

1. FLAG SALUTE & CERTIFICATION OF COMPLIANCE

Chairman Bruce Stern called the meeting to order at 6:00 p.m. with the Pledge of Allegiance and Ally Morris read the Certification of Compliance with the NJ Open Public Meetings Act:

“The time, date and location of this meeting was published in the *Asbury Park Press* and posted on the bulletin board in the office of the Township of Lakewood at least 48 hours in advance. The public has the right to attend this meeting, and reasonable comprehensive minutes of this meeting will be available for public inspection. This meeting meets the criteria of the Open Public Meetings Act.”

2. ROLL CALL

Mr. Garfield, Mr. Flancbaum, Mr. Isaacson, Mr. Meyer were present. Mr. Gonzalez from the Zoning Board was present as an alternate.

3. SWEARING IN OF PROFESSIONALS

Mr. Terence Vogt, P.E., P.P., C.M.E. was sworn.

4. MEMORIALIZATION OF RESOLUTIONS

1. **SD 2396 Mordechai Eichorn**
326 & 332 River Avenue & 12 Birch Street Block 417, Lots 20, 21, & 23
Minor Subdivision to create six lots

Mr. Meyer questioned the conditions included in the resolution. He recalled the applicant indicating that the driveways would be 3 car lengths wide and that no parking on Route 9 was requested. Mrs. Morris read from the draft resolution where Mr. Flannery’s testimony referenced the same, and recommended adding an additional Condition reiterating said testimony. Mr. Meyer agreed.

A motion was made and seconded to approve.

2. **SP 2339AA Khal Bnei Torah**
828 Ridge Avenue Block 189, Lot 26
Change of Use/Site Plan Exemption to convert an existing house into a synagogue

A motion was made and seconded to approve.

3. **SP 2343 Congregation Torah Utefilah**
141 Miller Road Block 12,02, Lots 8 & 18.02
Minor Site Plan for a parking lot addition

A motion was made and seconded to approve.

4. **SD 2299 Jonathan Rubin**
Ocean Avenue & Pearl Street Block 246, Lots 40, 41, 42.01, & 67
Extension of Minor Subdivision to create seven lots

A motion was made and seconded to approve.

5. PUBLIC HEARING

1. **SP 2310 The Parke at Lakewood, LLC**
752 & 688 Cross Street Block 524; 524.23, Lots 2.03 & 77.02; 1
General Development Plan for a Planned Unit Development

This is a continuation from the July 23, 2019, meeting. Mr. Garfield stepped down.

Mr. Stern discussed order of testimony with Mr. Jackson and indicated they would start with a redirect. He asked Ms. Donato who else she would be presenting, perhaps her planner.

Ms. Donato indicated her presentation would be the redirect of Mr. Goll, and also the testimony of her planner. Mr. Schneider said he would follow with his rebuttal as well as any items the Board had requested that they address.

Ms. Donato reminded that the applicant was requested to address the 48" inch pipe, which would be new testimony that warrants new cross-examination. Further, fiscal impact testimony may warrant further presentation by the author of the report.

Mr. Stern replied that fiscal impact isn't really part of planning, so he will give it a little bit of leeway but can't afford to lose another four hours on fiscal impact. His inclination is that they will not be addressing that study.

Mr. Jackson advised that the Board should hold that decision in abeyance until the objector's testimony and credentials have been presented.

Ms. Donato indicated that she did not submit a memorandum as previously requested by the Board because the Municipal Land Use Law offers opportunity for cross-examination.

Mr. Jackson stated that proceedings before Boards are not adversarial proceedings, and that the right to cross examine witnesses is not an absolute right and is subject to reasonable discretion by the Chairman of the Board. It is common procedure for the Board to have items presented wherein the witness who prepared that report is not present to testify, such as surveys, police reports, etc.

Mr. Jackson said Ms. Donato might ask the Board to draw an adverse inference from the fact that they did not call that witness. Mr. Jackson said Mr. Schneider is able to make that strategic design on his own behalf.

Mr. Jackson continued that he thinks the fact that they asked the applicant to prepare a memorandum on what he feels is a novel question, and they declined to do so, is also something to be properly weighed in the Board's decision.

Mr. Schneider stated that Mr. Jackson misspoke and intended to say the Board asked the objector for a memorandum. Mr. Jackson confirmed.

Mr. Stern asked Mr. Schneider who he had available to testify, and Mr. Schneider indicated his traffic engineer and professional engineer were present and available.

Ms. Donato called Mr. Goll to testify. Mr. Geoffrey M. Goll, P.E., civil engineer specializing in stormwater management, geotechnical engineering and civil engineering, was reminded by Mr. Jackson that he is still under oath.

Ms. Donato reminded Mr. Goll that he was questioned about his report that he had submitted to the DEP in opposition to the CAFRA permit. Those had not yet been marked into evidence. Ms. Donato presented a letter dated May 24, 2017, and Mr. Goll confirmed that was the report in question. It was marked as D-16.

Ms. Donato directed attention to page 3 of the report, which references information regarding the 1997 CAFRA permit for the Fairways combined residential and golf course application.

Mr. Schneider objected, indicating that this is a report that was submitted to and acted upon by the DEP. DEP's decision is under appeal and he doesn't understand why the Board is rehashing a permit that is not under their jurisdiction.

Ms. Donato said previous cross examination appeared to amount to a difference of opinion, which is incorrect, and this report goes to the heart of that issue.

Mr. Jackson indicated the Board should have latitude on this issue. One of the concerns the Board has to look at is the long-term impacts as well as the environmental issues of this project. He asked Ms. Donato if the DEP permit was rescinded.

Ms. Donato stated that it was originally denied, and later settled which resulted in their approval.

Mrs. Morris interrupted due to audio feedback issues somewhere in the audience and resolved the problem. Mr. Schneider objected on the record to Ms. Donato coaching the witness during the distraction and stated that her questions should be public while the witness is on the stand. Ms. Donato denied she was coaching the witness.

Mr. Schneider indicated that the DEP encourages permit denials to go through a settlement program, which allows for public notice and public comment on the same. DEP approved a scaled down version of the project which is now on appeal.

Mr. Jackson said to Ms. Donato that during their phone conversations she indicated that the DEP had rescinded the permit or set it aside, based on new information she had provided them. He asked if that was correct.

Ms. Donato restated that regarding the discovery of the 48" pipe, she had attempted to depose one of the DEP professionals. In that process she explained to the DEP that the newly discovered file on the old CAFRA permit was essential for review in the 2017 CAFRA permit. The DEP professional then engaged in a process that Ms. Donato is not aware of, which eventually the DEP said we have found the files that we didn't have when they approved the 2017 permit. Ms. Donato OPRA requested those files, presented their existence to the judge in the Civil Appeals Settlement program, and now the permit is going for reconsideration based on new information.

Mr. Jackson asked again if the permit had been rescinded or set aside.

Mr. Schneider said no.

Ms. Donato said she is representing that the Superior Court of NJ appellate division is issuing an order remanding the permit back in light of the new information.

Mr. Jackson asked if there was an order.

Ms. Donato indicated that the DEP employee is on partial retirement and it has not been issued yet but she is expecting it this week. She will provide it to the Board upon receipt.

Mr. Jackson stated that it is a straightforward question. Is there an order?

Ms. Donato said it was agreed upon but not yet issued. Mr. Jackson stated that his understanding is that the judge can't issue an order without consent.

Ms. Donato stated it was with consent.

Mr. Schneider denied that.

Ms. Donato said it was another attorney from Mr. Schneider's office that gave consent on the phone. The judge also suggested there were other avenues to order reconsideration.

Mr. Jackson stated that there is a vast difference between what a judge says it might do and what is legally on the record, namely the permit.

Mr. Stern asked that if the permit had been rescinded, what would that do to this proceeding?

Mr. Jackson stated that the Board should know about it, but it doesn't affect this proceeding at all. CAFRA is CAFRA.

Mr. Stern stated there is no reason they can't proceed tonight, and Ms. Donato confirmed there is not.

Mr. Schneider questioned the limits of the redirect and felt this discussion was outside of that scope. He stated that Ms. Donato is trying to convince the Board that the DEP made the wrong decision. Ms. Donato denied that.

Ms. Donato returned to Mr. Goll's questioning. She asked Mr. Goll if he interpreted Mr. Schneider's questions at the previous meeting to imply that Mr. Goll had a debate with the DEP and that he lost.

Mr. Goll said yes.

Ms. Donato asked if he brought anything to the DEP's attention regarding the 1997 files from the CAFRA permit.

Mr. Goll said at that time he only had the permit, not the additional files.

Mr. Vogt asked for clarification on the 1997 permit.

Mr. Goll indicated it was for the golf course and residential development of the Fairways.

Mr. Goll discussed the review of the original permit after his discussion with the DEP and there was new information that hadn't been available at the time of the 2017 permit approval. This information illustrates that the development was reviewed originally as one in 1997 and that the golf course can't be reviewed individually, as it was in the 2017 permit.

Mr. Goll referenced previous Exhibit D-15, the Preliminary Stormwater Management Report and Drainage Calculations prepared by Lynch, Giuliano & Associates, dated 1996, which was submitted to the DEP as part of the 1997 CAFRA Permit application for the Fairways development.

Ms. Donato directed the Board specifically to page 12 of 42, which is a map that labels the golf course area as a "recharge area."

Mr. Schneider objected and stated that this is not redirect, as he had not questioned the witness about this report. Ms. Donato said this report goes to the credit of the witness who Mr. Schneider undermined and alleged had only a difference of opinion with the DEP.

Ms. Donato stated that the information that is coming to light throughout the proceedings is changing the nature of the testimony to be presented and that the court cases support the Board being flexible.

Mr. Jackson agrees that this is an important part of this case and the Board should hear the testimony. The DEP did not have this information at the time of their 2017 approval.

Ms. Donato asked Mr. Goll how basins 7, 8, and 9 in the Fairways are treated in the report.

Mr. Goll stated that they are linear basins that discharge into each other and then into the golf course.

Ms. Donato asked if those basins have permits associated with them.

Mr. Goll said yes, the CAFRA permit and also DEP dam safety permits. They are registered Class 3 dams, which is because the water is elevated greater than 5 feet from the top of the embankment down to the invert of the outlet structure.

Mr. Jackson asked if the map in question or any others present contours that support the explanation of the basin flows.

Mr. Goll stated that the report also has a USGS map but this one is the clearest.

Mr. Stern asked where this is going and what the relevance is.

Mr. Goll said that regulated dams in the state have structures with holes that allow the water to flow out. If the embankment of the pond is high enough, over 5 feet, it is also regulated by dam safety. They have an outlet structure, a low level outlet and low level invert. The issue is the 48" pipe is not just providing flow for the Fairways it is also the spillway for Basin 8.

Ms. Donato feels this map supports previous statements by Mr. Goll about the water flow.

Mr. Stern asked if this was a dam safety issue and potential dam busting.

Mr. Goll said no.

Mr. Flancbaum summarized that the DEP didn't have this information before, if they had it when they approved the 2017 permit they may not have approved it.

Ms. Donato said yes but it is also relevant information for the Board.

Mr. Vogt stated that this great information. This information will be used in review of the design in accordance with the DEP's storm water rule regardless of the CAFRA permit status, when that review is to take place. He also referenced that the report is titled Preliminary and questioned if there is a later revised version of this report. Mr. Vogt said that the full review of the stormwater design and the impacts of the overflow would occur later when the Site Plan or Subdivision applications come in. And if the design doesn't work, the applicant will have to redesign.

Mr. Goll confirmed that this report is in fact the latest version and is the one that was approved with the 2017 CAFRA permit.

Ms. Donato said that they tracked down one of the original engineers that prepared this report and they found a lot of subsequent reports that were reviewed by Mr. Goll. The 48" pipe is still there as originally designed and is also on the final subdivision plans the Township has on file.

Mr. Schneider objected when Ms. Donato started talking about legal issues. Mr. Jackson agreed to the objection.

According to 55D-45, Mr. Jackson stated that the criteria do not state that the drainage must be finalized. The Board Engineer is indicating that this will be addressed at the appropriate time.

Mr. Stern asked if the 48" pipe means there is the potential for something really bad happening.

Ms. Donato said that's what she's trying to illustrate. She argued that Mr. Vogt stated he had not reviewed the drainage because this is a conceptual plan, but she disagrees. This not conceptual. The Ordinance says a stormwater management plan setting forth the proposed method of controlling and managing storm water on the site.

Mr. Vogt said that is correct, that does not mean a stormwater design. The applicant has met the letter of the law regarding the submission requirement.

Mr. Jackson said then there is a difference between plan and design.

Mr. Stern requested relevance for all further testimony.

Ms. Donato asked Mr. Goll if he did any kind of analysis as to the effect on this pipe by the current design plans.

Mr. Goll said the applicant assumed about 6 acres of a watershed for the 48" pipe, from the rear yards of the homes along the golf course. If they approved the plans as designed...

Mr. Schneider objected, and stated the Board isn't being asked to approve the stormwater design at this time. Ms. Donato said yes they are.

Mr. Flancbaum said there is no plan, no stormwater design at this time. Nothing is going to happen at this time.

Mr. Goll said if the applicant did not include the 364 acres that flows into the 48" pipe, it will overwhelm their stormwater detention system.

Mr. Jackson asked what if they do take it into account.

Mr. Goll said they would probably have to redesign the site.

Mr. Stern stated that the testimony last time was that he didn't do the calculations.

Mr. Goll said they now did run the numbers. Ms. Donato conceded that this is new evidence, but she thinks the Board wants to hear this information. Mr. Jackson agreed.

Mr. Goll retrieved his notes on the matter. The calculations show that the 48" pipe starts to convey flow around the 10-year storm event. At the 100-year event, a peak flow of 51.17 cubic feet per second exists. The volume is

around 32.6 acre-feet, which is a foot deep of water over a certain amount of acres. That is the discharge from the Fairways.

Mr. Stern asked what happens if that is overlaid on the proposed development plan

Mr. Goll said it is a lot larger than the basins they have proposed as of now.

Mr. Stern asked if the system can handle it, or if he doesn't know.

Mr. Goll said the designed system didn't take that flow into account. The basins are sized based on smaller calculations. He can't say for sure that something catastrophic would happen as designed, but there is a high probability it would.

Mr. Isaacson asked if this is overcomeable.

Mr. Goll said sure, you'd have to enlarge the basins and lose a lot of homes. He said the 1997 permit design assumed the golf course would be taking care of their recharge.

Mr. Isaacson said so there is the ability for the new development to accommodate the flows.

Mr. Vogt said there are options, including bypassing the water through the new site at the current rate at which it is discharging. They won't know until they see the design. And if the design is undersized it would have to be redesigned.

Ms. Donato and Mr. Isaacson discussed what the Board is being asked to approve. Mr. Isaacson said this design is theoretical and the actual design will be reviewed at a future application. It's nonsensical to review it at this time.

Ms. Donato said the Board is making a terrible mistake by considering the stormwater to be theoretical.

Mr. Schneider entered an objection and indicated that if Ms. Donato isn't limited to asking questions, he shouldn't be either. He calls the Board's attention to the decision of the appellate division in *Citizens United vs City of Millville Planning Board*. Which is a very similar case, where objectors said that the Board can't approve a development plan unless it is designed essentially to the point of a site plan. And the court said no, we're just talking feasibility at this stage.

Mr. Stern asked what level of design the Board is supposed to be looking for.

Mr. Schneider said the court quoted the MLUL, "the method, merely the method, proposed for dealing with stormwater," must reasonably be shown to be feasible. If you required the developer to make proofs of full site design at this stage, you're defeating the whole purpose of the general development plan.

Mr. Jackson stated that he reviewed the case, and he quoted the findings including that until a specific design is undertaken it is impossible to conduct a detailed engineering analysis, and that more detailed plans would be furnished over the long term of the application process. This is to be dealt with at a later date.

Ms. Donato referenced *Field vs. Franklin Township*, which is another general development plan application which says otherwise.

She then asked Mr. Goll if the basins shown on the plan are feasible to handle the runoff he calculated.

Mr. Goll said no. Mr. Goll said the pipe that comes from the Fairways goes into the lowest elevations, so without employing pumps they wouldn't be able to discharge it past or around the site. The design is not feasible based on the current layout. He said further the seasonal high water table indicates the ponds constitute where the groundwater level is.

Ms. Donato asked if it's feasible for the developer to change the flow from the 48" pipe, without consequence.

Mr. Schneider objected and said their application does not propose to change that flow or touch that pipe.

Ms. Donato asked Mr. Goll, if the 48" pipe flows as shown on the plans, what would happen?

Mr. Goll said the existing pond and the ability to overflow, it's actually smaller and has to get over retaining walls. Therefore, it will increase the hydraulic head and it could back up into detention basin 8 on the Fairways property and reduce the capacity of that basin to pass flow out of the outlet structures. There will be a significant impact, the basin could stop functioning, it could over top.

Ms. Donato if this would affect the dam safety permits in place. Mr. Goll said yes.

Ms. Donato asked Mr. Goll, PE, about the front yard setbacks that he found deficient and how he scaled 103 of them as under the requirement.

Ms. Donato indicated Mr. Goll had previously said the GDP and the CAFRA applications were virtually identical.

Mr. Goll said yes, the overall layout, the road circulation system, retaining walls, basins. The DEP looks at overall coverage, not number of units. Mr. Goll said the GDP didn't provide enough information to determine if the project is feasible, so they took that information from the CAFRA permit. If they change the impervious coverage, a revised CAFRA permit would be required.

Mr. Schneider indicated they've previously stated that a revised CAFRA permit would be required.

Ms. Donato asked if they'd have to go back if they revise the retaining walls. Mr. Goll said yes. Mr. Schneider argued we've already conceded this.

Mr. Jackson stated that he's looked at the case Ms. Donato mentioned, Field vs. Franklin Township. The court said there that the MLUL was not violated because that approval was subject to fulfillment of certain terms and conditions as a future unspecified date. So even Ms. Donato's case said it is appropriate to get these details worked out at a future date.

Ms. Donato said Mr. Jackson misread the case and is not presenting it correctly.

Ms. Donato's last question about the DEP is if the applicant made these changes, would it affect the GDP?

Mr. Goll said from an engineering layout, yes. It would not be feasible to have the same number of units with the issues that have been raised regarding stormwater management. Mr. Goll confirmed he presented a number of exhibits to illustrate ground elevation changes, and the impact of the proposed homes on the site lines of the existing homes.

Ms. Donato presented a report by Mr. Goll dated today that summarized the findings regarding the 48" pipe and stormwater concerns, and basin 8's relationship to the golf course. This was marked as D-17.

Mr. Schneider objected to this new piece of evidence, since Mr. Goll's testimony already went over these results.

Mr. Jackson agreed, but Ms. Donato asked it to be marked as D-17 anyway. She stated that she has a major issue with the varying perspective on evidence and procedures that the Board has been advised to do. Does the Board want facts?

Mr. Stern stated this is clearly new evidence, but it is based on newly discovered documents. So it is beyond the scope of a redirect. If she'd like to submit it to the Board, they will read it. Just like at the last meeting, she brought up some issues and the Board asked Mr. Schneider to clarify. They are not going to read it and discuss it now.

Mr. Stern offered Mr. Schneider to re-cross.

Mr. Schneider asked if any questions will be deferred to a later time. Mr. Stern said yes.

Mr. Schneider asked Mr. Goll where the setbacks were measured. He said from the property line to the building, not from the street to the building. Mr. Schneider asked, regarding the discharge from the 48" pipe, was that 51.17 cubic feet per second?

Mr. Goll checked and said yes.

Mr. Schneider asked if the 32.26' acre-feet was the 24-hour volume. Mr. Goll said yes.

Mr. Schneider asked to be walked through the calculations.

Ms. Donato objected and said the Board has said before that they don't want details, and this goes to the uniformity of procedures.

Mr. Schneider said this is one detail that he has questions about. Mr. Stern said he thinks this is permissible.

Mr. Schneider asked again how Mr. Goll came to that number.

Mr. Goll elaborated on a number of factors that were considered, including the Lynch Giuliano report regarding layout, stormwater structure information provided on the plans, and also digitizing the prior grading plan and basins, in order to understand how the basins functioned, using the outlet structure info to input into their hydrocad program.

Mr. Schneider said so there would be more than one number put into a program.

Mr. Goll said I guess it would be multiple numbers including the stage area discharge, which is the elevation of the storage of the basin and discharge out of the pipe.

Mr. Jackson interrupted and questioned why Mr. Goll said "I guess."

Mr. Goll confirmed it would be multiple numbers.

Mr. Schneider questioned the certainty of the 32.6 acre-feet number, and Mr. Goll insisted it is correct. He said we ran the calculations and that's what we got.

Mr. Schneider asked if Mr. Goll did the numbers himself and if they were double-checked, and Mr. Goll said he oversaw the calculations done by his staff. Mr. Schneider had no further questions.

Ms. Donato asked who Mr. Goll had on staff. Mr. Goll stated it was Brittany as well as Dr. Clay Emerson who is a PHD hydrologist and engineer.

The Board recessed for a 5-minute break.

Mrs. Morris took role again. Mr. Gonzalez, Mr. Flancbaum, Mr. Stern, Mr. Isaacson, Mr. Meyer were present.

Ms. Donato called Ms. Barbara Allen Woolley-Dillon, of Tuckerton, NJ, who was sworn in. She detailed her qualifications and experience as a licensed professional planner, which the Board accepted. Her Summary of Qualifications was submitted as Exhibit D-18.

Ms. Dillon stated that she reviewed the Unified Development Ordinance history, UDO section 18-1021, 2017 Master Plan, Ordinance 2017-51, sat through all the Master Plan hearings, UDO section 18-606, and the Smart Growth Plan of 2013. Ms. Dillon also attended or watched the video of the hearings on this application and the fiscal impact statement, as well as the application materials and the plans that were submitted.

Ms. Dillon continued that as far as the 2017 Master Plan, under page 265 under A-2 for adult communities, location R-40 zone, the proposal is to delete the senior requirement but continue the planned community requirements.

Ms. Donato said this is the basis for how this site became rezoned from the golf course to residential development, and she marked it as Exhibit D-19. Ms. Donato confirmed with Ms. Dillon that this section was put into effect by Ordinance 2017-51. Ordinance 2017-51 was marked as D-20.

Ms. Donato questioned Ms. Dillon on the first page of Ordinance 2017-51.

Ms. Dillon stated there are conditions contained therein that indicates that for a non-contiguous cluster ordinance, when there are traffic improvements, a full traffic impact analysis is to be done ensuring a level of service C as a minimum. Further this is to be a traffic analysis of all dwelling units including basement apartments.

Ms. Donato asked if Ms. Dillon was aware that the requirement for level of service C or better was invalidated by the Superior Court. Ms. Dillon said yes.

Ms. Donato asked about section 18-606 which are the GDP requirements of the Ordinance. Ms. Donato marked this section of the Ordinance as D-21, and asked Ms. Dillon which requirements she'd like to highlight for conformance or non-conformance by this application.

Ms. Dillon stated a circulation plan, an open space plan...

Ms. Donato jumped to B-1 of the Ordinance, which Ms. Dillon said requires a general land use plan including the tract area and general locations of the land uses, total number of dwelling units, and non-residential floor area to be provided.

Ms. Donato asked if the total number of dwelling units is shown on this application.

Ms. Dillon said no, it says 556 but under the Lakewood Ordinance there is actually a potential to have basement apartments. If that is the case, it would double. So there are twice as many that could potentially be developed. D-1 of the Ordinance states that the density and intensity of the entire planned unit development shall be set forth.

Ms. Donato asked what other component should be addressed regarding non-compliance.

Ms. Dillon stated that an open space plan is required under B-3. As well as a utility plan, stormwater management plan, environmental inventory, community facility plan...

Mr. Stern asked her to specify what is not being complied with.

Ms. Dillon stated under number 10, the fiscal impact report, she has issues with.

Ms. Donato asked if the municipal development agreement under D-12 was provided.

Ms. Dillon said no she did not see that in the application materials.

Ms. Donato directed attention to the Smart Growth Plan of 2013. She asked Ms. Dillon to highlight the components she has interest in and why.

Ms. Dillon replied that there are a handful, page 9, page 21, page 16, page 7, and page 11. And page 6 too.

The Smart Growth plan was marked as D-22.

Ms. Dillon introduced page 6 titled Existing Generalized Land Use which labels the golf course as recreation. Page 9 is entitled Smart Growth Plan and shows the golf course on Figure 3.1 as existing parks, recreation, and open space. Page 20 is Environmental Preservation Strategy, also labeled as an existing park, recreation, and open space area. Page 21, under 5.2, shows the same thing.

Mr. Stern asked where this is going, is the point that this application doesn't comply with prior directives.

Ms. Donato said she didn't get there yet. She is reviewing the sections first and then will have Ms. Dillon state why she highlighted those sections.

Ms. Dillon stated that in particular this parcel is labeled as recreation and open space, and on page 9 they were looking for areas where future growth would occur. A triangle is labeled at Cross Street and Prospect Street as a center of growth where the growth is supposed to happen, not in the area where this project is located.

Ms. Donato asked if the development of this parcel would have a negative impact and Ms. Dillon said yes. There is actually a section of the 2017 Master Plan, page 66, to be labeled as D-23. She drew attention to the fifth paragraph down, last two lines. It talks about the area dedicated for park and recreation, and indicates based on the 2010 census there was a need for a certain amount of acres of open space and that by 2030 there could be a need for up to 1,628 acres. This property is identified as recreation and open space and this development would remove it from those roles.

Ms. Dillon states that the site as it is currently used is part of the recreation area for the Fairways development, an 18-hole golf course. The proposed general development plan would remove those 18 holes that were originally part of the Fairways. The clubhouse has not been addressed in this application.

Ms. Donato asked if Ms. Dillon reviewed the application for the alcoholic beverage license for the golf course. Ms. Donato marked the same as D-24.

Ms. Dillon stated that on page number 2 it was filed on March 13, 2017, and indicates on page 3 that it is for the Eagle Ridge Golf Club. Page 4 of the package, under 3.5, any grounds adjacent to the building includes the patio

area and golf course served by beverage cart. The following page, section 4.4, indicates there will be a restaurant, catering, and golf course, pro shop, merchandise sales, atm, cigars.

Ms. Donato asked if the clubhouse for the golf course is included in the property for the GDP application.

Ms. Dillon said it is on the very edge of it, yes.

Ms. Donato asked if the use of the clubhouse as described on the alcohol application are listed on the GDP application.

Ms. Dillon said no, and one of the requirements for the GDP application is to list the residential and non-residential uses.

Ms. Donato asked what is a GDP.

Ms. Dillon said the purpose of a GDP is to develop a plan on a larger scale that grants certain rights and vests the approval. There are certain rights that are guaranteed as part of the approval process. It guarantees the number of units.

Ms. Donato asked if in order to guarantee the units, the Board has an obligation to determine the feasibility of those units.

Ms. Dillon said yes, that's why a fiscal impact statement and stormwater is required to be prepared.

Ms. Donato asked if they come back later and need a bigger basin, would they keep that number of units.

Ms. Dillon said more than likely they will get the number of units regardless of what happens with the basin.

Mr. Stern asked not-withstanding if the Board Engineer requires that the basins be bigger. Other rules and ordinances would probably limit or govern the number of units, correct?

Ms. Dillon stated she hesitates to answer the question because she is not an engineer.

Ms. Donato said it is not an engineering question, the question is does the General Development Plan set the number of units, and does the Board have an obligation to fully determine the feasibility of the development before vesting a certain number of units.

Mr. Jackson stated that is not what the question was, the Chairman asked a question and that he deserves an answer.

Mr. Stern restated, if we approve this GDP with a certain number of units then is this Board tied for the next 25 years to the number of units or is that subject to all other Ordinance requirements which may mean less units. The unit number is a maximum not a minimum.

Ms. Dillon said if we find that there is something afoul later, the fiscal impact statement, etc., are all determined based on the number of units proposed now. If that changes later, all of these documents are incorrect.

Mr. Stern asked again about plan vs design of the stormwater from previous conversations.

Mr. Vogt stated that there is an inference that if the Board approves 600 units, that's it. But he respectfully disagrees. He read from the municipal land use law, 40:55D-45.6 titled "Revision of General Development Plan," which says that a developer can come back and reduced the number of units by 15%. That comes in to play if they provide a drainage plan that he decides later doesn't work, there is an avenue by which the plans can be adjusted so that the drainage works properly.

Ms. Donato says the "developer" may amend the plans. The Board isn't given the right to amend the plans. If the developer comes back and says you approved these plans, that's what was approved.

Mr. Vogt says the law says they must meet NJAC7:8, the stormwater rule, doesn't matter how many units. They have to comply with that.

Mr. Schneider stated that the applicant concedes that if they can't satisfy the stormwater rules, for example, they will revise the plans as necessary. It's ultimately a matter of law. The GDP doesn't authorize them to build whatever they want regardless of the law.

Mr. Stern said yes, thank you, but we still haven't heard that from the professional.

Mr. Isaacson asked Ms. Dillon to confirm what Ms. Donato said earlier, which is that if 556 houses are approved, they can do whatever they want to get 556 houses.

Ms. Dillon said yes, if they can make the site work and it is engineered properly, then yes that is what they will build.

Mr. Jackson said they have to get that approval down the road.

Ms. Donato asked Ms. Dillon about the approvals given for the Fairways residential and golf course.

Ms. Dillon said she looked at a map dated November 17, 1999, entitled Final Major Subdivision Phasing Plan by Lynch Giuliano Associates signed by John Woestnick PE.

Ms. Donato asked if this came from the record here in Lakewood Township.

Ms. Dillon said I believe so. It was marked as D-25.

Mr. Schneider asked if this is the entirety of the document.

Ms. Donato said yes.

Ms. Donato asked Ms. Dillon what the significance of this plan is.

Ms. Dillon said it shows the overall boundaries of the site, the residential units, the golf course, the clubhouse, and the access drives.

Ms. Donato stated so it is labeled as the golf course.

Ms. Dillon said yes.

D-26 was marked as an application to the Planning Board for the Fairways residential development and golf course.

Mr. Schneider objected, and indicated this was presented in discovery during litigation. The question of whether the golf course is part of the residential community is being determined during litigation.

Mr. Jackson stated he thought it was clear the Board is not determining this issue and asked what this exhibit has to do with the application before the Board.

Ms. Donato stated it is how this application will affect the validity and value of the Fairways community.

Mr. Jackson stated that he disagrees.

All parties discussed again the material omission of the site uses as depicted by the liquor license application.

Ms. Jackson asked again why we are reviewing the 1997 application documents again.

Ms. Donato asked Ms. Dillon about paragraph 10.

Ms. Dillon says it states proposed use as golf course for adult community. Also, Final Site Plan approval is checked with an 'X' and in parenthesis says "golf course." The golf course is not a permitted use without the residential community.

Ms. Donato asked does this application require any other approvals for use variances that are generated by eliminating the existing golf course.

Ms. Dillon said yes, and the 9-hole golf course that is to remain is on municipal property outside of the Fairways.

Mr. Jackson asked if the Fairways becomes a non-conforming use, and Ms. Donato said yes.

Mr. Flancbaum said no the golf course becomes a non-conforming use.

Ms. Donato said the Fairways becomes a non-conforming use without the golf course, and the golf course becomes non-conforming because it is not within the boundaries of the ACP (the Fairways).

Mr. Jackson asked for Ms. Donato to stop insulting the Board with side comments.

Ms. Donato asked Ms. Dillon, based on the documents just presented, is it Ms. Dillon's opinion that the Fairways and the golf course are one integrated community.

Ms. Dillon said yes, and Mr. Goll's analysis of the drainage supports that position.

Ms. Donato asked Ms. Dillon if there are any other documents that show the golf course is open space and introduced Exhibit D-27.

Mr. Schneider objected, and stated that the provenance of this exhibit is the basis of his objection. This is a picture that was hanging on the office of the Fairways.

Mr. Jackson said to be fair, this map is not signed or sealed and not properly authenticated.

Ms. Donato said it is a colored map showing the common areas of the Fairways Adult Community Project and the golf course being shown as open space. It's by Flannery, Webb, and Hansen.

Mr. Jackson said they are not here to authenticate it.

Mrs. Morris asked if this is a previous exhibit that the Board was unable to authenticate.

Ms. Donato said yes.

Mr. Jackson said that it is Ms. Donato's responsibility to identify the item as such and indicate why she now thinks it should be authenticated.

Ms. Donato, Mr. Jackson, and Mr. Schneider argued the point extensively. It was marked as D-27 for identification only, and Ms. Donato did not present it further.

Ms. Donato asked Ms. Dillon if it is her opinion that the golf course is part of the adult community project and if it is the open space for the project.

Ms. Dillon said yes, and removal of the golf course would dramatically alter what was previously approved and given rights by this Board.

Ms. Donato asked if it makes the Fairways a non-conforming use, and Ms. Dillon said yes.

Ms. Donato said the clubhouse itself doesn't have a golf course associated with it within the boundaries of the ACP. Ms. Donato asked if Ms. Dillon is aware this application is using the yards of the properties as open space.

Ms. Dillon said yes, and she has never seen an application where a private yard is then considered as common open space or open space for a large project of this nature.

Ms. Donato asked Ms. Dillon about the Fiscal Impact Statement.

Ms. Dillon referenced an old book no longer in print titled Development Impact by Urban Land Institute that directs how to prepare fiscal or community impact statements. She said it is still the assessment book that is typically accepted today as industry standard despite its age.

Ms. Dillon stated that she reviewed the Fiscal Impact Statement provided against this book. The flaws she identified are the number of units in the report is 556, negating to indicate the potential basement units that are permitted. Next, puma data, which is a particular, selected small area of data. She discussed factors included such as census data. The puma data in the Statement provided is not dated so she doesn't know what they referenced or what census counts they used. The further out the counts are from, the more skewed the results could be.

The other issue Ms. Dillon highlighted is the number of school children. Table 6 projects persons per household is 6.591 and children at 1.31. The math leaves 5.2 people not accounted for as being in school.

The other issue Ms. Dillon stated is the developments they were comparing with. The developments were completed in 2015, 2016, 2017, and it indicates that as development ages the number of school children increase. Prospect Vines is one of the older developments and is has the highest number of school children. The correlation also shows the smaller the number of homes, the less the number of school children.

Ms. Dillon discussed family ageing and progression of children into school ages. She stated that they didn't look at Lakewood as a whole, but only these three communities and she doesn't know why.

Ms. Dillon continued the other issue goes back to the date of the information they are using, back to 2015, 2016, 2017. We should be using more current information.

Ms. Dillon referenced footnote 7, which discusses the number of persons that reside in Lakewood at 97,000 people. The note says they referenced the ACS survey from 2016, but that was the year of the government shutdown and that data is not extremely valid. The numbers were not double-checked by telephone calls because of the shutdown. She feels the number of residents is wrong based on the use of this unverified information. If the number of residents is lower, the per capita cost for the students would be higher.

Ms. Dillon said the bussing costs were never ever looked at but given the issue of bussing in Lakewood this should have been specifically addressed and it is not.

Ms. Donato asked about special education costs.

Ms. Dillon replied that the study says 25% of the student population in this development is going to be special needs. Regardless of public or private school, if it is a special needs student that cost is born by the Board of Education and by the school district.

Ms. Donato asked for clarification on the puma data.

Ms. Dillon said typically this data is provided as an appendix in the study but in this case it was not provided.

Ms. Donato asked if she has a concern the family size is accurate.

Ms. Dillon said yes, and without that information they can't accurately determine fiscal impact.

Ms. Donato said per 18-606 B-10 the fiscal impact statement is supposed to be coordinated with the timing of the application.

Ms. Dillon stated that the phasing of the project should be incorporated into the Fiscal Impact Statement by illustrating the ageing of the students into the school age population.

Ms. Donato asked if neighborhoods prior to 2015 should have been looked at as well.

Ms. Dillon said you're supposed to guesstimate population based on the latest 2010 census information and then extrapolated based on new construction and new permits, and that wasn't done.

Ms. Donato said the Fiscal Impact Statement should also look at tax assessments.

Ms. Dillon said yes. The Fiscal Impact Statement indicates it will be a positive impact for the municipality. But residential uses are not typically a plus for the municipality. Issues on the expense side in the report are the costs for the school budget, bussing cost, several other things down to the number of police, fire, ems, library books, and government employees needed to service this development properly. This has not been analyzed.

Ms. Donato asked if the Fairways values would be diminished as a result of the loss of the golf course.

Mr. Schneider objected as to the witness's credibility for a value assessment, either as an appraiser or real estate agent.

Ms. Donato asked Ms. Dillon if as a planner she's been asked about impacts on value in a general sense.

Ms. Dillon said yes.

Mr. Stern indicated he heard the objection and agrees.

Ms. Donato asked Ms. Dillon if she is aware of any Fairways property owners who have received a tax reduction because of the loss of open space in the most recent tax cycle.

Ms. Dillon said yes. Ms. Donato marked as D-28 Memorandum of Judgement of Ocean County Board of Taxation dated May 1, 2019, and indicated that it is a public document.

Mr. Schneider indicated this is the first time he's seen it, and he doesn't see where this document indicates the reasons for a reduction.

Mr. Stern asked if this is an appeal.

Ms. Donato said it is an appeal by Mr. Rob Robison and his wife, but they are out of the country. She will withdraw it at this time until they can present it.

Ms. Donato asked Ms. Dillon how the population projection affects the fiscal impact.

Ms. Dillon stated if the population is incorrect then the assessment is going to be incorrect. The impact can't truly be measured because it's faulty information going in, it can't possibly be accurate coming out.

Ms. Donato asked Ms. Dillon if she heard Mr. Goll's testimony regarding the municipality's obligation to inspect and remedy stormwater management.

Ms. Dillon said yes.

Ms. Donato asked if the stormwater system was to fail, the municipality would have to inspect it.

Ms. Dillon said yes, and that is not reflected in the fiscal impact statement.

Ms. Donato said that Augusta Boulevard is a road owned by the Fairways association. As a planner, does Ms. Dillon look at how a development will be accessed.

Ms. Dillon said yes, and she has seen the access easement granted by the Fairways association to the new development.

This document was marked as D-29, and Ms. Donato stated that the relevancy is whether or not this development can provide secondary access here as required by the DEP and by the GDP.

Mr. Schneider objected, and said this is one of the plethora of lawsuits under consideration. It is better for the Judge to decide than the Board.

Ms. Donato said she is simply presenting this to the Board so they have a complete picture on how access will be provided.

Mr. Stern agreed with Mr. Schneider.

Ms. Donato asked Ms. Dillon what the access easement allows.

Ms. Dillon said under D first page it says the easement may not be used by any person on the adjacent parcel except for up to two dwellings.

Mr. Schneider objected again.

Ms. Donato said there is a circulation requirement for the General Development Plan.

Ms. Dillon said yes. Ms. Dillon illustrated on a map where the issue is.

Ms. Donato said the road goes into the clubhouse, and showed where it connects in the back to the new development.

Mr. Jackson asked if they are saying the applicant doesn't have the right to use that.

Ms. Donato said that is correct. So the Board should not approve a plan that shows access that violates this easement.

Ms. Dillon said is there's not supposed to be an unreasonable adverse impact upon the area around the proposed development. She believes what is being proposed is an adverse impact. It is removing recreation and open space, and the Master Plan says the Township is already short on that. They are proposing double residential units that what the plans say. The Fiscal Impact Statement is fundamentally flawed, it is using outdated data, and the impact of the proposed development cannot be properly assessed. The proposed development is going to dramatically affect the existing community.

Mr. Stern stated that he still doesn't have the end point, if you take away the golf course then the Fairways is a nonconforming use, what does that mean. Assuming whatever the Township did is correct, doesn't that override the nonconforming use.

Ms. Dillon asked if you had envisioned another 1100 units, would you have originally approved the Fairways with no golf course. She stated that as a municipality they don't have enough information to make this decision.

Mr. Stern said that if the Master Plan says you can develop here, doesn't that mean something.

Ms. Donato says the Fairways has property rights and you would be taking away their open space. Ms. Donato says the Ordinance does not allow this development as proposed, it requires service level C which we don't have.

Ms. Donato asked if the Board has the right to take away rights from someone else.

Mr. Jackson asked if the court disallowed this case to go forward.

Ms. Donato said the requirement for service level C was stricken by a judge.

Mr. Jackson said Judge Ford said this application can go forward. He asked Ms. Dillon if the Fairways and the golf course are two separate lots, is there an Ordinance provision that says the community cannot exist without a golf course.

Ms. Dillon said in the Zoning ordinances no, but that's what was originally approved which creates the zoning in this area.

Mr. Jackson asked if there is something in the Ordinance that provokes a D variance by the golf course being turned into residential development.

Ms. Dillon said there is supposed to be an open space component of a planned development.

Mr. Stern asked if they would be violating policy or if they are creating some sort of untenable legal situation.

Ms. Donato said Ms. Dillon is not an attorney.

Mr. Jackson said your professional is suggesting that severing the golf course creates a D variance.

Ms. Donato said the golf course is the open space which the Ordinance requires.

Mr. Jackson said he is asking because this is not a Zoning Board, and D variances are generally not the Planning Board's jurisdiction.

Ms. Dillon was excused.

Mr. Stern stated it is late. Our next meeting will be our fifth or sixth. Mr. Schneider will do his cross examination and then Ms. Donato will redirect.

Mr. Stern asked Mr. Schneider if then he would be presenting his witness regarding the 48" drainage pipe.

Mr. Schneider said yes, and regarding the traffic.

Mr. Stern said he hopes they will get through everything in the next meeting. At the seventh meeting they will hear from the public.

Ms. Morris discussed the next available meeting dates and general Board scheduling. This project would be scheduled for Tuesday November 12th.

Ms. Donato asked if there are any other dates besides Tuesdays.

Mr. Stern said no, and Mr. Isaacson said he is not adverse to a Wednesday.

Ms. Morris said that she can't determine in this moment what dates the courtroom is available.

Mr. Stern said his presumption is to keep Tuesday so we don't have to look at several different schedules.

Mr. Schneider consented to an extension of time and indicated he would email Ms. Morris in the morning confirming the same.

Mr. Schneider asked if they could schedule the following meeting at this time.

The Board discussed and was not able to determine a date at this time.

Ms. Morris indicated that she would look at other meeting dates for the following hearing on this application.

Mr. Schneider asked if they could consult with the other parties regarding the date prior to the November 12th meeting.

Mr. Jackson asked about Wednesday the 13th.

Ms. Morris said she doesn't know at this time regarding courtroom availability, holidays, fast days, etc. Ms. Morris indicated we have a board member who can't meet on Wednesdays.

Mr. Vogt agreed let's not schedule the second meeting at this time.

Ms. Donato said the following week in November is the League of Municipalities and many people aren't available then.

Mr. Stern said Ms. Morris will check the dates and report back to fit everyone's schedule.

A motion was made and seconded to continue the application at the November 12, 2019, public hearing. A public announcement was made as to the same.

- 6. APPROVAL OF MINUTES**
- 7. APPROVAL OF BILLS**
- 8. ADJOURNMENT**

The meeting was hereby adjourned. All were in favor.

Respectfully submitted
Ally Morris
Planning Board Recording Secretary