

**LAKWOOD PLANNING BOARD
MINUTES
OCTOBER 30, 2007**

Mr. Banas announce this was a special meeting for the expressed idea to purpose to hear the application of Jule Estate. We have heard this matter at a previous meeting and have receive the transcripts and need to have a continuation of the meeting. There has been a request of a pending legislation in another state that may or may note require one of the attorneys to be absent from the meeting. Accordingly, so that we do not miss anything and that attorney does not miss anything, using the extent that we have used in the past, we have given all kinds of latitudes for any type of discussions that might take place, we will have a recess until that matter is tended to.

I. CERTIFICATION OF COMPLIANCE

Chairman Banas called the meeting to order at 6:00 p.m. with the Pledge of Allegiance and Ms. Johnson read the Certification of Compliance with the NJ Open Public Meetings Act:

“The time, date and location of this meeting was published in the Ocean County Observer and 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 at least two of the following newspapers: The Asbury Park Press, The Ocean County Observer, or 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, Mr. Neiman, Mr. Banas, Mr. Akerman, Mr. Fink, Mr. Gatton, Mr. Percal

3. SWEARING IN OF PROFESSIONALS

Mr. Peters and Mr. Truscott were sworn in.

4. NEW BUSINESS

- 1. SD # 1366C (NO VARIANCE REQUESTED)**
APPLICANT: RALPH CLAYTON & SONS – JULE ESTATES
Location: Gudz Road and Lakewood New Egypt Road
Block 11.05 Lots 13-17, 19, 19.01, 84 & 85
Preliminary & Final Major Subdivision – 36 lots

Mr. Peters had nothing more to add than his letter read from the September 18th meeting.

Mr. Truscott had nothing new to add since his letter dated April 30, 2007.

Mr. Penzer Esq. appeared on behalf of the applicant. Mr. Liston appeared as the attorney representing an objector, Aharon Kahn and Mr. Gasirowski appeared as the attorney for an objector, Abe Schwartzman.

Mr. Penzer stated Mr. Stevens would give the members a brief overview of where they left off and then he would be available for cross examination. His only other witness is his traffic engineer. Mr. Stevens stated the application is for a major subdivision of Jule Estates, the applicant is proposing to subdivide this property into 36 conforming residential lots and 1 lot to be reserved for open space. Testimony was given at the previous hearing stating this is for an amended as there was an approval granted for 43 residential lots and the reason it is back is because Ocean County Engineering Department has done a wetland delineation for improvements along Route 528 and an LOI was issued showing changes since the last approval. The applicant is now asking for approval under Section 18-908, the reduction of residential lot requirements for recreational purposes. The original application for 43 lots subdivision was also approved under this same section. There was some confusion at the last hearing between this and another ordinance which is now being applied which is Section 18-808 which are provisions for Park and Recreation Areas. Section 18-808 is a new ordinance that was not applied to the original 43 lot subdivision. Section 18-908 he believes is the important section for the board to discuss this evening and that will allow the board to grant an approval for a reduction in the minimum lot area and width requirements of the proposed lots. He ran through the section saying it was permitted in the R12 zone provided the permitted density is not exceeded. The permitted density is 3.1 dwellings units per acre where the applicant proposal is for 1.8 dwelling units per acre. The land resulting from the reduction in lot size shall be set aside for park, playground or other recreational purposes, which the applicant is proposing to do here. The land shall be dedicated to Lakewood Township for recreational purposes, which it will. The soil, drainage, slope, etc. shall be deemed suitable by the board for recreational purposes in it review for lot reduction under this section the board shall consider the location of the proposed recreation area with respect to the Township population, traffic, and the possible addition of more land to the area proposed for dedication. He feels this paragraph gives the board the ability to review the property to be dedicated and the applicant in this case is planning on dedicating in excess of 5 acres. He feels there is no part of this ordinance that requires the applicant's dedication to be a certain number of uplands, wetland, wetlands buffers, etc., it simply states the board has the right to review it and determine if it believes that it is suitable for that purpose. He continued to quote the section which stated that it needed to have access to a public right of way, shall not be less than 150 ft at its' least dimension and that is the requirements which he feels he meets. Section 18-808 is a new section that was applied to this application and is worded differently than the other section. It states not less than 5% of the land area for every residential major subdivision or site plan consisting of 25 % or 25 or more units shall be preserved as common open space. This property is approximately 20 acres which would require them to set aside 1 acre of land and they have set aside 5+ acres. The section states the required open space shall be contiguous free of environmental constraints such as flood plains, wetlands, bodies of water,

stormwater drainageways and basins, exclusive of underground facilities or steep slopes and the land shall be utilized for passive or active recreation. He feels they exceed all these provisions.

One of the items that Mr. Truscott brought up in his comments was talking about the lot area that would be needed to be dedicated to allow the lot reduction for recreation. He stated that any land that would be reduced from the lots would have to be set aside as open space. They did the math and determined that it would be approximately about an acre which is less than they are dedicating. They are subdividing into 36 lots; 23 of those are under 12,000 sf (64%), some of them are 11,600 sf. If you looked at the average lot size, it would be 14,763 sf and the total land in excess of 12,000 sf beyond the 36 lots would be equal to 2.28 acres or 99,457 sf. They have more land than what would be necessary if all the lots were 12,000 sf it is just the configuration that changes the shape and leads them to where they are today. If they were to only look at the 23 lots that are less than 12,000 sf they had a shortage of 34,964 sf or 0.80 acres. They are setting aside a total of 5.05 acres and of that there are 2.31 acres of wetlands, 0.69 acres stormwater management basin, 2.05 acres of upland area which includes 1.12 acres of wetland buffer which leaves an area of upland outside of the buffer of 0.93 acres. Section 18-908 has no requirement for any amount of uplands or wetlands property and Section 18-808 it requires the property be contiguous and free of environmental constraints such as flood plains, wetlands, bodies of water, stormwater drainageways and basins but nothing about wetland buffers. He feels he meets the intention of both sections.

Mr. Neiman had a question about the separate piece of parcel and asked if it was a separate homeowner and was told Lot 18 is owned by someone else and recently received approval from the planning board.

Mr. Liston representing Aaron Kahn, had questions for Mr. Stevens. He said Mr. Stevens mentions a figure of upland exclusive of buffers and asked for that number again and asked him to show it on the map. Mr. Stevens showed it on exhibit A3 and said it was contiguous and no isolated areas. Mr. Liston asked for the size of the playground exclusive of wetlands or wetland buffers and Mr. Stevens said approximately 75 ft. x 75 ft. Mr. Liston asked if this was the only parcel set aside for active recreation and Mr. Stevens said you would have to define active recreation because the applicant planned on building a walking trail around the detention basin to take advantage of the natural areas and the natural areas would be available for passive recreation. Mr. Liston asked Mr. Stevens to characterize a walking trail, whether it was passive or active recreation and Mr. Jackson asked if it was defined in the ordinance and Mr. Truscott said he would check. Mr. Liston read it into the record and said it is defined as "recreational activities which require physical participation including but not limited to sports such as soccer, baseball, softball, tennis, basketball, etc. and facilities including playground equipment of all types." Passive recreation is defined as "an unimproved area of land which may include water set aside dedicated, designated or reserved for public or private use and enjoyment which utilizes and depends on the natural environment and requires no modifications of the environment other than to provide access or reserved for public or private use and enjoyment which utilizes and depends on the natural environment and requires no modifications of the environment other than to allow access. It permits such low impact uses such as hiking, fishing, canoeing, nature study, horseback riding and bicycling.

Passive open space typically includes wooded areas, streams, lakes, and other varieties of natural vegetative areas. Mr. Penzer renewed his objection that it doesn't state what walking trails are and Mr. Jackson asked Mr. Liston if it matted. Mr. Liston said it did because if you consider how little of the recreation area is active (75x75). Mr. Stevens said based on the definitions read his opinion would be as the applicant's professional, they would fall somewhere in between. Mr. Liston asked about the access on Gudz Road and asked if this application only proposed the application to the county with access from Gudz Road and Mr. Stevens said yes. Mr. Liston asked about the previous approval for 43 lots and asked Mr. Steven to show him that exhibit (A7) and none of those lots has access to Lakewood New Egypt Road. Mr. Liston question Mr. Stevens about the Westgate project and the number of units on that project (993) and the access for that development which Mr. Stevens stated there was one access point to Lakewood New Egypt Road, one to Central Avenue. Mr. Stevens stated that as the planner for this project the applicant's proposal to have access out to Gudz Road is the proper plan for this application. We always connect secondary roads to secondary roads, it doesn't make sense to connect a secondary road to a primary road like the county road to avoid vehicular conflicts like turning movements, etc. and the Ocean County Planning Board approval and their comments specifically that they would prefer to see the application constructed this way with access to Gudz Road just backs up his point as a planner. The Westgate project is built all on secondary roads with one exception, we have a main feeder road that goes through the project from County Route 528 back out to Central Avenue which is also a county road. There are no homes built on it, no stores fronting on it, it is strictly for access.

Mr. Liston asked the distance from the access for Westgate to where the access to this project would be and he said approximately 1000 ft. Mr. Liston then asked the distance between Rte. 528 and Gudz Road and if the cul de sac met Rte. 528 and Mr. Stevens said approximately 900 ft. (Exhibit A3). Mr. Liston asked Mr. Stevens if he was aware that it is one of the primary objections of the neighbors of Gudz Road and Mr. Stevens said yes. Mr. Liston asked what is proposed in the recreational area and Mr. Stevens said playground equipment consisting of slides, ladders, etc. sheet 13 of 16 and it is located adjacent to the drainage basin which is behind it. The basin is set up for the 100 year storm and the basin needs to be dry within 72 hours of the peak storm event. In a peak storm event the basin would hold approximately 6-7 feet and there will a 4ft. high fence with a gate. There is also a sewage pump station located in the southwestern most portion of the property and will abut the playground. It will be an electric pump underground with emergency interconnects and portable generators if there was an emergency which will be owned by New Jersey American Water Company. It will be surrounded by a 6ft high chain link fence. The detention basin fencing will be Franklin fence. The area taken up by the pump station and paved drive and fence is approximately 25 ft. x 35 ft. Mr. Liston asked if the pump station will run on electricity and Mr. Stevens said yes and there will be a low hum only when the water level reaches a certain height.

Mr. Banas asked the point of all these questions, the plans were available for at least 6 months and there was ample time to review the plans at that time. Mr. Liston said the point is he wants to make the board aware of the fact that on the lot with the recreation area, there is also a sewage pump station and a drainage basin and they are directly adjacent to it.

Mr. Gasiorowski, representing Abraham Schwartzman. He had some additional questions for Mr. Stevens. He questioned his testimony as an engineer and as a planner and said as a planner he is critiquing his own work. He said they don't have an independent planner giving testimony, they have an engineer who is testifying as an engineer, then putting on another hat and testifies as a planner and says everything I designed as an engineer from a planning perspective is acceptable. Mr. Jackson did not see a problem with that. Mr. Gasiorowski asked the length of the roadway to the proposed cul de sac and Mr. Stevens said 1400 ft. Mr. Gasiorowski said in an emergency if the roadway were blocked there would be no other access and Mr. Stevens agreed. Mr. Stevens said the project meets all the standards of the RSIS and the Ocean County Planning Board has approved it.

Mr. Neiman said why did the Ocean County Planning Board specifically mention no access from Rte. 528 unless it was an option. Mr. Gasiorowski said nothing was presented to them and Mr. Jackson asked if he knew that to be true because the county people are certainly capable of looking at the big picture and thorough. Mr. Gasiorowski said any agency if they could be less impacted would be inclined to vote that way. Mr. Penzer also said the Lakewood Fire Department also approved this and examined this application.

Mr. Jackson said the objector has the option to go to the Ocean County Planning Board and ask them to review the plans and state their case to them, as they have jurisdiction over this board as to what this board can do on their roads. Mr. Gasiorowski disagreed and said the county can not tell this board what to approve. Mr. Penzer disagreed and said the county is a superceding authority and every approval this board makes is subject to the county approval. Mr. Neiman asked why don't they make the plans through to the county road and Mr. Penzer said when they hear the testimony of the traffic engineer they will see why.

Mr. Gasiorowski asked Mr. Stevens as an engineer, based upon the topography and the land, if it was possible to run that cul de sac out to the county road and Mr. Stevens said that is one of his favorite questions, you can't ever ask an engineer if anything is possible, the Hoover Dam stands, they can make anything possible. Mr. Stevens said it would be possible, there is no wetlands, but safety and tree clearing etc. Mr. Banas asked Mr. Stevens if these plans were drawn according to the states requirements and he said no.

Mr. Gasiorowski pointed to the playground and asked the description again. The request was made to relocate the playground so the surrounding neighborhood could use it by the prior planning board approval. The playground is about 1/7th of 1 acre. Mr. Gasiorowski then questioned Mr. Stevens about the NJDEP wetlands delineation determination again. Mr. Gasiorowski asked him where else he could locate the playground area and Mr. Stevens said anywhere along the perimeter of the 5 acres.

Mr. Gasiorowski talked about the basin. Mr. Stevens said it is a detention basin that will contain 6-7 ft. and the slope of the basin is 3 to 1. Mr. Gasiorowski asked Mr. Truscott what he meant by useable lands for open space and recreation and if any paths or trails could be built on freshwater wetlands or buffers and he said no. Mr. Gasiorowski said nothing could be done on that land and Mr. Stevens and Mr. Penzer disagreed and said

you can hike through it and build bird blinds like in the Manasquan Reservoir at the freshwater wetland there are signs of this and there is hunting and fishing allowed along with bird watching.

Mr. Liston had some further questions for Mr. Stevens and asked him how many single family homes there were on the cul de sac beyond the first intersection and Mr. Stevens said 17 and his interpretation of the RSIS does not require the road divider to go to the first intersection.

Mr. Fink had a question about the testimony that Route 528 is congested and the playground was approved in the present location 5 years ago, but a lot has changed since then, so he would like to see the playground changed more to the middle of the development.

Mr. Henry Ney was called in by Mr. Penzer as an expert in traffic engineer. He is also a planner and has extensive planning and traffic experience and Mr. Penzer provided his resume into evidence as exhibit NEY-3. Mr. Penzer asked him why they are not opening up this development onto Route 528 and Mr. Ney stated there are 3 reasons and the #1 reason is safety. The location of that roadway if it were to be extended is an area of limited site when looking towards the west, it is on a downgrade and it has limited safety, there is also a conservation easement that is in that area so the site distance is limited by trees as well as by the horizontal and vertical character of the roadway. They don't meet the standards in AASHTO (The American Association of State Highway & Transportation Officials) that text has been adopted by RSIS and must be adhered to. They don't have enough site distance and showed them on exhibit A3 how he calculated the site distances. Looking in an easterly direction, the site distance is no problem and is adequate because they are going uphill. Another calculation used is speed and he used 5 miles over the posed speed limit of 45 mph, and he used 50 mph which translates to 8 ½ seconds of time to see a vehicle and react. While he was sitting and timing vehicles, he was getting between 7 & 8 seconds and less than 8 seconds which mean people are not doing 45 mph. There is also no widening on that part of Route 528, there is no place for a left turn in so it will be sheltered if a car is approaching from the east. He also said there is also a planning issue; roads of lower order are connected to other roads of lower order. Mr. Ney entered exhibit NEY 2 which is a copy of the tax map showing Westgate development and showed the subject parcel in the lower left hand portion of the map.

Mr. Ney then testified about what his traffic study entailed with counts and measurements. Mr. Penzer handed out the reports to the members. There are no sidewalks in the immediate area; there are sporadic sidewalks further to the north of the proposed development. Using the multipliers provided by the Institute of Traffic Engineers to estimate traffic for single family homes, the calculations for 36 unit single family homes project 34 morning peak hour trips; 26 out in the morning, 8 in and 42 in the evening; 27 in the evening, 15 out. As far as a bottleneck on Gudz Road, he referred to 3 agencies, NJDOT, Inst. of Traf. Eng. and CAFRA and said all of them have standards for when you need a traffic study and the lowest is CAFRA and they said if you generate more than 50 peak hour trips you need to do a traffic study: State of NJ and Inst. of Traff. Eng. says 100. Mr. Neiman asked if he took into consideration that there are basements in these homes and there might be tenants living in them when he calculated the trips and Mr. Ney

said the calculations are based upon single family homes not based upon multi-family. If it were multi-family, the rates per unit are less because it has to do with economics, vehicle ownership, etc. There would be more units, but the rate would be lower than the rate he used by about 60%. There would be, 6 to .7 per unit more vs. 1.1 to 1.2 per unit or about 50 trips.

He then talked about traffic distribution and traffic conditions along with the building of this development and the continuing building of the Westgate development and increased the traffic for that gradual building.

The only other way to make the connection onto Route 528 is to pull the road down from where it is located and have site distance, but the RSIS does not say to connect a secondary street to an arterial street, you should be connecting it to a residential access street or a minor collector which is what Gudz Road is. Also the segregation of the community from Whitesville Road makes for a more livable community. As far as the issues of fire, emergencies, ambulance, etc, those issues are all reviewed by the fire department, they have a divided entry up to the about the first cross street and the standards are the least for safety and the most that can be required. It meets the requirements of RSIS. He does not feel that having an entrance on Lakewood New Egypt Road is safe.

Mr. Jackson asked Mr. Ney if he was involved in the county's decision on this application and Mr. Ney said no. Mr. Jackson asked him if it surprised him that they restricted access onto Route 528 and Mr. Ney said his experiences on the Monmouth County Planning Board there are instances where they were specific in their statements on approvals and resolutions and deed restrictions in that county for county roads.

Mr. Gatton asked if the standards given were based on a standard house and Mr. Ney said yes. Mr. Gatton asked if it signified the number of bedrooms and Mr. Ney said no and Mr. Gatton asked if he could adjust his figures for a 4-5 bedrooms. Mr. Ney said he has tested these numbers when in Monmouth County against subdivisions in Rumson, Freehold, Manalapan, etc, and they are fairly standard. Mr. Gatton asked if the trips included school buses and Mr. Ney said he did not think the buses would go into this subdivision, it would pick the children up at the corner of Gudz Road.

Mr. Liston asked Mr. Ney when he was first hired by the applicant and he said early May so he did not have any input into the plan. Mr. Liston discussed the trip counts and the additional counts with this subdivision and Mr. Ney said the traffic splits with 50% going one way and 50% going the other way. The 50 ft. short that they would need for the site distance could be accommodated by shifting the road. Trees would have to be cleared but that would have to be a substantial amount of trees, but he would have to do calculations.

Mr. Gasiorowski asked Mr. Ney if the bring the roadway 50 ft to the east, you would eliminate the site distance problem and Mr. Ney again said yes. Mr. Ney said he was not aware of the concerns of the residents when he was hired and did not ask Mr. Stevens to prepare a layout reflecting an ingress and egress off of the county road so he project the feasibility of the establishing the site distance of exactly how much tree removal was necessary. Mr. Gasiorowski said the site distance problem would be eliminated if they

restricted the left hand turn from Route 528 and Mr. Ney said this is a residential street and asked if he would be deterred from making a left and said it would just cause disobedience. He said it might ease Mr. Gasiorowski's concern but not his. Mr. Gasiorowski asked him as a planner if it made good planning sense to locate the playground this close to the intersection and Mr. Jackson said he is here testifying as a traffic expert and it is not appropriate to ask this witness that question. Mr. Banas agreed.

Mr. Neiman asked to forget the county report, and asked from a strictly engineering point, from an application point, would there be any issue bringing the road down another 50 to 75 ft. to eliminate this site distance problem; is it going into wetlands? Mr. Jackson said the testimony is that it is not safe to put the intersection where it would go right across there because it would be 50 ft. short. Can you re locate that so it would not be 50 ft short and be a safe intersection? Mr. Ney said the other point he made was there was no room to protect the left turn in this area because it is widened on one side. Mr. Peters said he could make it a more specific question for Mr. Stevens for Mr. Neiman and that is that he is already filling in 0.93 acres of wetlands and his experience with the DEP is you are limited to 1 acre per site, do you know if you can move that road 50 ft. and still meet the DEP requirements for wetlands requirements? Mr. Stevens said yes. Mr. Neiman said the issue of school buses has come up, and with 36 homes and no buses coming into the cul de sac, that would mean 100 children waiting on the corner of Gudz and Jule. If there was a through road, it would be safest for the community. The only other way would be to widen the cul de sac and the end and Mr. Penzer said they could do 50 ft, and allow a roadway easement and have the buses go in so the buses would have 55 ft. to turn around in. Mr. Fink said there are accesses on other county roads that do not allow left turns coming out of the development and this is one development where he would like to see right in right out and restrict left turn out. It would avoid all the problems.

There was a recess while all the parties discussed alternate plans.

Mr. Banas stated the discussion during recess went towards the following: the playground area might be eliminated; the street running through might be from Gudz Road through the project and end on County Route 528. If that doesn't sit right with the public, then there would be a consideration to change the radius of the cul de sac to allow a 55 ft. turning radii. Mr. Penzer suggested hearing from the public then the objector and then have the objectors attorneys bring in their expert witness.

Mr. Percal asked if the elimination of the playground from its' present location a prerequisite for any of the other solutions and Mr. Banas said they are not even doing that until they hear from the public. Mr. Gasiorowski said he and Mr. Liston have spoken and graciously accept the offer and the thought that has gone into it and he thinks conceptually they would work towards that, but they think if the applicant would prepare a revised conceptual plan showing how the roadway with an ingress and egress onto the county road and showing where the playground can be relocated within the interior of the project. Mr. Banas said they will do that after the public portion.

Mr. Banas opened the microphone to the public

Mr. Simons asked how could the public testify if there is a professional witness that still has not been heard. Mr. Banas said if there is a disagreement with what the board has done at this point and Mr. Liston chooses to have his witness heard, following the witness the floor will be opened to the public again.

Mr. Penzer said they are not going to do anything until they know there is an agreement, they wasted their time to get to a point, they need to know there is an agreement in principle before they do that. He does not think it is fair to make them go to the county and back their head against the wall and then tell them thanks but no thanks. He does not want his client to spend another dime unless they have an agreement in principle.

Mr. Banas opened the microphone to the public

Abe Schwartzman, 33 Gudz Road was sworn in. He is being represented by Mr. Gasiorowski who stated he is entitled to speak. He said a lot has been said about wetlands and technicalities but he really thinks in order for the board to come to a conclusion the neighbors really have to be asked, and he was asked by a member why the neighbors have not shown up and that has a lot to do with some of the tactics of Mr. Penzer who cancelled the meeting and stretched it out a couple of times so a lot of the women had to leave. They have a very core, strong neighborhood association that is against the project completely. They really want it to go through Westgate, they built 938 houses there, they could take away 2 lots and go through Westgate, they do not have to destroy our neighborhood, like they destroyed Gudz Road between Central and Miller which is now a superhighway. The expert they brought in is talking about other neighborhoods in New Jersey. Lakewood is a different community, it has different rush hours, like when the boys come home from yeshiva. Every house in Lakewood has a van and a little car and if it has a basement, 2 vans and 2 little cars. The impact of this development on Gudz Road is monumental; it will change the structure of the neighborhood. He wants Mr. Rottenberg and Mr. Penzer to know, god forbid this goes through, if there ever is an accident on Gudz Road, he holds them personally responsible.

Aaron Kahn, 80 Gudz Road was sworn in. He is being represented by Mr. Liston. He said since a meeting 18 months ago with Mr. Rottenberg, they made many requests for a courteous meeting with Mr. Penzer and Mr. Rottenberg to sit down and discuss the application and devise a plan that can benefit both parties involved. The courtesy was never granted. There are terrible effects to the entire neighborhood by this plan. Gudz Road has a 25 MPH speed limit and has no sidewalks and is designed to handle the traffic of the 20 homes that are situated on it. The quality of life will be immeasurably affected by this development and come to an abrupt halt if this application is approved. This entire neighborhood is already suffering the effects from the traffic brought on by the Westgate development that was built by Mr. Rottenberg himself. If the entrance were on Lakewood New Egypt all parties involved would be satisfied. There is a development nearby called Central Park off New Central Avenue that has approximately 32 homes that was only approved by this board with a dual entrance on New Central Avenue and Hope Chapel Road. Both of those roads have a 40mph speed limit. Gudz Road has a 25 mph speed limit. It would be appropriate for the board to stand up and reject the county's recommendation citing all hazards we mentioned and for the county being inconsiderate to the members of the neighborhood. In the name of all the women and children who

cannot be here, to consider them make them part of the decision. Don't destroy their quality of life.

Menachem Locker, 1825 Attaya Road was sworn in. He said the neighbors all appreciate the 2 neighbors who have hired the attorneys and taken it upon themselves to bring this to the board's attention that this development is very bad for the neighborhood and for the people and children of the neighborhood. When you come to this neighborhood there are literally 50 children on bikes and toys from the ages of 1 through their teenage years either waiting on the corner for their busses. Most of the neighbors have small children and they all believe this is a bad idea. If there is going to be a development, they do not want it to be an overpopulated one that will completely spoil the neighborhood. They have not objection to having a development, they just want it to be done in a way that's not going to disturb the quality of life and not ruin the peace of the neighborhood. It is not a luxury we are looking for, this is a necessity they need. The safety of our children are not Mr. Penzer's or Mr. Rottenberg's responsibility, but the board's and hopefully this development will be made in a way that will not be a danger to the children in the neighborhood.

Aryeh Pollack, 74 Gudz Road was sworn in. He said his children ride their bikes in the street because it is so quiet, and on the other side of Gudz Road, very often there is a police office because of the speed of the cars going down because of Westgate. He would appreciate if there would be no entrance at all on Gudz Road to keep the quality of live the way it is.

Samuel Brownstein, 75 Gudz Road was sworn in. He said his neighbors pretty much said it all but wanted the members to close their eyes and envision themselves being in their neighborhood and seeing it going down in shambles by a few people trying make a few dollars and build a community on the expense of a beautify neighborhood that exists now. If you took a stroll just once in this neighborhood you would see what he means.

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

Mr. Penzer said it appears they don't have a settlement so let's pick a date to continue the hearing. Mr. Banas said he was prepared to continue and the members agreed.

Mr. Gasiorowski said there seems to be some confusion. He said Mr. Banas had asked Mr. Liston and himself their thoughts on this proposal and they thought it was something conceptually that would work and would like to see the layout. The board then asked for comments from the public who expressed what it is they wanted. Mr. Liston said his clients wanted and got the opportunity to say what they want in a perfect world. They realize they do not live in a perfect world, and under those circumstances they are prepared to sit down and try to work out something they can all live with if the board wants to give us that opportunity, we will take it. If the board wants to finish it tonight, they will finish it tonight. Mr. Penzer said they have a hardship with their traffic engineer goes away for the next 6 months to Florida. He heard Mr. Schwartzman attack him, Mr. Kahn him and he took them personally and he does not think they want to settle anything, he thinks all they want to do is jerk them around. If they want to settle, then put it on the record now what the plan is and we agree to that plan. If it works good, if they don't want to agree to that, he is not sitting down because 4 years we tried and we couldn't get anywhere,

contrary to Mr. Kahn who didn't tell you that if he said if you include my lots I won't object to what is going on, so we are tired of accusations that we don't want to meet and compromise. It has to be in front of the board, put the parameters of the deal now, what the alternatives, if you agree, great, if not call it. Mr. Banas said that is probably what they will do, and if not, they can certainly go to court.

Mr. Gasiorowski said what they said they were prepared to negotiate a deal which was there would be an ingress and egress out of county road, and depending on engineering, it might be a right in, right out only. Mr. Banas stated he would repeat it again: the idea was to go and cut the road through from Gudz Road to County Route 528. At County Route 528 it would be a right in right out only and any transportation that would come in would be either from Gudz Road or through County Rte. 528 from the east to the west. There would be a "Y" island constructed restricting left turns out onto Lakewood New Egypt Road. The playground area will be eliminated and they were talking about putting it centrally but it would cost the town too much to maintain. Mr. Neiman said why eliminate it and they said they would discuss it. Mr. Franklin said they also discussed if it were denied they would make the cul de sac large enough that buses could turn around and come back out to Gudz Road. Mr. Gasiorowski asked if they go to the county and the county denies the ingress and egress, you are saying the objectors are bound by that or can they continue on with their right to object and Mr. Penzer said no. Mr. Banas said their only recourse would be the courts and Mr. Penzer said no. Mr. Jackson said Mr. Franklin said an alternative approval for the cul de sac. Mr. Neiman said he would not vote on that. They should go to the county with one proposal and they say no to that, come back and look at that again. If you are going to show the county 2 proposals, they are going to say of course go with the wider cul de sacs and then it defeats the purpose.

Mr. Franklin said the only presentation they make to the county for the right in and right out, that is the only presentation given to them. Mr. Gasiorowski has a problem with waiving his right to go to court and Mr. Penzer said that is correct. Mr. Liston said he did not like that either.

Mr. Fink wanted to ask Mr. Penzer's traffic engineer if, in his opinion, they went to the county, with this idea of the right in right out off of county Rte. 528 and Mr. Ney said if the came with the recommendation of this board, and unless he is missing something, in all probability they would approve it. Mr. Fink said that is the way to go. Mr. Neiman said if the county says no to that, he does not think they should be bound the just widening the cul de sac and that is it and Mr. Fink agreed with Mr. Neiman. Mr. Penzer said then let's just vote on it.

Mr. Liston called Mr. Alexander Litwornia, Medford Lakes as an expert traffic engineer and witness. He has over 30 years experience. He entered exhibit that was marked Litwornia1 which was his resume. He said the plans do not entitle the applicant to a density increase and a lot reduction under Section 908. He entered exhibit Litwornia2 which is sheet 3 of 16 of the site plan and looked at which areas are being dedicated to Lakewood and which areas are available to active recreational use. He said the area in yellow include the high ground and the playground area is an area that has been filled in with 2-3 ft. of fill so that it can create some high ground to be used. The other area is a small finger area that is almost completely surrounded by buffer and mitigation area and what the applicant is not

bringing out is that there are cross hatched areas that are on the site plans that are not useable because they are lands dedicated as wetlands because they are mitigation areas to take into account other places where you have encroached into the buffers to put the homes in along the road. Now when you take a look at that you can see some of the cross hatched areas that are around to be dedicated are useless. The third area that is usable is on the map and he showed them on the map. The total of the 3 areas is approximately $\frac{1}{2}$ of an acre at the most. That $\frac{1}{2}$ of an acre, in his opinion, is not enough to meet the reduction of residential lot requirements for recreational purpose according to the Ordinance 18-908. The land has to be set aside for park, playground, or other recreational purposes according to B3. If you don't have the larger open space because it is all wet, you are not really following what the ordinance's intent is. Mr. Banas asked Mr. Truscott if there was merit to what he was saying and Mr. Truscott said yes, that is what he pointed out in his letter in terms of as to what those numbers were. The applicant's engineer furnished the board with numbers and now the objector's planner is doing the same. Mr. Liston said this brings him to the jurisdictional issue he spoke of. Mr. Litwornia said that while the applicant has brought out various portions in the summary, some of the mitigation areas were not brought out and there are inside of the land to be dedicated but they have already been dedicated to not be used because of the mitigation that is used from the encroaching of land in other areas, so he has to put it back in other areas; well he put it back into Township's area and you can't use it anymore. In order to meet the DEP requirements when they encroach on a lot they have to give you some land and dedicate it back somewhere else, well when they do that somewhere else and it is inside the area that is being donated to the Township, then you can't use it because he has already committed to save that land as part of his mitigation. That is part of the problem here; you can't use the detention basin, you can't just do anything there so you are left with less than $\frac{1}{2}$ acre of usable land. Mr. Jackson asked him if he accepted about Mr. Stevens argument about the useable area being more than just what you can put a soccer field on, such as fishing, hiking, bird watching, just enjoying the outdoors, etc. and Mr. Litwornia said the board has to take that into consideration, if they feel deep down in their hearts, that the intent of the ordinance was to allow to use wetlands for bird watching to increase the densities so you can increase the taxes etc. then you have to make the decision. Whether the board thinks that walking through the swamps and such is suitable for recreation is their decision. He thinks the only path suitable for hiking is shown in yellow and that is on top of the detention basin linking 3 small pockets of dry land and that is basically it.

As far as the traffic issue, Mr. Litwornia felt the plans were not in accordance with the RSIS and that is because RSIS restricts the amount of traffic that occurs on a cul de sac and that is for 24 sf homes maximum on a cul de sac. There is an exception and that is a dualized road then the 24 homes can extend past the dualized road when it goes up to the first cross street and the count here is more than that (1 or 2 lots). The dualized section must be modified up to the first cross street which would then make it consistent with RSIS. Secondly there is a requirement for site easements and Mr. Ney said there is a site distance problem with the county road but there is also a problem with the internal lots meaning some of the driveway would have to be relocated, you could not park a van in the driveway, there would have to be an easement, (Lot 85.12). While he agreed with Mr. Ney on the site problems on county road, he differed from Mr. Ney on how far back to take the site triangle. Mr. Ney mentioned 26 ft. and AASHTO requires 14 ft. from the edge of the traveled lane, not 26 ft. which would increase the site distance somewhat. Usually the

stop bars are further back and you proceed with caution. He felt even with a larger cul de sac, school buses were not going to go up that cul de sac, there will be cars parked there and they will have to back up which they will not do.

Mr. Litwornia felt if this subdivision is developed as proposed by the applicant it will have a negative impact on the Gudz Road neighborhood because of the increase in density, it will double the amount of traffic and safety problems because of no sidewalks. The board pointed out there will be sidewalks installed. If the board found they did not qualify for the density bonus they would have to reduce the density by 15% which means they would lose 6 lots, but if they stay with the propose through roadway, they would probably lose a lot or two for that.

Mr. Akerman had a comment and said that he is correct about the cul de sac and the buses will probably not go down whether it is 50ft or 55 ft., if there are cars parked there, the bus is stopped.

Mr. Penzer asked Mr. Litwornia his credentials and what kind of company Tri State Transportation. Mr. Penzer asked him to open Section 18-908 and asked which section the applicant does not comply with and Mr. Litwornia said B3, B5 & B7. Mr. Penzer asked him to agree to Mr. Stevens calculations and he agreed to some and disagreed to others with regard to the mitigating areas.

Mr. Gasiorowski asked Mr. Litwornia if it is his opinion that as a planner that the burden is on the applicant to prove to this board that he has satisfied the criteria of the ordinance in order to enable him to reap the benefit of the density bonus. Mr. Penzer objected and Mr. Jackson said he did not see the harm. Mr. Litwornia said yes.

Mr. Gatton wanted a clarification from the planner on C1 about the abandoning the prior approval and was told they would when this is approved. It is a condition of resolution compliance.

Mr. Henry Ney was called to re direct. He responded to the comments about the RSIS. He missed the site triangle for Lot 85.12 and it will be added to the plans. The other comment about the number of units for the cul de sac RSIS does not regulate the # of units it regulates the traffic and the # is 250 and that would equate to 25 homes which is what he has. Also the RSIS say to the 1st cross intersection and he has had occasion to have an interpretation of that done from the DCA and they agreed as long as they had 25 homes to the far side of the island we had complied with the intent. It is his testimony they comply with RSIS except for the site easement. He agrees with the 14 ft. length that Mr. Litwornia but said the location of the stop sign the site triangle should be measured from the point that the car has to stop, not to crawl into the intersection to see.

Mr. Stevens was brought back to testify and he stated they have put the testimony on the record already and what was already approved on the prior application.

Mr. Fink said after listening to everyone, he strongly feels they need another entrance onto Rte. 528, right in right out.

Mr. Banas opened the microphone to the public

Larry Simons, 7 Schoolhouse Court was sworn in. He said he was confused the comment from Mr. Ney about the amount of cars that were generated from one family and then they sublet the basement and now there would be less. Mr. Jackson said the ratio went down, then Mr. Ney said the rate for a single family home is 1.1 trips peak hour the rate for a townhouse or a condominium is .7, so if you had 10 sf that would be 11 trips, if you had 10 condos, that would be 7 trips, it would be 14 trips.

Mr. Gasiorowski asked Mr. Ney if the proposed roadway, proceeding in a southerly direction to the cul de sac, angled to the east and outward to County Route 528 and have that be the ingress and egress could it be in an area to satisfy the site distances looking to the west. Mr. Ney said he already answered it yes but that it still left the problem of no place to shelter a left turn coming from the west turning into the street.

Mr. Kahn wanted to re iterated the feeling of the entire neighborhood and remember how it would look on their block. It doesn't have to look the way it is and please think of the effect it will have on the neighborhood.

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

Mr. Peters had a point of clarification to put on the record. There were 2 different opinions on whether the site met the RSIS standards. In one case, he agreed with Mr. Litwornia and the other he agreed with Mr. Ney, a cross street reference that the divided roadway did not have to go to the cross street, but the RSIS counts 10.1 trips per house which knocks you down to 24 houses on the cul de sac not 25 so Mr. Stevens would have to revise his plans to extend the divided entrance by one house. Mr. Ney said go back and look at RSIS; the table is only for example and the trip generation has been amended twice since that book is published so that 10.1 is still there; you have to go to ITE trip generation manual and input units and when you input 25 you come to 248 trips.

Mr. Percal asked if there was a discrepancy with the amount of land available for passive recreation and was told by Mr. Jackson there were 2 opinions but Mr. Truscott said it was up to the board to make the ultimate decision on how the board wanted to look at the land being dedicated for recreation. It says for park, playground or other recreational purposes as stated, and based on the acreage, it is .8 acres is required. There is 5.05 acres being dedicated, so the board has to determine, based on the testimony heard and review of the plans, whether it is appropriate. They do need to make a finding as part of their determination.

Mr. Neiman wanted to discuss the playground and said he felt it should not be eliminated. If they cannot find another area for it, keep it where it is, fence it in to keep it safe. Mr. Banas said Mr. Stevens indicated that the playground can be relocated into the area centrally located by the homes. It seems the appropriate place would be where that site triangle where that curve is. The other thing the cutting into the county road (County Route 528) Lakewood New Egypt Road, make an entrance, right in and right out, making an elevated triangle so no one jumps the curb. Mr. Franklin said there was one other item that they agreed to at the Plan Review Meeting and that was the storm pipes that were going through Lot 85.05 and Lot 85.04 and the manholes and Lot 85.03 and they agreed to it.

Mr. Percal said they are going under the assumption that if the board recommends that type of ingress and egress that the county will approve it. Mr. Banas said they have to look at it this way; this is the plan that we have approved (if we approve it) the county then has an opportunity to review that, re-review it, if they turn us down, then we come back.

Mr. Jackson said the board would have to determine if under the ordinance it is an appropriate public use of the property and it does fulfill the intent and purpose of allowing the increased density. There was discussion about what passive recreation was and if it was what the intent was. Mr. Percal said if they approve this with the ingress and egress includes the wetlands approval. Mr. Jackson said this is also a jurisdictional issue also.

Motion was made by Mr. Neiman, seconded by Mr. Franklin, to approve the application. He understands the developer has a right to develop his property but yet we want to maintain the integrity of the neighborhood. He made a motion to move the playground to another area, keep it 75 ft. x 75 ft. in the center of the development; to keep the entrance on Gudz Road but open an entrance onto Route 528 right in right out only to allow buses in and out of the development and all the other agreements made between the parties and in the professionals reports including the storm pipes. Mr. Neiman did not want to commit to a specific lot to move the playground to only that it be moved more centrally to the development. If the site triangle parcel is the best place, then let it go there.

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mr. Neiman; yes, Mr. Banas; yes, Mr. Akerman; yes, Mr. Fink; yes, Mr. Gatton; yes, Mr. Percal; yes

Mr. Banas stated the applicant requested the in the event the county turned down the proposal to increase the width of the cul de sac to make it a 55ft. radii and do not require them to come back and Mr. Liston said he does not believe they can legally do that. You have an approval with conditions, if that can't build that with conditions then they have to come back with another plan. Mr. Penzer did not agree and said he would take the risk to litigate that issue.

Mr. Jackson said to see if the board would like to do it and Mr. Jackson said it would be risky to do it that way but the board is still here if they wanted to modify it now.

Mr. Neiman said if they left even a little needle hole open for the county they will use that against this motion. If the county understands that this is the recommendation of this board, they listened to hours of testimony they will approve that. He does not want to give them any opportunity or opening to do something else, and even if you open the cul de sac you are not guaranteeing that buses are going to go in. The board members agreed.

Mr. Banas said there will be no more motions.

5. CORRESPONDENCE

- None at this time

6. PUBLIC PORTION

- None at this time

7. APPROVAL OF MINUTES

- Minutes from October 9, 2007 Plan Review Meeting

Motion was made by Mr. Neiman, seconded by Mr. Franklin, to approve

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mr. Neiman; yes, Mr. Banas; yes, Mr. Akerman; yes, Mr. Fink; yes, Mr. Gatton; yes, Mr. Percal; yes

9. APPROVAL OF BILLS

Motion was made by Mr. Fink, seconded by Mr. Neiman, to approve

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mr. Neiman; yes, Mr. Banas; yes, Mr. Akerman; yes, Mr. Fink; yes, Mr. Gatton; yes, Mr. Percal; yes

Motion was made by Mr. Franklin, seconded by Mr. Herzl, to change meeting of December 11, 2007 from Plan Review Meeting to Public Hearing to clear up the back log

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mr. Neiman; yes, Mr. Banas; yes, Mr. Akerman; yes, Mr. Fink; yes, Mr. Gatton; yes, Mr. Percal; yes

10. ADJOURNMENT

The meeting was hereby adjourned. All were in favor.

Respectfully submitted
Chris Johnson
Planning Board Recording Secretary