

## **1. FLAG SALUTE & CERTIFICATION OF COMPLIANCE**

Chairman Yechiel Herzl 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 & SWEARING IN OF PROFESSIONALS**

Mr. Gonzalez, Mr. Flancbaum, Mr. Stern, Mr. Isaacson, Mr. Meyer were present.

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

## **3. MEMORIALIZATION OF RESOLUTIONS**

### **1. 2020 Planning Board Calendar of Meeting Dates**

A motion was made and seconded to approve. All were in favor.

## **4. PUBLIC HEARING**

### **1. SP 2310 The Parke at Lakewood, LLC**

752 & 688 Cross Street

Block 524; 524.23, Lots 2.03 & 77.02; 1

Mr. Stern reviewed the order of testimony that is anticipated for the night. He said there would be a redirect by Mr. Schneider of the planning testimony. Counsel sent out an email last Friday and said the Board had three objectives to cover tonight. That is Mr. Schneider's cross examination and Ms. Donato's redirect. Two witnesses were requested, on the 48" storm drain and a traffic engineer, both to be presented by the applicant. The Board wants to understand the exponential increase in traffic delays. The theme in asking for this testimony is to look at a General Development Plan, which is bigger picture than a typical application. The Board in this case is looking for fatal flaws. The Board Engineer has indicated that future site plan applications will have a full vetting by the Board Engineer. The Board is interested to see if there is some fatal flaw from the outset, and the only issues that had that appearance were the 48" storm drain which was not part of the CAFRA discussion and could cover 32 acre-feet of area with water.

Mr. Schneider appeared on behalf of the applicant and said we were prepared to present that testimony last time. At the end of the day, the normal course of these things is the applicant puts on his case, the objector puts on their case, and then the applicant has a chance to rebut. Then it ends. The objector doesn't sur-rebut. It doesn't appear that is Ms. Donato's intention. She intends to re-call some of her witnesses that testified last time. I think it is more in the Chair's discretion by the language in the MLUL to say we've heard enough. We've had 5 days of testimony, 2 by the applicant and 3 by the objector. The objector has had a reasonable period of time. For me, to put my witnesses on and then have Ms. Donato put her witnesses on again, I don't think the Board should allow that. There is also due process towards the applicant, there is a presumption of 95 days... What I would welcome from the Chair now is to say that cross examination is limited to x amount of minutes. I'll adhere to that as well in my cross examination of Ms. Woolley-Dillon. I'd also like to, besides traffic and stormwater, touch on some of the planning type issues we've laid. And have cross examination of those witnesses be similarly so confined. Otherwise

it's wishful thinking to believe we are going to get done tonight and another night, unless some rules are set and adhered to. I have no problem with bringing this to an end.

Ms. Donato appeared on behalf of objectors. She said there is significant difference between a witness being called at a trial to rebut after the cases have been put in. What we are having here is new evidence, generated by different forces. The first force being that there have been critiques registered against the evidence presented by the applicant and there were significant defects. Fortunately, the Board recognized that they needed to look more closely. We can't compare this to an Ordinance Board hearing. Secondly, in the midst of the hearings we were able to get the NJDEP to locate files that were missing when they approved the 2018 CAFRA permit. That is everything with regard to the creation of the original Fairways Adult Community Project. The stormwater system, the drainage system, dam safety... it came in stages from the DEP. This is a situation where there is new evidence being found. We are not creating it. It was not available, on July 23 all we had was a preliminary drainage report. The problem with these proceedings is 1, the applicant approved the General Development Plan as if it was a concept plan and didn't really have all the details ironed out. That's not our problem, we didn't cause that. Number two, I have had the advantage that your meetings are streamed and people can go back and watch the video. I had to hold my breath when I did so at the amount of interruptions and disturbances to my testimony. Half of my time spent on a witness was spent on interruption. You're here to find the truth. You aren't approving 50 homes, this is 556 homes with basement apartments, that's a very big development and you want to do the right thing even if it takes a little bit longer. You can't just say we've had enough, that's not the way to approach this. You must give due process to both parties. I'm not here to delay anything, no one wants to be here less than I do, but we have to get to the truth. I think when you talk about what is the fatal flaw, there is more than one. You ought to send them back to the drawing board over the drainage issue, make them look at the impact of the 48" pipe. The 100-year storm is not accommodated in their design. We could continue with this or maybe you could just send them home and say it's not feasible. We are dealing with fundamental misunderstandings about the nature of a GDP. It is not a concept plan, it does require some level of stormwater detail and feasibility. It's not our fault it wasn't presented that way. With all due respect to Mr. Vogt, I do give some blame to him. He said I didn't review the stormwater plan at all. I have also requested that you sign a subpoena for the fiscal impact because there are numerous failures in assessing the impact of this development, in terms of family size, in terms of bussing, special ed, tax implications, stormwater that this township is going to be asked to be responsible for. So we have that subpoena, and then we have the public. I have one lay witness, you may recall I tried to introduce the tax reduction for Mr. Frederick Robison that was not previously admitted into evidence. These things should be considered. You aren't talking 20 units. I don't think there's another development in this community that has this many units. Do it right.

Mr. Stern said this isn't a blame game. Let me try to parse out the issues here. Regarding testimony we've asked for, (to Mr. Schneider) you're going to do your cross and (to Ms. Donato) you're going to do your redirect of the planning. I want it focused and as short as possible. Everyone will have their day. The information that the Board requested on the stormwater and the traffic, when the jury sends a message to the judge and says we'd like to have a repetition of the testimony... it's us digging in and trying to get understand it a little bit deeper. I'm not allowing cross examination. They've already testified, we just want to hear it again and focus in a little bit deeper. Regarding that, I did not check my emails past 2:00. Did we get, Ms. Donato, the calculations from your stormwater engineer about how he got his calculation of 32 acres of 1-foot deep water?

Ms. Donato said when the storm water testimony was initially given, there was no mention of the 48" pipe. The preliminary stormwater report that was uncovered and explained by Mr. Goll in July, that was the first time. It wasn't as if the applicant was able to address that at that time. That's new testimony. It's not relooking at the same information. I don't think the analogy is applicable.

Mr. Stern said your engineer testified, then there was cross examination, and then your witness said we have now done the calculations and we have determined that this will produce a foot of water over 32 acres in the extreme

scenario. That's a big number, so I clearly heard that statement. We asked during our last meeting, Mr. Jackson asked on Friday, we asked again today, can we see those calculations. I didn't check my email past 2:00.

Mr. Schneider said you didn't get them.

Ms. Donato said I read that email to request that I produce the additional documents that were obtained from the DEP. I thought you wanted to have the final stormwater report and the stream encroachment and dam safety report. That's what I interpreted it and not the hydrological data that Mr. Goll testified to on September 10<sup>th</sup>.

Mr. Jackson said his email from Friday November 8<sup>th</sup> asked for the calculations.

Mr. Stern said we wanted to hear the applicant's response to your calculations. We don't have them.

Mr. Jackson read his November 8<sup>th</sup> email at 10:51, and said "Mr. Stern requests to see those calculations by the end of the day today or first thing Monday morning so that all parties may review same in advance of the hearing." So far they have not been submitted. The question is, have those calculations been provided. Mr. Schneider indicated no, and I did not receive a copy.

Ms. Donato said I did not provide them. May I speak to Mr. Goll?

Mr. Jackson said this was also requested at the hearing.

Ms. Donato said I apologize.

Mr. Stern said let's put that issue on the shelf for a minute. The fiscal memo, I believe you wanted the applicant to bring testimony on the fiscal impact memo. Mr. Jackson said they aren't obligated to and we had a back and forth by legal counsel. Mr. Jackson told you that if you want to move that forward, please provide a legal memo. We didn't get that. Mr. Jackson called you, and I'm not going to categorize that...

Mr. Jackson said the answer was no, Ms. Donato indicated she was not going to provide a legal memo.

Mr. Schneider said this is why we are never going to finish. There was a meeting in July when it was requested. In the September meeting we didn't have that memo, and you decided that you weren't going to require the witness to appear. At the September meeting.

Mr. Stern said I am trying to refresh everybody's memory. That whole issue is decided. Ms. Donato can appeal that or bring it to court or whatever. But the Board has considered it and gotten legal counsel. That issue is off the table.

Ms. Donato said I understood that as I had to issue a subpoena to get the witness to testify. There is a mechanism in the law, every witness is subject to cross examination. It's very unfortunate that you'd take one of the mandatory components of a GDP and then not have the witness present. Someone has a reason why they don't want him, so we'll leave it at that.

Mr. Jackson said on Sept 6<sup>th</sup> at 3:39 PM there was an email addressed to Mr. Schneider and Ms. Donato. He read the email that said we had requested a memorandum from Ms. Donato. No memo was submitted. The Board determined that the applicant is not required to call that witness. This was addressed back in September.

Ms. Donato said it was really unreasonable for an objector to submit a memorandum as to why a witness is required to testify. Secondly, she said, Mr. Jackson said if the applicant didn't bring that witness then the Board

could draw its own conclusion from that. That didn't mean that I couldn't ask for a subpoena. I don't think the fiscal report should be part of this record period unless the witness is subject to being cross examined.

Mr. Stern said so that issue is off the table. The spreadsheet with the calculations would have been nice to have. We'd still like to hear testimony on the stormwater from the engineer the applicant has. Ms. Donato, your email had a bunch of new reports and new evidence. Let's discuss that. What is that you're asking this Board to do and what is the new evidence.

Ms. Donato said I sent them this afternoon, the others I didn't have in their entirety because they were being analyzed and scanned by the engineer's office.

Mr. Stern asked when she got those evidences.

Ms. Donato said I sent two this afternoon regarding stormwater, a Final Report on Section 6, which is the section with the 48" pipe. That document, as well as the Stream Encroachment and Dam Safety Report. I got them some time in September, after the September 10<sup>th</sup> meeting. What happened was the DEP found files some time in late August. We went down, did an OPRA, Princeton Hydro sent their people down and got those documents, and we posted everything on a Google Drive. After that Mr. Goll started digging into the information and then went into the dam safety issue. Then he went to the Dam Safety Bureau and got the Dam Safety Permit. So it came in a series of progressions. There was a whole nother set of documentation that came in from an entirely different source, 6 bankers boxes full, from the original engineers of the damn safety project. In August and September it came in as a mountain of data.

Mr. Stern said so why then did you send excerpts from that pile of information today at 3:00?

Ms. Donato said because there is no requirement in the rules and there never has been to submit reports in advance. I've been chastised for every little tiny evidentiary issue you can find. You think I'm going to go introduce a whole bunch of documents without having the witness introduce them, I would have been a sitting duck if I did that.

Mr. Jackson said on May 24<sup>th</sup>, I sent an email to Ms. Donato, "The chair has asked that you provide all reports and exhibits that your witnesses and experts intend to rely on as soon as possible and in advance of the hearing." He said in this instance the Chair has requested that they be provided in advance, which is different from providing them into evidence. It gives the Board professionals and the applicant the opportunity to look at them.

Ms. Donato said I thought you were referring to reports from the experts themselves and not government documents. This is not our case. If the applicant wanted to give this Board a correct stormwater management presentation, they would have gone to the DEP themselves.

Mr. Stern said what are the main pieces of new evidence that you want us to consider.

Ms. Donato said I must speak to Mr. Goll because he was assembling them. She said I provided today portions of the Stream Encroachment and Dam Safety Permit, and they all say essentially the same thing. Then the Final Stormwater report from Section 6. Mr. Vogt raised concern over the one previously presented that was preliminary, she said.

Mr. Stern said so those two reports, are those regarding the Fairways.

Ms. Donato said yes, the whole ACP adult community project including the golf course. These reports say that it's the recharge area for the residential development. They drain through basins 7, 8 and 9, the 48" pipe, certain

storms the 10-, 20-, and 100-year storm discharge through that pipe and into the golf course where they discharge into the ground. The other reports I've provided say the same thing.

Mr. Jackson read under Municipal Land Use Law 40:55D-10, it is a long statute about the governance of a hearing. It says testimony under section D, "the testimony of all witnesses on an application shall be taken under oath or affirmation by the presiding officer. Right of cross examination shall be provided to all interested parties through their attorneys or representatives, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses." Under subsection E, "technical rules of evidence shall not be applicable to the hearing, but the agency may exclude irrelevant, immaterial, or unduly repetitious evidence." The Chair had requested that I provide him for the authority regarding on how he can manage the proceedings subjected to reasonable time limitations so that we can essentially finish. There is one Planning Board in this large town. There are numerous applications before this Board. This application has consumed seven hearings. There has to be an ability to manage the proceedings and to make them move in an orderly and efficient manner. Mr. Schneider has asserted that everybody doesn't get multiple rebuttals and re-cross, even when you go to court the judge can put limitations on that. The rules of evidence don't apply. In the context of this case, this is also a GDP and all of the details of the site plan will be addressed at the time when there is an actual design in play. So there is the ability for the Chair to manage the proceedings to keep them contained so they don't go on indefinitely. There's a reason why we had requested things like memorandums and documents in advance of the hearings. The reason is so we don't spend a tremendous amount of time going over the preliminaries of it. It's all designed to make the proceedings go more efficiently. We've asked for things and haven't received them and the Board can take that into account.

Mr. Stern asked Mr. Schneider how long his cross examination will take.

Mr. Schneider said 20 minutes.

Mr. Stern asked Ms. Donato how long to redirect.

Ms. Donato said the same or less, 15 minutes.

Mr. Stern said and we have two witnesses, that's half an hour each. An hour and 35 minutes... If we can get through all of that in a timely fashion, then Ms. Donato I'd like to have your engineer talk for half an hour at most about all the goodies you found in your six bankers boxes from the DEP.

Ms. Donato said the six bankers boxes came from Kokes.

Mr. Stern said if we can get through all of the aforementioned in a timely fashion, then you've got 30 minutes for your expert to summarize any points deemed relevant. The criteria is we are looking for fatal flaws. We are not getting into the weeds. There will be multiple opportunities to look at this. It's not an aspirational goal, we are finishing testimony tonight. We might even have some time for the public to talk. If not, we are going to do it at the next meeting. We'll give a good two hours, let's not say the same thing, and then we're going to vote. That's the plan.

Ms. Donato said she spoke to Mr. Goll. He provided the same documents that I have for you. His hydrocad calculations are something that any engineer can prepare. Are we preparing the applicant's case here or are we just objectors? Why should we have to give them everything, they should do some work themselves. They can go to the DEP and get the same documents.

Mr. Stern said someone made a statement about 32 acres of water a foot deep. If that's an accurate number and that storm happens and some little kid dies, god forbid, we want to know about that. We want the calculations so

that Mr. Schneider's people can say you are right and we have to revise the plan, or, you misplaced a decimal point by two and it's not a problem.

Ms. Donato said there's an inherent contradiction. We have your engineer saying he didn't review stormwater, we are only looking at this from 10,000 feet, we aren't designing a plan or specific stormwater, and now all of a sudden all the specificity lands on us. I'm having a difficult time connecting those two theories. I want to represent that what I have here is a list of all the drainage reports...

Mr. Stern said when we get through the first three items, then you can talk about the weather in Paraguay. You've got thirty minutes (Ms. Donato), and you've got thirty minutes (to Mr. Schneider). Is that fair? Is it not unfair?

Ms. Donato said I think you should give enough time for everything to be heard fully and completely. This is a major project with major impacts. I understand you are trying to strike a balance and that is to get this done. I'm not trying to repeat, but I can't say it's fair.

Mr. Stern said I can say the quicker we get through the first parts, the more time you're gonna have. He asked Mr. Schneider if he wanted to make any general comments before calling his planning witness.

Mr. Schneider said Ms. Donato said twice, first she said that her reports all just reiterate the same thing and then she said they all just say the same thing. So to me, to have Mr. Goll testify about things that reiterate the same thing, comes down to unduly repetitious. I'd like to address some of their planner issues and have my planner rebut. It's quite common the applicant does that.

Ms. Barbara Allen Woolley-Dillon appeared and was sworn.

Mr. Schneider asked her if she is familiar with the ACP Ordinance, pursuant to which the Fairways got its approvals.

Ms. Woolley-Dillon said yes.

Mr. Schneider asked would you agree a golf course is not a required part of an adult community.

Ms. Woolley-Dillon said that is correct.

Mr. Schneider said so no having a golf course in itself would not make the community non-conforming with the ordinances.

Ms. Woolley-Dillon said that's not correct, there is more to it than not having a golf course. The golf course was used to calculate the open space for the original approval and by removing it, it's having a problem conforming with the ordinance.

Mr. Schneider said putting aside the open space issue, not having a golf course would not make it nonconforming.

Ms. Woolley-Dillon said that is correct.

Mr. Schneider asked are you aware of the permitted residential density, that it is 4.5 units per acre.

Ms. Woolley-Dillon said I believe that is correct. She referred to her notes and said yes.

Mr. Schneider said are you aware that the entire community including the golf course has a density of 2.2 units per acre.

Ms. Woolley-Dillon said that is correct, yes.

Mr. Schneider said even if you excluded the golf course and looked at just the residential community the density would be substantially less than 4.5 units per acre.

Ms. Woolley-Dillon said yes.

Mr. Isaacson asked what it would be.

Ms. Woolley-Dillon said I don't know it off the top of my head.

Mr. Schneider said you indicated that the 19<sup>th</sup> through 27<sup>th</sup> holes, the 9-hole addition that was added later on, was not part of the ACP. Correct?

Ms. Woolley-Dillon said I'm not sure if it was added later but it is not part of the adult community project.

Mr. Schneider said and you also testified that a golf course is not permitted unless it's part of an ACP. Is that correct?

Ms. Woolley-Dillon said in that particular zoning district, yes.

Mr. Schneider said so when the Board approved those last 9 holes, they were approving something that wasn't permitted. Is that your testimony?

Ms. Woolley-Dillon said that's not my testimony, that's your inference.

Mr. Schneider said would you agree then? That seems to be the logic of your testimony. Those last 9 holes are not part of the ACP.

Ms. Woolley-Dillon said that is an accurate statement

Mr. Schneider said same section of the adult community project ordinance, that sets the 4.5-unit density subsection E, has a provision that says "minimum open space: 50% of the gross area of ACP tract. For purposes of this requirement, open space shall mean portions of the tract not covered by buildings, structures, streets, or other surfaces paved with impervious materials." Is that correct?

Ms. Woolley-Dillon said that is the way the ordinance reads, yes.

Mr. Stern said can you tell us where this is going?

Mr. Schneider said it makes it more difficult to cross examine the witness.

Mr. Stern said fine, tell us at the end.

Mr. Schneider said so that's the definition of open space.

Ms. Woolley-Dillon said in that particular ordinance, yes.

Mr. Schneider said and that's the section that sets the 50% open space requirement, correct?

Ms. Woolley-Dillon said that is correct.

Mr. Schneider said that's a different definition than is found in the MLUL, correct?

Ms. Woolley-Dillon said yes

Mr. Schneider said the Supreme Court said in Rumson Estates that municipalities, in their ordinance, can define terms differently than the ways they are defined in the MLUL, is that correct?

Ms. Woolley-Dillon said I don't know the specific language, but that is the gist of it, yes.

Mr. Schneider said would you agree that areas not covered with buildings, structures, streets, or other paved impervious materials is commonly called pervious area?

Ms. Woolley-Dillon said yes.

Mr. Schneider said many municipalities have ordinances that set limits on impervious cover or set minimums on impervious cover in residential zones, correct?

Ms. Woolley-Dillon said yes.

Mr. Schneider said that's what the 50% open space requirement does essentially in this ordinance, correct?

Ms. Woolley-Dillon said yes.

Mr. Schneider asked is it your testimony that this is a cluster development?

Ms. Woolley-Dillon said I didn't testify that, however that is the original zoning that it was taken under. It was the R-40/C under the Master Plan.

Mr. Schneider said is that the 2017 Master Plan or the Master Plan that was in effect when the ACP Ordinance was adopted in 1993.

Ms. Woolley-Dillon checked her notes. She said it was talking about a bunch of clusters and also had to do with... Sorry about this, I don't have the exact page.

Mr. Schneider said if you don't know that's fine.

Ms. Donato objected. The whole issue of what constitutes opens space is something to be determined by the Superior Court. I understand he wants to undermine her credibility about her opinion, but if you want to apply your efficiency standard this is the place to do it. We are going far afield to Master Plan. This is irrelevant.

Mr. Jackson asked Mr. Schneider to address the objection.

Mr. Schneider said this witness, the premise of her opinion is that the golf course is the open space for the community. I'm trying to establish that it's not.

Mr. Stern said just like Ms. Donato has her 30 minutes to discuss the weather in Paraguay, you can ask any question you want for the next 15 minutes.

Mr. Schneider (to Ms. Woolley-Dillon), if you don't know the answer, that's fine.

Ms. Woolley-Dillon said I believe that it was part of an earlier Ordinance.

Mr. Schneider said are you aware that the concept of cluster development was not added to the Municipal Land Use Law until 2013.

Ms. Woolley-Dillon said I am aware that there have been changes to the Municipal Land Use law that reflect that.

Mr. Schneider said the Smart Growth Plan, D-22, is that something you have handy?

Ms. Woolley-Dillon said yes.

Mr. Schneider said can you direct your attention please to page 11. Page 11 shows existing planning areas and proposed planning areas.

Ms. Woolley-Dillon said correct

Mr. Schneider said in the Smart Growth Plan, the golf course, the existing planning area was PA-3 Fringe Area. The Smart Growth Plan proposed changing it to PA-2 Suburban Planning Area.

Ms. Woolley-Dillon said correct.

Mr. Schneider said in general, growth is more encouraged in the PA-2, correct?

Ms. Woolley-Dillon said typically, but there can be exceptions.

Mr. Schneider said page 28 and 29 of the same Smart Growth Plan, page 28 has the existing sewer service areas.

Ms. Woolley-Dillon said figure 7.1, yes.

Mr. Schneider said the golf course at the time of the smart growth plan, was in an existing sewer service area.

Ms. Woolley-Dillon said that is correct.

Mr. Schneider referenced that page 29 has it in a proposed sewer service area. Certain parts of the Township that were in the sewer service area were proposed to be taken out of the sewer service area.

Ms. Woolley-Dillon said correct.

Mr. Schneider said the golf course was not proposed to be taken out, was it?

Ms. Woolley-Dillon said no.

Mr. Schneider said the Master Plan, you testified that its clearly identified that Lakewood is already short on recreation and open space.

Ms. Woolley-Dillon said I had stated the Master Plan indicates that there is a current shortage based on the number of residents, and based on the Township's population in Lakewood it was determined that to match the median

acreage of park and recreation areas in other jurisdictions, the Township needed approximately 854.16 acres at the time of the 2010 US census and could need as much as approximately 1,628 acres in total by 2030.

Mr. Schneider asked if she has the Recreation Element of the Master Plan handy.

Ms. Woolley-Dillon said yes.

Mr. Schneider said on page 61, it states that municipal park and recreation areas encompass 474.61 acres.

Ms. Woolley-Dillon said correct.

Mr. Schneider said page 65, it says non-municipal recreation and open space encompasses 1,909.90 acres. Is that correct?

Ms. Woolley-Dillon said yes.

Mr. Schneider said and that's made up of 148.60 acres of private open space subject to conservation restrictions.

Ms. Woolley-Dillon said conservation easements specifically, yes.

Mr. Schneider said and 1,661.3 acres of public lands owned by the State and County.

Ms. Woolley-Dillon said correct.

Mr. Schneider said so if we take just the municipally-owned parks and recreation, and the publicly-owned by the State and County, we add up 464.61, and we add up 1661.30, that gives publicly-owned recreation and open spaces of 2,135.91 acres, is that correct?

Ms. Woolley-Dillon said I'll take your math at your word.

Mr. Schneider said page 66 says current and future needs are 854.16 acres in 2010 and 1,628 acres by 2030, is that correct?

Ms. Woolley-Dillon said I believe that's what I stated.

Mr. Schneider said and they already have 1,909.9 acres when you don't even include the privately-owned conservation easements, is that correct?

Ms. Woolley-Dillon said yes that's correct.

Mr. Schneider said and the Master Plan concludes that there is actually a surplus of open space and recreation land both today and using the 2030 population projections, does it not.

Ms. Woolley-Dillon said it says that there may be, yes. It also says that the total acreage of these calculations is based on the total municipal and non-municipal parks that exist within Lakewood.

Mr. Schneider said correct.

Mr. Stern asked how we are doing on the 20 minutes.

Mr. Schneider said within a minute or two.

Mr. Schneider said is it your testimony that if the Planning Board approves the General Development Plan, my client is guaranteed that it can build the number of units in the GDP?

Ms. Woolley-Dillon said the General Development Plan is a plan that dictates, supposedly, the number of units that based on what I've seen there is a doubling of units because you can include basements, so I hesitate to answer because if we say its 556 units its actually double that, that's what they're guaranteed to be able to develop based on what the requirements of the Ordinance state.

Mr. Schneider said you've used the term guaranteed, you're standing by that?

Ms. Woolley-Dillon said yes, because this is what in theory the Board could approve.

Mr. Schneider said we can't do anything without site plan or subdivision approval, correct?

Ms. Woolley-Dillon said correct.

Mr. Schneider said let's suppose when we get to site plan approval, we can't demonstrate compliance with the stormwater management rules. We still can go ahead because we are guaranteed units without complying with the stormwater management plan? What happens then?

Ms. Woolley-Dillon said no, well actually if you change the number by more than 15% you have to come back to the Board. That's the only guarantee that you're allowed under the municipal land use law is to change that number by 15%.

Mr. Schneider said let's say we can't build any units in compliance with the stormwater rules when we get down to site plan approval. We're not guaranteed anything, are we?

Ms. Woolley-Dillon said you have been given an approval by this Board.

Mr. Schneider said so then we are guaranteed we can build it, regardless of whether we can meet stormwater requirements, CAFRA, or anything else. Is that what you'd like the Board to believe.

Ms. Woolley-Dillon said what I'd like them to understand is that this homework should have been done in advance of this hearing so that you have a realistic understanding of what this site and contain and can be developed with.

Mr. Schneider said my question is we're not guaranteed anything just because of the GDP. We're not guaranteed we can build one unit.

Ms. Woolley-Dillon said you are, subject to other approvals.

Mr. Stern said Ms. Woolley-Dillon, thank you for answering the questions asked. I'd like to use her as an example for all future witnesses.

The Board clarified Ms. Woolley-Dillon's full name.

Ms. Donato asked Ms. Woolley-Dillon if she looked at the definition of a GDP under the Municipal Land Use Law.

Ms. Woolley-Dillon said yes, a General Development Plan is a plan that comes in front of the board and it's defined as looking at things in a broader picture. But there are certain things that are required to be submitted as part of a General Development Plan. Would you like me to go through...

Ms. Donato said I just want you to read the definition in the MLUL.

Ms. Woolley-Dillon read the definition from the MLUL: 40:55D-4: a comprehensive plan for the development of a planned development as provided in section 4 of public law in 1987 c-129...

Ms. Donato asked what is comprehensive.

Ms. Woolley-Dillon said it means you're supposed look at everything all as one.

Ms. Donato said have you had an opportunity to read the decision of the Friends of Maurice River of the Appellate Division

Ms. Woolley-Dillon said yes I have.

Ms. Donato said does that decision give you guidance as a planner in the testimony that you've given before this Board.

Mr. Schneider said this doesn't have anything to do with the cross.

Mr. Jackson said Mr. Stern's direction is we can go as deep as the weather in Paraguay as long as it stays within the 15 minutes.

Ms. Donato said did you review also how one can modify a General Development Plan once it is granted.

Ms. Woolley-Dillon said yes.

Ms. Donato said isn't it true that under the municipal land use law the developer MAY reduce the number of units by no more than 15%.

Ms. Woolley-Dillon said that is correct.

Ms. Donato said I'd like to ask you about some testimony regarding variances. This is a General Development Plan to comprehensively address everything. Did you listen to the testimony by Mr. Geoffrey Goll regarding the setbacks/

Ms. Woolley-Dillon said yes, there are numerous variances that are needed for the application as well as have been identified by Mr. Goll. I believe that it has been identified that there are detention structures that crosses over property lines and structures or other areas related to community facilities and some of proposed clubhouses that go closer to the property line than should be permitted. And the other part is that there are 130 homes that need variance relief for setbacks, some of them were pushed more forward but now require front yard variance relief rather than rear yard variance relief.

Ms. Donato said the plans show parking areas in the rear of the buildings.

Ms. Woolley-Dillon said yes.

Ms. Donato asked do you know how that parking was determined based on the number of bedrooms.

Ms. Woolley-Dillon said it is my understanding that they have 5 bedrooms, it's not been exactly clear, the plans are a bit nebulous about it other than saying that they comply in the chart.

Ms. Donato said in your review of the Maurice River case with regard to stormwater, can you compare what you read in that case to what you heard in this case.

Ms. Woolley-Dillon said in the case that is at hand, an application was submitted for a General Development Plan. The applicant's engineers had given a lot of information, and it was determined thus for example while it is optional under Section 45.2e that a developer include a stormwater management plan, such a plan would be required under NJSA40:55D-38b(3). When you look at the things that the contents of an ordinance, basically under the section of the ordinance, that is it has to have adequate water supply, drainage, shade trees, sewerage facilities and other utilities necessary to essential services for residents and occupants.

Mr. Stern said this is the GDP section?

Ms. Woolley-Dillon said this is an ordinance requiring approval by the Planning Board and in this case it says subdivisions or site plans or both shall include the following. How this ties into your requirements for a General Development Plan, you have to have very specific information with regard to what is being proposed. There has to be a feasibility as to what this site can hold. I believe that there is additional information in reviewing all of the material that was submitted. I didn't go through all six boxes of it, but in looking at some of the information that came to light as part of NJDEP has, it's difficult for me to understand that the site is going to hold all that is going on and I looked at the older reports that were issued from the original approval from the DEP. It looks like as much as 95% of the sheet flow from the original development, the Fairways and the golf course, flows onto the golf course. So there's a question in my mind even as a planner, not as an engineer, if we're looking at sheet flow going onto the golf course what is taking that away going to do to what's left. How are we going to accommodate that?

Mr. Stern asked is there a bright line that guides us as a Planning Board as to what level of specificity... would you agree that the level of specificity is lower for a GDP than for a site plan approval.

Ms. Woolley-Dillon said I would say that, but there has to be a feasibility...

Mr. Stern asked but where's the line?

Mr. Vogt read 40:55D-38, Contents of Ordinance: An ordinance requiring approval by the Planning Board of either subdivisions, site plans, or both. It's not referring to a GDP.

Ms. Woolley-Dillon said that's exactly what I read earlier.

Mr. Vogt said we're hearing a General Development Plan, I'm confused.

Mr. Stern said that was our question before, is that the General Development Plan statute.

Ms. Woolley-Dillon said no.

Mr. Vogt said no.

Ms. Donato said you were discussing some of the cases you had reviewed, specifically the Maurice River case, and some of them... am I correct in that you're looking at feasibility and that you need to have this information for feasibility.

Ms. Woolley-Dillon said yes and not only that if you go to Section 18-606 of the Ordinance, General Development Plan requirements, under letter 5, stormwater management plan, setting for the proposed method of controlling the stormwater on the site.

Mr. Vogt said that's correct but that's not a design, that's the problem.

Ms. Donato called for no further interruptions. She asked Ms. Woolley-Dillon, in your preparation, did you review the legislative history of the ACP ordinance

Ms. Woolley-Dillon said yes I did.

Ms. Donato asked does that ACP ordinance refer to it as a cluster ordinance?

Ms. Woolley-Dillon said yes it does.

Ms. Donato said I'd like to talk about the 9 holes that are not part of the ACP. You know that's a former municipal landfill.

Ms. Woolley-Dillon said that is correct.

Ms. Donato asked if municipalities are subject to their own zoning.

Ms. Woolley-Dillon said no, and the reason why is a lot of times it says governmental uses are exempt and other times they are specified in the ordinance

Ms. Donato said so that's a municipally-owned golf course.

Ms. Dillon said that's correct.

Ms. Donato said so it doesn't really have anything to do with your testimony, does it?

Ms. Woolley-Dillon said no.

Ms. Donato said in your reviewing some of the reports from the NJDEP and the testimony from Mr. Goll, did you see that the golf course is designated as a recharge area.

Ms. Woolley-Dillon said yes I did.

Ms. Donato said in referring to the definition of open space in the ACP, as a planner can you tell me how you view that definition in light of the entire Ordinance.

Ms. Woolley-Dillon said typically open space is viewed not as privately-held land, and the reason why is you have to be guaranteed that there's a reliable space... that the open space will be preserved. If it's on a private lot as part of somebody's backyard, they decide to put a swing set or whatever, how is that reliably guaranteed?

Ms. Donato said and in your reviewing the history, everything that you've seen so far about the Fairways, the golf course was the open space.

Ms. Woolley-Dillon said that's my understanding, correct. I take that back. There were other additional tree-space areas I believe.

Ms. Donato said and this reference in the Ordinance to what constitutes open space, something not covered by an impervious surface, it's not in the definitions.

Ms. Woolley-Dillon said no.

Ms. Donato said and as a planner, how do you interpret an ordinance?

Ms. Woolley-Dillon said typically you're supposed to apply that common logical reading and you take it in its whole.

Ms. Donato said in referring to the Smart Growth Plan, is there a site in the southwest portion of the Township that was designated for center development in the Smart Growth Plan?

Ms. Woolley-Dillon said yes there was.

Ms. Donato said was it the golf course.

Ms. Woolley-Dillon said no.

Ms. Donato said in fact, was the golf course designated for any specific development in the Smart Growth Plan.

Ms. Woolley-Dillon said no. It's typically shown as conservation easements, parks and recreation, always shown as a green area.

Ms. Donato said in the 2017 Master Plan figures, there's like 1900 acres that are non-municipal lands that are open space.

Ms. Woolley-Dillon said that's correct.

Ms. Donato said do you know whether the golf course is included in that.

Ms. Woolley-Dillon said I don't.

Ms. Donato said is there anything in the Master Plan that led you to reach that conclusion.

Ms. Woolley-Dillon said no because it wasn't formally identified other than in the Smart Growth Plan as a "recreation open space area."

Ms. Donato said in your review of cases that have been addressed, did you look at the Field case.

Ms. Woolley-Dillon said yes I did.

Ms. Donato said does that also address this feasibility?

Ms. Woolley-Dillon said yes it does.

Ms. Donato said with respect to the question that you've seen with regard to the golf course being the recipient of the drainage from the Fairways residential component, does that affect your opinion as a planner as to whether or not there has been a feasible plan presented to this Board?

Ms. Woolley-Dillon said yes

Ms. Donato said and how does it affect it

Ms. Woolley-Dillon said obviously when the documents from the DEP refer to this area as a recharge area, recharge is pretty typically where you're going to recharge your water supply. If you're removing that, there's now a question as to how this is going to be accommodated. It's a substantial portion of land.

Ms. Donato said now... I'd like to touch briefly on some of the reasons why you have critiqued the fiscal impact study. Can you give me a big overview of why you thought it would be important to understand how, from the author of that study, how they reached the conclusions that they did.

Mr. Schneider objected and said this wasn't touched on cross examination.

Ms. Donato continued, give me a brief overview of the reasons why you felt the fiscal impact statement needed to have more information.

Ms. Woolley-Dillon said in looking at the fiscal impact analysis, the number of units was only stated as the 556 units without the basement apartments. It didn't give a full accounting of the unit numbers, therefore the projected population could not be correct. The second thing is that the population estimates were given from the American Community Survey which I stated previously that was in the year during the government shutdown and the information wasn't verified and isn't reliable. Also it's saying there is a positive to be generated from it but there are other things that could have been reviewed, generally should be given more detail. But unless you take the full impact of the development with the appropriate number of residents then it can't be properly determined.

Ms. Donato said did you have any concern about the number of residents that were projected per household and the number of school children.

Ms. Woolley-Dillon said yes. 5.6 residents per household, giving 1.3 to the children, I'm seeing a detach, I believe there are 3... 5 residents left, I can account for two parents. What does that leave with the other three residents? It's either children aging into the school system... it's impossible to tell. And when you say its 1.3, with 3 other people unaccounted for, I can't determine that and as I said their expert was not available to ask.

Ms. Donato said and did you have a concern about not projecting the financial impact of bussing and special needs students.

Ms. Woolley-Dillon said yes. This is one of the things that is provided here in Lakewood, bussing is provided by the Township of Lakewood. The costs for that are... I also understand that there are differences, I understand that there are things that are community sensitive. This is one of those issues. It is my understanding the bussing is done not only with the public and private schools, it is also separated for some of the private schools where females are not mixed with the males. So this creates a whole different picture that I'm not even sure was addressed.

Ms. Donato said now I'm going to circle on back to the coverage issue. We know that this kind of provision calls open space something that's not covered by pervious surface. There's a section of the Ordinance that refers to that. You know that that particular section of the Ordinance applies to this rezoning of the golf course.

Ms. Woolley-Dillon said that is correct.

Ms. Donato said now did you have a chance to look at the coverage that was analyzed in this plan.

Ms. Woolley-Dillon said I actually did.

Ms. Donato said can you tell me what is included in the calculated open space on this development, the Parke at Lakewood, this general development plan proposal

Ms. Woolley-Dillon said I'll give you a reference for what I'm looking at. It's Open Space Plan, sheet 4 of 9. What I'm looking at, I'm not sure if it was brought up as a bigger exhibit. It highlights open space per... It lists a section of the Ordinance shown in yellow... but then if you go up to the area on the top of the page to the right-hand corner, there's a tabulation of areas not covered by building structures of any kinds, streets, or other surfaces paved with impervious materials. Talks about stormwater management areas. This is what I found interesting. The next part specifically states community areas, roadways, areas of recreation and preservation. And then it lists 59.38 acres. So based on what they've shown on the plan they are including areas of roadway as part of their open space.

Ms. Donato said and the other component of the open space, would you finish up that chart please.

Ms. Woolley-Dillon said yes, it talks about residential lot area, 38.38 acres I believe, and then it says clubhouse lot area 5.01. And if you go down to the bottom it lists the total 4 million nine hundred ninety six some odd thousand square feet, or 114.71 acres, which is 68.9%, and then it says "50% required, complies."

Ms. Donato said so what they are including as open space is a roadway.

Ms. Woolley-Dillon said that's what this chart indicates.

Ms. Donato said I have no further questions.

Mr. Stern asked Ms. Woolley-Dillon to answer what they were asking before. Is there a qualitative difference between what this Board is supposed to be scrutinizing from a level of detail for this GDP versus a normal site plan.

Ms. Woolley-Dillon said I don't have a bright line. Your engineer has indicated he hasn't reviewed it for those standards. What you should have is something that indicates it works. And from a planning perspective I'm seeing some challenges. If a planner can see that we have recharge problems, to me that's an indication that maybe we should have dug a little bit deeper.

Mr. Stern said excellent, that is a good segue into the storm drain of the apocalypse that we want Mr. Schneider to talk about.

Mr. Stern called for a 3-minute recess. After, he called the meeting to order.

Mr. Schneider said you will hear next about the 48" pipe, but I'd like to continue briefly the colloquy we had about whether additional testimony such as by my planner was something that was discussed. I had a chance to review the transcript... Mr. Stern you indicated your interest in moving things along and you said "okay then Mr. Schneider, you're going to present after the cross examination and redirect, then you're going to present your witness

regarding the 48" drainage pipe." And I said "and the traffic thing you required and any other rebuttal we need to do" and you said "whatever you want." And I do believe, for purposes of making an adequate record, that I do need to also present the testimony of a planner addressing some of these variance issues and various other issues that have been raised.

Mr. Jackson said why don't we hold off and then we're going to want to hear your proffer on...

Mr. Schneider said we talk about due process...

Mr. Jackson said we don't have to address it at this point.

Mr. Stern said it's about ten to eight. If we can get through these two witnesses in the next 45 minutes that would be great, and then I promised Ms. Donato that we could have her expert talk for 30 minutes and then we can maybe...

Mr. Schneider said you promised me last time, any other rebuttal we wanted, and there is one witness...

M. Jackson said let's not waste time talking about that now, we'll address it when we get to it.

Mr. Schneider called Mr. Thomas Muller, P.E., a principal of Dynamic Engineering Consultants, who was sworn. He provided his professional education and experience, which the Board accepted.

Mr. Schneider asked for his involvement with the proposed development.

Mr. Muller said he was involved in the oversight and design of the project, as well as technical comments from the DEP that resulted in that CAFRA approval. He attended the July and September 2019 public hearings and is familiar with Mr. Goll's testimony.

Mr. Schneider asked for the history of the 48" pipe as it relates to this proposed development

Mr. Muller said we went out and identified existing conditions of this property and the immediate area surrounding the subject property. At the time of our original surveying efforts, we identified the locations of the 48" pipe, with topography in the immediate area, so what they did was design the CAFRA design plans and accommodated that 48" pipe location and the limited information they had on it at that time.

Mr. Schneider asked what he based his assumptions on what was coming out of that 48" pipe, or going in and coming out.

Mr. Muller said it was based on the ability of surveying the location and identifying drainage areas that go to that pipe. At the time of our original design, many of the docs that have been produced during this hearing were not made available.

Mr. Schneider said so you identified a manhole on the Fairways and determined it went to the 48" pipe, and you calculated what was flowing to that manhole. You designed a proposed basin accordingly.

Mr. Muller said correct

Mr. Schneider asked what additional information has become available since then.

Mr. Muller said following the July 2019 hearing, we were given the opportunity to review additional archived information from the previous land developer, the Kokes organization. Towards the end of August 2019, we were provided with additional stormwater management reports, which have been presented in front of this Board. Some of the information provided identified a series of basins located on the Fairways and how they relate to the Parke. What we've done over the last few months is done an analysis to identify the flow and to confirm and review what Mr. Goll noted and that's where we stand today.

Mr. Schneider asked if he consulted with anyone else who's been involved in the Fairways development process.

Mr. Muller said we interviewed the original design engineer.

Mr. Schneider asked can you explain the basins and how they relate to the 48" pipe. He asked Mrs. Morris what exhibit number we were up to.

Mrs. Morris said A-12 from May 16<sup>th</sup>, she's not sure if that sounds correct.

Mr. Schneider introduced Exhibit A 101.

Mr. Muller identified it as a Post Development Drainage Area Map that was provided in the Appendix of a Stormwater Management Report prepared by Lynch, Giuliano & Associates dated December 2, 1996, last revised April 14, 1997.

Mr. Schneider said this is not a brand new exhibit is it.

Mr. Muller said in the last hearing, Exhibit D-15 included a screenshot of a portion of this. This is a full-sized reproduction.

Mr. Schneider asked for him to give us the lay of the land in terms of the basins.

Mr. Muller said this drainage area map shows the general drainage areas that go to each of the basins as they related to the Fairways development that was designed at the end of the 1990s. North is to the top of the page. What you see is basin 7, 8, and 9. In the narrative of the report it identifies the drainage series that occurs. Basin 7 flows into basin 8, basin 8 flows into basin 9, and basin 9 flows offsite.

Mr. Schneider said it doesn't flow to the golf course?

Mr. Muller said beyond the golf course, away from the golf course.

Mr. Schneider asked where.

Mr. Muller said to the west of the property, beyond

Mr. Schneider said nothing to do with the Fairways.

Mr. Muller said nothing to do with the Fairways, correct. Basin area 7 has an offsite drainage area of 284 acres, which is quite large compared to the on-site drainage area. Basin 7 drainage area is about 75.4 acres.

Mr. Schneider said there actually stormwater flowing to the Fairways from off-site.

Mr. Muller said correct, approximately 284 acres.

Mr. Schneider said and the Fairways accommodated that in the Fairways development.

Mr. Muller said correct.

Mr. Schneider said explain how that was done.

Mr. Muller said basin 7 attenuates water and then it discharges to basin 8 through overflow pipes. The basin 8 drainage area is about 15.9 acres, and as you've heard in testimony there's an overflow that goes to this 48" pipe but the smaller storms actually drain through basin 8 and drain to basin 9, where the drainage area of basin 9 is about 36 and a half acres, which then discharges to the west of the property irrelevant to the golf course discharge 48" pipe.

Mr. Schneider said and so continue with where you've been going with this additional information.

Mr. Muller said once we received this additional information, we actually went back and we created a hydraulic and hydrologic model of the entire drainage area including the 284 acres of offsite drainage. So essentially what we did is a similar exercise to what Mr. Goll did.

Mr. Stern said this is a model for the Fairways.

Mr. Muller said correct. The entire offsite drainage area, onsite drainage area, and how that flows into the 48" pipe. What we did was we took publicly available topography for this entire offsite and onsite area. We identified that approximately 271 acres offsite drainage area goes into basin 7, which is comparable to the 284 that was calculated at the end of the 1990s and that's using current topography. For purposes of being conservative we used the 284 number, the larger number, because it would result in a higher flow rate and volume. We calculated CN values based on current topography, CN values are a curve number identified by the land use. We used this topography to calculate time of concentration numbers we used the previous design plans to identify basin storage area of the basins 7, 8, and 9 on the Fairways development. We actually did an analysis of the previous 1990 rainfall rates compared to modern times. Conceptually today it is more than it was in 1990's.

Mr. Schneider said so today you would assume even more water is coming in the rain.

Mr. Muller said correct. To summarize, we were not provided with Princeton Hydro's analysis, but Princeton Hydro said 32.6 acre-feet of water would be discharged through that 48" pipe for the 100-year storm. Based on our analysis, which is very similar, we calculated 34.4 acre-feet. So we are slightly higher using conservation assumptions. It's a negligible 5% difference. We agree with Princeton Hydro's calculation for the 100-year storm. That is using the old rainfalls. Taking it a step further, for purposes of this GDP application, you want to know if there is no fatal flaws. So we took the new rainfall data and inserted that into our model. We calculated that the new 100-year volume is 50.7 acre feet, based on the new precipitation rates. Using conservative measures and current rainfall we are at 50.7 acre-feet from that 48" pipe

Mr. Schneider asked if that warranted any changes to the General Development Plan.

Mr. Muller said yes. A-102 is the Basin Expansion Exhibit prepared by our office dated October 31, 2019. It was submitted to the Board on November 1, 2019.

Mrs. Morris confirmed for the Board that they have a copy in their stack of plans.

Mr. Schneider asked Mr. Muller to describe the Exhibit and what they did to accommodate the additional flows that they now know are coming from the Fairways onto the golf course.

Mr. Muller said on this Exhibit you see the Parke development and the Fairways development. The 48" pipe comes off the Fairways development at the bottom of the sheet and it discharges onto the Parke development. What we did was use the information obtained during the CAFRA application and we expanded the basin in close proximity to the 48" pipe to accommodate that 50.7 acre-feet. We expect the basin footprint here to accommodate that. As a result, we lose approximately 42 dwelling units from that 556, which is an 8% reduction from that originally noted on the application.

Mr. Jackson asked what that does to the number of lots, before and after.

Mr. Muller said assuming one lot has 2 dwelling units on it, it would be a reduction in 21 lots.

Mr. Schneider said the original application was for 556 units.

Mr. Jackson said I'm just trying to... there's been testimony about basements. I just want to know apples to apples how many lots we started with and what we have now.

Mr. Schneider said we started with one half of 556, and we are reducing that by 21.

Mr. Jackson said at some point can you give us a number. Does the Board want to know the lots?

Mr. Isaacson said let's stick with the 556 dwelling units

Mr. Jackson said ok, never mind.

Mr. Gonzalez said 556 minus 42.

Mr. Muller said now we are at 514 units approximately.

Mr. Schneider asked for a description of the basin as now proposed.

Mr. Muller said it's identified by hatching as proposed basin area on the Exhibit. It is encompassed by Road J and Road A. And this is what we expect will be required to accommodate the 48" pipe based on new precipitation rates.

Mr. Schneider brought up Exhibit A-1, an aerial image previously provided and asked Mr. Muller to identify it.

Mr. Muller said it is the aerial Exhibit prepared by our office dated February 5, 2019. It's an aerial image of the existing golf course and Fairways development

Mr. Schneider asked him to point out where the 48" pipe discharges to now.

Mr. Muller said it discharges at the bottom of the sheet, Rolling Hills Lane, through two private properties on the golf course.

Mr. Schneider asked if there is any existing basin or pond where it collects.

Mr. Muller said it collects at the existing irrigation pond at the south of the golf course property.

Mr. Schneider asked what happens during the 100-year storm. Does the whole golf course get fully inundated?

Mr. Muller said no, just the general local area of that pond overflows and it eventually irrigates into the ground.

Mr. Schneider said and the proposed basin is in the same general vicinity of the pond.

Mr. Muller said correct.

Mr. Schneider said it is considerably larger.

Mr. Muller said yes.

Mr. Schneider said, in your professional opinion, can that accommodate the 50 feet or whatever it is you calculated, by updating the flows and the current rainfall data?

Mr. Muller said yes.

Mr. Schneider said is it fully engineered.

Mr. Muller said it's not fully engineered but we did a substantial analysis to come up with this Exhibit.

Mr. Schneider said in your professional opinion, is it feasible?

Mr. Muller said yes.

Mr. Vogt asked is the intent of the basin to deal with the 48" flow only?

Mr. Muller said no, it accommodates part of the onsite flow also.

Mr. Vogt asked so as part of your design that will eventually come here as part of your site or subdivisions, this basin and all the others will be fully functioning as outlined in the NJ stormwater rule?

Mr. Muller said yes.

Mr. Vogt asked what the anticipated staging height of water in this basin.

Mr. Muller said for the 100-year storm, approximately 7 to 8 feet, which is comparable to what was previously approved by the DEP under the CAFRA application.

Mr. Vogt said and the properties around it, is there freeboard between that max staging height and where these properties are going to be.

Mr. Muller said yes, more than one foot.

Mr. Vogt said this is going to be looked at in further detail when you come back for site plans or subdivisions.

Mr. Muller said correct.

Mr. Isaacson asked Mr. Vogt if this is something that would have come to light in the future at site plan stage anyway.

Mr. Vogt said yes. Major site plans and major subdivisions are subject to what is known as the New Jersey Stormwater Rule, which is routinely in our reviews.

Mr. Isaacson said I'd like to refer back to the testimony that Mr. Schneider presented earlier, which is, is 556 units guaranteed. I think just here tonight we've seen a reduction and with further scrutiny it could continue to go down.

Mr. Vogt said we aren't going to sign off on a design that doesn't meet the State regulations.

Mr. Jackson said this is your observations. I'm going to tell you, Mr. Vogt is going to tell you, that it's not guaranteed. No one suggested that anything was guaranteed with the General Development Plan, it's a concept plan.

Mr. Isaacson said yes it was suggested.

Mr. Stern said on the positive side, due process works. It was addressed in a professional manner and got a better result.

Ms. Donato asked for cross examination of the witness. She was given 15 minutes by the Chairman.

Ms. Donato said when you prepared the plans for the CAFRA permit, you had limited information.

Mr. Muller said on the Fairways design, yes.

Ms. Donato asked if they had the DEP files available from the 1997 approval.

Mr. Muller said partial files, yes.

Ms. Donato asked if they had them at the time of the preparation of the GDP application.

Mr. Muller said no, we didn't obtain it until the end of August 2019.

Ms. Donato said so the connection to the 48" pipe wasn't available to you until the DEP found some of its records.

Mr. Muller said visual inspection of the 48" pipe was obtained however detailed reports from the DEP were not available then.

Ms. Donato asked if the manhole cover was in the way.

Mr. Muller said we opened the manhole and the only identifiable invert and outlet was the 48" pipe into the Parke development.

Ms. Donato asked for the amount of watershed identified in the CAFRA permit application.

Mr. Muller said based on our survey information, which was only superficial, we identified approximately 6 acres.

Ms. Donato said and that was the same information available when you prepared the stormwater plan that showed facilities in connection with the GDP.

Mr. Muller said correct.

Ms. Donato said and you're trying to correct that with this document that your presenting here, showing a reduction of approximately 40 units.

Mr. Muller said correct.

Ms. Donato said when you calculated, you were able to replicate whatever the hydrological computations that Mr. Goll had undertaken.

Mr. Muller said yes.

Ms. Donato said when you calculated the fact that you were going to increase the size of the basin, what did you do to determine the size of the basin that you have here.

Mr. Muller said we identified publicly available topography, which is common practice, looked at aerial photography, which is common practice. We created the model using publicly available information in conjunction with the information obtained in August of 2019.

Ms. Donato asked about calculations to determine the volume of the basin.

Mr. Muller said yes, based on the volume that comes out of that pipe is a number that we could use to identify the footprint of the basin needed.

Ms. Donato asked so you have calculations at your office that show how you arrived at this size basin?

Mr. Muller said yes.

Ms. Donato said and have you submitted those calculations for consideration?

Mr. Muller said no, my testimony is that at the time of site plan application I will provide detailed calculations.

Ms. Donato asked if he knows the term net opinion.

Mr. Muller said no.

Ms. Donato said so you don't know that a net opinion is an opinion that is rendered by an expert that doesn't have any data to support it.

Mr. Jackson said he indicated that he doesn't know what a net opinion is.

Ms. Donato said I just explained it to him that, I've just asked him that you don't know that a net opinion...

Mr. Jackson said don't answer that question.

Ms. Donato said is he your witness Mr. Jackson? Are you his attorney?

Mr. Jackson said no, I'm the Board's attorney, and I don't think that question is appropriate so I'm directing the witness not to answer.

Ms. Donato said my question to you is, how do you know that this basin is going to work. What do you have other than this plan?

Mr. Muller said based on our familiarity with the project and our experience with the design constraints identified during the CAFRA application process, coming through this analysis, we are comfortable and in our professional opinion we expect it to function.

Ms. Donato said the CAFRA application and the CAFRA permit that you have did not include the full drainage area that is discharging to the golf course. You only accommodated approximately 6 acres of the watershed.

Mr. Muller said many of the inputs that go into a stormwater design were identified during the CAFRA application such as soil types, ground water levels, and things of that nature. So using that type of information we were able to come to a comfortable conclusion that this size basin will be able to accommodate the 48" pipe.

Ms. Donato said do you have calculations that can be looked at to verify that your redesign is in fact accurate.

Mr. Muller said they're not in report format, but calculations certainly were prepared.

Ms. Donato said ok and so when you got your CAFRA permit, you accommodated 6 acres of the watershed into the drainage system of the Parke. There are in fact about 336 acres, no, more than that, almost 400 acres based on your Exhibit 102, 101? Exhibit 101 from the Lynch, Giuliano & Associates report.

Mr. Muller said yes, approximately.

Ms. Donato said so my question to you is not that you verified, and I appreciate your honesty in terms of the calculation of the acre-feet of water that it needs to be accommodated, my question to you is how do you know this basin is going to do that. What do you have other than this plan to say that this basin can achieve that.

Mr. Muller said based on our familiarity with the property and our experience with stormwater management design we feel this basin can accommodate it. And in the future if it doesn't, during preliminary and final site plan approval process we'll have to identify it at that time.

Ms. Donato said is there anything before this municipality that you have filed that can allow anyone to review the size of this basin to determine whether or not this basin accommodates all of this additional flow.

Mr. Muller said no, just this testimony.

Ms. Donato said now you say that the basin drains, on the Fairways we have these series of basins. I'm talking about the complex that's to the west, basins 7, 8, and 9. You say that they drain offsite and not into the Fairways. Do they drain into some stream or body of water offsite?

Mr. Muller said I'm not sure the name of the stream that it eventually drains through, but basin 9 drains to the west and does not impact the Parke development.

Ms. Donato said it doesn't impact the Parke development, does it impact the Fairways development?

Mr. Muller said once basin 9 drains offsite, it technically does not impact the Fairways development.

Ms. Donato said no backflow or any issues that can occur when you drain into something and you don't get like backflow or something like that occasionally.

Mr. Muller said I'm not sure what you mean by back flow.

Ms. Donato said well if the Fairways, let's just assume... let's just assume that the plan that you have here restricts the flow of water as it has been discharging since 1997 or whatever. So the water now is all gonna go down south of the Fairways to some, think there is some kind of stream or body of water there.

Mr. Muller said I believe so, yes.

Ms. Donato said so what if that area there can't accommodate the flow, everything's not being discharged onto the old golf course the way it used to. How will that affect the Fairways?

Mr. Muller said I believe you're referring to tailwater effects of the basin on the Parke development as it relates to the Fairways development, and we would certainly provide that analysis at the time of our site plan application.

Ms. Donato said alright so you don't, you're just asking us to go by faith. That this, that what you've shown on this plan, without any calculations, without any reports, solves the whole problem of the extra 40 some acres, 50.7 acre-feet, that is discharging from the Fairways, currently discharging to the golf course.

Mr. Muller said for purposes of a GDP application.

Ms. Donato said that is not my question.

Ms. Donato and Mr. Schneider argued over one another.

Mr. Jackson asked Mr. Muller to answer the question

Mr. Muller said for purposes of a GDP application, I think we went above and beyond what a normal application would show. We did a substantial analysis, conservative analysis, we prepared the Basin Expansion Exhibit, and we are proposing a plan that, for purposes of GDP approval, we are comfortable supporting during a preliminary and final site plan application.

Ms. Donato said I didn't ask you for a legal opinion, I asked you for an engineering opinion. Do you have any data whatsoever to present to this Board for review by an engineer that indicates that that basin, the size that you're proposing, is feasible and will satisfy all the drainage needs of the Fairways?

Mr. Jackson said you can't preface your question with a comment on the last answer, that's inappropriate. Don't make the complaint that he gave a legal answer and not an engineering answer, that's your opinion. Don't preface your question with that because then the premise of the question is inappropriate. It's the format of the question. Also please don't ask multi-part questions.

Ms. Donato said did you receive legal advice that this is beyond what a GDP requires?

Mr. Muller said no I didn't receive legal advice but I'm familiar with a GDP application.

Ms. Donato said so you've submitted a GDP application to other municipalities?

Mr. Muller said personally this is the first I've overseen.

Ms. Donato said so how do you know that that's all you need for a GDP?

Mr. Muller said through consultation with the project team, discussions.

Ms. Donato asked who's the team?

Mr. Muller said my entire office, our professionals, in terms of the engineers that support me, just through general conversations through the design process.

Ms. Donato said with people outside of your firm.

Mr. Muller said yeah the developer, the applicants professionals and consultants.

Ms. Donato said ok. Alright now you were referring to the pond, there's currently a pond right now where the 48" pipe discharges. What kind of pond is that?

Mr. Muller said it's an irrigation pond.

Ms. Donato said is it naturally occurring.

Mr. Muller said based on what I understand it's a manmade pond that was created during the golf course construction. Going back to the CAFRA application process, we did receive a Freshwater Wetlands Letter of Interpretation which did not identify that as a natural pond.

Ms. Donato said ok let me just ask you this, the pond, does it recharge water into the groundwater?

Mr. Muller said based on my review of the previous design documents, yes.

Ms. Donato said so it's not a lined pond or anything.

Mr. Muller said I believe the pond itself is lined, but the area surrounding has been designed to infiltrate water.

Ms. Donato said why did you say "I believe."

Mr. Muller said because I'm not reading the report word for word right now.

Ms. Donato said what report is that.

Mr. Muller said a number of the reports prepared by Lynch, Giuliano & Associates through 1996-1997.

Ms. Donato said they indicate that the pond is lined?

Mr. Muller said I don't recall without looking at the reports.

Ms. Donato said you said that you didn't think the golf course itself was flooding. You said it's just kind of flowing into this pond.

Mr. Muller said what I identified was the local area around the pond floods, not the entirety of the golf course. Its localized in the area of the irrigation pond.

Ms. Donato said have you ever seen the golf course after a 100-year storm.

Mr. Muller said no.

Ms. Donato said so you're referring to this localized flooding, what kind of storm events are you referring to?

Mr. Muller said I haven't personally witnessed a 100-year storm flood that pond, but through reading the narrative in the reports, for larger storms it would flood. I'm not sure at what storm it starts to flood.

Ms. Donato said where what starts to flood?

Mr. Muller said the irrigation pond.

Ms. Donato said well I'm trying to understand something. You've said it's localized. How do you know it's localized after a hundred year storm?

Mr. Muller said based on the previous design documents and storm water reports.

Ms. Donato said well if you take the previous design, they've eliminated the entire golf course as a retention area. So how are you now saying that only the ponds are flooding.

Mr. Schneider objected and said there's been no testimony that the entire golf course has been...

Ms. Donato said that's not my question.

Mr. Jackson said regardless, Mr. Muller can handle the question.

Ms. Donato said I want to know why you think the ponds are only localized flooding when the entire golf course as shown... on Exhibit A-101 is called a retention area.

Mr. Muller said the golf course is not identified as a retention area.

Ms. Donato said I'm looking at A-101 and... I'm sorry, recharge area. I used the wrong word.

Mr. Muller said yes, it's labeled as a recharge area. When you analyze topography of the golf course its apparent that the entire golf course would not flood for the 100-year storm, it would be limited to the contouring around the manmade irrigation pond at the southern end of the golf course.

Ms. Donato said but you don't have anything to present here that would allow anyone to look at those numbers to see whether they are correct or incorrect.

Mr. Muller said I'm not sure I understand the question.

Mr. Stern said I understood the relevance of the questions regarding the new plan. I'm not sure I understand the relevance of the questions regarding the golf course.

Ms. Donato said I' going to pass on it anyway.

Mr. Jackson said you know, Ms. Donato, I recall myself I asked Mr. Goll if his calculations were done by himself and he said his office did it and he did not have those calculations when he gave his testimony on the 26 or 28 hect-acres of...

Ms. Donato said he had them on his phone. So I don't think it's your job to rehabilitate the witness, Mr. Jackson.

Mr. Jackson said I'm just asking because of your comment about the net opinion...

Ms. Donato and Mr. Jackson talked over each other.

Mr. Schneider said I would like to note that the 15 minutes are up. If you're going to preclude me from presenting my planner, I think I'm being denied due process.

Mr. Jackson said the Chair has the authority to control the meetings, I had advised him when we had two minutes left and he said he wanted to let this finish as he felt it was important.

Ms. Donato said have you determined where the seasonal high water table is on this property?

Mr. Muller said yes.

Ms. Donato said and have you submitted that information to the municipality?

Mr. Muller said no it was submitted to the DEP through the CAFRA application process.

Ms. Donato said are you aware that there's a Dam Safety and Stream Encroachment Permit for basins 7, 8, and 9?

Mr. Muller said yes.

Ms. Donato said did you know that when you prepared the original CAFRA permit?

Mr. Muller said no, that wasn't made available to us.

Ms. Donato said do you realize that you have to amend the Dam Safety and Stream Encroachment Permits if you're going to change the method of discharge?

Mr. Jackson said I think when you say "do you realize," you're testifying. The witness doesn't necessarily have to agree with your premise. Please ask your question in the correct format.

Ms. Donato said I will correct it. Do you agree that the Dam Safety and Stream Encroachment Permits have to be amended if you change the point of discharge and the manner of discharge.

Mr. Muller said I would have to review the conditions of the approval at that time to see if it would warrant modification to such approval.

Ms. Donato said well if you have a free-flowing discharge with no restrictions, which is currently the conditions... is that correct?

Mr. Muller said no.

Ms. Donato said well the 48" pipe, it discharges freely onto the golf course correct?

Mr. Muller said that's not correct.

Ms. Donato said you mean it's limited, it goes into another body of water?

Mr. Muller said yes, I believe you mentioned that it discharges into the irrigation pond.

Ms. Donato said right but if it discharges into the pond and the pond overflows it just spreads out further, right?

Mr. Muller said yes.

Ms. Donato said the water itself coming out the pipe is not restricted, correct?

Mr. Muller said it's not a simple answer, restricted versus unrestricted. We would have to analyze the tailwater effects of the irrigation pond on that 48" pipe.

Ms. Donato said isn't that what's typically done on a stream encroachment permit.

Mr. Muller said typically yes.

Ms. Donato said so there are dams here and a Stream Encroachment Permit and you don't think you need to modify it based on what you're proposing on Exhibit 102?

Mr. Muller said I'd have to review the previous permits to determine if we need to modify it, and I assume if we did need to modify it, we'd pursue that type of modification.

Mr. Jackson said I've sat on this Board for a while and I don't recall this Board ever analyzing a stream encroachment permit or anything like this. Are these DEP issues?

Mr. Vogt said well it's going to be a DEP issue. The issue of a potential impact of tailwater flow is going to be relevant and will be reviewed in future design applications. What the DEP does or what they require is up to the DEP. I had the opportunity to look at one of the documents that Ms. Donato submitted today and it was the March 1997 document, and there is a statement in there that says based on the review of the submitted documentations, now this is the dams on the Fairways and it talks about basins 4, 5, 6, 7, 8, and 9 should be classified as Class 3 Low Hazard Structures with the soil design etc. "Please note that the Dam Safety Department may at its discretion raise the classification of any dam due to a change in land use downstream." This could go to a higher hazard dam, or some or all of the dams, based upon this development. The DEP is not saying you're not allowed to build. It's saying as a result of development which is basically inevitable, these classifications may change at a later date. That's the rules. But that's a DEP decision.

Ms. Donato said ok, what will the height of the walls around the basin be with the modification that you are proposing?

Mr. Muller said approximately 7 to 8 feet high.

Ms. Donato said I thought I heard something some place, I don't know... What's the height of a wall in a detention basin that might trigger the requirement of getting a dam safety permit?

Mr. Muller said it's based on the toe of slope beyond the discharge point.

Ms. Donato said have you analyzed this basin to see if you need a dam safety permit.

Mr. Muller said the proposed basins on the Parke development would not require a dam safety permit because it's not classified as a dam.

Ms. Donato said well you don't have to classify it, the DEP has rules. Doesn't it have something to do with the height of the wall.

Mr. Muller said that's only half of the definition.

Ms. Donato said so are you saying that you analyzed this to see whether or not you'd need a permit.

Mr. Muller said yes that was analyzed during the original CAFRA permit application process.

Ms. Donato said but I'm asking about what you have here, the larger basin.

Mr. Muller said the larger basin is not classified as a basin.

Ms. Donato said by your opinion.

Mr. Muller said yes.

Ms. Donato said you haven't submitted it to the State for any kind of determination.

Mr. Muller said no, this is simply an Exhibit that we submitted on November 1<sup>st</sup>.

Ms. Donato said and you know that you're going to have to do that, right?

Mr. Schneider objected.

Ms. Donato said alright, I will rephrase. You know you're going to have to go back to the DEP for these changes, correct?

Mr. Muller said from a CAFRA perspective, I would have to analyze that to see if it would qualify as a modification to the previous application.

Ms. Donato said and the DEP might tell you that you also need to have a modification to the Stream Encroachment Permit.

Mr. Muller said yes.

Ms. Donato said and they might tell you that you need a modification to the Dam Safety Permit as well.

Mr. Muller said that's possible.

Ms. Donato said you were asked by Mr. Vogt what was the amount of freeboard. You said a foot. What did you base that on.

Mr. Muller said based on the original grading design that we did during the original CAFRA application, we expect that we can provide at least a foot of freeboard to the surrounding dwelling units around this new basin area.

Mr. Stern asked what is freeboard.

Mr. Muller said it is the elevation of the surrounding properties over the designed storm elevation, typically the 100-year storm. It's a factor of safety above the elevation of the basin.

Mr. Vogt clarified when talking about freeboard, you don't mean the stage height to the unit you mean the stage height to the residential properties and the roads.

Mr. Muller said correct.

Ms. Donato said my question to you was whether or not you calculated freeboard on the revised plan that you submitted this evening.

Mr. Muller said it was something we considered when we prepared this Exhibit, but the Exhibit doesn't show the topography and the information that you would need to see the freeboard value in the area of the basin.

Ms. Donato said are you aware of the fact that the 48" pipe enters and there is no easement for that.

Mr. Muller said I don't think there's an easement.

Ms. Donato said what do you do when there is drainage and you don't have an easement.

Mr. Muller said if we have offsite drainage onto a proposed development, we accommodate for it whether there is an easement or not.

Ms. Donato said and given the nature of this development showing the golf course as the recharge area, and showing the residential development as part of it, is it...

Mr. Schneider said that's a compound question.

Ms. Donato said I will rephrase the question, thank you so much Mr. Schneider. You read the reports that we were able to get from the NJDEP, the preliminary report, right?

Mr. Schneider said objection, what report are we talking about.

Ms. Donato said the Preliminary Stormwater Report. I said the reports we got from the NJDEP, the traffic, ... hold on a second, I have to get my other file...

Mr. Stern said Ms. Donato, we are going to have a hard stop in 6 minutes.

Ms. Donato said ok, good. I'm referring to the document marked D-15 in evidence marked Preliminary Stormwater Report and Drainage Calculations for Lakeridge North. Do you have that report dated December 2, 1996?

Mr. Muller said I do not in front of me.

Ms. Donato said that's the one we had submitted in July. In reviewing this did you happen to note that it states that the project consists of 971 dwelling units.

Mr. Muller said I don't have it in front of me.

Ms. Donato said do you recall it refers to stormwater detention and retention areas, as well as an 18-hole public golf course.

Mr. Muller said that sounds familiar.

Ms. Donato said do you recall reading that the site itself contains 440 acres, of which 137 exists as an abandoned borrow pit and is being dedicated for the golf course?

Mr. Muller said I'm not familiar with that exact language.

Ms. Donato said I will show you a copy of the document...

Mr. Schneider said it has nothing to do with direct testimony. And the notion that I'm going to be denied the opportunity to present the planner, talk about due process...

Mr. Jackson said have you provided a copy of the document that you are talking about to Mr. Schneider.

Ms. Donato said it's an Exhibit that's already been, in July.

Mr. Stern said let's keep going.

Ms. Donato said I direct your attention to the project description.

Mr. Muller said I'm not sure what you want me to read.

Ms. Donato said I read to you the... why don't we just read this whole thing, the whole project description.

Mr. Schneider said why are we presenting something that's already in evidence.

Mr. Stern said Mr. Schneider, she's got five minutes. Four, go.

Mr. Muller read the project description from Exhibit D-15 into the record.

Ms. Donato said thank you. Mr. Muller. So with this development, that is approved as an adult community project as recited in this report, you're just going to change the drainage from the Fairways without consulting with the entity.

Mr. Muller said it's a common practice to accommodate offsite drainage onto our proposed development by over detaining it and addressing modern stormwater management regulations through New Jersey code as well as local code. So the short answer is yes, we are accommodating the offsite flow.

Ms. Donato said have you ever dealt with accommodating the offsite flow from an adult community project that was developed as one entity such as the Fairways adult community project.

Mr. Muller said personally I have not had experience in that exact situation except for this project.

Ms. Donato said so this isn't just a matter of somebody's overland flow going onto an adjacent property.

Mr. Muller said is that a question.

Ms. Donato said that is, it's a question. Is it?

Mr. Muller said in my opinion based on NJ State Code 7:8 Stormwater Management Rule, offsite drainage would be accommodated whether it's from an adult community or some other land use. So in my opinion, it doesn't matter what the upstream use is. We will still accommodate it and meet stormwater code.

Ms. Donato said ok so let me ask you this about the basement apartments. These buildings are going to have basements, are they not.

Mr. Muller said I believe so, yes.

Ms. Donato said and do you know what the finished floor elevation of the basement will be?

Mr. Muller said that is something that we would design during the preliminary and final site plan process.

Ms. Donato said so you have to design them to get above some storm level, do you not?

Mr. Muller said yes.

Ms. Donato said so how does this Board know whether or not these basements, which someone in the future is going to do, will be habitable space.

Mr. Muller said we would evaluate that during our site plan design process.

Ms. Donato said so then what would happen if you have to elevate the buildings to get the basements up?

Mr. Muller said that would be something we would do during our site plan design.

Ms. Donato said so we don't really know what it looks like now?

Mr. Muller said correct, a detailed grading design of each individual lot is not provided on this package.

Ms. Donato said so we don't really know what calculations, you don't have the calculations before this Board to substantiate the feasibility of that basin shown on Exhibit 102.

Mr. Muller said correct, they were not submitted in a report format.

Ms. Donato said they weren't submitted at all were they.

Mr. Muller said no.

Ms. Donato said I have no further questions.

Mr. Schneider said I have one on redirect. Is there any change to the scheme proposed to the stormwater management system on the Fairways property?

Mr. Muller said no, all disturbance and modification would occur on the subject property.

Mr. Stern called for a 2-minute break after which he returned the meeting to order. He said we are going to finish testimony. We are getting it done by 10, and if that means I have to railroad things, I will.

Mr. Schneider presented the testimony of Justin Taylor, P.E., and certified traffic operations engineer, who was sworn.

Mr. Schneider said Mr. Taylor, if I'm correct there are two things you are going to go through tonight, one relates to phasing of the project in relation to traffic improvements on Cross Street and the other relates to this geometric issue of what happens at the intersection of Cross Street and Route 9, is that correct?

Mr. Taylor said yes, that's correct.

Mr. Schneider said and you submitted a Supplemental Traffic Assessment to the Board sec on October 4, 2019, is that correct?

Mrs. Morris said November 4th is the day she uploaded it, she's not sure if that's the day she received the paper copies. The Board has copies in their piles on the dais.

Mr. Schneider said why don't you go through the Supplemental Traffic Study, Traffic Assessment, and tie it into what your conclusions are in terms of what's needed for phasing of the project as it relates to traffic improvements on Cross Street.

Mr. Taylor said absolutely. This study was essentially prepared to address some of the concerns raised by the Board at some of the hearings. I know of import was how is Cross Street going to operate, how is this driveway going to be operating as we load units onto both our proposed roadway and Cross Street. We conducted a phased analysis to determine what geometry was needed at that intersection to accommodate each phase of development

Mr. Schneider said and this is the intersection of Cross Street and the new entrance into the development.

Mr. Taylor said correct. What we found was under phase 1, 118 units, the intersection could be constructed unsignalized with the geometry of Cross Street remaining as it is today. So it could be one lane in each direction, our driveway could be one lane in each direction. We may build that out greater than that because it doesn't make sense to build the roadway more than once. But we wanted the minimum safety.

Mr. Schneider so the proposal is for two lanes but even if you only built one lane...

Mr. Taylor said that's correct. With the addition of phase 2, another 100 units, the proposed driveway could remain as a single lane exiting but the center lane along Cross would need to be constructed if the County hasn't come through and done that. So before we get to phase 2 coming online, if the County's phase 2 project of widening between Augusta and Veterans is not complete, then we would need to construct that 2-way left turn lane along our frontage to accommodate site traffic. We then looked at phase 3, which is an additional 104 units for a total of 322, and at this point the traffic signal is necessary. We didn't go to phase 4 or 5. When phase 3 comes online, the traffic signal will need to be constructed. But it has been designed to accommodate the traffic for the full build-out of the project. So phase 1 proposes an unsignalized intersection, phase 2 the center lane needs to be constructed along the frontage, and for phase 3 we need the traffic signal.

Mr. Schneider said we're focusing on Cross Street, because that's arguably more important than how long you have to wait if you're a resident of the new development. Focusing on Cross Street, what would be the levels of service at each of those phases with those improvements your suggesting.

The levels of service along Cross Street would be A's and B's during all three of those phases.

Mr. Schneider said if the improvements were made.

Mr. Taylor said under phase one, with just the single lane and unsignalized, the turning levels from Cross Street would be level B or better. As we add each phase, the geometry that's necessary to accommodate each phase, you'd be level B or better on the Cross Street approaches.

Mr. Schneider said and that's B as in boy.

Mr. Taylor said that's correct.

Mr. Schneider said so that pretty much covers the phasing you had asked for in the past. Now let's look at Route 9, and you were present when Mr. Meth testified some time ago.

Mr. Taylor said that's correct.

Mr. Schneider said you heard him testify about improvements in the Route 9 corridor that he said have been funded and are going to happen.

Mr. Taylor said that's correct.

You heard him testify that for purposes of this application, the Board should assume that those improvements are going to be done by DOT.

Mr. Taylor said that's correct.

Mr. Schneider said explain what additional analysis you did with regard to Cross Street and Route 9.

Mr. Taylor said through the various hearings there was some question about the traffic volumes used along the Route 9 corridor, be it the age of them, the time period from when they were taken, and the time of year. So we went out and conducted updated traffic accounts on Wednesday, June 12<sup>th</sup> from 7-10 and 2-6. What we find is as alluded to, the morning peak hour occurs between 8:45 and 9:45 and the afternoon occurs between 3 and 4. That's a little bit later and a little bit earlier than is typically experienced along a commuter corridor. We then utilized these volumes to conduct updated capacity analyses to determine what impact the new volumes would have. We find that they are slightly higher, in the morning 20% higher overall and in the afternoon approximately 3% higher. So we used these new volumes to conduct updated analyses to determine whether or not the conclusions within the Traffic Study still remain valid.

Mr. Stern asked was school still in session on June 12<sup>th</sup>?

Mr. Taylor said yes it was. So based on those analyses, we find that we have substantially similar results to what was exemplified in the Traffic Study. There are slight differences in the level of service but really they remain generally the same. Specifically, if you look at the overall operation of the intersection you find deviations of 5 or 6 seconds between what was set forth in the Traffic Study and what's determined in our updated analysis. The other issue that was raised, I have to give credit where credit is due. Mr. Meth did a great job explaining the reason behind the jump in delays. It's a theory of what we would term a met demand. As you have vehicles that don't make it through the intersection, the queue builds, the levels of service deteriorate not in direct linear function but you can have a higher jump than the amount of traffic added. We utilized the synchro analysis that was submitted here, that gives us another method of effectiveness on the unmet demand for an intersection. We looked at how it

is today and how it is in the future with the DOT improvements with a full build-out of this site. You find between 60 and 90% reductions in what's out there today. So while we are adding traffic, the improvements that DOT is constructing is going to have an overall benefit to the intersection even with the traffic that we propose. We've confirmed that the DOT is building these improvements and so that intersection is going to get better. Based on this new analysis, the overall operation of the intersection, the level of service of that intersection and the unmet demand is all going to be reduced from what it is today.

Mr. Schneider said is there anything else you want to add.

Mr. Taylor said no that's it.

Mr. Schneider said I have no further questions.

Ms. Donato said Mr. Taylor, when you prepared your report initially you said you included the unmet demand in looking at the levels of service at that time?

Mr. Taylor said in the original analysis?

Ms. Donato said yes.

Mr. Taylor said no we did not.

Ms. Donato said and so let me ask you this. When is full occupation of the site? Is that 2021?

Mr. Taylor said I don't have that information up here. There was previous testimony.

Ms. Donato said on your report of October 24<sup>th</sup>, you say upon full occupation of the site. You don't know when that is? If you don't know the answer just say I don't know when that is.

Mr. Taylor said I don't know when that is.

Ms. Donato said ok. Now you're referring to 556 total residential units, that doesn't include basements, am I correct?

Mr. Taylor said no, that's correct.

Ms. Donato said well 556 total residential units, there are 228 duplexes, am I right?

Mr. Taylor said 278.

Ms. Donato said 278 duplexes, and each of... so that's 556 units.

Mr. Taylor said that's correct.

Ms. Donato said but that doesn't include a basement apartment.

Mr. Taylor said the Traffic Analysis does.

Ms. Donato said that was not my question. My question was, in your report you're referring to 556 total. So you're saying for trip generation the figures take into account the basement apartment.

Mr. Taylor said yes they do.

Ms. Donato said that was my question, thank you. Now the State improvements for the intersection of Cross Street and Route 9, you stated that they're definitely going to be making those improvements, is that correct?

Mr. Taylor said yes it's my understanding that they are being done.

Ms. Donato said ok and in your analysis of the traffic level of service that would result after the development, when did you put in the impact of the NJDOT traffic improvements to the intersection. Are they predevelopment, are they in the no-build condition or the build condition.

Mr. Taylor said they are in the build condition.

Ms. Donato said is that consistent with Traffic Access and Impact Studies for Site Development of the Institute of Traffic Engineers?

Mr. Taylor said I'm not sure exactly what you're asking.

Ms. Donato said alright, when you did that analysis, did you consider, did you look at the standard practice for traffic engineers in determining how to handle planned transportation improvements.

Mr. Taylor said what we analyzed was what the operation of the intersection would be with the improvements and with the site traffic.

Ms. Donato said under the Standard of the Institute of Transportation Engineers, aren't you supposed to consider such planned and known capital transportation improvements to be in the no-build condition.

Mr. Taylor said what we were determining was what the operation of the intersection would be at the conclusion of the project and with the improvements that are out there. The impact of the project has already been considered by the Township by the inclusion of this lot in their Transportation Improvement District.

Ms. Donato said ok. My question to you is did you review the Traffic Access and Impact Studies for Site Development, a Recommended Practice, prepared by the Transportation Planners Council for the Institute of Transportation Engineers.

Mr. Taylor said specifically for this project? No.

Ms. Donato said so you're not aware of the fact that this particular recommendation, this particular discussion of how to address changes that are planned, changes to a transportation plan are supposed to be implemented at the no-build condition?

Mr. Taylor said I think what the analysis and goal of this study was to determine the operational characteristics of the intersection at the completion of the project, with all known improvements. What it shows is, is that at the end of the day things are going to be operating better than they are today.

Ms. Donato said ok let me try to rephrase the question because you aren't answering my question. Let's assume that this project doesn't get built, but the DOT improvements are going to be built. What will the level of service be at the intersection of Cross Street and Route 9.

Mr. Taylor said I didn't do that analysis.

Ms. Donato said ok and you're not aware of the fact that standard transportation planning directs that when you have known traffic improvements that are going to happen, like the intersection of Route 9 and Cross Street.

Mr Jackson said hold on, ask the question properly, you're asking in multiple parts that the witness might not agree with. Ask it in a proper format.

Ms. Donato said isn't it true that standard transportation engineering analysis requires that you place the planned transportation improvements in the no-build category.

Mr. Taylor said not necessarily, no.

Ms. Donato said so what are you relying on, not necessarily. What are you relying on?

Mr. Taylor said I'm relying on the direction to determine the operation of the intersection at the completion of the project with the improvements out there.

Ms. Donato said if this was not built, do you know what the level of service would be at the intersection of Cross Street and Route 9 with the NJDOT improvements?

Mr. Taylor said I do not.

Ms. Donato said is it your testimony, you're saying that you're going to improve the intersection from what it would be if the NJDOT did these improvements. That's what you're saying?

Mr. Taylor said I'm saying at the end of the day, with the inclusion of our project and the DOT improvements, the operation of the intersection at Cross Street and Route 9 will be better than it is today.

Ms. Donato said my question to you, Mr. Taylor, is if the DOT improvements are implemented and this development is not built, are you saying that the traffic improvements will be better or worse than if the development is built.

Mr. Taylor said I'm telling you I didn't do the analysis of what it would be with the DOT improvements without this development.

Ms. Donato said so you took the DOT improvements as a credit for your development.

Mr. Taylor said no I didn't do that. What I looked at was what the level of the intersection would be at the culmination of this project as I previously stated. The traffic impact of this project has been quantified by the Township through their TID program and so we looked at it, the DOT is coming through...

Ms. Donato said you don't need to go into a big dissertation. You've increased... you've found that with the traffic count of 2019, that there was a 20% increase in traffic volumes in the morning peak hour. Am I correct?

Mr. Taylor said yes that's correct.

Ms. Donato said and are you saying that that's negligible or scant.

Mr. Taylor said no, what I said was that the change in level of service delays were substantially similar to what they were in the Traffic Impact Study.

Ms. Donato said ok, so here's what I don't understand. If we were to look at your Table 3 on your report, ok. If the total number of trips has gone up by 19.9%, how does the level of service not change?

Mr. Taylor said 1, it's a function of where that volume is associated with, which turning movements. 2, it's the function of the operation of the traffic signal.

Ms. Donato asked what traffic signal. The one at Route 9?

Mr. Taylor said that's correct.

Ms. Donato said so you have 20% more volume but yet you're saying the level of service is better.

Mr. Taylor said no I didn't say it was better, I said it was substantially similar.

Ms. Donato said well...

Mr. Taylor said and that can be evidenced if you review Table 5 in the submitted documents.

Ms. Donato said well, Table five you have some of the, some of it actually getting better, don't you?

Mr. Taylor said yes.

Ms. Donato said so you increased the volume by 20%. Now, what do you attribute that to?

Mr. Taylor said as I think I just stated, it's a function of the volume on several movements could have changed. We could have seen a reduction in one specific turning movement, the other thing is we are talking about an actuated traffic signal and it's possible that in its actuation the signal is getting more green time. Without directly going into it, yes it's possible that several of the movements are going to improve in operation.

Mr. Stern said, Ms. Donato, one or two more questions.

Ms. Donato said how many... did you have any residual cues when you came up with this analysis.

Mr. Taylor said I didn't look at that.

Ms. Donato said you didn't. So when you did the calculations in June of 2019, do you know whether or not those cues took into account the residual delays of vehicles that did not pass through the intersection.

Mr. Taylor said we did not collect that data.

Ms. Donato said so couldn't that possibly account for why you think there's an improvement in the traffic even though you increased the volume by 20%?

Mr. Taylor said no I don't think so, I think it's an apples to apples comparison.

Ms. Donato said you don't know, you just said you don't know whether you took account of residual delays in the June 2019 count.

Mr. Taylor said I don't think that's what I actually said, what I said was no we did not. However, neither were they taken into account in the 2017 count. So what we are comparing here is apples to apples analysis and what is shown is, is that the results of the capacity analysis are substantially similar to what we did previously, and that the conclusions in the study still remain valid.

Ms. Donato said so you're asking this Board to believe that you found that the traffic was 20% higher in the morning peak hour but the level of service improved. Nothing else changed, apples to apples analysis.

Mr. Taylor said I'm not saying that the levels of service improved. I'm saying that on several movements they did and on several movements they increase.

Ms. Donato said what I'm trying to understand is how you have a 20% increase in volume and overall you get a substantially similar result.

Mr. Taylor said as documented here and submitted to the Board, the capacity analyses show that we have substantially similar results.

Mr. Stern said ok.

Ms. Donato said ok.

Mr. Stern asked if the Board has any questions for the expert.

Mr. Klein said I'd like to cross examine the witness too.

Mr. Stern said oh, please no... Mr. Klein, you have two questions.

Mr. Shloma Klein appeared. He asked when you calculate your pattern of behavior of people did you calculate the Orthodox Jewish community behavior?

Mr. Taylor said I'm not sure what you're asking.

Mr. Klein said the Orthodox community, when people go in the morning and the same in the afternoon, the way that the traffic works, everybody goes from Toms River or from Jackson, north. When you calculate in traffic patterns you calculate some go south and some go north. But none of the people in that neighborhood are going to go south into Toms River. Schools also don't go south. Everything is in Lakewood. Did you calculate those patterns, that it's only a one-way and everybody is going to congest on that intersection of Route 9 and Cross Street?

Mr. Taylor said we distributed the traffic out in various points amongst the various directions it can go. So yes, it was contemplated, not everybody is going to congregate towards Route 9 and Cross. There are other ways to travel north.

But did you calculate your patterns of the traffic analysis, did you use a calculation of a secular person or you used it as a Jewish Orthodox person, the way Lakewood is, everybody goes north.

Mr. Taylor said we took both into account.

Mr. Stern said that's one question, you get one more.

Mr. Klein said ok, did you calculate the traffic pattern, obviously the orthodox community is moving into Toms River, Jackson, everybody goes north. Did you calculate those and because it's one question I'll have to push in another one on that, the fact that there's a lot of developments got improved over the last few months. Did you calculate, you know the Zoning Board gave quite an approval, did you calculate all that with cars and basements?

Mr. Taylor said at the time of the study, we incorporated every adjacent development that had been approved at the time. We also utilized Ocean County's growth rate that they just determined for Lakewood specifically, to account for any development that could have been approved subsequently to the analysis.

Mr. Klein said does the Ocean County growth rate count it as the Orthodox community factor, or they calculate it as building-wise. Because we have a lot of community members taking over the secular gentiles in Toms River and they're all moving north. Did you calculate that or not?

Mr. Taylor said I can't speak to exactly how Ocean County derives their references, but when we went to them and told them where our development was, they specifically gave us a growth rate to utilize. So I'm assuming that that's accommodating that growth that they've projected throughout the County.

Mr. Klein said so that's your assumption, but you don't know for sure that that's what they did.

Mr. Stern said thank you Mr. Klein, we appreciate your time. He said we're kinda doing ok. Mr. Schneider, you want to do your thing and Ms. Donato you want to have your expert.

Mr. Schneider said we previously said Mr. Goll was going to go first, that's fine by me.

Mr. Stern said ok. It would really make the Board happy if we could get this done in 15 minutes and give Mr. Schneider 15 minutes.

Ms. Donato said I will try to achieve your happiness goal.

Mr. Stern said thank you Ms. Donato.

Mr. Jackson said Mr. Goll, you're still under oath.

Ms. Donato said Mr. Goll, subsequent to the last time that you testified here, were you able to obtain additional records from other departments of the NJDEP.

Mr. Goll said yes, we obtained a Stream Encroachment Report from through the Bureau of Dam Safety and it's entitled Stream Encroachment and Dam Safety Report for the Fairways at Lakeridge. We also were able to locate a report on the final drainage report, I know Mr. Vogt had questioned the preliminary nature of the other report which was a valid question. We were able to find this, this was in the similar information that was provided in the boxes from the Koke five bank boxes.

Ms. Donato said so initially you had your office prepare a request of public records from the DEP.

Mr. Goll said correct.

Ms. Donato said then you went to Dam Safety and you got this Stream Encroachment and Dam Safety Report.

Mr. Goll said yes.

Ms. Donato said and then you also began to analyze the documents that we obtained from the Kokes entity. So you have several sources of information.

Mr. Goll said that is correct.

Ms. Donato said now on the Dam Safety Report do you have copies of that to distribute, and I'd like to have that marked. I don't know Ms. Morris what the last exhibit number was.

Mr. Goll read the title, it is a Stream Encroachment and Dam Safety Report for the Fairways at Lakeridge, Lakewood Township, NJ, prepared for Cross Street Associates, LLC, prepared by Lynch, Giuliano & Associates, signed by John Woestnick PE., dated April 13, 1997.

Mrs. Morris said I believe D-28 is our last exhibit from you, Ms. Donato.

Ms. Donato said and so this is D-29.

Mr. Goll said he had 16 copies, and Ms. Donato distributed them.

Ms. Donato said ok now you've heard the testimony this evening of this plan that was presented today, the revisions to the plan to accommodate the drainage. Now how is that associated with this stream encroachment and dam safety?

Mr. Goll said the Stream Encroachment and Dam Safety Permit describes, has a description of the basins on the Fairways property in question, 4, 5, 6, 7, 8, and 9. It provides a description and a description of their hydrology.

Ms. Donato said do these, 7, 8, and 9, they're the three of the basins that discharge or use this 48" pipe.

Mr. Goll said that is correct.

Ms. Donato said you had described those flows before. How does that effect, what they're proposing, to enlarge the basement to accommodate this flow, how does that affect the Stream Encroachment and Dam Safety Permit?

Mr. Goll said well the, it does describe on page 18 that the outflow from basin 8 drains into basin 9 and the golf course recharge area. The basin stores approximately 11.3 acre-feet during the 100-year storm elevation and that's what it describes.

Ms. Donato said but here's my question. Here's a proposal to increase the size of the basin.

Mr. Goll said correct.

Ms. Donato said how would you describe that proposed change. The first time you saw it was this evening, am I correct?

Mr. Goll said yes.

Ms. Donato said and you haven't seen any calculations or reports that are associated with it.

Mr. Goll said no, I have not.

Ms. Donato said are you as an engineer able to determine with any reasonable degree of certainty, say whether or not that proposed enlarged basin is going to be feasible to accommodate the flows from the Fairways?

Mr. Goll said not at this time.

Ms. Donato said and as an engineer, can you tell us whether or not the proposed changes to the plan will generate any requirements for modifications at the State level?

Mr. Goll said yes, they'll have to be a modification. This is a vastly different plan than that which was submitted to the DEP for their CAFRA approval.

Ms. Donato said you're calling it a vastly different plan, why do you say that?

Mr. Goll said there's an additional between 364 and 365 acres of water, that are now entering the golf course that were not accounted for before.

Ms. Donato said ok, and so now the applicant is proposing to increase the size of the basin to accommodate that.

Mr. Goll said correct.

Ms. Donato said you haven't seen anything that indicates that what they have proposed to modify would accommodate that flow.

Mr. Goll said no.

Ms. Donato said ok, if they were to have that change in your opinion, would they need to modify the State CAFRA permit.

Mr. Goll said yes.

Ms. Donato said would they need to modify the Stream Encroachment and Dam Safety Permit.

Mr. Goll said I would assume so, yes.

Ms. Donato said ok well let me ask you this. Currently, the water that discharges through the pipe, it flows onto the golf course. Does it have any restrictions to it?

Mr. Goll said it flows into the pond, other than that there's no other restrictions.

Ms. Donato said and what is being proposed as you understand it based on the plan that was presented this evening?

Mr. Goll said what is being proposed is that they're going to be routing the 48" pipe and, it's hard to tell, I guess all of the basins are being combined in that area of the site into one.

Ms. Donato said is it a free-flowing situation where the water will now have the same type of condition as it currently has?

Mr. Goll said it depends, assuming it worked, it would be probably dry and then it would fill up and have a sort of backwater effect into the site. So for example it was testified earlier it was going to back up about 7 feet of water

into the recharge area, and I do not know how much backwater backs up into the golf course to understand if there is a difference. If the golf course allowed the water to flow out more freely at a lower elevation and allowed the water to spread out, now its confined and at a higher elevation there could be a backwater effect that could slow down the flow of water.

Ms. Donato said so what I'm trying to understand is this. Currently you have the water from the Fairways that flows onto the golf course without any kind of limitation, right?

Mr. Goll said well yeah it discharges into the pond and then has to elevate, it has its own restrictions on hydraulics.

Ms. Donato said there's no walls is there.

Mr. Goll said just around the pond there are, a few feet high.

Ms. Donato said it doesn't restrict the water.

Mr. Goll said no if it rises to the level of the wall it then flows into the golf course.

Ms. Donato said so it currently has a more natural condition for drainage, would you call it that?

Mr. Goll said no, I mean it's pretty highly-engineered.

Ms. Donato said I mean currently, what exists now.

Mr. Goll said well it's diverting flow into the golf course so it's a pretty complex diversion, it's a manmade system that would flow into the golf course.

Ms. Donato said but it would flow into the golf course and recharge on natural land.

Mr. Goll said well there's a larger area for it to flow on if need be.

Ms. Donato said is that area going to be reduced by a series of walls and engineered structures as this apparently is going to do.

Mr. Goll said well the aerial extent of free-flowing water is definitely going to be reduced. To what extent, I don't know.

Ms. Donato said as an engineer, do you have a concern about hydrological trespass?

Mr. Goll said there is a concern because if it backs up water, I mean any change of the flow regime from one site to another, even if you change sheet flow to concentrated flow, if you change the peak flow from one property to another, it could be a trespass if there's water backed up onto the property.

Mr. Stern asked what does that mean?

Mr. Goll said it means you're putting water, it's an old law, it means you're taking water that didn't normally flow in a certain way or even volume or amount, and putting it onto somebody else's property.

Mr. Jackson asked if any other engineers use that term besides him, hydrological trespass. Is that a term that's known in the world of engineering?

Mr. Goll said absolutely.

Ms. Donato said isn't it the subject of a Superior Court decision in the past several years?

Mr. Goll said in New Jersey, yea it was.

Ms. Donato said alright, so this Stream Encroachment Permit, does this show a relationship between the stream that is on the Fairways property and the golf course?

Mr. Taylor hesitated.

Ms. Donato said is this Stream Encroachment and Dam Safety Permit related to the golf course?

Mr. Taylor said yes, because both the CAFRA and the Stream Encroachment Permit both specifically state that the golf course is used basically as a receptacle for additional flows of stormwater coming through the site. Essentially if you cut that off and send it further downstream for example, let's say they decided hey we're going to cut the pipe off, well now there'd be issues downstream because you're sending more downstream and potentially impacting the dams.

Ms. Donato said ok, and you also have a document which is the Final Stormwater Report.

Mr. Goll said yes.

Ms. Donato said and that we also sent over today, but I'd like to have that marked as D-30.

Mr. Goll read the title into the record, a report titled Final Drainage Report for Fairways at Lakeridge, Section 6. I also have another document that can be submitted at the same time, it's one I produced. It's one page that describes how the final project was built in phases.

Ms. Donato said let's go over D-30 first. How does this relate to the 48" pipe?

Mr. Goll said the Final Drainage Report for Section 6, Section 6 is the part of the Fairways project where they had included the drainage description of the 48" pipe. They checked the calculations to make sure everything was consistent with the Preliminary Report and then they make a judgement or a recommendation on the stormwater system and whether it's still functioning the same as it was in the Preliminary Report. In this case, they confirmed it does.

Ms. Donato said now you have another document you said which is just a listing of documents.

Mr. Goll said yes, and for the record the Final Drainage Report was prepared by Lynch, Giuliano & Associates dated November 4, 1997. As another thing I have digital copies of the plans that accompanied these reports.

Ms. Donato said these are additional plans that were too big to print out. She marked these plans as D-32.

Mr. Goll said D-31 is the list of reports, I titled it Final Drainage Reports for the Fairways at Lakeridge, all these reports were prepared by Lynch, Giuliano & Associates by John Woestnick, for Cross Street Associates. It's a listing of the name of the sections of those reports and their dates. They were too voluminous to provide but it gives the Board an understanding of the sections and the context of Section 6.

Ms. Donato said and none of this information was available to the DEP when they issued the 2018 CAFRA permit.

Mr. Goll said correct.

Ms. Donato handed out D-31.

Mr. Stern said one or two final questions.

Ms. Donato said I just want to ask you a couple additional questions. So you saw the exhibit that was prepared tonight that increases the size of the basin.

Mr. Goll said I have a copy.

Ms. Donato said is there any way for you to determine whether or not it is a feasible basin to construct?

Mr. Goll said I do not know.

Mr. Stern said last question.

Ms. Donato said I have no other questions.

Mr. Stern said thank you.

Mr. Jackson said I have a question for Mr. Goll. Hydrologic trespass, isn't that generally a circumstance or an issue of the downhill person complaining about what's coming from uphill?

Mr. Goll said usually, except, because gravity usually lets the water flow downhill, but if you're backing water up into a property... there's been instances where let's say you put a berm...

Mr. Jackson said like tail-wagging or whatever.

Mr. Goll said tailwater.

Mr. Jackson said you indicated that you're not aware of any easement that allows this 48" pipe to go out onto the golf course.

Mr. Goll said there is no easement as far as I know.

Mr. Jackson and Mr. Stern said thank you.

Ms. Donato said we provided the search, there is no easement.

Mr. Schneider said he was ready to present. He presented Brian Flannery, P.E., P.P., who was sworn. He said what was alluded to last time was that the golf course was the open space component of the Fairways, which is not the case on any of the filed maps that were approved by this Board and prepared by the prior development. I provided copies of the appropriate sections of each of the filed maps 1-11 in the Fairways. I have 5, 6 and 10 on the easels there. Interesting to note, on 5 and 6, which abut the golf course, the line separating the golf course from the Fairways is delineated as project limit. When you look through all of these copies each one has a chart that indicates open space and it highlights on each one a note that says open space defined as areas not covered by buildings or structures of any kind or other streets or impervious. It also lists the common open space for each

section. If you look in the chart for each particular section, there's common open space so the golf course was not THE open space because there's 86 acres of common open space designated and highlighted on each of the 11 sections. Each says individually they comply with the 50% requirement. So this is an open space difference that the objectors interchanged open space with common open space, and they make it seem like the only open space there is, is common open space. But if you look in the Lakewood Ordinance, first of all, there's the section for the GDP that defines open space as the pervious areas as was indicated before, and each of those sections have it so we aren't creating any non-conforming use by this. We're not using anybody's backyard as a common open space. If you look at the definitions in the ordinance of open space, coincidentally there's one for open space and one for common open space. Open space is an unoccupied space on the same lot with the principle use or accessory buildings. That could be in somebody's yard. Open space, common, parcels or parcel of land, and you get the point. Two separate things. When you look through all the maps approved and signed by this Board, filed in the County, anybody that looked at their filed map would know clearly that it never references the golf course as common open space or any open space. They indicated that the golf course is the recreation element. Someone asked Ms. Woolley-Dillon if she knows if that's common open space and if you look on page 65 of that report, where it gets to non-municipal park recreation and open space areas, it indicates that there's 1,990, approximately 248 acres is private open space. So they're saying all of Lakewood, there's 248 acres private open space included in that and it says "ie conservation easements." The golf course is not in a conservation easement, it's not in that 248 acres, and clearly it's not in the recreation element. It wasn't on the Smart Growth Plan, it wasn't on anything. It's a private golf course for public use and the Township never decided they were taking that away from the private owner. It was indicated that we need front setback variances. I should note that the Lakewood Ordinance, 18-606 says the developer has the option of bifurcating the preliminary application. So we have a preliminary application, which you've seen many times, the developer has the ability to bifurcate it and its bifurcated into a General Development Plan and then the second phase is all of the design items that they've been asking for. It specifically says that you cannot ask for bulk variances at the General Development Plan and we're not asking for variances, we don't need variances. The Lakewood Ordinances says we can ask for bulk variances when we come back for the preliminary but we're not asking for bulk variances because we don't need them. The front setback variance that they indicated we need is because, as testified, they measured from the right-of-way line, and the Ordinance clearly says for these lots minimum setback from an interior circulation roadway is 20 feet and the plans as drawn show that. If the board decides that something that's proposed on the preliminary concept plan that just shows the feasibility, and when I first testified I went through every requirement and showed that it is feasible. I've heard more testimony on outside agency approvals for a General Development Plan than I've ever heard on an application for site plan, subdivision, or anything else. We know we need outside agency approvals, we'll get them. Terry's going to review it, Terry's not going to let us build something. We aren't going to let our water trespass, we aren't going to cause any adverse impacts. We're going to get all the permits that are required or we don't build anything. The GDP, as I indicated previously, just locks in the zoning so that we have time to do this job properly. The perimeter setback, there was a lot of talk about it's a no-fly zone, it's a buffer... it's not, it's a setback, same as all other setbacks. If the Board determines that parking or a basin, which they haven't determined, and it's an item that an interpretation is being granted from the Zoning Board, if the Board decides those items aren't allowed in the setbacks, treehouses, pools, they won't be there when we come in with the preliminary. The perimeter boundary setback which was the same as for the Fairways says no buildings, structures, other entrances, or gatehouses shall be located. By a strict interpretation of a structure, it's a combination of materials. That could be roads, that could be landscaping. If it's a strict interpretation, the whole boundary, you can't build so you can't build anything. So you have to use some common sense and that's what we will do. The stormwater, we've heard that the golf course is a recharge area. Well yards are recharge areas, anywhere where there's no impervious coverage is a recharge area. Any recharge that's occurring on the golf course will be occurring in this development when we come in with detailed plans. And the State and Terry will make sure of that. Again, we're not going to let the water trespass. The GDP requires that we show the method of controlling and managing it, which we've had. I've heard terms like its inextricably linked, but it's no different than any downstream property and we have to prove that we're not going to have an adverse impact and we will do that when we come in. There was an issue raised with respect to Augusta Boulevard, that we can't have our traffic go through it. The testimony was that all

the traffic for our development is coming in through the Boulevard. It's a Boulevard that complies with the RSIS requirements.

Mr. Schneider said you mean the new Boulevard, not Augusta Boulevard.

Mr. Flannery said the new Boulevard. The only traffic on Augusta will be for the golf course, the way it is today. The 9-hole golf course is not a municipal course, the 9 holes is part of this, it was done by the Kokes organization and added to this. It's not a municipal golf course because it's on municipal land. This applicant from Kokes got a 99-year lease on it with an option to buy it, so it's definitely not a municipal golf course. If you look at the agreement that was indicated, in paragraph B at the end, it says the easement is only granted for the aforementioned golf club uses and may not be used for housing except up to two dwellings. So at the time of this, they expected some development. The fiscal report, Ms. Woolley-Dillon testified two times in the transcript, she said it should be based on the 2020 census which is not out yet, and twice she said if she did it, she would guesstimate. That's what's done in this and there's no requirement that it shows a positive. The last thing, they said we didn't mention the golf course had a clubhouse. The clubhouse is mentioned in the project description, it's shown on the plans. They said we didn't address the uses on it. The uses were shocking, there's a restaurant, catering, pro shop, merchandise sales, atm and cigars. And obviously any golf course club house in the area has all of those.

Mr. Schneider marked the Final Plats for sections 1 through 11 as A-103 to A133, respectively.

Mr. Stern said good job, thank you. Ms. Donato, I see you have one final thing to share with us.

Ms. Donato said I have many other things to share but I guess time will not allow. Mr. Flannery, were you here when we admitted...

Mr. Stern said Ms. Donato... Oh, cross exam. We are going to lose our quorum. He allowed 5 minutes.

Ms. Donato said I will try my best. Haste makes waste. Were you here when we introduced into evidence D-25 the Final Major Subdivision Phasing Plan for the Fairways at Lakeridge?

Mr. Flannery said I'm sure I was here, I don't recall it.

Ms. Donato said do you recall that on that plan the golf course is called the Fairways golf course?

Mr. Flannery said that would not surprise me.

Ms. Donato said ok and would it surprise you that the Stormwater Management report that we introduced in July indicates that the adult community project consists of the housing and the golf course?

Mr. Flannery said some engineer wrote a description in there and that was an engineer's interpretation when he submitted...

Ms. Donato said that's your interpretation.

Mr. Flannery said that's my interpretation.

Ms. Donato said so when the engineer wrote that the site itself consist of 440 acres, of which 137 exists as an abandoned borrow pit and is being dedicated as the golf course, that was just the engineer who said that.

Mr. Flannery said the engineer said that, it doesn't say dedicated to who, dedicated to the Kokes organization, dedicated as a public golf course... it's an engineer's writing, it has no bearing, and from a planning perspective it says nothing

Ms. Donato said did you ever look at the legislative history of the ACP ordinance that created the Fairways?

Mr. Flannery said I was involved in town when that was done and I was familiar with it as it went along, I wasn't involved in it but that's the extent of my investigation of the legislative history.

Ms. Donato said you didn't see anything about the fact that they were going to cluster the residential component to create the open space?

Mr. Flannery said I did not see that, no.

Ms. Donato said ok, so you were also involved in the Masters collection, the development of the Kelly Horse Farm.

Mr. Flannery said I was associated with FWH Associates at the time when they did that, yes.

Ms. Donato said do you recall signing plans for that?

Mr. Flannery said yes.

Ms. Donato said so when we showed the colored map that was colored by somebody at Flannery, Webb, and Hansen, didn't you decline to have any knowledge of how that map came about.

Mr. Flannery said I declined any knowledge of who colored the map because it wasn't a signed or official map

Ms. Donato said well it... I didn't know you were testifying tonight. Would it surprise you to know that there's a colored map from that particular Masters collection that colors the green area to include the dark green area as the individual lots, would it surprise you that your name is signed on a document...

Mr. Jackson said didn't we already go over this?

Ms. Donato said no it was not.

Mr. Flannery said a colored map has no significance unless you know why it was colored. And the Masters was added, it's another example of the Fairways seems to think that once the GDP was done nothing could be added to it, but we saw that 9 holes was added to it, the Masters was added to it.

Ms. Donato said that was not my question to you. My question was, the last time you said you didn't know anything about how that map was colored. You thought you didn't know who colored the map...

The two parties argued over one another.

Ms. Donato said you are under oath. Would you be surprised to know that you signed a colored version of the map for the Masters Collection.

Mr. Flannery said I would not be surprised.

Ms. Donato said did you see anything in the Fiscal Impact Statement addressing the cost to the school system?

Mr. Flannery said the Fiscal Impact Statement indicated that they took an overall cost per student and divided that out. Because Lakewood is predominantly private school and the costs are driven by both the bussing and the special education, all of that was incorporated in the number of students divided by the cost and, in my opinion, that's actually a conservation estimate.

Ms. Donato said did you contact the author of the report in coming to that conclusion?

Mr. Flannery said I have spoken to the author. I didn't specifically ask him about that because it was perfectly clear in the report.

Mr. Stern said last question.

Ms. Donato said so you know there were 6.59 people per household?

Mr. Flannery said that is correct.

Ms. Donato said and 1.31 children per household?

Mr. Flannery said that is correct.

Ms. Donato said and you have two parents, who are the other people?

Mr. Flannery said well if you look at a breakdown of the ages, from 0-5 they're not in school at all, that's a certain percentage, and when you get to 20 you're not in school. So any of the children that are still there above that are not in school, so the number doesn't seem unrealistic to me

Ms. Donato said it's not explained in the report, is it?

Mr. Flannery said the report indicates where the number came from.

Mr. Stern said thank you. Mr. Klein, you have one question

Mr. Klein said it's hard to make a question when it's a leading question. Is there a building currently on the golf course?

Mr. Flannery said yes.

Mr. Klein said what is the building used for?

Mr. Flannery said it's a clubhouse for the golf course.

Mr. Klein said do they sell wine.

Mr. Flannery said yes they do.

Mr. Klein said is it open Saturday?

Mr. Flannery said yes they are.

Mr. Klein said and it's owned by a Jew?

Mr. Flannery said no.

Mr. Klein said by whom is it owned.

Mr. Flannery said the liquor license is in my name.

Mr. Stern said thank you Mr. Klein. We heard this, he testified about this in May.

Ms. Donato said I'd like to bring something to your attention. The image with the larger basin was posted on the site today, available to the public today.

Mrs. Morris said that was before you sent the documents that you sent which the Board requested from you quite some time ago.

Ms. Donato said I'm not... I just want it to be clear that the document was on... placed on the Township's website today.

Mr. Schneider said we are done with testimony and we are going to come back to hear from the public.

Mr. Stern said yes, we did it Mr. Schneider.

Ms. Donato said I brought my traffic engineer here because he wanted to be able to comment on the additional counts, he could do it in five minutes.

Mr. Stern said no, but if he wants to submit something in writing we will read it.

Ms. Donato said ok and I do have the testimony of a lay witness. He can present it as a member of the public if you prefer, about the tax appeal.

Mr. Stern said he can do that during the public and I will give him leeway.

Mr. Schneider said we have to select another date.

Mr. Stern said we already have.

Mrs. Morris said a legal announcement needs to be made, but the attorneys had already agreed on November 25<sup>th</sup>, a special meeting.

Someone from the public complained about the holiday.

Mr. Flancbaum said I celebrate Thanksgiving too.

Mr. Stern said Thanksgiving is on Thursday, this is Monday.

Mrs. Morris said the Board also has a regular meeting that Tuesday and she thanked the Board for their service, which is unpaid.

Mr. Stern said the public will get to speak the next time, and he asked them to limit repetition. He said if we can get it down to two hours, then the Board will have a solid hour to deliberate and decide.

Mr. Jackson made an announcement that the project would be continued to the November 25<sup>th</sup>, 2019, meeting.

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

The meeting was hereby adjourned. All were in favor.

Respectfully submitted  
Ally Morris