

I. CERTIFICATION OF COMPLIANCE

Chairman Neiman called the meeting to order at 6:00 p.m. with the Pledge of Allegiance and Mr. Kielt 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. Advance written Notice has been filed with the Township Clerk for purpose of public inspection and, a copy of this Agenda has been mailed, faxed or delivered to the following newspapers: *The Asbury Park Press*, and *The Tri-Town News* at least 48 hours in advance. This meeting meets all the criteria of the Open Public Meetings Act.”

2. ROLL CALL

Mr. Herzl, Mr. Franklin, Mrs. Koutsouris, Deputy Mayor Miller, Mr. Neiman, Mr. Akerman, Mr. Banas, Mr. Follman, Mr. Schmuckler

3. SWEARING IN OF PROFESSIONALS

Mr. Vogt was sworn in.

4. MEMORIALIZATION OF RESOLUTIONS

1. SD # 1696 (Variance Requested)
Applicant: Mark Properties
Location: Drake and Whitesville Roads
Block 251 Lots 4 & 5
Minor Subdivision- 2 lots to 4

Motion was made by Mr. Herzl, seconded by Mrs. Koutsouris, to approve

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mrs. Koutsouris; yes, Mr. Neiman; yes, Mr. Akerman; abstain, Mr. Banas; abstain, Mr. Follman; abstain

Mr. Jackson swore in Deputy Mayor Miller and Mr. Schmuckler as members of the 2010 Planning Board

2. SP # 1926 (No variance Requested)
Applicant: Beth Medrash Govoha of America
Location: Princeton Avenue between 6th & 7th Streets
Block 164 Lot 1
Preliminary & Final Site Plan for 2-four story multi family buildings (102 units)

Motion was made by Mr. Herzl, seconded by Mrs. Koutsouris, to approve

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mrs. Koutsouris; yes, Deputy Mayor Miller; yes, Mr. Neiman; yes, Mr. Akerman; abstain, Mr. Banas; abstain, Mr. Follman; abstain; Mr. Schmuckler; yes

3. SP # 1838A (Variance Requested)
Applicant: NJ HAND Inc.
Location: Vine Avenue, north of Oak Street
Block 833,834 Lot 4
Block 835, 836, 837 Lot 3
Preliminary & Final Site Plan –Phase II of affordable housing

Motion was made by Mr. Herzl, seconded by Mrs. Koutsouris, to approve

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mrs. Koutsouris; yes, Deputy Mayor Miller; yes, Mr. Neiman; yes, Mr. Akerman; abstain, Mr. Banas; abstain, Mr. Follman; abstain; Mr. Schmuckler; yes

4. SD # 1699 (Variance Requested)
Applicant: Shimshon Bandman
Location: Ridge Avenue- west of Somerset Avenue
Block 223 Lots 9.04 & 80
Minor Subdivision – zero lot line

Motion was made by Mr. Herzl, seconded by Mrs. Koutsouris, to approve

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mrs. Koutsouris; yes, Deputy Mayor Miller; yes, Mr. Neiman; yes, Mr. Akerman; abstain, Mr. Banas; abstain, Mr. Follman; abstain; Mr. Schmuckler; yes

5. NEW BUSINESS

Mr. Kielt said there was one change to the agenda. Item #2 –SD 1691 Sam Bauman, the applicant's attorney requested it be carried to the meeting of February 16, 2010.

Mr. Neiman asked which members can vote on this next application and Mr. Kielt said the members eligible to vote are Mr. Herzl, Mr. Franklin, Mr. Neiman, Mrs. Koutsouris, Mr.

Akerman, Mr. Banas, Mr. Schmuckler and Mr. Percal (absent). Mr. Neiman said everyone but Mr. Follman and Deputy Mayor Miller can vote.

1. SD # 1509B (No variance Requested)

Applicant: Majestic Contracting

Location: Massachusetts Avenue, south of Prospect Street
Block 445 Lot 18

Preliminary & Final Subdivision & Site Plan for 17 two family townhouses

Mr. Vogt prepared a letter dated October 20, 2009 and is entered in its entirety. The applicant proposes to develop this property for multi-family development, including seventeen townhomes within three (3) proposed on-site buildings. Proposed amenities include but are not limited to a privately-owned cul-de-sac (Alpine Court), seventy-five (75) parking spaces, a proposed tot lot, an underground detention systems and an above-ground recharge basin. The property is located in the Residential Multifamily (RM) Zone. Per our interpretation of the submitted documents, including the Final Major Subdivision Plan, the property will be maintained through a future Homeowners' Association with the proposed lots being Fee Simple. Per our review of the documents, an earlier version of this application was denied by the Planning Board at its November 21, 2006 meeting due to Board and public concerns expressed including but not limited to three (3) primary issues: Parking – Due to the potential for basements proposed within the development being converted into inhabited basements, the Board expressed concerns regarding the number of parking spaces (75) proposed. Buffer – The Board felt that Lakewood buffer ordinance for multi-family or townhouse development adjacent to single-family development/zoning, Section 18-803(E)(2)(b) should be applied to the project. Cul-de-sac – The Board requested a Cul-de-sac turnaround for the proposed Alpine Court terminus in lieu of “other suitable means” such as hammerheads allowed by RSIS standards for multifamily cul-de-sac stems (NJAC 5:21-4.5(m)). Per review of the Findings in Judge Vincent Grasso’s March 5, 2009 (written) Court decision, the Court found that the Board’s denial of the proposed seventy-five parking spaces was “arbitrary and not based on credible evidence in the record”. However, our interpretation of the Findings indicates that the Court found that the Planning Board was entitled to request a cul-de-sac turnaround for Alpine Court, as well as the landscape buffer to single family-development/zoning stipulated in Section 18-803(E)(2)(b) of the UDO. The following design revisions were made per site plan review at the June 2, 2009 hearing: Proposed handicap spaces have been shifted closer to the main building units on both sides of Alpine Court, and are accessible to proposed sidewalks (via ramps that are also necessary). Proposed parallel parking on Alpine Court has been reduced to three (3) spaces, and the minimum 24’ wide access aisle from the Alpine Court 90 degree parking spaces is now provided per RSIS standards. A separate lighting plan has been provided with design data as requested. Soil test data has been provided as requested. Various plans revisions and clarifications per our initial site plan review. *In response to our previous review letter dated July 16, 2009, and comments received at the September 1, 2009 public hearing, the applicant has made a revised submission including but not limited to the following revisions: The cul-de-sac bulb has been revised to provide the minimum 40’ wide turnaround prescribed in RSIS, per discussions at the September 1, 2009 hearing. The handicap spaces originally proposed have been removed from the current design, and replaced by two (2) 8’ x 12’ refuse pads as depicted on the revised plans. A “typical front yard” detail has been provided on the revised Layout Plan (Sheet 3), indicating enlarged, 6’x6’ individual trash enclosure pads now proposed for each residential unit. The number of parking spaces proposed tangential to the cul-de-sac bulb has*

been increased to six (6). Two (2) spaces were deleted from the parking area proposed immediately east of the bulb. Miscellaneous plan design revisions per our previous review letter. We offer the following comments and recommendations per review of the current application, the above referenced Planning Board resolution of denial, the Findings of the Court, prior engineering and planning review letters by T&M Associates dated September 15, 2006, and comments from our review letters dated May 26, 2009 and July 16, 2009, respectively: Zoning- The property is located in the Residential Multifamily (RM) Zone. Townhouses are a permitted principal use in this zone. *Fact.* No variances are requested with this application. *Fact.* In response to Code Section 18-900(H)(10) requiring structures with more than two (2) units having a variation in offset of at least two (2) feet, the architectural drawings were revised to show an offset of two (2) feet per unit (as scaled from the First floor Plan provided on Sheet P2). Testimony should be provided from the applicant's professionals indicating that the two-foot minimum standard will be met. *Testimony is required.* Review Comments- General- As indicated on the site plans, and as upheld by the Court's decision, a Cul-de-sac bulb is now proposed at the terminus of Alpine Court. *Fact.* - The proposed Cul-de-sac bulb has a design radius of only 30 feet as depicted on the submitted plans. Per RSIS standards for Cul-de-sacs for "Multifamily access" (NJAC 5:21-4.5(m)), "Cul-de-sacs shall provide for a cartway turning radius of 40 feet or other suitable means for vehicles to turn around, such as hammerheads". Since the applicant is providing a Cul-de-sac are required by the Board, and upheld by the Court's decision, vs. "other suitable means", our interpretation of the design requirements is that the Cul-de-sac bulb must meet the minimum 40' cartway turning radius identified in the RSIS. The road should be redesigned accordingly. *Per testimony at the 6/2/09 workshop hearing and the 9/1/09 public hearing, the applicant now proposes a compliant (40 foot radius, right-justified) cul-de-sac terminus. This item has been addressed.* We defer detailed review of the road design, including proposed grades and alignment, until review of the above referenced design revision. *Fact.-* The applicant proposes seventy-five (75) parking spaces to serve seventeen (17) townhomes, or 4.4 spaces per unit. These are the same numbers and ratios proposed in the prior application. The Court Findings (page 28) indicated that the Board's denial of the proposed parking was arbitrary. Therefore, our interpretation of the Court findings is that the proposed number of parking spaces (75), or 4.4 parking spaces per unit is adequate for the project. *Fact.* We note that the requested cul-de-sac bulb cartway width revision could impact parking proposed along the northwesterly portion of Alpine Court, providing 75 spaces as proposed may not be feasible. *Fact.* As indicated previously, parking space locations have been revised to accommodate the larger terminus. The plans show four (4) proposed parallel spaces proposed within the northerly cartway portion of Alpine Court, across from 90-degree spaces proposed for units in Buildings One and Two. Based on a scaled cartway width of 28 feet, and (minimum) 7-foot wide parallel spaces, an aisle width of only 21 feet would be provided for the Alpine Court parking spaces across from these parallel spaces. Per RSIS (NJAC 5:21-4.16) Table 4.5, "Parking Angles and Aisle Widths", a minimum 24' wide aisle width must be provided to for all of the 90-degree parking spaces. Design revisions are necessary. *As noted previously, the plans have been revised to provide the minimum 24-foot aisle width. This item has been addressed.* The revised plans depict two (2) proposed handicap accessible spaces across from Building #2. Unfortunately, there would be no sidewalk access from these spaces to any of the proposed units. We recommend that the applicant consider relocating these spaces to be directly in front of one of the proposed Buildings. If the design could accommodate, providing one accessible space for Building #3, and one accessible space for Buildings #1 and #2 would be an improvement. *As noted previously, the plans have been revised to provide to eliminate the originally-proposed handicap spaces in favor of two (2) 8'x12' trash enclosure pads, one on each side of the road. Per Board comments expressed at the 9/1/09 hearing, the above referenced trash enclosure pads are now proposed, as well as 6'x6' individual pads proposed for each residential unit. Testimony should be provided from the*

applicant's professionals regarding the proposed design, and who will be collecting trash from the development (HOA or Township). If Township pickup is proposed, Department of Public Works approval is necessary. Sidewalks are now proposed along Massachusetts Avenue, as well as in front of the residential units. *Fact.* As requested in T&M's 9/15/06 engineering review letter, the Alpine Court Access is proposed to be right-in, right-out. This is satisfactory. *Fact.* As requested in T&M's 9/15/06 engineering review letter, the Alpine Court Access turning aisle widths were recommended to be a minimum of sixteen (16) feet, vs. 14 feet as proposed unless the design engineer could provide a turning plan indicating the proposed width's adequacy for trash truck access. This issue must be addressed by the applicant's engineer. *This item remains outstanding. Testimony is required.* The proposed Alpine Court access design is subject to Ocean County approval. *Fact.* One (1) new road name, Alpine Court, has been proposed for the project. The proposed road name is subject to approval from the Township and proof of approval shall be provided. *Fact.* The applicant must provide proof that all proposed Block and Lot numbers have been approved by the Lakewood Tax Assessor. *Fact.* Plan Review- If this project is approved by the Planning Board, metes and bounds will be necessary for the proposed Sight Triangle Easements dedicated to the Township of Lakewood as shown at Alpine Court's intersection with Massachusetts Avenue. This easement should be depicted on the Subdivision Plan as well. *Fact.* A fifteen-foot (15') drainage easement is proposed along the property's Massachusetts Avenue frontage as depicted on the Subdivision Plan. *Fact.* A tot lot is proposed immediately west of Building #3. A detail is provided on Sheet 5 of the plans. All play equipment must be installed over an impact-absorbing surface. We recommend that a CPSI (Certified Playground Safety Inspector) certify that the equipment is installed properly prior to project release by the Township, and that the tot lot is ADA-accessible. These conditions shall be met prior to issuing a certificate of occupancy. *Fact.* Homeowners documents must be provided for Township review in accordance with UDO requirements if/when this project receives Board approval. *Fact.* Grading- Proposed grading is provided in sufficient detail on Sheet 4, "Grading and Drainage Plan. The grading design as indicated is generally acceptable for preliminary approval purposes. *Fact.* Five (5) retaining walls are proposed along the property perimeter as part of the grading design. If this project is approved by the Board, design information for each of the wall systems will be required during compliance review. *Fact.* Additionally, grading easements are likely necessary with adjacent owners/properties for construction of several of these walls as designed. Per further review of the proposed grading at the intersection of Alpine Court and Massachusetts Avenue, there is a proposed cross-slope of over 2 feet at the end of the Court as currently graded. Revisions will be necessary, at a minimum, as a condition of Planning Board approval if/when forthcoming. Stormwater Management- As depicted on the plans and in the stormwater report, two (2) proposed basins will provide stormwater management for the facility. An underground detention system, consisting of a network of 36" diameter HDPE perforated piping is proposed underneath of the Cul-de-sac, with an overflow discharge to a "bubbler" inlet to be constructed along the southern edge of Prospect Avenue. A "Stormceptor" pretreatment unit is provided to meet the NJ Stormwater Rule's Total Suspended Solids (TSS) removal requirement. In addition, an above ground retention basin is proposed in the southeast corner of the property, along the Massachusetts Avenue frontage. *Fact.* A stormwater management report is provided, indicating that the two (2) proposed basins are designed per the NJ Stormwater Rule. *Fact.* No site-specific soil information is provided for the proposed stormwater design. Soils information must be provided via borings or test pits, including information on soil lithology, percolation rates, and depth to seasonal high water table (SHWT). As indicated previously, soil data has been provided in the vicinity of both proposed stormwater systems. Existing depths to water table and permeability rates appear favorable. This item has been addressed. An impact analysis of the proposed "bubbler" discharge onto Prospect Avenue must be provided by the applicant's engineer. A drop manhole should be considered in lieu of the proposed 15" diameter

outfall pipe slopes for energy dissipation purposes. *Fact.* An overflow weir should be provided for the proposed above ground basin. *Fact.* A stormwater maintenance manual will be required in accordance with NJ Stormwater Rule (NJAC 7:8) and Township standards. *Fact.* A final review of the stormwater design will be performed upon receipt and review of forthcoming soils information and design revisions. *Fact.* Landscaping- Proposed landscaping is depicted on Sheet 5, "Lighting and Landscape Plan" of the revised submission. The proposed design includes evergreen trees along the majority of the property's perimeter, to consist of White pines, Norway spruces, Leyland Cypress, interspersed with Littleleaf lindens, Red oaks and Red Maples. A double row of evergreens is proposed along the southerly property line, and residentially zoned Lot 2. *Fact.* *In addition, the revised plans also indicate one (1) shade tree proposed behind each of the 8'x12' trash enclosure pads.* The applicant's engineer should testify whether any mature vegetation with this site can be preserved. If so, tree protection measures should be provided on the plan. Additionally, final plans for this project (if approved by the Board) must include proposed root protection for trees to remain at the property line with adjacent Lot 2. *Testimony is required at the public hearing. Shade tree easements are depicted on both sides of Alpine Court. While we recognize that these easements are proposed by the applicant in an effort to comply with the Township ordinance, they are not functional for shade trees as proposed since the underlying areas will be occupied by paved and/or developed areas as currently designed. It may be more appropriate to limit these easements as utility (only) and waive the Shade Tree easement requirement.* As evidenced in the Board's resolution and Court Findings, the issue of the proposed buffer provided to adjacent (residential) Lot 2 was discussed in detail. Our interpretation of the Court Findings (Page 24) indicated that the Board has a right to require buffer to adjacent (residential and residentially zoned) Lot 2 as referenced in Section 18-803(E)(2)(b), specifically: "Multi-family or townhouse adjacent to an existing single-family residential development or an area zone for single-family residential land uses shall provide a buffer area of at least thirty (30) feet in width, as measured from the property line toward the proposed use. The Board may reduce the required buffer to fifteen (15) feet in width if the developer provides a dense landscape screen." Per review of the plan, a 10-wide buffer (as scaled) is proposed along the southerly property line abutting Lot 2. Unless a design waiver is requested and granted by the Board, this buffer must be widened to at least 15 feet (if the Board is satisfied with the proposed buffer), or the buffer must be revised to a minimum 30 feet in width. *Fact.* *Additionally, per further review of the plan and the Court decision (Page 24), it appears that the same (15 foot or 30 foot landscape) buffer requirement may also apply to adjacent Lot 1 to the west of the site, since it is in the same (RM) zone as Lot 2. Testimony is required from the applicant's professionals regarding this issue. If applicable, additional relief will be necessary for the current design.* Landscaping should be provided to the satisfaction of the Board. Additionally, compensatory tree plantings for specimen trees that will be lost (or equivalent monetary contribution) must be provided in accordance with the Township's Tree Protection Ordinance. *Fact.* *Lighting- A separate Lighting Plan (Sheet 6) has been provided as requested with supporting data. Ten (10) lantern pole lights appear to be proposed along portions of Alpine Court and the proposed Tot Lot. Light intensities as depicted appear generally adequate. Shielding of several of the proposed lights along Lot 17 appears necessary to minimize spillover. A light pole and foundation detail(s) must be provided, including the proposed pole height(s). Several of the lights proposed along the southerly curb line of Alpine Court appear to be in conflict with the underlying parking spaces. Design revisions appear necessary.* Utilities- Existing and proposed water and sewer utility services are provided on the Grading and Drainage Plan. If this project is approved by the Board, more detailed utility information, including individual water and sewer services proposed (per unit) will be required during compliance review. *Fact.* Similarly, additional services (telephone, gas, cable, electric) will be required during compliance review if this application is approved. *Fact.* Signage- Traffic, parking and directional signage details are provided on the plans. *Fact.* *Per further review of*

the design, one of the proposed "Fire Lane signs is proposed between the edge of the cul-de-sac bulb and the four (4) adjacent parking spaces, and must be relocated. The applicant should indicate whether any additional signage is proposed for this project. If so, details must be provided. *Fact.* Environmental Impact Statement. An Environmental Impact Statement was provided for review, and is generally satisfactory. Additionally, locations, sizes (diameters) and types of mature trees are provided on the plans. *Fact.* To assess the site for environmental concerns, our office performed a limited natural resources search of the property and surroundings using NJ Department of Environmental Protection (NJDEP) Geographic Information Mapping (GIS) system data, including review of aerial photography and various environmental constraints data assembled and published by the NJDEP. The following data layers were reviewed to evaluate potential environmental issues associated with development of this property: Known Contaminated sites (including deed notices of contaminated areas); and Bald Eagle foraging and Urban Peregrine habitat areas; and NJDEP Landscape Project areas, including known forested wetlands, emergent wetlands, forest, grassland and wood turtle habitat areas. Per NJDEP mapping, the wooded area in the northwest corner of the site, and along the northerly property line is mapped as potential state-threatened species habitat. While this wooded area is not likely "critical" habitat due to surrounding development, we recommend that the applicant retain a qualified consultant to investigate the site habitat based on a request for NJDEP natural heritage database information, and provide a summary report of findings. *This information is still required.* Phase I/Areas of Environmental Concern (AOCs) As depicted on the plans, there is an existing well near Massachusetts Avenue that will be sealed per NJDEP requirements. The applicant's professionals should testify whether there are any known areas of environmental concern (AOCs) within the site (e.g., underground or above ground fuel tanks). A Phase I study for the property, if existing, should be submitted for review. *Fact.* At a minimum, Board approval for this project should be conditioned upon the applicant removing and disposing of all on-site structures, materials and debris in accordance with applicable State and Local requirements, including on-site septic systems (if any). *Fact.* Construction Details- Construction details are provided on the plans. *Fact.* Except for inverts, which may be constructed of Class S concrete, any concrete shall be a minimum of Class B. The strength of Class B concrete is 4,500 psi. All references to Class C and D concrete shall be removed from the details as these mixes are no longer used by NJDOT. Bicycle safe frame and grate number shall be 2618. A drainage manhole detail must be added. *Fact.* Details for Handicap Ramps must conform to the NJDOT Standard Details. *Fact.* All details must be revised to conform to applicable NJDOT, County or Township standards (as necessary). If this project is approved by the Board, a more detailed review of construction details will be performed during compliance review. *Fact.* Outside agency approvals for this project may include, but are not limited to the following: Ocean County Planning Board; Ocean County Soil Conservation District; New Jersey American Water Company (water); and all other required outside agency approvals.

Mr. Vogt said this application has been around a while and the newest changes are they now have a 40 ft. radius cul de sac which is RSIS compliant, they changed some handicap spaces, front yard detail has been revised to show 6x6 individual trash enclosure pads. Mr. Vogt said there were some changes to the parking spaces on the cul de sac bulb and miscellaneous changes.

Mr. Alfieri Esq. appeared on behalf of the applicant. He said there were several engineering issues raised at the last hearing and they have submitted revised plans. Mr. Ray Carpenter is the design engineer and Mr. Brian Flannery will discuss the waiver they are seeking and they also have a tree expert who will describe the buffer and trees.

Mr. Alfieri gave a brief overview on the project so the board members can have their memories refreshed. He said this board denied the earlier plan and the applicant appealed that denial and Judge Grasso issued an opinion. There were 3 issues he dealt with: 1) the adequacy of the parking spaces; 2) the buffer and 3) the cul de sac. It was remanded back to the board because there was some discussion at the end of the public hearing that the applicant was willing to make some adjustments to the plans. The applicant came back to the board and there have been adjournments since but they did have a public hearing and the issues were the cul de sac and the garbage collection and they have revised the plans and that is what brings them here tonight. The cul de sac issue has been addressed in full; at the last meeting they agreed to write to the DCA to get a ruling on the smaller cul de sac and since that time they have decided to comply with the board's recommendation of a 40 ft. radius which is RSIS compliant. Mr. Carpenter said he has also met with Mr. Franklin the garbage pick up which resulted in revised plans. The only other issue that is carried over is the buffer and Mr. Alfieri said they expanded the buffer from what was denied but are still deficient under the literal reading of the ordinance and Mr. Flannery will comment on that. Mr. Carpenter said there are 17 units and Mr. Alfieri said they never reduced the number of units from the original application.

Mr. Jackson said that Mr. Gasiorowski has been present throughout this matter and Mr. Gasiorowski said Mr. Alfieri is accurate but he would like to confirm the fact that this is a remand so therefore all of the testimony which was at the initial hearings are part of this record and this board will take judicial notice of the opinion of Judge Grasso in the findings he made.

Mr. Alfieri said they will continue to present testimony as if they did not hear any testimony in this application so there will be a full venting of all the issues.

Mr. Carpenter marked the exhibits. A1 is sheet 3 of 10 of the layout plan of the Preliminary & Final Major Site Plan and Subdivision with the latest revision of 9/28/09. Mr. Alfieri said testimony was presented on this plan by Mr. Flannery at the last public hearing. Since the last testimony, the following changes were made: they increased the cul de sac radius to 40 ft. to be compliant with RSIS; they re positioned some of the parking spaces to alleviate some of the concerns about the thoroughfare on Alpine Court and they have placed garbage trash pads in between the parking stalls to accommodate the garbage for each individual building as recommended. Mr. Schmuckler asked what is behind the pads between the sidewalk and the end of the pad and Mr. Carpenter said there is a shade tree and the sidewalk and this is only to be used on collection day-each individual unit has their own trash enclosure by the doorway to each unit. Mr. Schmuckler asked how they are getting their cans to the pads on collection day and Mr. Carpenter said they will wheel them down the sidewalk to the pads. Mr. Schmuckler requested a connection to the dumpster pad and Mr. Alfieri said if Mr. Franklin thinks that is better they will do it. Mr. Neiman asked Mr. Franklin to look at this to make sure he is comfortable with the whole pick up situation and Mr. Carpenter said he had Mr. Franklin review it and he has plans with a note on it from Mr. Franklin stating where the cans should be placed and Mr. Franklin said he did go over it with Mr. Carpenter and he is ok with it.

Mr. Carpenter said the next issue was about the cul de sac and they have complied with that and eliminated the handicap parking spaces that was brought up and they relocated the tot lot from the southerly side to the northerly side of the site. Mr. Alfieri said there are very few issues that are left from the review letter and Mr. Carpenter said he agrees to the remaining issues. Mr. Alfieri said there are some comments that need testimony and said with regards to the look-alike ordinance and said the applicant will comply with that. There is a question about the

turning radius at the RSIS compliant cul de sac and the board engineer asked for a turning radius to be provided and Mr. Carpenter said he would provide one.

Mr. Neiman said he also wants to talk about parking and Mr. Alfieri said Judge Grasso ruled that the parking is adequate and Mr. Flannery will be discussing that.

Mr. Jackson asked the applicant to take a few moments to explain the turning radius for the board. Mr. Carpenter said originally they designed a hammerhead at the end of the street allowing the trucks to turn around like a "K" turn and the board felt that was not acceptable and they went to court and the Judge ruled that the board was within their rights to ask for a cul de sac and they came back with a cul de sac with a 35 ft. radius and the board had a problem with that radius so now they have a 40 ft. radius which will provide all the necessary turning required by RSIS. Mr. Jackson asked how were they able to do that because it was such a big issue, why didn't they do that to start with and what did they move around to get it there now and Mr. Carpenter said they pushed the parking closer to Prospect Street and have to put up a substantial retaining wall in order to accommodate that. The retaining wall is located on the grading plan on page 4 and will be about 15- 20 ft. at its highest point and there will be fencing on top of the retaining wall. Mr. Schmuckler asked what type of fence will they install and said he thinks children will climb chain link. Mr. Carpenter said the retaining will be a concrete block retaining wall. Mr. Akerman suggested a fence that was low maintenance and Mr. Vogt said as far a durability a chain link would be the best and there is chain link with the smaller openings and Mr. Schmuckler asked how high is the fence going to be and Mr. Vogt said the code allows for 6 ft. and Mr. Schmuckler said he would go higher. Mr. Carpenter said he thinks a 6 ft. fence is more than adequate- if someone is going to go over a 6 ft. fence they will go over an 8 ft. fence. Mr. Jackson asked how close the retaining wall is to the parking area and Mr. Carpenter said there is a 10 ft. space between the end of the parking stall and the top of the wall and they can put guide rail in that area. Mr. Vogt said what is shown on the plans is not a fully engineered design, it is basically for purposes of planning and if the board acts favorably they will have to work with Mr. Vogt during compliance for a lot of these issues. Mr. Jackson asked what the guide rail will look like and who will have the view of it etc. and Mr. Carpenter said they will not really see the wall because there is a vegetative area between Prospect Street and the wall with mature trees 30-40 ft. Mr. Vogt said looking at the grades shown on the plan, at the extreme end there is a section that appears to be more than 10 ft. and the majority of this wall is not that high; only about 4-5 ft. and the 10 ft. section is next to the parallel parking spaces. Mr. Banas said they do not have 10 ft. between the parking space and the wall and said Mr. Carpenter indicated there would be at least 10 ft. but it looks like ½ ft. Mr. Franklin said where the 7 cars are parked just before the drainage, there should be a highway barricade there so cars couldn't just over the curb and get over the wall.

Mr. Gasiorowski wanted to note his objection to this because he felt this was an incomplete set of plans. These are items which should be considered by this board, reviewed by the board's engineer and not left for speculation for another date. Mr. Neiman suggested they see if they can work it out and if not, he is right.

Mr. Alfieri said the applicant would revise the plans to provide the barrier recommendation of Mr. Franklin and any other location that the board engineer determines in the review. Mr. Vogt clarified that the way that wall aligns, they have a gradual bend around that monument and said they can taper that wall to gain more area. Mr. Carpenter said the retaining wall is only adjacent to those 7 spaces and there is a buffer between the parking and Prospect Street. Mr. Franklin said there may be one other place they would need that barrier and that would be at the end by that cul de sac (over by inlet 3 of 10) and Mr. Carpenter agreed. Mr. Banas said he doesn't know

the distance between the end of the parking for the 7 and the wall and said Mr. Carpenter indicated he would have 10 ft. but Mr. Banas said he doubts it and said the board engineer indicated it would be 3 ft. and Mr. Carpenter said 3 ft. would be more than adequate and Mr. Banas asked if they changed the composition of the wall and Mr. Carpenter said no. Mr. Carpenter said New Jersey barrier is when you drive down the New Jersey Turnpike and see a concrete barrier that separates the northbound from the southbound traffic: it is 42 inches high and 24 inches wide. They will be putting that barrier up then the wall which at this point is 5 ft. high. The ground on the other side of the wall goes up and down; the top of the wall will match the proposed grades. Mr. Franklin said they did not have to put jersey barrier in there, that would not look good and suggested they put in the post with the metal barrier (guardrail) and Mr. Vogt agreed. Mr. Carpenter said they would install whatever the board suggests.

Mr. Banas had a question about the north side where there is the other wall and asked what are they doing there (be Alpine); how are they stopping traffic from going through at the end and Mr. Carpenter said Mr. Franklin also suggested they place a barrier there to prevent people from continuing through; whichever barrier the board recommends. Mr. Alfieri asked how high is the wall at that location and Mr. Carpenter said it varies from 0 to 6 ft.

Mr. Vogt commented on the walls in general and said in his letter they will look at the wall in much closer detail-one observation is that these walls are right up against the lot lines and they will probably need grading easements to put a lot of these walls in. Mr. Jackson asked if a 15 ft retaining wall that adjoins a roadway is quite a feat of engineering and Mr. Vogt said yes, you have to have structural calculations for the wall system, construction details in the field, you have to make sure the person installing the wall has the proper techniques. Mr. Neiman asked Mr. Vogt if there is enough room between the last house and the wall and Mr. Vogt said they are going to need grading easements to do this. Mr. Alfieri said they agree to address that.

Mr. Neiman asked why didn't this come up at the first application that was denied and Mr. Alfieri said they didn't have as severe grading because they did not have the cul de sac, they had a hammerhead, but as you expand the cul de sac and the impervious coverage, you have more cuts.

Mr. Schmuckler asked if they were going to put in a retaining wall at the end of the cul de sac where the 6 spaces are located and Mr. Carpenter said no because it is graded down to meet the existing grade and it will be a 5 on 1 flow which is pretty gradually. Mr. Vogt said if the board acts favorable he would recommend some type of guide rail there as well. Mr. Carpenter agreed to whatever recommendation he has.

Mr. Jackson asked Mr. Carpenter to explain lot 17; is it wooded, is it environmentally constrained, is it developed etc? Mr. Carpenter said it is being developed right now as townhouses.

Mr. Alfieri said there was an issue about shade trees that the board engineer raised and said they have provided shade trees to comply with the ordinance and the board engineer suggested limiting the easements as utility only and waiver the shade tree easement requirement and Mr. Alfieri said the applicant will comply with whatever the board wishes. Mr. Alfieri said they have a tree expert present who will address that issue. Mr. Vogt said his comment is they can show the easement as being a shade tree but if it is going to be paved, there will not be any shade trees there, so do they just want to acknowledge that easement is going to be utility only. Mr. Neiman asked why aren't they putting in shade trees there and Mr. Vogt said because it is paved and it is part of the parking. Mr. Carpenter said they put trees at every garbage concrete pad

and Mr. Banas said looking at the landscaping plans he does not see any trees listed. Mr. Schmuckler said there is no landscaping in front of each home and asked if there should be. Mr. Vogt said with the layout the way it is, there is no room for landscaping. Mr. Vogt said on sheet 5 there is a typical planting detail which shows red maple.

Mr. Jackson said the record should reflect that the board members appear to be looking over the plans at the various places where the trees are or are not.

Mr. Schmuckler asked Mr. Carpenter about the light towers located on the garbage pads and asked if there is going to be enough room for the pails and Mr. Carpenter said yes. Mr. Alfieri asked Mr. Carpenter to describe the tree plantings proposed on the entire site. Mr. Carpenter said the landscaping plan shows a detail for each unit with a planting detail and every unit has a shade tree in front. On the layout sheet for the garbage pad there is also a tree at every pad along the street and there is a pad for every building. Mr. Banas asked what the tree is and Mr. Carpenter said it is alternating red maple and red oak down the street and an aristocrat pear is in front of every unit; it is shown on page 5 of 9 and it is a building planting detail and it shows a tree in front of every unit. Mr. Vogt said it is not shown that way on the plan view.

Mr. Neiman said the board needed a break from this testimony and asked if Mr. Gasiorowski would like to comment on whatever was spoken so far.

Mr. Gasiorowski, 54 Broad Street, Red Bank is an attorney representing objectors. He said he troubled by this application because this has been going on for over 2 years and he recalls that when Mr. Banas was chairman he basically plead with the applicant to come back with fully engineered plans and he thinks what the applicant has to do is look at the MLUL and the requirements of what he must submit in order to receive preliminary and final approval. There should not be this discussion about how high is the retaining wall, have you secured the easements, do you need easements, etc. He realizes that Mr. Alfieri is not completed his testimony but he finds there is not one question asked with regards to the buffer requirements as were pointed out by the court in its' opinion so right now it is unfair for this objector to have to guess what the ultimate plan will look like and said there is an important decision called Fields vs. --- which says that the board cannot delegate to its' engineer at a later date to answer important questions; the answers to the questions being posed by the board members should be answered by Mr. Carpenter, the plans to substantiate this should be presented to a board at least 10 days prior to a hearing so that the public has an opportunity to understand what this is all about. If this board understands these retaining walls, these barriers, highway standards, etc. all intended to cram as many units onto this property as they possibly can then he thinks they have to be clairvoyant and the board is not here to practice clairvoyancy but to review concrete plans before them and they are not here.

Mr. Alfieri said they did not get to the buffer yet but will be. Secondly, the case that Mr. Gasiorowski cites indicates that if this board needs that information to grant a variance they can't delegate what their responsibility is for what is necessary for a variance and in this case a variance is not being requested with regard to the retaining walls. Thirdly, none of the retaining walls are next to Mr. Gasiorowski's client's property so other than creating an issue; it is not affecting his client. The board has the ability, since these are engineering issues, to defer to their engineer to qualify and design these things property. Lastly, he said he does agree that if you are concerned that there are engineering issues that need to be addressed, you should only grant preliminary so that you are sure they are all addressed before final approval. Mr. Gasiorowski said the argument that the applicant must be seeking a variance in order for the board to demand a full set of plans is absurd. The applicant is before you for a site plan, and

not a site plan reflecting a small driveway; this is a complicated site plan with serious engineering questions-all of them should be before the board for discussion before we proceed forward. Mr. Alfieri said he never said the board can't ask for it, he said they have the power to defer those items to the board engineer.

Mr. Banas said if memory strikes him, he thinks when this application was before the board at its' inception, he probably made a comment that you are asking to put a bushel in a peck and he clearly remembers that he said that this is over built, there are too many units in here, there weren't enough items specifically to make a development function properly and he does not know we started with 17 if we are going to go and we saw that problem at its' inception and we have 17 now-it is impossible to fit all the units in here today if it was impossible back then. He said he likes to see development but not with this kind of compact- it is disturbing. Mr. Alfieri commented and said this board denied the application on 3 grounds and the court ruled on those 3 grounds and the court agreed with the applicant on the parking and agreed with the board that they had the power to deny the other 2 and out of those other 2 they have addressed one in full (cul de sac) and they have improved the other by expanding the buffer so the number of units should not be deciding factor it should be whether they have addressed those items that the board used as a basis for denial. Mr. Neiman said he thinks what the board feels that the underlying issue, the reason why they had the hammerhead, etc. all stems from the fact that there were 17 units initially and there are still 17 units. It has been here so many times, and each time it comes to the board, and they look at it fairly, now we have this whole retaining wall at the end and shade tree and it stems from the fact that there are still 17 units on this piece of property and when you try to put so many units onto a piece of property you are going to have these issues continuously come up. We understand the frustration of the developer, he spent years on this and thousands of dollars, but look at the big picture, this is a piece of land that can be developed and there are townhouses going up right next door, but he thinks the board thinks there are just too many units on this piece of property and a lot of it can be freed up by freeing up one or two units. Mr. Alfieri said this is variance free and they are asking for 1 waiver for the buffer so the fact that the number of units may be problematic to the board, from an engineering point of view they will address every engineering issue they have. Mr. Vogt said as far as waivers there are actually 2; the shade tree and the buffer and Mr. Alfieri said Mr. Flannery will discuss that.

Mr. Franklin said in this last snow storm they were going to build 3 scaffolds in the parking lot; one was a guillotine, one a hangman's noose and a cross- he didn't know if they were going to hang him, cut his head off or crucify him and said it is totally impossible to plow this road if you had a 2 ft. snow- totally impossible. There is no place to put this snow. Mr. Jackson said for the record, Mr. Franklin was responsible for snow removal (2ft) a few weeks ago. He said this will be a private street and that private contractor has no place to put it – it is totally impossible to maintain.

Mr. Jackson said the difficulty in this that the applicant has come in variance free, there are some waivers, he has already gone to court and the court said they have to re look at this road. He is surprised the judge didn't reverse it and thinks Judge Grasso is sending a signal. He could have just said the decision of the board is affirmed-he remanded it so to Mr. Jackson it is a signal- he is really putting a lot of stock in the fact that this is a conforming application. The thing that the board is stuck with the applicant relying on what the ordinance is telling him he can do it as far as design etc. so it is a hazard of the way the ordinance is written. Mr. Jackson said he does not think the board is without authority to look at things like a retaining wall but keep in mind this is a case that the courts said just approve it if they can address these 3 areas

(if he reads between the lines) he is not saying you have to turn a blind eye to problems that come up in the context of the hearing.

Mr. Schmuckler said whenever they have such a tight application every detail has to be perfect because anything slightly off will throw the whole development off. The frustrations on the board's side is that everything they are looking into, they are finding other problems and issues, and they haven't even gone to the buffer yet. He understands this meets the ordinance but he would like to see a complete perfect plan in front of them that they can feel works and is safe. Mr. Neiman said this is a multi family and he would almost like to see 4 stories and 2 buildings and have the same 17 units then spread out like this. Seeing these 17 units packed in there because it is an RM zone and they are allowed to build multi family homes there, if it is all not going to click, if there wouldn't be a grading issue here it might make it easier but there are so many other variables that are coming into this application-the grading, the fact that it is on Massachusetts Avenue, it is buffered up next to single family. If it was a perfect piece of land without any neighbors maybe it could work. Mr. Schmuckler added that the plans were perfect and they clear and the board can see every detail they need to see and they would feel more comfortable and feel it will work and is safe. The road thins in the middle, and he knows they would lose a couple of parking spaces, and said it is not a perfect plan.

Mr. Alfieri said the applicant has heard the board and their comments. Mr. Neiman said he is at a loss of words. Mr. Alfieri said they would like to continue. Mr. Gasiorowski said one problem that he has and what he would request this board to do in light of all the comments made concerning engineering questions is to have the applicant come back with a fully engineered set of plans which satisfy the concerns which the board has. Let him do it the right way, let him do it the way he is supposed to do it so that we do go up on appeal we have a proper record. The one thing he does not want to see is a denial of this application based upon a lack of information being properly being before this board and right now he thinks that is what this application is about; it is incomplete.

Mr. Jackson said in fairness to the applicant, you should let him finish his application and hear all the objectors, hear all the witnesses, then at the end of the case, if you want to look at the design wall, etc.

Mr. Alfieri continued with Mr. Carpenter and said there were photographs taken and they are being introduced to support the testimony that the other witnesses will provide. Exhibit A2 is marked and was originally marked 2006 so Mr. Jackson asked him to put the new date on it. Mr. Carpenter identified A2 as an aerial exhibit of Lot 18 Block 445 which shows the outline of the site and the vegetation and existing structures. Mr. Franklin asked how much difference is there in 4 years and said if you took another aerial photograph of it, how different would it look? Mr. Alfieri asked Mr. Carpenter if he has been to the site since 2006 and has he been to the site in the last couple of months and Mr. Carpenter said yes and the only major change to this area is to the west of the site where it shows an existing sand pit, there is now townhouses built, but the property to the south, north and east remain as shown. Mr. Banas asked him to show him the outline of the lot they are dealing with and Mr. Carpenter said it is marked in yellow. Mr. Banas asked what is directly north of the site and Mr. Carpenter said it is Prospect Street with an existing single family house and there is an approved townhouse project to be constructed on the site. Mr. Carpenter entered exhibit A3 which is a series of photographs (6) taken from the site taken the week after Thanksgiving of last year by Mr. Carpenter. The photo on the top left is a shot from the center of the site looking due south and shows one of the access roads for the adjacent property and it shows trees planted along the road and the property line is about 10-15 ft. off the road. Another photo shows an existing red flags hanging off a tree; that is the

property line that they had marked off in the field. Directly to the left is a shed or greenhouse with heavy vegetation. Further down, you can see more of the hot house/shed shown. The bottom right hand picture is showing the adjacent property from Massachusetts Avenue with the existing structure and you can see towards the right the mature oak trees and landscaping adjacent to the existing structure. The bottom left you see a line of evergreen trees that are planted along the existing access road on the adjacent property that are approximately 20-30 ft. high. In the center of the picture is a sign that says no trespassing-that is the property line between their property and the property to the south and you can see the evergreens planted along the property line and you can barely make out the house in question on the adjacent property- this was standing on the property line. The photo display was passed around for the members to review and Mr. Gasiorowski also asked to review them.

Mr. Gasiorowski had a few questions for Mr. Carpenter and said with regard to the exhibit A2 which is an aerial photograph; he asked if that was taken off one of the Google services or is it an actual photograph and Mr. Carpenter said it is taken off a Google site and Mr. Gasiorowski said it is not really reflective of the true coloration of the site at the time the photograph was taken because he noticed there appears to be a lot of redness compared to green area and asked if it was fall and Mr. Carpenter said he had no idea. Mr. Gasiorowski asked if he knew when the photograph was taken and Mr. Carpenter said no so Mr. Gasiorowski said it could have been taken years before 2006 and Mr. Carpenter said no, it was taken within 12 months because that is what is stated on the site the photo was taken and Mr. Gasiorowski asked if he had the documentation with him and Mr. Carpenter said no. Mr. Gasiorowski said with regard to the other photographs, on the diagram the applicant southerly sideline is abutting his clients' northerly sideline and Mr. Carpenter said that is correct. Mr. Gasiorowski asked him to give the distance from the easterly property line to the westerly property line and Mr. Carpenter said 481 feet. Mr. Gasiorowski asked Mr. Carpenter if it was his representation that these 6 photographs fully reflect what the 481 ft. of property line is made up of. He asked if he had any places marked on the plan where he took the exhibits from and Mr. Carpenter said it is evident if you look at the plan of existing conditions and Mr. Gasiorowski asked if he had a plot plan that shows exactly where he took the photographs from and Mr. Carpenter said no. Mr. Gasiorowski said he is the engineer who is in charge of drawing the plot plan reflecting the request for preliminary and final approval and Mr. Carpenter said yes. Mr. Gasiorowski said you start with a survey and the survey is reflecting the outside parameters of the property and Mr. Carpenter said that is correct. Mr. Gasiorowski said before you start drawing your plan, if you first consider the surveys to see what you have to work with then you go to the zoning ordinance and Mr. Carpenter agreed. Mr. Gasiorowski if it is part of his responsibility to compare what is permitted in the zone and what can be placed on this property and Mr. Carpenter said that is reflected on the zoning table on the plan. Mr. Gasiorowski asked if he considered the zoning ordinance before he drew his plan and is he aware what uses are permitted in this zone on this particular piece of property Mr. Carpenter said yes. Mr. Gasiorowski said single family homes are permitted there and 2 family residential homes and multi family homes are also permitted and Mr. Carpenter said yes. Mr. Gasiorowski asked if Mr. Carpenter was ever called upon by the applicant to prepare a plan reflecting single family homes, 2 family homes and Mr. Carpenter said no. Mr. Alfieri objected and said what is permitted in the zone is permitted and what can be built on the site is not relevant; they are here presenting this application with this permitted use so the other questions are adding time to an application that has already taken far too long. Mr. Gasiorowski said the applicant has come before this board seeking what he describes as a waiver and what Mr. Gasiorowski describes as a variance for a significant aspect of this plan called buffering; the ordinance requires that in this particular zone there should be a 30 ft. buffer and it says under certain circumstances the board can permit a 15 ft. buffer and despite

that this applicant is here for a 10 ft. buffer so Mr. Gasiorowski said what can be fitted on this plan which might obviate the necessity for that waiver he thinks is relevant.

Mr. Jackson said the chairman has the authority and the right and the responsibility to limit the testimony to keep it focused on the application and he doesn't think there is any issue here that something else could go on there and he thinks that Mr. Alfieri's point is correct. Mr. Alfieri wanted to make the record clear that Mr. Gasiorowski believes that that waiver request is a variance and not a waiver and said Judge Grasso ruled upon this and he did not say that this was a variance he did say that the board's denial based upon the insufficient waiver was justified but he did not rule that this was a variance. Mr. Alfieri said it was presented as a waiver, it was argued as a waiver, there was never a variance consideration and he did not say it was a variance and Mr. Jackson said they should not get off that tangent now and they should deal with that at the appropriate time.

Mr. Gasiorowski continued and asked if they ever prepared a multi family plan honoring the 30 ft. buffer and Mr. Alfieri said it is the same question and Mr. Gasiorowski said he is talking now about the design of a multi family project where he is seeking relief and Mr. Alfieri said they are asking for this plan, this use, not a multi family use. Mr. Gasiorowski asked if this is not a multi family townhouse plan and Mr. Alfieri said if he defines multi family for the board and Mr. Gasiorowski asked how would you define the proposed use on this property and Mr. Carpenter said it is a townhouse project and Mr. Gasiorowski asked if he has the original plot plan that was submitted and sent back to this board when it was denied and Mr. Carpenter said yes and Mr. Gasiorowski asked him to mark it as an exhibit and Mr. Alfieri said he objected again and Mr. Jackson said he thinks it is fair though for him to compare what is before the board vs. what was in terms of the changes. Mr. Jackson asked Mr. Gasiorowski if there is a point he wants to make regarding that and asked why he is comparing it to the old application and Mr. Gasiorowski said his offer of proof is when we read the ...

Mr. Neiman interrupted and asked if it was safe to assume they were not going to hear anymore applications and Mr. Jackson said he thinks so. Mr. Neiman said they should make the announcement that no other applications will be heard tonight.

#3 SP 1925 Yeshivat Keter Torah - moved to February 16, 2010

#4 SD 1694 North Lake Realty - moved to February 16, 2010

#5 SD 1701 Abraham Flan (formerly Harvard Community) - moved to February 16, 2010

#6 SD 1702 323-325 Realty LLC - moved to February 16, 2010

#7 SD 1692 JG Ridge - moved to February 16, 2010

Attorneys/representatives for the above applicants all agreed to waive the time and agreed to the new date.

Motion was made by Mr. Banas, seconded by Mr. Akerman, to table the above applications to the meeting of February 16, 2010

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mrs. Koutsouris; yes, Mr. Neiman; yes, Mr. Akerman; yes, Mr. Banas; yes, Mr. Follman; yes, Mr. Schmuckler; yes

The board continued listening to the application. Mr. Carpenter found the old plans and it was marked exhibit A4 (Mr. Banas thought it was exhibit A5) Mr. Gasiorowski asked if this was the plan that was originally denied by the board and Mr. Carpenter said yes. Mr. Gasiorowski asked

if before he started drawing the revised plan, did he read the opinion of Judge Grasso in his comments in regard to the buffering and Mr. Carpenter said yes. Mr. Gasiorowski said on the original plan there was no buffer and if you go from east to west you have the Payne's property line on the south side and the applicants on the north side and along that property there were a series of cuts in the earth to reduce the elevation as it is shown on the applicant's property and asked if there was a retaining wall built along the east west property line and Mr. Carpenter said yes. Mr. Gasiorowski asked how high the retaining wall is and Mr. Carpenter said it varied from 1 ft. to 4 ½ ft. to 2 ft. Mr. Carpenter was immediately adjacent to the Payne's' property Mr. Gasiorowski said that is what the board meant when they said in order to do that they would be cutting along property lines and the question arose about root disturbance and the like and Mr. Carpenter said that was an issue. Mr. Gasiorowski said as they went in a northerly direction was all of the property on the southerly side of the applicant's property lowered in grade and Mr. Carpenter said it was leveled- the grading varies up and down and Mr. Gasiorowski said it meant that the property on that northerly side of the wall was reduced in elevation and Mr. Carpenter said yes, in areas. Mr. Gasiorowski went to the new plans and said the new plan provided for no buffer at all (exhibit A1) and asked if it also has a retaining wall. Mr. Carpenter showed a plan marked soil erosion plan and said it shows the proposed grading and Mr. Gasiorowski questioned him on the plans and Mr. Neiman asked Mr. Gasiorowski what the goal with this cross examination is. There was confusion on what sheets they were looking at and Mr. Gasiorowski wanted it to be entered as an exhibit and there was a question what exhibit # to mark it also. Mr. Alfieri said they marked the original plan as A1, A2 was the aerial photo, A3 was the photo board, A4 was the old plan and A5 is now this. Mr. Gasiorowski said he wanted to see the plan that is front of the board showing the grading. Mr. Banas said it is sheet 4 of 10 which was marked as A6. There was much confusion as to what plans and what exhibits they were looking at.

Mr. Gasiorowski asked if that plan showed the retaining wall along the north-south boundary line and Mr. Carpenter said no but there is one on the applicant's property. Mr. Gasiorowski asked how far from the boundary line of Lot 2 and the applicant's property is the retaining wall and Mr. Carpenter said 10 ft. Mr. Gasiorowski asked what is the area that they have now classified as the buffer area and Mr. Carpenter said 10 ft. behind the retaining wall. Mr. Gasiorowski asked for the height of the retaining wall and Mr. Carpenter said the wall varies in height from 1 ft. at the westerly boundary to maximum height of 4 ½ ft. in the center and at the easterly boundary the top of the wall is 3 ft. high and the design is not required at this time.

Mr., Neiman asked if there was going to be a retaining wall the entire 481 ft. and Mr. Gasiorowski said yes. Mr. Gasiorowski said in order to construct that wall the applicant is also changing the topography or elevation on the north side of the wall and Mr. Carpenter said yes. Mr. Gasiorowski asked how those cuts ranged in the cut going from west to east and Mr. Carpenter said the retaining wall is 2 ft. high in the western boundary, 4 ½ ft. in the center and 3 ft. at the easterly end. Mr. Gasiorowski said you could lay this property out by swaying the roadway and allowing for and creating a 30 ft. buffer area along this property line here and Mr. Carpenter said he could do anything they asked him to and Mr. Gasiorowski said if he asked him to design this project honoring the 30 ft. buffer required by the Lakewood Zoning Ordinance he could do that. Mr. Neiman said he is asking for a waiver here, they know it is not 30 ft. Mr. Gasiorowski said in order for him to receive a waiver he has to convince this board that the granting of such a waiver is reasonable and that it would be virtually not reasonable to develop this property without having that waiver granted to it. Mr. Alfieri said they do not have to demonstrate a hardship for a waiver. Mr. Gasiorowski said they have to show that given the dimensions of this property that it would be reasonable for this board to listen to consideration put forth by this applicant to grant such a waiver and Mr. Jackson said isn't that part of the whole mixture- of

course he can make changes to specific components of it and it will have repercussions an ripples on everything else. Mr. Gasiorowski said the applicant is before you today seeking whether we call it a waiver or a variance and the ordinance says that the required buffer should be 30 ft. but in certain instances it can be 15 ft. and they are looking for 10 ft. and it is a fair question to ask the applicant –can you lay out this project for a townhouse concept keeping the 30 ft. buffer.

Mr. Neiman asked Mr. Vogt the fact that there is a wall there, does that make a difference for a bigger buffer, a smaller buffer, etc. and Mr. Vogt said he doesn't think it is part of the argument of the buffer width to do what they propose on this site based on this layout; to do a 10 ft. buffer with those grades with the concept you have, you have to have a wall. There are all kinds of "what ifs" and this layout would need a wall. Mr. Neiman asked if that wall would make it a reason to have less of a buffer or more of a buffer from a design perspective. Mr. Vogt said from strictly design standpoint – no; from a standpoint with respect to what may be present in that buffer- right now you have trees and he personally has not done a tree survey and can't tell the board the sizes or root zones and what impact the wall, depending on where it is placed, you may be cutting into root zones of mature trees. That would be one thing to take in mind; from a strictly visual standpoint if you are planning a new buffer, then no he doesn't believe it has an impact; it could have an impact on existing trees. Mr. Akerman asked if they need a 30 ft. buffer but you have a 6 ft. wall there, so that wall also partitions the project from the neighbors, would it diminish the need for 30 ft. to allow for a 28 ft. and Mr. Vogt said he doesn't think the wall diminishes the need for a buffer and typically when a buffer is written like this, what they are trying to say is ideally you like to have that maximum distance and in events when you cannot, they allow the applicant to try to compensate for putting additional buffer within that short a distance and he believes that is the interpretation of this. Mr. Vogt said this wall is not going to raise up and be buffer, this is the opposite, from that property you are not going to see that wall, it is going to have no buffer value. Mr. Alfieri said the reason the wall is required is because they are cutting into the property to the north and rather than disturb the 10 ft. buffer, they are putting in the wall to hold that grade. The wall is to stop the disturbance 10 ft. from the property line.

Mr. Waldemar Panek, a state certified tree expert was sworn in. Mr. Alfieri asked him Mr. Panek to describe what a tree expert is and Mr. Panek said the State of New Jersey requires persons to be certified and licensed. Part of that is the experience with trees, and educational background. He has represented Howell Township, Fair Haven and Farmingdale as a certified tree expert and has been accepted to testify numerous times in front of planning and zoning boards.

Mr. Gasiorowski asked what the nature of his testimony and Mr. Alfieri said he and the board will find out. Mr. Alfieri said Mr. Panek had the opportunity to review specifically the property line adjacent to Mr. Gasiorowski's client property and looked at the trees located on the property on both sides. Mr. Alfieri asked him to describe the retaining wall and what it would do at the buffer and at 10 ft. off the property line and Mr. Panek said in his background he was the assistant superintendent for shade trees for the County of Monmouth and part of his job was to make these kinds of assessments. One of the main things he looked at is the species of trees; the secondary thing is the type of soil that is there. What we have in Lakewood is more of a sandy type of soil and that tells him the way the root system is directed and in this situation the roots will grow down as opposed to out. He also looked at the proximity of the wall and his concerns were twofold: when the wall is put in and the footing is put in, what sort of damage could happen to the roots and the other thing he looked for is after the wall is installed, whether or not soil is going to be taken away or added to that particular area because in his opinion you would have more damage to trees if you took soil away or added to it and the engineer told him on the

side of the neighbor no soil is to be touched. He also looked at the distance of the wall from the centerline of the tree and said they average 10-13 ft. from the center and in his opinion based on the trees being there, 2 of them pine and one being oak (they are on the objector's site), the oak tree he considered a hazard tree and he would tell the applicant to take the tree down because there are many major branches and limbs on top that are dead that are going to fall down and 100% of the time he would advise an applicant to remove the tree. Mr. Neiman said the tree is on the objector's site and Mr. Panek said he is looking at saving the tree he still has to make an honest assessment of the tree, irregardless whether the tree is going to fall down or not his main assessment is to look at the tree generally but at the same time he is looking to see if the wall is adversely affect the health of those 3 trees. Mr. Neiman asked if there were only 3 trees along that whole 481 ft. and Mr. Panek said those were the only trees that were so close to the wall that he felt would adversely be affected. Two of the trees were white pine trees and they are really not a good tree; they are a fast growing tree and a tree that needs a lot of light and being where it was it was shaded out by a lot of other trees so the quality of both of those pine trees was quite poor. One of the main stems was already damaged by insect activity and it had very few needles because it was stretching for light and looking for light and because of the lack of light caused by other trees it was a poor specimen. The second pine tree had a very obvious lean to it because it was stretching for light. The lean doesn't affect the integrity of the tree and both trees would live for many years, they are just not good horticultural specimens. He said they are looking to preserve the tree for the applicant and he is not suggesting they be removed; he is just saying the type of trees that are there are not likely to do very well in the situation that they are in. Mr. Alfieri asked if there were any measures in the proposed construction to ensure that those trees will not be damaged and if there are describe them and Mr. Panek said he would be at the site at construction and as the equipment is brought in to do excavation, if any major roots are observed, he would stop the construction but based on the 2 species of tree there he doesn't see putting the wall in because he would be there if there is any type of surgery that needed to be done with the roots he would do that himself. There is an instrument that works on air that we blow on the root area to clean it then he does the surgery. Mr. Alfieri said the applicant agreed to have Mr. Panek on site during the excavation of the retaining wall area. Mr. Alfieri asked about tree preservation on the site and Mr. Panek said that is what he normally does and he would take those measures to protect any of the trees but in his observation of the site there really wasn't a whole lot that needed protection but he would be at the site and normally he comes ahead of time and puts protection fence across the area so a piece of equipment wouldn't go to that area and damage it. Mr. Vogt said he heard him say he would be in the field and if a root is compromised he may decide to not put in a section of the wall and Mr. Panek said correct. Mr. Vogt said that ties into the engineering design and his comment is that it could have an impact on the grading and drainage back there. Mr. Panek said in his opinion he doesn't feel they will be addressed with those kind of roots but the age and size of the trees, one of the white pines is 12 years old, so there probably won't be roots going out to 10-12 ft. The oak tree is 13 inches in diameter and they have tap roots that don't spread out. Mr. Vogt just wanted to caution him that if there is a potential for areas where the ultimate decision to save the tree is to not have the wall put in, the applicant's engineer needs to look at that very carefully and Mr. Alfieri said they will address before the evening is over.

Mr. Gasiorowski said he though that Mr. Panek commented that he gave an expert report to the board and Mr. Panek corrected himself and said he gave an expert report to the applicant's engineer, not the board. Mr. Gasiorowski asked it see a copy and Mr. Panek complied. Mr. Gasiorowski asked him if there was any reason he did not submit it to the town and Mr. Panek said no. Mr. Gasiorowski asked to have the report marked A7 and Mr. Alfieri said they never offered that because that report was issued to assist the design engineer in finishing the plans and it was not offered into evidence. Mr. Jackson asked if he was reading from the report and

Mr. Panek said no, he was at the site several times. Mr. Jackson said when a witness testifies and they have a report and they refer to a report it is fair game and it should be marked. Mr. Panek said he also has photographs of those trees he referred to. Mr. Gasiorowski said he would like the opportunity to read the report and possibly re call Mr. Panek with any questions. Mr. Panek submitted the photographs into evidence and they were marked exhibit A8 and Mr. Panek said he took the photographs around October, 2009. Mr. Jackson asked if there was any regulation, case law, policy, etc. for saying you can't cut the soil on an adjoining property that kills the trees on the other side and Mr. Alfieri said no and Mr. Panek said how the case law that is being brought before NJ Supreme Court- if there are branches or roots growing over another neighbor's property, that property owner has every right to trim that and cut to his property line. Mr. Gasiorowski said we are not talking here about the applicant complying with the ordinance requirement of a 30 ft. buffer; he is seeking to reduce that buffer from 30 ft. to 10 ft. and he is arguing he can't do that unless it is reasonable to do that and if he is doing it and it will be harmful to his client's property it doesn't conform to the buffer and it is fair game. Mr. Jackson said the buffer is designed as protection possibly for the trees that are growing on the other property and if they had the accurate buffer it would not jeopardize those trees and Mr. Gasiorowski said that is correct.

Mr. Gasiorowski said looking at the plan (A1), he asked Mr. Panek if he looked to the area north of the retaining wall and Mr. Panek said his testimony is on what affect the wall would have on the trees. Mr. Gasiorowski asked with regard to the property located immediately to the north of the retaining wall, if those cuts take place, any and all trees which would be located on the northerly side of that wall would be removed and Mr. Panek said they would have to be removed in order to make room for the road and Mr. Gasiorowski said that would be done in the area where the buffer was supposed to be and Mr. Panek said it appears to be that way and Mr. Alfieri said they acknowledge that they are building in the 30 ft. buffer area but they are not disturbing 10 ft. Mr. Gasiorowski wanted to talk about the 10 ft. between his client's property and the retaining wall and asked when a retaining wall is installed, is there also a footing that is placed and Mr. Panek said normally yes but they do not know the engineering specs yet so he does not know how deep down the footings might be but if the footings were 30 ft. deep it would not affect any trees located in the buffer area. Mr. Gasiorowski asked if he kept a diary or a log of his observation and Mr. Panek said it is in the report. Mr. Gasiorowski asked if he prepared a tree preservation plan and Mr. Panek said that would be derived from his report- tree preservation or tree removal plan is what he is looking at. Mr. Gasiorowski asked if he took the plot plan or survey and place a tree inventory plan on it and Mr. Panek said it was not required of him, he was asked to look at 3 particular trees.

Mr. Brian Flannery was called to testify as an engineer and planner. Mr. Flannery testified previously on this specific application. Mr. Flannery wanted to follow up on Mr. Panek's testimony where he was reviewing the 3 particular trees- the events that took place is the property line was flagged under his supervision and Mr. Panek and himself walked that property line and Mr. Flannery pointed out where the retaining wall would be 10 ft. onto the applicant's property line and they looked at all the trees along that 481 ft. Mr. Gasiorowski said that is for Mr. Panek to testify and not Mr. Flannery to rehabilitate Mr. Panek's testimony. Mr. Alfieri said he was there and Mr. Flannery said Mr. Panek's testimony was he was directed to assess whether this development would hurt those 3 trees and those were the only trees when they walked in the field that were potential.

Mr. Flannery said part of the prior application with the denial and what the judge looked at with the buffer was twofold: at the last application the neighbors indicated that the applicant was going to adversely affect the trees on their property and for this application they wanted to

make sure they have an expert who can tell the trees would not be adversely affected. Mr. Flannery said when Mr. Panek testified if there were any roots in the area of the retaining wall, that would be a wall with retaining mats going back in that 10 ft. area and they can do a reinforced concrete wall if they need to- it would cost more money than the block retaining wall they propose but physically it can be constructed with no adverse impact on those trees. Mr. Vogt asked if they would be willing to have an alternate plan for the wall as part of the final plans and Mr. Alfieri said yes. Mr. Flannery said as far as parking, the judge agreed the parking was RSIS compliant. The cul de sac issue has also been resolved and the board brought up some issues with regard to safety and guide rails but to characterize the plans as incomplete is not accurate. The real issue is the buffering and there are 2 parts to that: are they going to hurt the neighbor's trees and they have an expert that says no and that is because they pulled the buffer, pulled the retaining wall 10 ft. from the neighbor's property line so it is his opinion that the issue is gone. Mr. Flannery spoke about the buffer and said the objector's attorney like to keep saying 30 ft. buffer and finding the facts when this board denied the application never mentioned 30 ft., they never mentioned a section of the ordinance that the buffer is required by and he read from 12/19/06 resolution item N which says the board expressed concerns regarding a buffer area. The board's professional advised the board that the zoning requirements are open to interpretation that buffers provide transition between developments that are not compatible and different than what is there and the board attorney advised the board that they need to determine what make sense for each development. Mr. Flannery said the board did not say they needed 30 ft. the board said they needed a buffer and we need to determine what makes sense for this development. The ordinance indicates that in Section E under buffering E2 says buffering shall be required when topographical or other barriers do not provide reasonable screening and when the board determines there is a need. He said the board determined there is a need and he said they provided a buffer on the plan; the question now is whether it is adequate and the board has to determine if it buffers between 2 uses.

Mr. Jackson asked whether the 10 ft. buffer here a hazard of the shape and length and narrowness of the property and Mr. Flannery said yes and that was testified at the first hearing as to why 0 ft. buffer was provided. Mr. Jackson said some of the comments of the board members are that it is overdeveloped-too many units, but Mr. Flannery said making fewer units does not widen the property or provide additional area for the buffer. Mr. Flannery said the property narrows down in the middle of it between Massachusetts Avenue and the rear of the property and that is the pinch point-at that point they need the access road, they need the units, they need the rear yard and the buffer and the last application they argued unsuccessfully and his view of the ordinance was viewed to narrowly that they did not need a buffer but the reason they did that was not to get on top of their neighbors but because the unique shape of this property doesn't allow them the room for more buffering. They would have been happy to provide the 30 ft. if the property was a different shape and for the use proposed it is his opinion that the 10 ft. buffer is sufficient.

Mr. Flannery continued reading from Section E2 and said when the board determines there is a need to shield the site from adjacent properties and minimize adverse impacts such as incompatible land uses, noise, glaring lights and traffic and said where they get into the 30 ft. is under 2B under multi family or townhouse adjacent to an existing single family residential development or an area zoned for single family. That does say the board may reduce the required buffer to 15 ft. if the developer provides the dense landscaping screen. He said what they have here is a single family home and the reality is there is a landscaping business going on there and what is near this applicant's property line are greenhouses where a landscaping business is conducted-it is not a single family residence. The single family residence is 240 ft. from the property line; there is a dirt road for the landscaping business within 30 ft. of the

property line but the actual residence they would be impacting is 240 ft. away. Mr. Neiman asked Mr. Flannery if he felt that the plan here tonight with all the wall and safety concerns can be worked out if the board would grant an approval of this application- is it big enough that it can't be worked out, do they need more engineering, or is that something that can be worked out with the professional after the approval and Mr. Flannery said it is his opinion that one of the issues that was raised was the design of the retaining walls and past practice is those design calculations for the retaining wall are done as a condition of approval. These are retaining walls that are designed everyday of the week, the height of the wall is nothing out of the ordinary and said Mr. Vogt would agree and Mr. Vogt said he did agree. Mr. Flannery said the guide rails that go along there were explained and it is something that will take Mr. Carpenter's office an hour to put on the plan and if the board doesn't feel comfortable with where they are, then they should wait until he adds them to the plan and bring it back but those are items that are minor in detail; certainly major in the safety impact and important detail.

Mr. Neiman asked if he was done testifying about the buffer waiver and Mr. Flannery said he would like to point out that in the court order from the judge, he also does not say 30 ft. and if Mr. Gasiorowski is going to object, then the easiest thing is to read it. It is 2 ½ pages and it is page 22 of his report and it says buffer requirements. It says the board determined in its' resolution that the buffers between the proposed development and adjacent properties raise concerns regarding the removal of trees and the potential for root damage to existing trees caused by proposed grade. On page 23 it say in the resolution the board finds that the preservation of existing trees and forestation is a high priority but without the size of the tree and a scope of the forestation being indicated on the plan proper determination cannot be made regarding what the limits of disturbance will be. Mr. Flannery said the trees have been located and put on the plan. He continued reading and said it is evident from the recording that this finding followed the testimony presented by intervener Payne whose testimony in part raised concerns with the number of trees being cut down as well as the lack of privacy with the proposed 4 ft. fence to be installed between the townhouse development and her adjacent property. Payne requested that the board require a 30 ft. buffer. Mr. Neiman asked Mr. Flannery what the judge said to that and Mr. Flannery read and said at the second hearing the applicant did revise its plan and proposed a 6 ft. decorative fence along the southern property line although the applicant's engineer testified that the local ordinance does not stipulate a buffer. At the second hearing Payne re-iterated her objection and went on to amplify her concerns with the extent of the grade and potential for harm to her 60 or 70 ft. oak in the area. Moreover Payne expressed concern with the height of the townhouses and whether illumination from the proposed structure would be adequately screened by a 6 ft. fence. The board professionals advised the board that design requirements are open to interpretation and buffers provide transition between developments that are not compatible and different from what is there and the board attorney advised the board they need to determine what makes sense for each development. He then read the ordinance that said the buffer must be 30 ft. in width as measured from the property line to the proposed use and the board may reduce the required buffer to 15 ft. if the developer provides a dense landscaping screen. Then he said the judges decision continued and said the Lakewood UDO contains extensive sections dedicated to buffering requirement and the applicant's engineer and planners interpretation can be considered too narrowly construed as the Payne's property can be construed as an area zoned for single family residential land use and based on the record the court cannot find the board acted arbitrarily or unreasonably in its finding the board had concerns which address the adequacy of the buffer in light of the proposed removal of the trees and evidence of grading and its potential adverse impact on existing trees. The Payne property could be considered as an area zoned for single family residential land uses. The concerns raised by the board are those which reasonably could have reached upon credible evidence in the record and its' denial in

this record was not arbitrary or unreasonable. Mr. Flannery said the judge is saying the board has the right to ask for a buffer. Mr. Neiman wanted Mr. Flannery to answer one question, explain how they went from 30 ft. to 15 ft. to 10 ft. Mr. Flannery said that is multi family to single family and said they don't have multi family to single family and they have multi family to a single family that is 240 ft. away but a business that is there and he feels that 10 ft. would suffice.

Mr. Flannery wanted to go through the remaining comments in the board engineer's report. He disputed the report when it said to comply with the section that states 30 ft. and said the court said the board was not arbitrary and had every right to ask for a buffer and the board's professional says that buffer should be what is appropriate for the unique situation. The architectural plans do show a 2 ft. jog between the buildings. Mr. Alfieri asked Mr. Flannery to explain why this is a waiver and not a variance and Mr. Flannery said the sections that require buffers are in section 8 which is design regulations and it is his opinion they are not really even requiring a design waiver but the board attorney tells they to be conservative but he thinks they comply with section 8 where it says you need a buffer, it says you need a buffer that provides the buffering between uses and it is his opinion you have that but they are requesting that waiver to be conservative because there is some confusion. Mr. Alfieri said the relevance of it being in the design section rather than the zoning section is because if it is in the zoning section a variance is required and had it been in the zoning section, when they were denied it would have been listed as a variance.

Mr. Vogt was asked to clarify that, ordinance vs. waiver and Mr. Vogt said he had 2 issues that came up: one is the issue with the buffer and the second one was the earlier question of whether they needed shade trees- they are both contained within section 8 with the design standards based on their location and it is his interpretation that they both be design waivers. Mr. Flannery continued with the topic of the shade trees and said it was in section 18-805D and it says street trees shall be installed on both sides of all streets in accordance with the approved landscape plan and all developments shall provide a shade tree easement and they are asking for this waiver as a technicality.

Mr. Neiman said the board feels comfortable that this is a waiver and did not want to hear from the objectors' attorney about any variance. Mr. Flannery said the justification for the second waiver is the ordinance says you need street trees and the landscaping plan shows street trees and it says it can be evenly spaced or mast and they have done that. Mr. Neiman said the plans were not clear and they just have to make sure the plans are clear and Mr. Flannery said they can call them out clearly. As a technicality they are asking for that waiver because it says that all developments shall provide a shade tree easement and the shade tree easement that they provided really doesn't make sense because it is mostly asphalt and it is Mr. Vogt's recommendation that they eliminate it which is in conflict with the ordinance. They will provide street trees that will be in an area that will be maintained by a homeowners association since this is a private street not a public street. Mr. Flannery said the final thing is the board engineer talks about the court findings that say they have to comply with Section 1803D2b and he said they do not-the court findings say the board was appropriate in requiring a buffer.

Mr. Neiman asked Mr. Gasiorowski if he would like to question the witness and Mr. Gasiorowski questioned the time and the fact that he had surgical procedure and Mr. Neiman said this has been going on for 3 years and he wants to finish it tonight and Mr. Gasiorowski said the regular hours are to 9 and Mr. Neiman said he would go to 11 to finish this already because it is screwing up the board's schedule and Mr. Gasiorowski asked to him if he was forcing him to

proceed forward and Mr. Neiman said he is not forcing him to proceed forward but he would like to try to end this application.

Mr. Gasiorowski said he has at least 3 witnesses to call and Mr. Neiman asked Mr. Gasiorowski what his goal is and Mr. Neiman said he thinks his goal is to stall this application for 4 years. Mr. Gasiorowski asked if Mr. Neiman said he stalled it? Mr. Gasiorowski said this board denied this application, not him, and then the applicant took it to appeal to the NJ Superior Court and that court affirmed the decision of the board with regard to the issues of buffer and the likes and to make the comment that he stalled this application is wrong. Mr. Neiman said it is based on his questioning tonight and he asked him to get to the point and try to move on.

Mr. Gasiorowski said his first request is to terminate due to its normal hours. He then proceeded to cross examine Mr. Flannery and asked if Mr. Flannery testified for the application when it was denied and gave testimony with regard to buffering and Mr. Flannery said yes. Mr. Gasiorowski looked at subsection E of the zoning ordinance for buffering and Mr. Alfieri objected to his reference to zoning ordinance, it is in the design section. Mr. Gasiorowski said section 18-803E also has subsections and he said to look at subsections 1, 2a-g, and said they went through this same section the first time it was denied and Mr. Flannery said yes. Mr. Gasiorowski said at that time Mr. Flannery stated that there was no requirement for a 30 ft. buffer and Mr. Flannery said at that point he did not have the judges order and Mr. Gasiorowski said the judge affirmed the decision and Mr. Flannery said the judge affirmed that the board had the right to ask for a buffer. Mr. Gasiorowski asked if his client's property is in a zone that permits one family use and Mr. Neiman said Mr. Gasiorowski is representing a client that has a home 240 ft. away from the property and has a landscaping business and Mr. Gasiorowski said he represents his client who owns the adjacent property and he would ask the question-the property which is owned by his client which is located immediately adjacent to the applicant, is it in a zone which permits one family residential development and Mr. Neiman asked what is he getting at and Mr. Gasiorowski said he wanted to voice his strong objection to Mr. Neiman's continued interference with his cross examination- this is a person that has been called as a professional witness and to give expert testimony and Mr. Gasiorowski said he has every right to cross examine him with regard to his testimony. Mr. Flannery is the one who stated that Mr. Gasiorowski's client has a single residence adjacent to this property and he is the one who said that Mr. Gasiorowski's client operating a commercial use and Mr. Gasiorowski said he has every right to cross examine him with how his client can in the future utilize their property as they choose to do so.

Mr. Jackson told Mr. Neiman he can see he has some tempers going here and he wanted to take a moment here and said there is a provision in Cox where he talks about the governance of a meeting and it talks about how the chairman has the right to preside over the meeting, limit the testimony of witnesses to prevent undo delay, duplication etc. Mr. Jackson said he thinks Mr. Neiman is doing his job and he thinks Mr. Gasiorowski is doing his job also. He thinks Mr. Neiman is trying to keep the meeting moving but likewise Mr. Gasiorowski is advocating for his client and as an attorney they always have the pressure to make the appropriate record. All he asks is that it remain respectful.

Mr. Gasiorowski continued and said the property owned by the Payne's is located in a zone which permits one family residential development and Mr. Flannery said one of the permitted uses is single family detached dwelling. Mr. Gasiorowski said they can if they wish in the future come before a board if they so desire to make an application for a single one family residential subdivision and Mr. Flannery said yes. Mr. Gasiorowski looked at 18-803 e2b, and specifically "b" and asked if there is anything in any portion of that which refers to a ten foot buffer being

permitted and Mr. Flannery said under e2 it says buffering shall be required when topographical or other barriers do not provide a reasonable screening and when the board determines there is a need to shield the site from adjacent properties. Mr. Gasiorowski asked him to look at subsection "b" which says multi family or townhouses and Mr. Flannery said this is definitely townhouse, and Mr. Gasiorowski continued and said adjacent to an existing single family residential development or an area zoned for single family development shall provide a buffer area of at least 30 ft. in width as measured from the property line toward the proposed use. The board may reduce the required buffer to 15 ft. in width if the developer provides a dense landscaping screen. Mr. Gasiorowski then asked Mr. Flannery to show him in that subsection "b" it gives the board to power to state that no buffer is required. Mr. Flannery said the beginning of 2 gives the board that power-the subsection provides additional information, the board has the authority and Mr. Flannery said that is his interpretation of it. Mr. Gasiorowski continued on to subsection "c" and said Mr. Flannery said the Payne uses that as a commercial nature and that this somehow colors the issue with regard to the buffer and Mr. Flannery said they have been running a landscaping business there and Mr. Gasiorowski read "c" which says proposed major residential subdivisions adjacent to an existing commercial use and then he asked Mr. Flannery if it was a commercial use and Mr. Flannery said he is not familiar with their business and Mr. Gasiorowski read again from "c" and said proposed major subdivisions adjacent to an existing commercial use shall provide a buffer area of at least 30 ft. in width as measured from the property line toward the proposed use-the board may reduce the required buffer to 15 ft. in width if the developer provides a dense landscaping screen and Mr. Flannery said that is exactly what it says. Mr. Gasiorowski said Mr. Flannery's interpretation is that these subsections are completely meaningless because if the board makes a determination that it wants no buffer at all it has the power to do that and Mr. Flannery said he never said they were meaningless but if the board determines that no buffer is needed, the board has the power to do that.

Mr. Gasiorowski wanted to talk about the buffer in question and asked Mr. Flannery, as a planner, to describe what a buffer is intended to do and Mr. Flannery said he read what is required of a buffer and said it is to separate incompatible uses. Mr. Gasiorowski asked if he would agree with him that if in fact a 30 ft. buffer were required, this applicant is basically denuding the property, removing it from any potential use as a buffer and Mr. Flannery said he does not think the applicant is denuding the property. Mr. Gasiorowski said he is lowering the grade from 1-4 ft. in different areas and Mr. Flannery said he is cutting and filling the site the same as you do for every site plan that comes before the board. Mr. Gasiorowski asked where in fact can the board could impose a buffer of 30 ft. the applicant is going to have his buildings backyard and Mr. Flannery said the applicant is proposing backyards 30 ft. from the property line and Mr. Gasiorowski said 20 ft. of which are in the buffer area and Mr. Flannery said the board is the authority that determines what the buffer should be. Mr. Gasiorowski said with regard to the document which is identified as the UDO, who legislatively creates that document and Mr. Flannery said the Lakewood Township Committee. Mr. Gasiorowski said in doing so, it is a legislative act and as a planning board, do they have the right or ability to legislate and Mr. Flannery said no so Mr. Gasiorowski said if in fact the legislature (Township Committee) says that in between different uses, multi family and one family residential uses, you must have a buffer of 30 ft. or in the alternative, the board can reduce it to 15 ft. an applicant coming before this board must seek relief and Mr. Flannery said the ordinance also indicates when the board determines there is a need. Mr. Gasiorowski said Mr. Flannery believes that this applicant doesn't need a waiver and Mr. Flannery said he doesn't think it matters with respect to his interpretation of whether a waiver is needed or not, the board makes that determination, and the court has weighed in on that. Mr. Gasiorowski asked if there in anything in the courts decision which says this is a waiver and not a variance and Mr. Flannery said the court's decision says

**PLANNING BOARD MEETING
JANUARY 19, 2010
MEETING**

**TOWNSHIP OF LAKEWOOD
REGULAR**

the board did not act arbitrary or capriciously in their action and the action was that it was a waiver, so indirectly they are affirming that it is a waiver. Mr. Gasiorowski asked if there is a standard which must be comported with in order for a board to grant a waiver and Mr. Flannery said no but it has to be reasonable. Mr. Gasiorowski asked if this property could be developed with a lesser number of units and satisfy the 30 ft. buffer and Mr. Flannery said the property could be left vacant, there is endless possibilities. Mr. Gasiorowski asked if it could be developed as a residential use providing for a 30 ft. buffer and Mr. Flannery said there is one house on it now and it could stay that way and there is a buffer. Mr. Gasiorowski asked if it could be developed with townhouses honoring the 30 ft. buffer requirement and Mr. Flannery said yes.

Mr. Neiman asked Mr. Gasiorowski who his witnesses were and Mr. Gasiorowski said he has a traffic expert and a certified tree expert as well his client.

Mr. Neiman said they were going to stop here. He asked Mr. Kielt if there was room on the February 2, 2010 agenda to add this and Mr. Kielt said it appears they have about 1 hour to 1 ½ hour if everything goes the way it should. Mr. Neiman said he would like to continue this to the meeting of February 2, 2010 and will continue with Mr. Gasiorowski's witnesses. Mr. Alfieri asked if that would be at the beginning or end and Mr. Neiman said at the end.

Mr. Banas said he will not be at that meeting and he wonders if there will be a quorum and Mr. Kielt said there should be no problem, the only one not eligible is Mr. Follman and Mr. Jackson said if he listened to the tapes, he would be eligible. Mr. Franklin said it is a lot of listening.

Mr. Jackson made the announcement so no further notice will be given and Mr. Alfieri said the applicant grants an extension through that meeting to act on it.

Motion was made by Mr. Akerman, seconded by Mr. Herzl, to continue to the meeting of February 2, 2010

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mrs. Koutsouris; yes, Mr. Neiman; yes, Mr. Akerman; yes, Mr. Banas; yes, Mr. Schmuckler; yes

2. SD # 1691 (Variance Requested)
Applicant: Sam Bauman
Location: Lakewood New Egypt Road-west of Pine Circle
Block 261 Lots 3, 3.01
Minor Subdivision to create 3 lots

Tabled to February 16, 2010

3. SP # 1925 (Variance Requested)
Applicant: Yeshiva Keter Torah
Location: Squankum Road, north of Apollo
Block 104 Lots 13 & 54
Preliminary & Final Major Site Plan for proposed high school

Tabled to February 16, 2010

4. SD # 1694 (No variance Requested)
Applicant: North Lake Realty LLC
Location: Lafayette Boulevard
Block 265 Lot 1
Minor Subdivision to create 2 lots

Tabled to February 16, 2010

5. SD # 1701 (No variance Requested)
Applicant: Abraham Flam (formerly Harvard Community LLC)
Location: East Harvard, East End Avenue and East End Street
Block 225 Lots 3, 4, 5 & 6
Minor Subdivision to create 2 duplex lots

Tabled to February 16, 2010

6. SD # 1702 (Variance Requested)
Applicant: 323-325 Realty LLC
Location: Ridge Avenue, east of Hackett Street
Block 235 Lots 33, 35, 36 & 41
Preliminary & Final Major Subdivision – 6 fee simple lots

Tabled to February 16, 2010

7. SD # 1692 (Variance Requested)
Applicant: JG Ridge
Location: southeast corner of Leonard Street & Park Avenue
Block 228 Lot 2
Minor Subdivision to create 2 lots

Tabled to February 16, 2010

6. CORRESPONDENCE

Mr. Kielt said there is an ordinance for review and said the only thing that changes is the verbiage in it where it refers to duplex. He said the items underlined are the changes and what it means is that duplexes that are back to back are not permitted. A standard duplex is side to side will continue to be permitted but any duplex that is back to back is not. Mr. Neiman said the ordinance says that the units must face the street and said there was an application tonight

that was heard at the tech meeting (#5 on the agenda) that was a through lot and asked if that is affected by this and Mr. Kielt said he feels that it does not fit in because it is back to back; there is verbiage about facing a road, but it also say may not be back to back. Mr. Neiman said that question should be answered and Mr. Kielt said when Mr. Jackson drafts his letter to Mr. Edwards he can call his attention to that question.

Mr. Schmuckler had a question as well. He said completely side by side is difficult language and if it is jogged a bit and Mr. Kielt said the intent of the zoning ordinance is not to have a duplex back to back. Mr. Schmuckler said why couldn't they say face streets instead of putting them completely side by side where if the architecturals show them not completely side by side or only 85% side by side. Mr. Kielt said whatever verbiage they want but a 2 ft. jog is acceptable and Mr. Neiman said the language says completely and Mr. Kielt said whatever verbiage the board wants to include is okay. Mr. Schmuckler said if they just take out the word side by side and state it must face the street it would cover the issue with private entraceways and separate driveways.

Motion was made by Mr. Banas, seconded by Mr. Schmuckler, to have Mr. Jackson write the letter to the Township Committee with the board's recommendations.

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mrs. Koutsouris; yes, Mr. Neiman; yes, Mr. Akerman; yes, Mr. Banas; yes, Mr. Follman; yes; Mr. Schmuckler; yes

SD 1695 Benzion Green – discuss requested changes to resolution memorialized on December 15, 2009

Mr. Lines appeared to request 2 more findings of fact in the resolution that was adopted last month specifically because the ordinance that was just introduced. They presented a duplex that was front to back with 2 separate driveways on the lot and now with the new ordinance he would not be able to build the house that he got subdivision approval for. He wanted to add to the resolution and Mr. Jackson said the ordinance has not been adopted yet. Mr. Neiman said he got approval for a duplex and the plans and minutes show it to be back to back but the resolution just says duplex (not back to back duplex) and Mr. Jackson asked if they want a resolution that clarifies that he can do that. Mr. Banas said the general position is that it is grandfathered in. Mr. Lines said it is in the ordinance and Mr. Banas said it is not an ordinance and Mr. Neiman said the client would feel more comfortable if it said as per plan in the resolution. Mr. Neiman asked Mr. Jackson to review the minutes and prepare a revised resolution.

7. PUBLIC PORTION

Mrs. Gerry Ballwanz asked if isn't it after a memorialization that then appears in the newspaper that within 2 weeks anyone from the public can challenge that decision? Mr. Kielt said it is 45 days after the publication in the newspaper. Mrs. Ballwanz asked when is the 45 days up for the applicant that was previously heard and Mr. Kielt said they still have time.

Seeing no one else, this portion was closed to the public

8. APPROVAL OF MINUTES

- Minutes from January 5, 2010 Plan Review Meeting

Motion was made by Mr. Banas, seconded by Mr. Follman, to approve

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mrs. Koutsouris; yes, Mr. Neiman; yes, Mr. Akerman; yes, Mr. Banas; yes, Mr. Follman; yes; Mr. Schmuckler; yes

9. APPROVAL OF BILLS

Motion was made by Mr. Banas, seconded by Mrs. Koutsouris, to approve

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mrs. Koutsouris; yes, Mr. Neiman; yes, Mr. Akerman; yes, Mr. Banas; yes, Mr. Follman; yes; Mr. Schmuckler; yes

10. ADJOURNMENT

The meeting was hereby adjourned. All were in favor.

submitted
Johnson
Board Recording Secretary

Respectfully

Chris
Planning