suggesting that, I'm just talking about in terms of the governing body's ultimate ability to draft the ordinances that are going to be required to do whatever type of development is deemed to be appropriate in that area.

MR. MCGROARTY: Right, I agree. Tiena may want to...

MS. COFONI: No, I agree.

MR. WEISS: Anybody else have any questions? I think, I had a slight conversation with Tiena and clearly the Mayor was asking the kind of questions that I thought the Planning Board should understand. What I want to do is I want to have Tiena just explain to members of the Planning Board. Some of us have been through this process some have not, and so the Planning Board is going to be asked to make a vote and vote on something, and the question might be what are voting on, so I want Tiena to explain the process, and then, once we all have an understanding, I'll open it to the public if anybody from the public has any comments. But let's make sure we understand why we're here and what we're going to do.

MS. COFONI: What the Planning Board is being asked to do tonight is to actually vote on the amendment to the Master Plan. This is a Planning Board document, and while the function of it is to essentially make general recommendations as the Mayor said to the governing body, this is your document, so you're voting. So you're not recommending approval of it to the Township, this is your document, you're going to vote and approve and adopt it, and by adopting it, you're then saying okay this is how we think this land should be zoned and regulated, and please governing body use this as a guidance when you're developing ordinances. But I am told from Chuck and Catherine that they're hoping that the Planning Board feels comfortable enough with the document that was prepared that there is a vote tonight to hopefully adopt it.

MR. WEISS: Okay, so everyone understands what we're going to be asked to do.

MS. COFONI: I know you all know this, once the governing body does propose ordinances, of course those zoning ordinances will come to the Planning Board for referral in between introduction and adoption by the governing body, so we will get a look at those ordinances and primarily your function at that point is to determine its consistency with the Master Plan.

MR. WEISS: Chuck, do I assume that you've completed your presentation?

MR. MCGROARTY: Yes.

MR. WEISS: Okay, so what I'll do at this point then, let me open it to the public. If anybody from the public has any comments about anything Chuck might have spoken about or any comments that you feel might be helpful before the Planning Board votes, I invite you to the podium. Will you state your name and address. I see absolutely no takers, and therefore, I am going to close it to the public right about now. Okay, so it's closed to the public. Anybody else on the Planning Board have any other questions, comments, I see none.

MR. FLEISCHNER: Wait, wait, I have a comment, of course.

MR. WEISS: Okay.

MR. FLEISCHNER: Based on what the Mayor says, we vote on what Chuck has presented and we say hey, this is a good plan or it's not a good plan. Either way, and if we say it's a good plan, then it goes obviously to the governing board, and they say you know what, just being devil's advocate, we don't like it, we think there should be 20 units per whatever it is and put up a high rise. And I have no problem with high rises, depends how high they go, then we have to change other ordinances in Town that limit height, but the governing board can do that, so in reality, what we are approving or being asked to approve, is a document that is only valid in this room, when we're here.

MR. MCGROARTY: No, I don't see it that way.

MR. MANIA: That's not true.

MR. FLEISCHNER: That's why I'm saying out loud.

MR. MANIA: I know what you're saying.

MR. MCGROARTY: Well, let me say, there's you know 30 or 40 years of case law on this kind of stuff, but again, the ordinance, and as Tiena said a moment ago when the ordinance is drafted, it comes back to you for review to see if it is again, substantially consistent with the Master Plan. But the bottom line

and you heard, governing body, they have the legislative authority to create ordinances, so they can change, and they can actually ignore this, they can modify this...

MR. FLEISCHNER: That's the only point I'm trying to say, you can, you know...

MR. MCGROARTY: ...but you still have a say in terms of, for better or worse saying if you feel it deviates too far from what the Master Plan recommends, if an ordinance were drafted that would do that...

MR. FLEISCHNER: But that has no basis either, we can say whatever we want then.

MR. MCGROARTY: I guess the point I was going to make though is that the document a Master Plan does have weight and it is important and I can tell you having just gone through a three week trial, in another jurisdiction, that it has a tremendous amount of weight and importance and so, there has to be that inter-relationship between your ordinances and your Master Plan.

MR. FLEISCHNER: That's why I said it so you would say what you just said, and now it's on the record.

MR. MCGROARTY: Oh, well, we didn't work that out beforehand.

MR. FLEISCHNER: I know, we didn't. It just worked out that way. But thank you, I appreciate that.

MR. WEISS: Henry.

MR. FASTERT: So let's use Joe's example, the governing body said okay, now we want to make this 20 units per acre. Does that meet the requirements of substantially similar, whatever the phrase was, Tiena and Chuck?

MR. MCGROARTY: Well I guess the question is, first and foremost, do you think residential use, and we're talking now about the residential, I guess the Light Industrial and General Industrial is less of a concern here, but if residential use makes sense, then if a greater density is advocated later, presumably there is a good rationale for that and there would be the substance there to support that, that again, the infrastructure is in place or can be provided for et cetera, and so, if you are taking the position tonight that residential makes sense, then I think working out the density, there's nothing particularly magical about four to five units an acre, it was based on our preliminary analysis with the other people involved that it would work out there, in terms of what's available.

MR. FASTERT: So, similar use is really more about the type of use as opposed to the density of use?

MS. COFONI: Yes.

MR. MCGROARTY: Correct, perfect, right.

MR. WEISS: Mayor.

MAYOR GREENBAUM: Yeah, anytime that you go before a Board and you are looking for a use variance, the Master Plan is the document which the planners rely upon in terms of this is why I don't think it's inconsistent with the Master Plan, so on and so forth. And again, coming back to what Chuck said, there has to be some rational basis for the governing body to totally abandon the Master Plan, it has to be either somewhat consistent with it or the governing body has to come back and ask the Planning Board to do another amendment if they feel there is some radical change that they want to do in that area.

MR. FASTERT: it sounds like a radical change...(Inaudible) make residential we want to make it industrial.

MAYOR GREENBAUM: I would imagine that's one and I would imagine that if the governing body of which I am not a member of the governing body, it's the seven members of the Town Council who ultimately vote, it would be, it they all of a sudden, if you had a density in the Master Plan of one unit per acre, and all of a sudden the governing body passed an ordinance that said 20 units per acre, that would be something which I think would be viewed as not substantially similar.

MR. FASTERT: Even though it's the same use type?

MAYOR GREENBAUM: Yeah, I would imagine that if you just totally go over, just abandoned in any form, the Master Plan it might be subject to, that ordinance might be subject to attack as inconsistent from the Master Plan. That's my, I mean no one's looking to really radically change what the, this is consistent with what we're trying to have happen in that area of Town. So, that's what we're asking for in terms of the administration.

MR. FASTERT: John.

MR. MANIA: Hypothetically, if the governing body made a change, a drastic change, would it come back to the Planning Board?

MAYOR GREENBAUM: No. I don't want to answer the legal questions, but my impression is that the ordinance would be subject to attack as invalid as it is radically inconsistent with the Master Plan. That's my guess is how it would come back.

MR. MCGROARTY: Mayor, may I just, I'll jump in on it too. Let's say that six months from now, if you adopt this tonight, whatever six months from now it comes out that a different density makes more sense or it works better as a plan that really gels and so on, probably the appropriate way and one way to do it is just simply amend this again. It's not a big production, we've already put the base line in place for residential, the density, again is based on the analysis we were able to do to date, if we have more information, things change in the future, that way you can keep the ordinance and the Master Plan in harmony as well.

MR. MANIA: As a member of the governing body, if there were a change made, I would hope that the Planning Board would review it and make suggestions to the governing body.

MAYOR GREENBAUM: Well, that's always the case.

MS. COFONI: What happens would be is that the governing body would introduce an ordinance stating whatever they wanted, and then if it's a zoning ordinance which of course it would be in this case, it comes to the Planning Board for review. That review is primarily to determine whether or not it's consistent with the Master Plan. Essentially that's the language. At that time, typically if you determine it's substantially inconsistent with the Master Plan, and you would probably include some other gratuitous comments along with that, in regard to your opinion on the ordinance, it goes back to the governing body. In order to adopt that, the governing body has to adopt a resolution setting forth all the reasons why they're going to adopt the ordinance.

MR. MANIA: Right.

MS. COFONI: In spite of the fact that it's inconsistent with the Master Plan. I see that rarely, most of the time what you see is, if there's a change of opinion about how the property should be used, there's an amendment to the Master Plan.

MR. WEISS: Dan.

MR. NELSEN: Not to get too thick into the weeds, or too deep into the weeds, we're hearing numbers of four per acre and perhaps 20 per acre, and then we're talking about the BASF property, which I imagine if that were converted into residential that would be a multi level situation. Those numbers, would they, how would that work, would that be per acre, per level?

MR. MCGROARTY: Per acre. It would be per acre. So a multi family building would be permitted if, whatever the acreage is, let's say the BASF campus, I think it's like 97 acres, but make it 100 just because it's easy. If it's four units an acre, that's your density and you have 100 acres so you get 400 units. How you apportion those units within the existing facilities and new buildings, the ones Joe was talking about earlier, and some other configurations, and that depends on how the ordinance is drafted and that is work that will take place later if this gets that far, so that's how it works Dan, you just calculate it based on the acreage and it's, and that's why, Henry's question earlier, there's more options than simply single family because out there it really, when you're talking about that kind of density you need those kind of options.

MR. WEISS: Nelson.

MR. RUSSELL: It's my understanding that regardless of what the governing body does, the Master Plan stands unchanged, correct?

MS. COFONI: Correct. The Master Plan is the Planning Board's document, the governing body doesn't adjust or amend the Master Plan.

MR. RUSSELL: Thank you.

MR. WEISS: Anybody else? Okay, Catherine, I think at this point I will ask for a motion, see if we can get that seconded and then we'll go for Roll Call. David.

MR. KOPTYRA: I'll make a motion to accept.

MR. MANIA: I'll second it.

MR. WEISS: Yeah, let's come back, David, you're going to make a motion to approve the amendments?

MR. KOPTYRA: Approve the amendments.

MR. MANIA: And I'll second it.

MR. MCGROARTY: Oh, and Mr. Chairman.

MR. WEISS: Go ahead.

MR. MCGROARTY: The document that you are, that has been moved then tonight, will have of course, it'll have tonight's date, today's date, December 17 draft will be removed and the correction Mr. Russell pointed out on page 12 will be made. Those are the only changes then.

MS. COFONI: And exhibit four?

MR. MCGROARTY: Well, yeah, from the original document that you had, I created a new exhibit four.

MS. COFONI: I don't know if it's just my version.

MR. MCGROARTY: I'm glad you mentioned that because the small one acre lot that contains the cell tower was not depicted on the first version, so exhibit four shows that the property in question is actually lot 1.01 and block 402 and it's the one that contains the cell tower. That is now shown as a separate distinct lot on exhibit four. Thank you, Tiena. So those are the changes on that.

MR. WEISS: And we do have that exhibit in our packet.

MR. MCGROARTY: Right.

MR. WEISS: Okay, so David with that, Chuck's comments, small little changes, that's acceptable?

MR. KOPTYRA: Yes.

MR. WEISS: Seconded by John. Anymore conversation? Seeing none. Roll Call, please.

ROLL CALL:

Joe Fleischner	-yes
Brian Schaechter	-yes
Mayor Greenbaum	-yes
David Koptyra	-yes
John Mania	-yes
Dan Nelson	-yes
Nelson Russell	-yes
Frank Wilpert	-yes
Howie Weiss	-yes

MR. WEISS: Okay, that concludes the public hearing on the amendment to the Land Use Plan Element of the 2003 Master Plan. For those who came out tonight, I certainly appreciate your attendance tonight I know everyone's time is valuable. We have nothing else on our Agenda, does anybody else have anything? We did speak last week, if anybody wanted to join the Planning Board for a year end celebration as we know this is the last Planning Board meeting of the year, we were going to go down to Flanders and have a drink. John you weren't here last week, we did talk about going down to the Corner Pub to have a drink, so as we adjourn tonight, that's where we're headed.

MRS. NATAFALUSY: Reorganization January 14th.

MR. WEISS: Reorganization meeting is January 14th. That's a little late, isn't it?

MRS. NATAFALUSY: It's the second Thursday.

MR. WEISS: Okay.

MRS. NATAFALUSY: Okay.

MR. WEISS: So that being said, somebody make a motion to adjourn.

Adjourned 7:45 p.m.

Transcribed by Secretary in Clerk's office