

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

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

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

## **2. ROLL CALL**

Mr. Garfield, Mr. Stern, Mr. Flancbaum, Mr. Herzl, Mr. Meyer, Mr. Gonzalez

## **3. SWEARING IN OF PROFESSIONALS**

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

## **4. MEMORIALIZATION OF RESOLUTIONS**

### **1. SP 2078 Park Lane Associates**

651 New Hampshire Avenue Block 1160.06, Lots 249.02 & 265  
Extension of Preliminary and Final Major Site Plan for a building addition

A motion was made and seconded to approve the resolution.

### **2. SD 2371 Simcha Nathan Birnbaum**

217 Jamescrest Court Block 411, Lot 48  
Minor Subdivision to create two lots

A motion was made and seconded to approve the resolution.

### **3. SP 2313AA Avraham Lieber**

1238 Hermosa Drive Block 186.06, Lot 3  
Change of Use/Site Plan Exemption to convert existing house to a synagogue

A motion was made and seconded to approve the resolution.

### **4. SP 2226A Bnos Devorah**

Oak Street Block 1154 Lot 1.02  
Amended Preliminary and Final Major Site Plan for a school gym

A motion was made and seconded to approve the resolution.

### **5. SP 2309 Congregation Chayei Yisroel**

11 Gudz Road Block 11.04, Lots 4 & 18  
Preliminary & Final Major Site Plan for a shul

Mr. Jackson said a member of the public arrived late to the meeting after this matter had been decided. He spoke with the applicant's engineer and chairman and the concern is they do not want to have a situation where a case is called, is heard and then someone comes afterward. In this case, he was present and was told the case would be adjourned to a date and time certain and is concerned with the uncertainty and the disruption that could occur if people come on the date that the resolution is to be adopted to say that they want the matter reopened. There is a policy where they should be reposed to a board's decision and that the applicant and the public can rely on the finality of the decision and are concerned that could cause a problem. He asked what his concern is with the adoption of the proposed resolution.

Mr. Walter Kovacofsky thanked the board members for hearing him and apologized he was late at the previous meeting. They had discussed the synagogue and that the road adjacent to his property, which was supposed to be the exit road, is alongside his bedroom window within 20 ft. The board had come up with an option to move the structure 10 ft closer to his property line, remove the driveway and put the entrance and exit roads on the north side of the project. He would prefer that option and the reason he did not emphasize that a month ago is because he wanted to see the actual plan. There is 100 ft of white fence from the back of the property towards the front where the parking lot is.

Mr. Jackson advised the board that there are provisions under the MLUL where an application can be reopened due to surprise, neglect, fraud, misrepresentation etc. which is an extraordinary remedy but he believes that is what Mr. Kovacofsky is asking. He asked the board if they would like to reopen the matter based upon the information provided.

Mr. Brian Flannery, P.E., P.P. said it is the applicant's position that this is a resolution of memorialization. The meeting was carried in deference to the neighbor, the board had asked if there are alternatives that could be done. Two alternative plans were presented and when he presented them, he did indicate that the neighbor preferred the other plan with the driveway moved but he also indicated the benefits in doing it the way it was originally presented and he thinks to all parties concerned, the benefits, the buffers of the trees and the fence provided the better option and the board made the decision.

Mr. Flancbaum said the board did hear both options, but the problem is, moving the driveway effects the neighbor on the other side. This plan proposes one way of ingress and one way of egress on the site as opposed to moving the driveway and having both on the same side. Another issue, if they move the driveway to one side there is no fence, no trees and there is minimal buffer on his side. So the board decided to go with the option with having ingress on one side and egress on the other side for a better flow of traffic and also so there is more of a buffer, there is going to be trees with a fence.

Mr. Kovacofsky said on the northside where both driveways are, as far as the neighbors go, that is usually the back of the property line. He prefers the road not be on his side.

Mr. Meyer agreed with Mr. Flancbaum. The board looked at both options and they did not like the ingress/egress on one side of the property and they asked for taller trees due to that. He asked that the trees be closer to 8 ft tall and that irrigation be provided.

A motion was made and seconded to approve the resolution.

Mr. Jackson advised Mr. Kovacofsky that there is a 45 day appeal period from the date of publication of the notice of decision in the newspaper. He urged him to consult a lawyer to determine what his rights and opportunities might be in regard to this decision.

## **5. SP 2328 – TOWNSHIP PRESENTATION RE: SHOOTING RANGE AIRPORT ROAD BLOCK 1160.01 LOT 228**

Mr. Jackson said in response to this application, they have received a letter from Lowenstein Sandler signed by Michael Long who is present tonight. In that letter, Mr. Long cites a case entitled Hills of Troy Neighborhood Assoc. v Township of Parsippany for the proposition that the board should require notice and he wants this matter put off on what is a review of a capital project by the Planning Board. He advised the board, under 40:55D-31, a review of a capital project is a situation where the municipal body shall refer the action involving the project to the Planning Board for review and recommendation in conjunction with the Master Plan and shall act on it without the recommendation until 45 days have passed with the Planning Board hearing. He has consulted with Cox and has read cases that cite this Parsippany case. It is a law division case that is not binding on this board, it is from out of county. It has also been discussed in an appellate division case which actually involved Lakewood wherein the court said they do not adopt that case, they do not refute that case, they make no comment on its validity or whether it is binding in general. He does not know if that case is binding and he also does not think it stands for the proposition that a municipality must notice for a courtesy review. That is a statutory process and he does not believe it is an application for development. He thinks it is only a circumstance where the governing body has to get input and a recommendation from the board. He is not even certain that public participation is required and Cox talks about it not requiring notice. His advice to the board is that notice is not required and that the applicant, which is the governing body, can go forward with this application and then the board can make the recommendation to the governing body which they think appropriate.

Mr. Herzl said this board is not taking any action, it is only a recommendation.

Mr. Jackson confirmed the board merely hears the case and determines whether it is consistent or inconsistent with the Master Plan and whether they have any recommendations as to the merit of the application. Anyone in opposition has the opportunity to petition the governing body.

Mr. Harold Hensel, Esq. agrees with the representations made by Mr. Jackson. This is an application, commonly known as a courtesy review, under 40:55D-31 of the MLUL and as indicated, it is a review of a capital project. Before municipalities spend government funds, they are supposed to come before the Planning Board and advise of the proposal and seek a recommendation. The Township does not necessarily have to follow that recommendation, but they really want to advise the board and let them know for their purposes in development of the Master Plan and future development what is being proposed. The project is block 1160.01 lot 228 and Mr. Jeff Staiger will explain what exactly is being proposed. He would advocate that there is no public participation in this sort of thing as Mr. Jackson has alluded. He knows council is here and he would object to that.

Mr. Jeffrey Staiger, P.E., P.P., C.M.E, Township Engineer was sworn. A concept plan for the rifle shooting range for the police department was entered as exhibit LW-1. It is located on block 1160.01 lot 228. The property is at the eastern end of Bennett Boulevard which is off of Airport Road and that is the only access to the property. Proposed on this site is a large berm for the shooting range. At the southern end of the site would be the highest part of the berm where they would be shooting which is proposed to be about 30 ft. The sides of the berms would go from 30 ft down to 8 ft. There is a proposed 20 ft x 40 ft picnic shelter or break area for the police department. There is a proposed 40 space parking lot as well as a proposed building eventually down the road.

Mr. Hensel said the parking lot and building has not been built but dirt has been placed on the site and the berm has started to be built.

Mr. Staiger said that is correct, dirt has been brought to the site through various different construction sites and have been moved into place for the rough construction of the berm. The picnic shelter has been constructed.

Mr. Hensel said moving of that dirt did not expend any capital funds.

Mr. Staiger confirmed. As the Township is going through and reconstructed several roadways, they are generating a lot of materials by the millings and the roadway soil underneath. That material, the department of Public Works gets the first right or refusal from any fill generated. The fill was brought to this site and Public Works then moved the fill onsite to shape up the berm.

Mr. Hensel said the property is now fenced in.

Mr. Staiger said that is correct, the block line going around the berm is an effort to secure the site as the area gets utilized by a lot of ATVs and other activities.

Mr. Hensel said the shooting range is not currently being used.

Mr. Staiger said no, not to his knowledge.

Mr. Hensel asked what the history of this property is.

Mr. Staiger said a portion of this property in the late 1960's was used as a landfill for approximately four years. According to records found, 1972 was the last record of material being deposited in the landfill. Sometime between 1972 and 1997, the landfill was capped with 2 ft of material. In 1997, DW Smith, hired by the Lakewood Industrial Commission, was hired to get a distribution permit as some of the waste material deposited on lot 228 was located on some of the adjoining properties. In 1997, that material was removed from the adjoining properties, the 2 ft cap on lot 228 was removed, the material was re-deposited in 1997 and the 2 ft cap was replaced over the landfill.

Mr. Hensel said the landfill has not been used in a number of years.

Mr. Staiger said except for the material that was redeposited in 1997, that would be 22 years and it is unclear when that cap was deposited. It would have been sometime between 1972 and 1997.

Mr. Hensel said the landfill, he takes it, has been closed for a number of years.

Mr. Staiger said per their investigation, the New Jersey Department of Environmental Protection (NJDEP) has indicated that the landfill is an unclosed landfill. However, it has been inactive for a number of years.

Mr. Hensel said that NJDEP is required certain testing.

Mr. Staiger said that is correct. They have met with the NJDEP and are complying with their requirements.

Mr. Hensel said one of the requirements is not to use this site yet other than the dirt and fence which has already been placed on the property.

Mr. Staiger said yes.

Mr. Hensel asked what properties surround this landfill.

Mr. Staiger said the properties on the three sides being to the north, to the east and to the south are currently vacant. The properties to the west are currently developed with flex warehouse type spaces.

Mr. Hensel asked if the development of this shooting range is in conformance with other state requirements.

Mr. Staiger said the Division of Criminal Justice police Training Commission has a standard for outdoor firearms range. They are following those recommendations.

Mr. Tony Arecchi, Chief Project Manager, was sworn. He said Mr. Staiger's testimony was accurate.

Mr. Herzl asked if the proposed project will be built above the landfill.

Mr. Arecchi said that is correct. They are actually raising the cap to ensure they do not infiltrate the landfill at all.

Mr. Meyer asked if it will be only for police use or public as well.

Mr. Arecchi said just police.

Mr. Herzl questioned if there will be enough parking.

Mr. Arecchi said they have not utilized the entire site, so they have the ability to expand parking if needed.

Mr. Hensel asked where police are currently training.

Mr. Arecchi said they are traveling out to Jackson, so they are losing between 35 to 45 minutes traveling out to Jackson's range. The availability for firing time is very tight as other towns are also using it, so they are unable to get their officers trained in a timely fashion.

Mr. Gonzalez questioned the size of the future building.

Mr. Arecchi said they do not know until they perform an assessment of the needs of the police department. There has been talk about possibly moving the SWAT team out there and doing some type of indoor training for the police, not just firearms.

Mr. Jackson asked if Mr. Vogt believes this is consistent with the Master Plan.

Mr. Vogt said this is a Township facility and the Master Plan recognizes Township facilities.

Mr. Mark Heinzlmann, Esq. representing a neighboring property owner. Their primary concern is perhaps outside of the purview of the Planning Board, but their position is that the zoning for this property is B-5 which does not contemplate any uses relating to guns, firearms or even training for governmental purposes. As such, in order to move forward the Township and the LIC should be required either to amend the ordinance or the Master Plan or file for some kind of variance before this plan ultimately moves forward.

Mr. Herzl does not think the Master Plan mentions this type of use in any zone.

Mr. Vogt is not personally aware of any shooting range that is any Township code. If this was a public shooting range, then he would look more seriously on the zoning side but this is a Township facility.

Mr. Garfield said there are two other ranges on Airport Road.

Mr. Arecchi said those are indoor ranges. Police officers need to qualify outside.

A motion was made and seconded recommending approval of the proposed project to the Township Committee. All were in favor.

## 6. PUBLIC HEARING

1. **SD 2282 Albert Street Holdings, LLC**  
Towers & Pine St Block 830.11 L 2  
Extension of Preliminary and Final Major Subdivision to create forty-two single family homes

Mr. Joshua Schmuckler said they are waiting for final approval from the LTMUA. A one-year extension is requested.

A motion was made and seconded to approve the one-year extension.  
All were in favor.

2. **SD 2342 Jacob Mermelstein**  
87 Lucy Rd Block 1248.01 Lot 44  
Extension of a Minor Subdivision to create 2 lots

Mr. Joshua Schmuckler said this application is located on Lucy Road where there is currently no sewer. A few homeowners on the block are trying to extend the sewer main. He requested two one-year extensions.

A motion was made and seconded to approve two one-year extensions.  
All were in favor.

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

This is a continuation from the April 2, 2019 meeting.

Roll Call: Mr. Gonzalez, Mr. Stern, Mr. Flancbaum, Mr. Isaacson, Mr. Meyer

Mr. Jackson said he had reached out to Mr. Schneider and Mr. Liston concerning something the chairman had indicated whether the parties would be interested in a situation where any approval would be tied in to and conditioned upon roadway improvements. In response to that, Mr. Schneider sent him an email which was forwarded to the board and to Mr. Liston and Ms. Donato. In the email, Mr. Schneider indicates that the board may want to take a look at the applicant's website. He recommended and took the link out of the email then he forwarded to the board members and recommended that the board not look at any websites in connection with this application. He is unsure whether that is a good idea or a bad idea in general. He knows that websites and news articles in general are out there and unlike a jury trial, board members are not sequestered. He thinks part of the process requires the board to have a feel for what is going on in the community and information comes from all kinds of sources, but the underlying principle is that decisions should be made on the facts and evidence that are on the record presented at the hearing. Unlike ordinary judicial matters, boards are entitled to use their own personal information. Unlike a jury trial, you can go to the intersection and look at it, you can go to the property and look at it, they could use their own personal knowledge. Rather than have a debate about whether anyone should or should not look at this website, he recommends that they not make that an issue.

Mr. Stern said he did visit the website and looked at the pretty pictures.

Mr. Jackson asked him if it will have any influence on his judgement.

Mr. Stern said no.

Ms. Michelle Donato, Esq. representing the Fairways at Lake Ridge Homeowners Association. She is concerned that there are people still outside of the courtroom and they do not believe there is sufficient space in this room to accommodate them. They do have the right to be in this room and she wants to make sure that everyone is able to attend.

Mr. Jackson said there is plenty of standing room. He knows there is an officer out there who has been managing the crowd and does not see any safety issue. He requested that the doors be left open. He noted he does not see anyone standing in the vestibule.

Ms. Michelle Donato, Esq. thinks it is very inappropriate that the chairman of the board to propose a potential condition of approval. This application has not been completed and there should be nothing prejudged. She does know that Mr. Jackson has eliminated some board members from participating because he perceived that he had thought they prejudged aspects of this application and she does not think it should be prejudged at all in any respect since the board has not heard the evidence from their witnesses.

Mr. Jackson noted for the record that the doors are open, and the microphones are turned up so if there is anyone in the hallway, they are welcome to come in and stand. There are empty seats at the front and in the middle.

Mr. Paul Schneider, Esq on behalf of the applicant, said it is interesting that Ms. Donato convinced the court back in February that they should not proceed with the hearing as originally noticed in February because she was in Florida and it was essential that she be here and not like Mr. Liston, at the prior hearing Ms. Donato didn't bother to show up. If she had, she would have known that it was on the record that the chair asked if there could be any consideration, and it is normal for there to be back and forth between the members of the board and the applicant, and the chairman asked whether the applicant would be willing to give any consideration to staging the development with regard to the road improvements so it is nothing that arose outside of the record.

Ms. Donato said she did see the video of the meeting and she had a personal reason she could not make the meeting.

Mr. Brian Flannery, P.E., P.P. said at the last meeting he introduced the GDP application submitted which is for 556 dwelling units on 166.44 acres which is at a density of 3.34 dwelling units per acre whereas the ordinance allows 3.6 so they are below ordinance requirements. The GDP application as indicated in the Lakewood UDO is a bifurcated preliminary, it is the first part of a preliminary similar to the Zoning Board as they do this for use variances all the time and really all it does is it locks in the zoning as it currently is and allows for development of this property in accordance with the GDP submitted so if the applicant submits a preliminary and final application afterwards which are conforming to the UDO and consistent with the plan submitted, the zoning cannot be changed but it doesn't lock in the number of units or grant any right to build anything. The MLUL and UDO both define the GDP as large developments built over an extended period of time. The UDO section 18-606 for GDP states 'applications of planned developments of at least 100 acres comprised of a minimum of 75 dwelling units' which is why this board doesn't see them on a regular basis. The MLUL sets forth similar language in NJSA 40:55D 45-1 and it indicates 'a GDP shall set forth the permitted number of dwelling units, the amount of non-residential floor area, the residential density, the non-residential floor area' and it's a road map of what needs to be submitted and at the last hearing that information was submitted by the applicant's engineer and traffic engineer. In an application of this size, it would not benefit anyone to rush through it and try to get a quick approval. It benefits the general public and the applicant to do it as a GDP. The GDP is basically a planning application which shows various elements so that the board gets a feeling of the project and they present the testimony to indicate that they are conforming with the provisions of the UDO and the MLUL. At the last hearing, preliminary engineering and traffic analysis was presented and it indicated the applicant's ability and intent to prepare applications for preliminary subdivision approval which would be 100% conforming to UDO and MLUL requirements. Documents were submitted, and testimony was provided at the last meeting indicating that was the intent of this application. The GDP approval only grants the

right to submit those preliminary and final applications which would be the second part of the preliminary process similar to once a use variance is granted under the bifurcated application, the applicant then comes back and provides the details and then gets approval. At the last meeting, a video was shown, and they looked at the plans and it is a well laid out application and it is certainly the nicest application he has presented to the board and he thinks the nicest application this board has seen in many years. He has some additional exhibits including sheet 4 of the GDP submitted which is labeled the open space plan, identified as exhibit A-5. The interesting part is when you see the colors, the yellow is the common open space that is being provided and as the board can see, it is a large percentage, 11% of the site. There is a small piece in the lower left hand corner that is the pine snake habitat area. There are no pine snakes but if there were pine snakes it would be a nice place for them. There was a landfill there at one time which is a nice habitat for pine snakes. Previous applicants have gone out looking for pine snakes but apparently it is a well-kept secret but the NJDEP required they preserve that habitat so 1.1% of the site has been set aside for that purpose. They also have the existing deed restricted areas and the proposed deed restricted areas, and those preservation areas and passive recreation areas represents 27% of the site. The proposed stormwater management is 8% of the site so roughly half of the site is set aside not for development purposes, not roads, not houses and that is why it is his testimony that this is the nicest application he has submitted. Exhibit A-6 is sheet 8 of the plans submitted which is the community facilities plan. The plan shows all of the amenities that are provided, and these are amenities above and beyond what is required. What is required is the four community centers and in addition to the community centers, there are pedestrian walkways, pocket parks, the existing clubhouse, ten playground areas, three bus shelters and four garden areas. He has indicated in yellow, all of the various elements that are distributed throughout the site providing a site that is the nicest application submitted to this board. Exhibit A-7 is Sheet 9, which is the phasing plan, at the last meeting Mr. Liston asked many questions about phasing and he thinks it is important for the board to see the phasing also. The yellow is the existing clubhouse which is already developed, the green areas to the top of exhibit A-7 are the preservation/open space areas which will remain. The pink is phase 1 which is basically the driving range. As indicated, that is 118 dwelling units with one community center. The expected start date for that would be 2023 by the time they get all of the approvals and based on a 1 to 4 year completion date, the completion date would be 2024 to 2028. Exhibit A-8 is phase 2 which is an additional 100 dwelling units with 1 community center. The expected start date would be anywhere from 2024 to 2028 and the completion date would be 1 to 4 years after that. Exhibit A-9 is phase 3 which proceeds back into the golf course. This is being respectful of the existing community and keeping the development further away so that it is a long time down the road before they see anyone there changing the landscape. That phase proposes an additional 104 units which brings the total up to 322. The start date would be from 2025 to 2032. This phase also has its own community center. Exhibit A-10 is section 4 and again, keeping the development away from the senior development to the south until the very end of the development. This phase proposes 114 units for a total of 436 with a start date of 2026 to 2036 and the start dates start spreading out because they do not know if it's 1 to 4 years. Westgate, which is a much higher dense development, was approved in 1996 and it is still not finished.

Mr. Jackson asked how many homes are in Westgate.

Mr. Flannery said it was approved for 993 units. It is double in size on a smaller piece of property. Exhibit A-11 is the final phase and has a start date of 2027 to 2040 so a long time down the road. It proposes an additional 120 dwellings units for a total of 556. When this was initially submitted to CAFRA, it was for 936 dwelling units. There was a public hearing on that where over 1,000 people came out and there was a lot of public input and CAFRA did not approve that many units. CAFRA limited the impervious area to 30% which is where they come to the number they are at.

Mr. Jackson said the area in pink which adjoins the existing adult community would not be developed until 2027.

Mr. Flannery said that is correct.

Mr. Jackson asked if that is something the applicant would agree to stipulate as a condition of approval.

Mr. Flannery said they are giving estimates and he thinks it would be premature to do that, but the applicant does want to show his willingness to make this the nicest project and if the board felt that was important, he would talk to the applicant and he thinks they would agree to that.

Mr. Flancbaum said they are talking about 556 duplex units and they do not anticipate starting until 2023 and finishing within the next 20 years. He knows that Westgate is about 1,000 units and it started about 20 years ago and they are still not done. He asked how many units are in the Fairways.

Mr. Flannery said approximately 1,100 units.

Mr. Flancbaum questioned the approximate time frame of construction.

Mr. Flannery does not know. That is a different type of development as it is senior development. He thinks this would be more comparable, time frame wise, to Westgate. Just to be clear, when they say 556 duplex units, 272 buildings with one on each side. In Lakewood, the terminology would be 556 doors or 556 separate residential dwelling units.

Mr. Stern said plus the basements.

Mr. Flannery said at the CAFRA application and at the public hearing, they had a lot of residents come out and were vocal about their opinions. The majority of the crowd were the ones that were not in favor of the development. There were people that spoke at the Master Plan as well as the CAFRA hearing in favor of development and those people were treated adversely and a lot of those people don't feel comfortable and feel intimidated.

Mr. Liston objected as his testimony has nothing to do with planning.

Mr. Jackson agrees with Mr. Liston. The board knows that the zoning permits this. That is what the zoning ordinance and Master Plan embraced so obviously there were people in favor of that.

Mr. Flannery said as long as there is an acknowledgement that there were people on both sides and that the board unanimously approved the Master Plan which had a recommendation to amend the R-40 zone to permit a planned unit development without any restrictions as a conditional use in the R-40 zone. The point he wanted to make, and it seems like Mr. Liston is acknowledging it, is just that.

Mr. Liston said he would not acknowledge any point he made.

Mr. Jackson asked that he refrain from those types of argumentative comments that are not testimony and not an objection. They are completely inappropriate.

Mr. Flannery said in 2017, the Master Plan was unanimously adopted by the Planning Board. He thinks that is significant from a planning standpoint because they are going to be asking how this impacts the adjacent area and what was the intent of the Master Plan and the governing body when they adopted these enabling ordinances and his testimony is it was perfectly clear that for the R-40, and specifically this particular area, everybody knew that the options for developing was schools, campuses or 4,000 sf lots. Anybody that has been in Lakewood a long time knows no one was going to develop a large tract with 40,000 sf lots so it was going to be schools or campuses. It is his opinion that the Planning Board made the correct decision in making this recommendation to the Township Committee and they made the correct decision in implementing the ordinance and that they are here in strict compliance with what everybody knew was going on and what everybody expected and in compliance with the UDO. The main consideration throughout that Master Plan hearing was traffic congestion and he thinks even the people opposed to development is due to mainly traffic congestion. A lot of people get focused, they think it is

traffic, but he does not think anybody cares about traffic as long as it doesn't slow them down. If the traffic is moving, no one would be complaining, and the room would not be full. The problem is traffic congestion and that is documented in the Master Plan. He read the provisions that were in the Master Plan that back up and give the justification for why this recommendation was made. He fully expects that someone will follow him and pick pieces out of the Master Plan to say why it should not be approved but it's crystal clear that the Planning Board made this recommendation. On page 9 of the 2017 Master Plan under Housing Strategies it reads *'provide housing opportunities for all groups, family sizes and income levels, to assure that affordable, convenient, and attractive housing opportunities with appropriate yard and play areas are available in Lakewood, especially for the growing population of young, large families with children'* and this does that. Master Plan Strategies on page 8, states *'encourage the redevelopment of existing underutilized sites.'* This certainly applies to this application. This board knows, and the Township knows that there are underutilized sites in Lakewood included self-storage facilities, golf courses, the land that is needed in Lakewood to provide all of the other housing opportunities. All the other goals and objectives, those types of uses are going away. The Lakewood Scoop today indicated that the Woodlake Country Club is being redeveloped. This is not something new, this is not something that is a surprise. This is something where the Lakewood land is valuable, and Lakewood needs land for families and schools and this is an ideal site for that. Page 23 of the same report goes into the population *'as of July 1, 2016, the Township's population had grown to an estimated 100,758 residents, which is about 8.5% more than the 2010 population of 92,843 residents' 67% more than the 2000 population of 60,352 residents; 124% more than the 1990 population of 44,988 residents; and 162% more than the 1980 population of 38,464 residents.'* At that time, it was a small town and most of the people in the room were not here, but it grew, and Lakewood is growing because it is an attractive place to be. On that same page under traffic and parking it mentions the issue he mentioned previously. *'Traffic and Parking: traffic congestion and a shortage of parking has been ongoing problems in Lakewood Township. These issues, which are fully explored in the Circulation Element, must be addressed. This can be done, in part, with sound land use planning that promotes reduced reliance on private vehicles through: compact development footprints; facilitated access to public transit; provision of local services within walking distance of residential areas; and, provision of adequate parking for existing and future land uses.'* The application before the board tonight is just for the residential. He thinks everybody in this room and everybody on the board knows when it went to CAFRA, there was a retail component to it and the property owner fully intends to develop a retail component but that would not be part of this planned unit development. There is property on Cross Street for that retail component which was indicated on the CAFRA plans and as part of this application and the entire process that is going to go on for years and years and that would be developed so that they do provide a compact development so that everybody doesn't have to drive downtown, to Jackson or to Route 9 to do their shopping. Page 29 of the report lists the zones for the R-40 residential zone. *'R-40 – Residential: The R-40 land use district is an existing land use district. The purpose of the R-40 land use district is to permit single-family detached housing, places of worship, and public and private schools. Public buildings of a governmental or cultural nature, congregate or assisted living and nursing care, and adult communities are permitted as conditional uses. In addition, this land use element proposes that planned communities on parcels of 100 acres or more, with a maximum density of 3.6 units per gross acre and without any age-restriction requirements, should be permitted as a conditional use on 100 contiguous acres of undeveloped tracts. The minimum lot size for all permitted uses except houses of worship is 40,000 sf.'* It is clearly indicated, where it discusses the R-40 zone, what the other options were and the recommendation that the Master Plan, which was unanimously approved by the Planning Board, recommended. That recommendation was included on page 37 under the recommendations. *'Amendment of the R-40 zone to permit planned communities on parcels of 100 acres or more, with a maximum density of 3.6 units per gross acre and without any age-restriction requirements, should be permitted as a condition use on 100 contiguous acres of undeveloped tracts. The current provisions of allowing various housing types within a planned community should be continued.'* Which is exactly what they are presenting in this GDP. The conservation element on page 153, under existing open space, *Existing open space: approximately 25% of Lakewood's land area is already dedicated for recreation and open space.'* So, Lakewood in general already has 25% dedicated and this plan as indicated before has a large dedication for open space. The approval of this plan is not going to change Lakewood to a town that has no open space. That has been provided for and this plan also provides for it. Page 179 under goals and objectives, *'to alleviate circulation issues.*

*The circulation element has four main goals that are intended to help alleviate the key circulation issues identified. Goal 1 is to reduce traffic congestion and it starts with work with the State of New Jersey and other interested parties to explore opportunities to widen Route 9, ensure proper and full implementation of the TID within all areas of the town.* This project is subject to the TID. Exhibit A-12 indicates the intersections, so for traffic congestion in order to have traffic flowing freely, they are proposing two lanes on the way out knowing that this is not like the senior community where there is a large degree that they can make a right turn and not go to Lakewood, a lot of the traffic will be going to Lakewood. So, there are two left turn lanes, there will be two lanes on the opposite side of Cross Street to accommodate that and they will be widening Cross Street consistent with what the County is proposing.

Mr. Stern asked when that will occur.

Mr. Flannery said that would occur during phase 1 as they need an entrance. The traffic light they are proposing at a minimum, it would be with phase 4. As each phase is submitted, they are going to submit the detailed traffic documents and reports on what is needed in order not to have an adverse impact on the existing roadway capacity.

Mr. Stern asked if the board will have the authority to condition each phase based on those studies.

Mr. Flannery said the studies will have to prove that the roadways have capacity. If they do not, just like they do a bifurcated application at the Zoning Board, the board either says they can't do this now or they have to do something to change that. It would be the same situation here. They also have plans from the NJDOT.

Mr. Flancbaum said there would be two lanes on Cross Street.

Mr. Flannery said there will be two lanes coming out to Cross Street. One lane would be for both right and left turns and the other would be a dedicated left turn lane. Most intersections you would only need one lane for a 'T' intersection like this, one lane for lefts and one lane for rights but they want to make sure they are not having these residents make a right and go down somewhere else, turn around and come back.

Mr. Flancbaum asked him to describe what they are looking at on Cross Street.

Mr. Flannery said the County has design plans which were 60% completed in January. To do a three-lane geometry that they are intending to start this year and be finished next year, long before they start, with one lane in each direction and a center turning lane. It is in two phases, one phase goes from Route 9 to Augusta Boulevard, phase two goes from Augusta Boulevard to Jackson Township which is all of Cross Street.

Mr. Jackson said what is being shown on exhibit A-12 is on the books proposed County road improvements.

Mr. Flannery said the Cross Street part of it with the two lanes in each direction and the center turning lane is on the books to be developed shortly. The intersection improvements are something this applicant would do where at this intersection they would have acceleration and deceleration lanes and would acquire needed right-of-way on the opposite side of this street so they could have two lanes at this point so that any traffic coming up Cross Street would have a lane to continue in and if someone is making a left it is not going to detract from that. There will be a traffic signal at the appropriate time, but they are agreeable to that at least by phase 4 which would manage the traffic.

Mr. Flancbaum asked if the applicant is proposing to acquire additional right-of-way on the northside of Cross Street.

Mr. Flannery confirmed. The County's ultimate goal is an 86 ft wide right-of-way and they want to have two lanes in each direction with a center turning lane. Their goal and their plans are at the intersection to provide that five-lane geometry as the intersections are what slows down traffic.

Mr. Meyer asked if there will be a stop sign until they get to the point where there will be a traffic light.

Mr. Flannery said yes, it would be a stop-controlled intersection.

Mr. Meyer asked if that would be through phase 4.

Mr. Flannery said at least by phase 4 they would do the traffic light. The County will weigh in on this also but in order to get the traffic light they have to meet the criteria for them to approve it and if their project is going to screw up traffic on Cross Street then they are going to tell them to put in the traffic light when it is needed on Cross Street. In his experience with boards, they really do not have to worry about improvements on County roads for on-site improvements as the County has recently gotten very vigorous in requiring the traffic improvements and impact fees to make sure an applicant is not creating problems to the existing traffic capacity.

Mr. Jackson asked if they are proposing that this would be at the start of phase 4 or by the completion of phase 4.

Mr. Flannery said he would expect that they would need to show an approval with the approval of phase 4 and construct it with the construction of phase 4.

Mr. Jackson said then it would be at the start of phase 4.

Mr. Flannery confirmed.

Mr. Flancbaum said they estimate that phase 4 would start in 2026 which is in 7 years and the County is proposing two phases of road improvements which has a 60% completion as of January. He asked if they have gotten any indication as to when they are planning to put the project out to bid.

Mr. Flannery said the County engineer told him they plan to put the project out to bid this year and are optimistic they would get to start this year but, in either case, they are anticipating completion next year.

Mr. Schneider asked if the County determines they want the light installed during phase 3, would the applicant provide the light during phase 3.

Mr. Flannery said yes.

Mr. Jackson said when a Planning Board gives an approval, it is already presumed that the roadway can already handle what the board approves. He asked what assurances and protections they can build into a potential approval that would guarantee that these improvements are put in prior to the beginning of phase 4. These improvements being what is shown on exhibit A-12.

Mr. Schneider said under the MLUL, development must be consistent with the GDP that has been issued and they are consenting to that as a condition in the GDP, so the development would have to be consistent with the GDP approval.

Mr. Jackson asked if he is stipulating, proposing, and consenting to that prior of the construction of phase 4, the improvements shown on A-12 would be completed.

Mr. Schneider said yes or as construction starts on phase 4.

Mr. Flannery said they could indicate that prior to COs being granted in phase 4.

Mr. Vogt said they are talking about when different improvements may be made by phases relative to when COs are issued. They had testimony at the last hearing as to the impacts of the proposed improvements to the pre and post traffic. He did not get any breakdown, in terms of the analysis, as to what happens if the light is put in during phase 3 versus phase 1, what happens if the widening is done during phase 1 versus phase 4. He thinks sometime later in the hearing, if they are going to be talking about locking down when improvements are done, they want to get further traffic testimony to hear what impacts there may be if a particular improvement is delayed.

Mr. Meyer asked what would cause the County to ask that the applicant install the traffic signal earlier than expected.

Mr. Flannery said when they submitted detailed plans and detailed traffic reports, the County analyses them and they see if it is going to have an adverse impact.

Mr. Meyer asked if it is based on a certain number of cars.

Mr. Flannery said it is a certain number of trips, indicating of the capacity of the roads. They do a comprehensive analysis of the submission. At this point, the GDP is a planning document. They do not have any approval to build anything, they do not lock in any number of units, they cannot put a shovel in the ground and they are saying each time they come back for the conclusion of the preliminary and the final, they would have those numbers and at that point they can provide the traffic report. Exhibit A-13 is a set of plans prepared by the NJDOT showing Indian Head Road to Hurley Avenue which is 6.67 miles of roadway and it includes intersection improvements. Exhibit A-14 shows the traffic signal plan for Cross Street and this is a substantial improvement as it is adding an extra lane to each side of Cross Street, one on Chestnut and one on Cross. Right now, they have two and that is what creates the bottleneck. They haven't gotten the definitive date from them, but he thinks the four years they are talking about before they start is certainly realistic. The Township engineer has a meeting with them next month where they are going to give a timeframe. If the board acts favorably, before they come back with the preliminary then they would know those numbers but it is showing an extra lane in each direction and if you look at the plans, it is a very limited acquisition of additional right-of-way which has been the DOT's problem.

Mr. Schneider asked where exhibits A-13 and A-14 came from.

Mr. Flannery said they were plans developed by the NJDOT. Exhibit A-15 is the striping plan which shows a thru lane, a left turn lane and a right turn lane.

Mr. Stern asked when the State estimates this would be done.

Mr. Flannery does not have a date. He spoke with Jeff Staiger, the Township engineer and he said the last meeting with them they were talking about starting this project next year. They are having a meeting to update everybody on the status which is next month. This certainly would be information that if the board approves the GDP, gives them the opportunity to go to Conrail to see if they can get another opening, go to the NJDOT and see what their timing is and then they can come back with that information. Exhibit A-16 displays the two match lines showing Cross Street and Chestnut Street indicating that very limited right-of-way acquisition is needed in order to accomplish these improvements. In conclusion, the Planning Board and the Master Plan actually recommending the amendment of the R-40 to allow a conditional use for planned unit developments is exactly as they have proposed. They must comply with the UDO or ask for relief but as indicated, they are not asking for relief. He has been doing this long enough to know that this applicant can come back with plans which completely conform with the UDO and

the MLUL and they meet all the design criteria of all of the regulatory agencies. Section 18-21 of the ordinance was a section that was approved by the Township Committee and it lists a bunch of conditions and items which they are going to comply with including a minimum tract area of 100 acres whereas they have 166 acres, the permitted principal uses are residential uses of all types provided they comply with area and bulk zoning requirements, recreational facilities, sales office, maintenance buildings, commercial uses, community centers, recreation buildings which may include buildings for religious worship and related activities. All of the specifics on those, when they come back with a preliminary and final application, would be provided to the board. The area requirements, building coverage it indicates as 25% and they are providing 30%. The maximum building density is 3.6 units per gross acre and they are providing 3.34. Minimum open space is defined in the UDO *'open space shall mean no portions of a planned unit development not covered by buildings, structures of any kind or other surfaces paved with impervious material.'* So, it is basically the pervious area including the grass and landscaped areas and they have to have at least 50% whereas they are providing 70%. They comply with all of the bulk requirements. Recreation areas are required for common open space and is being provided. *'Any planned unit development shall contain and provide or the benefit, use and enjoyment of its residents, the following recreation facilities: a recreation area which shall contain a recreation building comprised of at least 15 sf of floor area inclusive of a basement area for each unit intended to be developed in a planned community.'* In addition, they have to provide parking facilities for that at 1 space per 50 sf which is provided on the plans and when they come back, they would have all of those details to show the board and that they comply in entirety. Optional recreational facilities are listed include *'golf courses, picnic, tennis, jogging trailers, tot lots, playgrounds, basketball courts, shuffleboard'* and he did indicate before the optional ones that they provided to make this a nice development. Ownership of recreation facilities, *'except for a golf course, shall be owned by a homeowner's association'* which is being proposed and is the right and reliable way to maintain those facilities. Perimeter boundary setbacks, *'no buildings or structures within 75 ft of the exterior boundary line of the community'* which they comply with. Homeowner's association, it goes through all of the documents they need which they would comply with and submit those documents when they come in with a preliminary and final application. Additional streets and roads, the streets have to be in accordance with RSIS as indicated previously they have agreed to exceed the RSIS which is the way Lakewood likes to do it with 32 ft wide streets, so they do not have any problem with school buses. They could have come in and said the State only requires 28 ft and saved 4 ft which is an extra 15% of impervious coverage and they could have built more units but they want to have a project they can represent as the nicest project and gets sold as the nicest project and be something this applicant will be proud of when it is completed.

Mr. Stern asked what the widths of the street are in most developments.

Mr. Flannery said the cartway widths in the past 5 or 6 years are all 32 ft as 30 ft does not work in Lakewood. So, 32 ft is the standard and it was something that John Franklin initiated a few years back when his garbage trucks were having trouble getting through and it is something the developers in Lakewood have agreed as it is needed. The common open space are the community centers which are shown on the plans and in addition to the community centers, they had an additional 11% common open space. Complying with all of the conditions of the UDO makes this a permitted use. It is conditionally permitted so it is permitted if they comply with the conditions which they do. It is a permitted use that is consistent with the vision of the Planning Board and the Township Committee. The other thing they need to show is conformance to the MLUL NJSA 40:55D-45 and that has five separate items they need to comply with; *'a. That departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to the zoning ordinance standards pursuant to subsection 52c'*. They don't depart from the standards and are completely in conformance with the standards and regulations and they are providing more open space and amenities than other developments in Lakewood and this is exactly what was provided for by the Planning Board and the Township Committee, so their vision is they are conforming. *'b. That the proposals for maintenance and conservation of the common open space are reliable, and the amount, location and purpose of the common open space are adequate;'* They are going to have a homeowner's association and there are requirements in the UDO on what they submit, and they will prepare one that is approved by the board and its professionals. As far as the amount, location and purpose of the common open space being adequate, it's as

specified in the UDO which was just done a couple of years ago with a development of this nature in mind, so it is his opinion that certainly the amount and purpose are adequate. It was the vision of the Planning Board and the Township Committee. 'c. *That provision through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate;*' They comply with the UDO and the RSIS so obviously they comply with that. 'd. *That the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established;*' If the Master Plan was from 2007 he would say that may have changed and maybe it will have an adverse impact but the Planning Board made this decision in 2017 that a development of this nature is appropriate for a tract of this kind and everybody knew that this particular tract met that criteria. 'e. *In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.*' Certainly, they would comply with all of the standard conditions, they would submit to the board for preliminary and final, the documents will be reviewed by the board and its professionals and they would comply with that provision as well. Based on that, his testimony is they comply completely with the UDO and they comply with the provisions of the MLUL. The traffic congestion problem which has been the problem all along is finally being addressed by the NJDOT and the County after 50 years and part of that is due to the Master Plan process and applicants such as this one who have met with the County, the County knew that they have impact fees coming and it is the nature of the whole development process. The existing traffic congestion is not from this developer. The existing traffic congestion is not this developer's fault and not this developer's obligation to fix. This developer's obligation is to make sure they do not adversely impact the roads. The obligation to fix them is with the County and the NJDOT and they have realized that obligation and they have plans that are being developed to do that. If the board acts favorably on the GDP, when they come back with the preliminary and final application, they will have all of the details the board needs to see they are in conformance with that. Part of this application also was a fiscal report which was submitted. There is no requirement to show a surplus, the report is submitted for information purposes, so they have some analysis of the impact. The report submitted indicated that the proposed development will add 320 million to the tax base. The annual tax revenues from that will be 5.26 million, the annual projected Township spending will be 3.52 million so there would be an annual surplus of 1.74 million. The board engineer prepared a report for this application and most of it indicates they are compliant. The report indicates the number of units proposed, the existing clubhouse building, the golf course to remain is 9 holes which is a 40-acre tract to the west. Part of it is the old landfill which is leased by the property owner and is currently 18 years into a 99 year lease and there is an option to buy at the end of the lease. There was a CAFRA approval on the property which would need to be adjusted.

Mr. Stern questioned what would happen to that golf course if it does not make it economically as 9-hole courses are less popular.

Mr. Flannery said that would be many years down the road because phase 1 is only in the driving range but there are a lot of 9-hole golf courses that are open and are viable. The question is if it is viable or is it profitable.

Mr. Stern said hypothetically if it becomes non-viable, what happens then.

Mr. Flannery said it is Township property, so the Township could find somebody else to use the property.

Mr. Stern said the lease would end and the Township would take it back and do what they want.

Mr. Flannery is not familiar with the terms of the lease, there may be some penalty, but the bottom line is the Township can take it back and do what they want. On page 3 of the engineer's report indicates they are conforming; the uses are listed on sheet 2 of the land use plan showing that no bulk variances are sought. Page 4 lists the various land use categories and under parking it indicates that off-street parking is proposed for the residential units and the community buildings in compliance with the ordinance. On page 5, item 7 indicates the

transportation improvement district impact fee of \$343,580.20 and that is based on trips. The open space plan indicates 114.71 acres of open space. On page 6, the tabulation of the pervious comes out to 68.9% but this applicant is proposing that the pervious area will be 70% and that would be part of this GDP and when they come back they would have to show that. The report indicates some of the land use items, item 3e is really an overlap of the pervious area just mentioned. On page 7, item G, it mentions the pine snake habitat which was discussed and the fiscal report they have gone over. That sums up the report of the board engineer. He thinks the relevant issues that the Planning Board needs to look at and they have shown compliance with the UDO and the MLUL, detailed submissions would confirm that when they come back with preliminary and final. Additionally, there are other outside agency approvals required and if they cannot obtain those there would be no development. There was discussion at the last hearing concerning the size of the retaining walls and ponding but there are no details in a GDP submission for those items because it is not appropriate at this level. There are also comments about the preservation areas and it should be clear that this is not a pristine forest that has been there since people have been in town. It was a gravel pit next to a landfill. The Kokes family came and redeveloped it into a nice golf course but it is underutilized in Lakewood. There are other nice golf courses in Jackson and all around and then there are golf courses like the Lakewood Country Club and that is what would be remaining when they get this whole development done a long time from now. His testimony is that this applicant will be coming back with plans that document all of that. The GDP only locks in the requirements for this planned unit development if preliminary and final applications are submitted consistent with this application. It does not give the right to build or lock in a number of units. The applicant has submitted amenities beyond UDO requirements and he thinks the proposed 30% impervious, 66% less than required, is a substantial difference. The RSIS compliant streets would have added 15% of impervious coverage which they could have used for more units. Sheet 8 shows the walkways, pocket parks, playgrounds, bus shelters and garden areas. This why he can testify under oath that this is the nicest development he has presented to the board and why his friend, Fairways resident and former Master Plan advisory member Bill Hobday described the park as absolutely beautiful with upscale homes, walkways and ponds. A self-contained unit with a lot of open space, good for Lakewood and good for the Fairways.

Ms. Donato said as the board is aware, this is a very large project which is very complex and has many components and a lot of history.

Discussion ensued as to whether both Ms. Donato and Mr. Liston can cross examine the same witness. Mr. Jackson did not find it fair or appropriate but did offer that they were each able to cross examine different witnesses.

Ms. Donato asked Mr. Flannery if his testimony is that this application is completely in conformance with the ordinance that the municipality adopted in 2017 being ordinance # 2017-51.

Mr. Flannery said that is correct.

Ms. Donato asked if he was part of the Master Plan process and the rezoning of this golf course during the time the Planning Board was reviewing the Master Plan.

Mr. Flannery said the Master Plan was done by the Planning Board, the rezoning was done by the Township Committee. The rezoning had nothing to do with this property so no, he is not a part of it.

Ms. Donato asked if he had ever made a request to the Master Plan Density Committee to change the zoning for the Eagle Ridge golf course.

Mr. Flannery said he had made requests and he testified at the public hearing.

Ms. Donato said then he was part of the Master Plan process.

Mr. Flannery said that would be her definition of being a part. He does not think he is a part of the process if the board makes the decisions.

Ms. Donato asked if he made a request for a zone change on this property.

Mr. Flannery confirmed.

Ms. Donato asked if there was an infrastructure analysis done in connection with that zone request.

Mr. Flannery knows that the Planning Board held many hearings, but he wasn't part of their hearings or deliberations so he is not sure what their professionals or what the Planning Board did.

Ms. Donato asked if he made a request to increase the zoning/density and to lift the adult aspect or age restriction.

Mr. Flannery did not make a request to increase the density. He requested to lift the age restriction requirement.

Ms. Donato asked if he is a professional engineer.

Mr. Flannery said yes, professional engineer, professional planner, professional land surveyor and licensed architect.

Ms. Donato said he had initially indicated that he was testifying here as a professional planner on this application.

Mr. Flannery confirmed.

Ms. Donato said he had spoken about many things that pertain to engineering.

Mr. Flannery said no, planning covers a spectrum of areas of the development process and he thinks his testimony was consistent with what planning documents are and his experience.

Ms. Donato asked if stormwater management is something a planner would normally testify about.

Mr. Flannery said on a GDP, which is basically a planning application, yes. Engineers will do the detailed grading and drainage for the preliminary and final applications when they are submitted.

Ms. Donato said on June 9, 2017 he requested that the Township change the zoning for the Eagle Ridge golf course.

Mr. Flannery does not recall the date.

Ms. Donato marked the letter as exhibit O-1 which is a letter from FWH Associates dated June 9, 2017 signed by Brian Flannery addressed to the Township of Lakewood attention Mayor Coles.

Mr. Flannery confirmed he sent that letter.

Ms. Donato said then he did make a request to the Planning Board, advisory committee, and counsel to allow the no adult restriction.

Mr. Flannery said he yes.

Ms. Donato said in fact, the Master Plan was adopted with the recommendation for this change.

Mr. Flannery confirmed.

Ms. Donato asked if he attended the public hearing at which time this PB had voted to adopt this change in the Master Plan.

Mr. Flannery attended all of the numerous meetings.

Ms. Donato asked if he recalls the extensive debate which took place on that evening regarding traffic and the fact that there were significant concerns expressed by the Planning Board as to the adequacy of the roadway systems to accommodate a development on the golf course.

Mr. Flannery does remember there were many conversations on traffic congestion.

Ms. Donato asked if it is true that the Planning Board required a condition that the use for any housing on this property would only be allowed once the roadways were all constructed and built to reach a level of service 'C'.

Mr. Flannery said there was a provision in there to that affect, yes.

Ms. Donato asked if it was true when the Township adopted ordinance 2017-51, it had a specific requirement in the ordinance that this use could not come into effect until such time that the adjoining roadways were at a level of service 'C'.

Mr. Flannery said there was an additional provision in that ordinance that a judge has determined that was inappropriate and invalid.

Ms. Donato asked if he is aware of the fact that Fairways HOA has had a pending litigation in Superior Court challenging the validity of ordinance 2017-51 on numerous grounds.

Mr. Schneider objected as to who has what litigation in the Superior Court. That is a road that will go on forever. The litigation that counsel is referring to was filed in January of 2018 and it is still pending.

Mr. Jackson said it is not relevant. The Master Plan was adopted, the court made its ruling and they are here. His knowledge of outside litigation is really not the purview of this board. The question is if the plans are consistent with the Master Plan as it exists on the books, as it has been with the gloss that has been put on it by Judge Ford to use the language that legal scholars use. Whether there is another law suit or whether Mr. Flannery is aware of it, he does not believe is relevant to these proceedings.

Ms. Donato said that Mr. Flannery testified repeatedly this evening and on prior evenings that this application conforms with what entirely the Planning Board did when it adopted the Master Plan and it approved the change of the zoning for the Eagle Ridge golf course. Having said that, it was very inadequate in that the ordinance when adopted by this municipality and when this Planning Board recommended the zone change and recommended the ordinance did so with a specific statement and requirement that the level of service on the adjoining roadways had to be a level of service 'C'. It is his testimony and she has the right, through cross examination, to undermine and question the validity of his testimony.

Mr. Stern said given there is and was litigation on that issue, he asked if it is within the purview of this board to ignore the judge's ruling.

Ms. Donato does not think so. They should know that the ruling happened invalidating that condition took place in violation of the entire controversy doctrine in the rules of court and it is in the appellate division.

Mr. Jackson said this matter was in front of Judge Ford and she made her ruling. Ms. Donato asked for a stay which was denied and that is the law of the land right now and now she is trying to undermine her authority.

Ms. Donato is not asking that be changed, she is questioning this man's credibility.

Mr. Jackson said she is representing to this board that it was an improper ruling by the court. He asked if she thinks that is disrespectful to the law of the land. They are required to abide by the ruling of Judge Ford. He asked why she thinks she has the authority to tell this board to disregard the ruling of Judge Ford and that it is an invalid ruling.

Ms. Donato said she did not ask the board to that. She was cross examining this witness who testified that the ordinance and the Master Plan were adopted consistent with this application and that is an untrue statement because when this Planning Board recommended the adoption of the ordinance and adopted the Master Plan, she thinks there were over 75 pages of discussion where the traffic had to be addressed. She is not asking that the board undermine it, she is simply undermining his credibility and his statements as they are untrue. His testimony was the ordinance was adopted and allowed this as of right, but it was not as of right as the ordinance was not to become effective.

Mr. Stern asked that she moves on with the questioning.

Ms. Donato said when Mr. Flannery testified that this application was consistent with the ordinance that this Planning Board recommended for adoption and the Master Plan that this board adopted, his testimony did not take into effect that this use was not to come into effect until the traffic was at a level of service 'C'.

Mr. Flannery said this board recommended this planned unit development and they had a provision in that which a Superior Court judge has determined is invalid. If a provision is invalid, then it is not there and this is all moot anyway.

Ms. Donato said when this board recommended the change in the ordinance and when it adopted the Master Plan, it required that the level of service on the adjacent roads be a level of service 'C'.

Mr. Flannery said that was in the Master Plan as adopted.

Ms. Donato said to that extent, this application is not consistent with the ordinance as recommended by this board and as embodied in the Master Plan.

Mr. Jackson said that is irrelevant and improper. The question is if this is or is not consistent with an ordinance that the court said was not enforceable. He does not see how that helps this board make a decision and he believes it is irrelevant.

Ms. Donato said hopefully the board will not rely on Mr. Flannery's testimony that this is the nicest application that he has ever seen because it is consistent with what this board did because it is not.

Mr. Stern believes the ordinance also had a severability clause so that if one section of the ordinance was held to be invalid it did not automatically invalidate the rest. He understands it is on appeal and litigation, but he is leaning towards Mr. Jackson's recommendations.

Ms. Donato wanted to raise the question in order to clarify that it was not this board's intent that this use should come in effect with the current state of affairs.

Mr. Stern thinks she made that point very well.

Ms. Donato asked how many total dwelling units will be on this site.

Mr. Flannery said the application as submitted is for 556 dwelling units.

Ms. Donato asked if he recalls that the Planning Board, when considering the requests for the rezoning and adopting the Master Plan, specifically questioned whether basement apartments would be allowed.

Mr. Flannery said this applicant is not asking for basement apartments. This application is a GDP for 556 dwelling units.

Ms. Donato asked if it is true that the MLUL and the Township's ordinance required that the GDP specify the exact number of units and the density that will be proposed.

Mr. Flannery said yes, and they did.

Ms. Donato asked if he is stating that this applicant has no intention of ever having basement apartments in this community.

Mr. Flannery said this application does not incorporate basement apartments. If in the future, homeowners decide to put in basement apartments as they do in any zone that will be something done in the future, but it is not part of this application. This application is for the number of units as stipulated on the application at the density stipulated on the application.

Ms. Donato asked if his client is willing to accept a condition that there would be a restriction in the community association documents that there would be no basements given his position.

Mr. Flannery said on a conforming application, he does not know why anybody would accept conditions that are not imposed on other applicants.

Ms. Donato said because the GDP requirements mandate that they specify the total number of units at build out. That is the purpose of a GDP.

Mr. Flannery said that question has been asked and answered.

Ms. Donato said they are just going to come back later for the additional 556 units.

Mr. Flannery said this application is a planned unit development for 556 dwelling units.

Ms. Donato asked if he is familiar with the 2013 Smart Growth Plan (SGP).

Mr. Flannery said he has read it but certainly does not have it memorized at this point.

Ms. Donato asked if he is aware of the fact that the SGP designates the Eagle Ridge golf course as park, recreation, and open space.

Mr. Flannery does not know how a Township planning document can designate private property as a park.

Ms. Donato asked if he has ever had the opportunity to review the planning history of the ACP ordinance that was used to create the Fairways community.

Mr. Schneider objected. This is exactly what Ms. Donato's lawsuit in the Superior Court is all about. It should not be litigated here.

Ms. Donato said it is not her intention to litigate the issue, she is questioning this witness on his testimony. He said there is plenty of open space all around the Township and this particular golf course is not open space.

Mr. Jackson asked if that is accurate, he questioned if it is zoned for open space.

Ms. Donato said by virtue of ordinance 2017-51, it is zoned for this application that is before the board.

Mr. Jackson said if she has a lawsuit which is challenging the zoning which she may or may not succeed in, this board is not the appropriate forum for making that determination.

Ms. Donato is not asking for that. His testimony is that there is plenty of open space in the Township and she wanted to show him that the SGP designates the golf course as open space. She is not asking the board to make a ruling; she is just asking that the board understand the full picture of facts. She is asking this witness in his testimony about this site to recognize what this site was used as.

Mr. Schneider said everyone acknowledges that this site is a golf course. The document shows areas that are existing parks, recreation, and open space. It is one of those three, it is recreation. In 2013, the SGP said there is an existing recreation here.

Ms. Donato said there are different components of the question. Mr. Flannery stated that there is a lot of open space in the Township and they do not need this, and she was going to show him that it was not this in the 2013 SGP open space.

Mr. Schneider said it is an inaccurate statement.

Ms. Donato said it is existing park, recreation, and open space. It is shown on the map.

Mr. Schneider said it is three different categories. They acknowledge it is a golf course and a golf course is recreation.

Mr. Jackson does not understand the relevance.

Ms. Donato said nearly one third of Lakewood's land area is dedicated for recreation and open space. This was the document that was used to change the State plan for the CAFRA which further goes to Mr. Flannery's argument that it is completely in compliance.

Mr. Schneider said they just spent a day deposing Mr. Lichtenstein about this very thing in the litigation. This is all about the litigation.

Mr. Stern asked if the 2013 SGP is legally binding on this board.

Ms. Donato said the 2013 SGP was used as the basis for the change in the State planned designation that increased the permitted impervious coverage on this property from 5% to 30%.

Mr. Jackson asked if it her position that this board must abide by that 2013 document.

Ms. Donato is not asking this board to make a ruling on anything that is before the Superior Court. She is cross examining this witness on his testimony.

Mr. Jackson said Mr. Stern's question was straight forward. Is that 2013 document binding upon this board.

Ms. Donato believes it should be still enforced.

Mr. Vogt cannot tell the board which plans are binding, they live in a world of ordinances and they go by the Township ordinances. The presumption is the ordinances are valid. Obviously if an ordinance is challenged and overturned, they no longer go by that ordinance, but they do not go by plans, they go by ordinances.

Ms. Donato said in that respect, even the Master Plan is a foundation, it is something you are supposed to comply with, but it is not a mandate, so she wasn't trying to tell the board what they should do, she was trying to cross examine this witness. She thinks it is helpful to know the whole picture.

Mr. Jackson asked if this witness mention the 2013 SGP in his testimony.

Ms. Donato said he spoke all about the fact that this is consistent with the all of the open space plans for the town.

Mr. Schneider said he mentioned the Master Plan and the ordinance.

Ms. Donato said the CAFRA permit was granted based on what was allowed there and in order to undermine that statement, you have to go to the 2013 GSP. She asked if Mr. Flannery had a firm called Flannery, Webb and Hansen or FWH.

Mr. Flannery said yes. The firm was initially Flannery, Webb and Hansen. The firm that currently exists that he is not a partner in is FWH.

Ms. Donato asked if FWH did work for the Kokes, a group of entities that developed the Fairways residential community and the Eagle Ridge golf course.

Mr. Flannery said that FWH did stake out work for the Kokes family. When there is construction proposed, the surveyors go out and stake out where the buildings are going to be built.

Ms. Donato asked if that is all FWH did.

Mr. Flannery is not aware of any other work other than the construction related work with respect to this property.

Ms. Donato said he did testify that this is the first GDP in Lakewood he has worked on.

Mr. Flannery said that is correct.

Ms. Donato said referring to exhibit O-2, the FWH logo is in the bottom left corner.

Mr. Flannery confirmed.

Ms. Donato asked when he disassociated himself from FWH.

Mr. Flannery said years ago. He does contract work for FWH same as other engineering firms, but he hasn't been an owner for more than 10 years.

Ms. Donato asked him to read the title block of the plan.

Mr. Flannery said Final Major Subdivision at the Fairways at Lake Ridge exhibit 1 2 prepared by Lynch, Guliano and Associates with John Wuestneck, P.E. and it has a date of 4/3/01.

Ms. Donato said he was with FWH at that time.

Mr. Flannery said that is not when this plan was done. This was an exhibit that took Lynch, Juliano and Associates plans and put together a pretty exhibit. FWH does not have a title block and nobody signed it. It is an exhibit to help out the Fairways residents.

Ms. Donato asked why it is labeled exhibit B-1.

Mr. Flannery said there was probably an exhibit A-1. He does not know as he didn't work on it.

Ms. Donato asked if he has ever seen this document before.

Mr. Flannery does not recall but he had nothing to do with preparing it.

Ms. Donato said he would not know why the golf course has a certain color green that is the same as the common area in the Fairways community.

Mr. Flannery said it is a pretty picture exhibit, that is all it is. It has no legal binding.

Ms. Donato asked how he knows that if he does not know where it came from.

Mr. Flannery said because if it had legal binding, a professional would have signed it.

Ms. Donato said it lists Mr. Wuestneck's name on the plan.

Mr. Flannery said that Mr. Wuestneck is with Lynch, Juliano and Associates who is no longer in business.

Ms. Donato understands but he was in business when this exhibit was created. She asked if Mr. Wuestneck put his former firm's logo on this plan.

Mr. Flannery said that he did not prepare this plan. The former firm put exhibit B-1 and the FWH logo on there for whatever reason.

Ms. Donato said he was a member of the firm at that time.

Mr. Flannery does not know when it was done. The plan that Mr. Wuestneck did was done in 2001.

Ms. Donato asked if he had anything to do with it.

Mr. Flannery said no.

Mr. Jackson asked if she is prepared to say whether this is an authentic document.

Ms. Donato said it is an authentic copy of something hanging on the wall in the Fairways clubhouse.

Mr. Jackson asked if she knows who and when it was prepared.

Ms. Donato does not know.

Mr. Jackson said the witness does not know either.

Ms. Donato understands. It is not for introducing evidence, she is just cross examining. She asked if this planned development application before this board for this tract also included a commercial component.

Mr. Flannery said the application for the Parke at Lakewood does not have a commercial component.

Ms. Donato asked if the planned development ordinance has a commercial component.

Mr. Flannery said commercial uses are permitted. They are not shown on the GDP, so this applicant is not asking, on the tract submitted, for commercial uses.

Ms. Donato asked if the commercial components were before the Zoning Board and they obtained variances on April 8<sup>th</sup>.

Mr. Flannery said there was an application before the Zoning Board for a different applicant on a different piece of property.

Ms. Donato asked if he is saying that the application before the Zoning board approved on April 8<sup>th</sup> had nothing to do with the planned development in its entirety.

Mr. Flannery said the application at the Zoning Board was for a different applicant on a different piece of property.

Ms. Donato asked if it was not within the bounds of the planned development that is part of ordinance 2017-51.

Mr. Flannery confirmed.

Ms. Donato asked how he knows that.

Mr. Flannery said he provided testimony for both applications.

Ms. Donato said as a GDP, aren't all components of the outward boundaries of the GDP supposed to be presented to the board in its entirety.

Mr. Flannery said yes, they were.

Ms. Donato questioned the commercial.

Mr. Flannery said no commercial is required.

Ms. Donato knows it is not required but there is commercial within the boundaries of what was rezoned by ordinance 2017-51.

Mr. Flannery said there was no rezoning of this property.

Ms. Donato said it was rezoned. It eliminated the adult community, the Township adopted an ordinance 2017-51, the density is 3.6 units to the acre plus there can be basement apartments.

Mr. Flannery does not agree with that statement. The ordinance did not say anything concerning allowing basement apartments, the adult community was not eliminated, the ordinance added an additional permitted use. The property is still zoned R-40 and it added an additional permitted use to the R-40 zone.

Ms. Donato said the additional permitted use is called a planned development.

Mr. Flannery confirmed.

Ms. Donato said the planned development allows residential development.

Mr. Flannery confirmed.

Ms. Donato said it also allows commercial development.

Mr. Flannery confirmed.

Ms. Donato asked if he is saying that the total tract rezoned by ordinance 2017-51 for a GDP does not include any commercial areas.

Mr. Flannery said he is talking about this application for the Parke at Lakewood and in his direct testimony, he indicated that the PUD ordinance allows commercial uses, but this GDP is not seeking commercial uses.

Ms. Donato said what she is trying to clarify is if that ordinance for GDP requires that...

Mr. Jackson interrupted and asked if the question is whether the Master Plan requires commercial development as part of a planned development.

Ms. Donato said no but the GDP ordinance itself.

Mr. Jackson said the question is whether the GDP application requires a commercial component.

Ms. Donato said that is her question. She asked if Mr. Flannery reviewed the provisions of the planned development ordinance adopted in 2017 that changed this site.

Mr. Flannery said he indicated that in his testimony and went through all of the provisions of that section of the ordinance, 18-1021.

Ms. Donato asked if there is another section of the ordinance called a GDP.

Mr. Flannery confirmed.

Ms. Donato asked if that GDP requires that the entire tract have a GDP showing all components and how they would be used.

Mr. Flannery said yes and that was submitted.

Ms. Donato said it was his testimony that it does not include any commercial component.

Mr. Jackson thinks she is saying that the GDP ordinance requires that an application have a commercial component.

Ms. Donato is trying to say that GDP ordinance states that if you are coming in for a GDP, you look at the whole tract of land covered by the GDP and you address everything in its entirety. The impact of traffic must include the commercial uses.

Mr. Jackson said they are not proposing any commercial uses and they are not required to.

Mr. Donato said right now the board is being asked to look in a kind of a vacuum and pretend that they are not going to have basements.

Mr. Jackson said that is not what the testimony of the applicant was. The testimony given was that there is the possibility for basements and they had a discussion that they were permitted in every zone and he thinks Mr. Flanbaum said they take that into account into their approvals and Mr. Flannery may have even said that. He does not think it is a correct representation to say that this applicant did not say that basement apartments were a possibility.

Ms. Donato said the testimony was there would be 556 units.

Mr. Jackson said it was Mr. Flannery's testimony that if future homeowner's want to have basement apartments then that's up to them. He wants to make sure the cross examination is focused and that it is not misleading. She is suggesting through her cross examination that there is a requirement that there be a commercial component in the GDP. The witness has denied that, and she keeps making that statement.

Ms. Donato said there is a requirement to assess the total impact of the GDP including all proposed uses including all density, all intensity.

Mr. Stern said there was testimony earlier indicating there may be a retail component. He asked if she thinks the board should not consider this application by this applicant because this applicant may have another phase which involves retail and commercial.

Ms. Donato is not saying they cannot consider it, but they must assess the entire impact.

Mr. Stern said then she is saying that we should not consider the application because it is flawed or void because it does not include the other tract the applicant spoke about.

Ms. Donato said yes, and it also doesn't consider the build out of the total density. That is what the statute, the MLUL and the Township's ordinance requires so this is not a total picture. The board is supposed to be looking at the big picture and they are giving them a piece.

Mr. Stern said for arguments sake, what if another group owned that piece of land. Does the board not allow this applicant to move forward until that owner submits their plans.

Ms. Donato said no, they are done together, and it used to be the old statute that was a planned unit development. It encompasses a series of different uses, different owners, the purpose of the GDP is to plan for the whole tract and to understand what the traffic impact would be and what the fiscal impact would be.

Mr. Stern asked what she is asking this board to do.

Ms. Donato said she is asking this board to require this applicant to assess the total impact, not just the impact of 556 homes.

Mr. Schneider said perhaps the witness should be asked, since he testified here today that he also testified for the commercial application before the Zoning Board, whether that other property is within the zoning that it could be included in the planned unit development; is it in the R-40 zone.

Mr. Jackson said the ordinance Ms. Donato is referring to *'the GDP shall set forth a permitted number of dwelling units in its entirety according to a schedule which sets forth the timing of the various sections for the development'*. He had always interpreted that to mean the four corners of what they are proposing because that is what they seek approval for. He does not think it says they may or may not do in the future on another tract or another parcel even if it is within the same zone because that could be addressed on its own merits at a later date. That is why he was asking Ms. Donato if she is suggesting that there is a requirement, that there be a commercial component in their application.

Ms. Donato said because of a requirement in the MLUL that it assess everything in its entirety, it is quite specific in many sections.

Mr. Stern asked what is the 'it' she is referring to.

Ms. Donato said there was testimony that there was a commercial component.

Mr. Stern said not in this application.

Ms. Donato said they are not proposing it, but she thinks they are really failing on communication and she is trying to be clear. If this tract of land covered by ordinance 2017-51 includes parcels that are not before this board on this application, then her statement and argument is well founded in the land use law and ordinance. She asked which tract of land in its entirety was subject to the Master Plan change subject to ordinance 2017-51 as a planned development.

Mr. Flannery said the planned development relates to the entire R-40 zone, any tract that has at least 100 acres. The subject tract of the Parke at Lakewood is 166 acres in the R-40 zone. In its entirety it has been presented and analyzed. The commercial application he did for a different application on a different piece of property is located in the M-1 zone which is different than the R-40 zone which is the subject of this tract, which is a different tract and a different applicant, and it was submitted and analyzed in its entirety.

Ms. Donato asked if it was changed by ordinance 2017-51.

Mr. Flannery said ordinance 2017-51 added a provision in the R-40 zone that allowed planned unit development without age restriction. It had no impact on the lot in the M-1 zone that another applicant submitted for retail development.

Ms. Donato asked who prepared the fiscal impact report.

Mr. Flannery said it was prepared by Philips Preiss Grygiel Leheny Hughes LLC, Planning & Real Estate Consultants.

Ms. Donato asked if he knows whether or not the applicant is planning to present the author of that report to the board.

Mr. Flannery said the applicant is not planning to present it. There is a requirement to submit a fiscal impact report. The fiscal impact report is pretty basic and there are no requirements of what needs to be in the report. It gives the board a look at projected taxes and revenues. If the board has questions on it, the applicant would certainly respond to any.

Ms. Donato asked if he testified that the fiscal impact report showed a positive fiscal impact to the Township.

Mr. Flannery confirmed.

Ms. Donato said then he read the report and is in a position to respond.

Mr. Flannery said yes.

Ms. Donato asked if the report takes into account the cost of school busing for children who would live in the community.

Mr. Flannery said the report took into account average expenses in Lakewood by the school district which does take into account all of the expenses in the school district including busing.

Ms. Donato asked if he has looked at the expenses of the school district and if he prepared to respond to questions in that regard.

Mr. Flannery did not prepare the report. He can certainly respond to generic questions, but the conclusions are pretty specific and again, there is no requirement that there be a surplus. This is just a document for the board to look at and get an anticipated impact.

Ms. Donato asked if he is aware of the fact that in Lakewood, the annual cost of busing a student for private school purposes is \$1,000 a year.

Mr. Flannery is not aware of particular numbers and he does not think the author of the report would do that either. He is going to go on a per unit cost. What the district spends per student for the existing students and factor that by the number of projected students.

Ms. Donato questioned if the purpose of the GDP with respect to fiscal impact is to allow this board to determine what the demand on services will be.

Mr. Flannery said yes.

Ms. Donato said so that it can be coordinated with the school budget. There is actually a specific requirement in that regard.

Mr. Flannery said if the board feels they need more information on the fiscal report, which he hasn't heard, the applicant would provide additional fiscal information. This provided a list of the projected revenue, a list of the projected cost and a list of the projected student population and based on that student population and the average cost for the existing student population, what the taxes would be.

Ms. Donato asked if there was an average number of students per family that were presented in that report.

Mr. Flannery said yes, 1.319.

Ms. Donato asked if he knows based on the demographics in the Township what the average number of students is per family.

Mr. Flannery said the number of children per family is higher than that, but the number of school aged children is going to be less and they are looking at a development that is going to be starting out with new families. If they have a child right away, it is going to be five years before they have any school aged children.

Ms. Donato asked if he is a demographic expert.

Mr. Flannery said no.

Ms. Donato said then that is his opinion. She asked if there was a buffer around the site of a certain depth.

Mr. Flannery did not testify to that.

Ms. Donato asked if there are buffer requirements.

Mr. Flannery said there are buffer requirements in the ordinance. He testified per section 18-1021, there is a perimeter setback.

Ms. Donato asked if it complies with the perimeter setback.

Mr. Flannery said yes.

Ms. Donato asked what is the amount of the perimeter setback to which he referred.

Mr. Flannery said item 'L' reads *'perimeter boundary setbacks: no buildings or structures, other than entrance gate-houses, walls or fences, shall be located within 75 ft of any exterior boundary line of the planned community tract.'*

Ms. Donato, referring to exhibit A-10, asked what the depth of the buffer along the backs of the houses along Skyline Drive is.

Mr. Flannery said there is no buffer. There is a perimeter setback of 75 ft from the house to the perimeter.

Ms. Donato said they are using rear yards as a perimeter buffer.

Mr. Flannery said there is no perimeter buffer requirement, there is a perimeter setback requirement.

Ms. Donato said they are using the rear yards of the houses as a perimeter setback.

Mr. Flannery said the perimeter setback stipulates in the ordinance that no structure shall be located within 75 ft. They are complying with that provision by having a rear yard of at least 75 ft to the exterior boundary.

Ms. Donato said they are using the rear yards for the perimeter setback. She asked if he knows that there is a stormwater basin that is directly up next to the property.

Mr. Flannery does not know what she means.

*Discussion ensued away from the microphones which could not be heard.*

Mr. Jackson asked if the applicant agrees to waive the time limitations of two weeks beyond June 5<sup>th</sup>, 2019 which is June 19<sup>th</sup>, 2019.

Mr. Schneider agreed.

Ms. Donato asked if he had an opportunity to look at the plans.

Mr. Flannery said on sheet 6, the stormwater management plan, does show a stormwater basin in that location.

Ms. Donato said then it does not require with the perimeter setback requirement.

Mr. Flannery read that '*no buildings or structure other than entrance, gate-houses, walls or fences shall be located within 75 ft*'. A basin is not a structure, so his testimony is that it complies.

Mr. Donato asked if there are any other locations where the perimeter setback is not honored.

Mr. Flannery said it his testimony that there is no place on the property where the perimeter setback is not honored because of the way the ordinance stipulates the perimeter setback.

Ms. Donato asked if it his position that the 50% open space is anything that is green on this site.

Mr. Flannery said no.

Ms. Donato asked if it was his testimony that anything not covered by an imperious surface is open space.

Mr. Flannery said no.

Ms. Donato asked if he is saying that he did not testify that open space is area not covered by imperious surfaces.

Mr. Flannery read from section 18-21e Area Requirements item 3 which states '*minimum open space: 50% of gross area of planned unit development tract. For purposes of this requirement, open space shall mean those portions of the planned unit development tract not covered by buildings, structures of any kind, streets or other surfaces paved with impervious materials.*'

Ms. Donato said in his calculation of their compliance with these provisions of the ordinance, it is his testimony that basically a rear yard of a house in this development would be considered open space under that definition.

Mr. Flannery said per this section of the ordinance, yes.

Ms. Donato asked what would be the manner in which the development would restrict the use of rear yards for the customary types of improvements that people use their rear yards for like porches, decks, pools and play equipment.

Mr. Flannery said if they were at 49% whereas 50% is allowed, that would be a legitimate concern. When they are at 30% whereas 50% is allowed, there is no way that people are going to put in their backyards enough impervious to increase the impervious by an additional 20% of the entire site. It is unconceivable.

Ms. Donato asked if he calculated these impervious coverage figures, is there someplace where they give a specific calculation of the impervious coverage.

Mr. Flannery said those impervious numbers were calculated by Dynamic Engineering and included on the GDP application submitted.

Ms. Donato asked if he is just speculating that it would not increase by another 20%.

Mr. Flannery has been in this business long enough to know that if all of the houses, all of the roads, all of the driveways make it to 30%, there is no way that the rear yards are going to add another 20%.

Ms. Donato said pavers, walkways.

Mr. Flannery said anything they want to put in there and it is not even close.

Ms. Donato asked if it his statement that widening and improvements to Route 9 are in the State budget.

Mr. Flannery said the NJDOT has prepared plans.

Ms. Donato asked if it is in the budget.

Mr. Flannery has no knowledge of that.

Mr. Stern said there are different phases and as those phases proceed, there will be more traffic. These road improvements would come along which mitigates the impact. He asked if there is a sense of what the impact would be through phase 3. He questioned when they would need to start making the road improvements, which ones would they need to make and by when they would need to make them. He thinks he heard Mr. Schneider say that at the beginning of phase 4, the applicant would be amendable to some of these road improvements being mandated.

Mr. Schneider confirmed.

Mr. Stern is trying to get an understanding of the specificity of what improvements and by when, presumably there would be more before phase 5 started so as the impact is growing, they make sure that those road improvements are done. They may not be able to answer that tonight, but he thinks the board would like to see that in greater detail.

Mr. Justin Taylor, P.E. said that is not an analysis they have done at this point. The analysis they did was a full build out analysis for the full development of the tract and that is what set forth in their traffic study. He thinks there is a decoupling of those improvements because, as Mr. Flannery testified, the improvements associated with the County are coming online pretty much regardless of this project. Same thing with the NJDOT improvements as they are in final design at this point. As they come in with their different phases, there will be a traffic study that is going to analyze that impact of that portion of the project and the cumulative impact of the project as each phase comes along. He thinks at that point they can identify the necessary improvements associated with this project, is it the traffic signal, is it an additional widening of Cross Street, is it the improvements that have already been constructed and their sufficient capacity.

Mr. Stern said they really cannot make a decision based on that traffic study.

Mr. Schneider said in the context of the GDP approval where in the event the board would approve it, it would presumably be for this extended lifetime that being the whole idea behind the GDP, he thinks it would be well within the board's power and authority in the GDP context to do essentially what the witness just described. Not saying what they have to have in each phase but that as each phase comes in for preliminary and final, that there

be a traffic study showing the impact of that phase and how that is going to be abated and as subsequent phases come along the same thing be done.

Mr. Stern said they could include that as a condition even though this board normally does not have that right.

Mr. Schneider said yes because normally you would just be coming in for preliminary and final subdivision but that type of flexibility that may not otherwise be there is exactly what the GDP process contemplates, and a developer might know they may be able to build this out over an extended period of time without concern as to zoning changes. There could be conditions in that GDP approval that if the developer accepted or the developer did not like, that governs any subsequent development, so any conditions would have to be satisfied as each phase comes in. He does believe that is the whole idea of the very types of things you can address with GDPs.

Mr. Jackson thinks that is specifically laid out in the statute and that is different than an ordinance. A statute says a GDP may include a circulation plan showing the general location and types of transportation facilities including facilities for pedestrian access within the planned development and any proposed improvements to the existing transportation outside the planned development, so the statute specifically says you can look outside the development and make that part of the plan and part of the conditions.

Mr. Schneider said the ordinance provision that Judge Ford invalidated and has already been raised, in the event this board were to grant the GDP approval he thinks there is an awful good chance there will be a challenge to that. That would go to the law division judge in Toms River. Had the judge not invalidated that provision, they could not even have started the GDP process or filed an application until after all of those other road improvements were made.

Mr. Liston asked if Mr. Schneider is suggesting that his client would accept the same type of restriction, his client was the plaintiff, to strike down the requirement that the PB and the Township Committee put on namely that there be specific improvements made before this project could start.

Mr. Stern thinks the distinction is that the ordinance was struck down that said they cannot do anything until all of the improvements are made. He thinks what Mr. Schneider is saying that to the extent that they can build in a structure that as this development progresses there will be milestones that they may be amendable to.

Mr. Schneider said exactly, and they are also talking about things that are specific to this project, not about a whole series of traffic improvements throughout the town.

Mr. Stern said he had spoken to Mr. Jackson concerning this and the reason is to try to create a middle position that keeps the impact to a minimum and if this board decides to approve to do so in the least impactful way possible.

Mr. Liston said his understanding of the email he received today is that Mr. Schneider rejected that. If he is saying something different now, then he needs to say it in plain language and he would also point out to the board that this is the same law firm and the same client that successfully challenged the initial requirement that there be infrastructure in place before this began. So, anything else that they may put on and he can agree to, he could then challenge anyway.

Mr. Jackson said this is hypothetical right now.

Mr. Schneider said an applicant cannot agree to something before a board and then challenge that. That is particularly true in the GDP process which is really intended to provide for a back and forth even more so than the typical process.

Mr. Jackson said it is an apples and oranges thing between something the applicant proposes as part of their plan or that the board imposes. It is authorized by statute versus an ordinance a general application that's challenged.

Ms. Donato said the law is actually not what Mr. Schneider represented with respect to an applicant who comes before a board, gets a condition imposed, consents to the condition and then later goes on and challenges it. There have been several cases which she can provide to the board in which the court has allowed such challenges to take place. She does acknowledge Mr. Jackson's ruling and his statement this evening essentially because this is a GDP, the board's purview is broader than it would be an as of right application which she agrees with but this is not a meaningless step. It is a step that vests this applicant in density and intensity and that is why they are asking for extreme caution with respect to all of the decisions the board makes.

Mr. Stern asked if the concept of the phasing that Mr. Schneider has spoken about if that is something her client would be amendable to.

Ms. Donato said she would have to have this addressed by the entire board of the association and secondly it would be one very minor component and there is litigation ongoing.

Mr. Stern is not asking to waive their litigation or settle this but he is saying that if the litigation were to fail that this board, if they were to have a phased in milestone based approach to each of these five phases linking some of the standard improvements and if she thinks her client may be amendable to that then they might choose to explore that option.

Ms. Donato is more than willing to go back to the board and address it, but it cannot be done in a piecemeal manner. There are many impacts, there are fiscal impacts they think are not adequately addressed. Assuming they lost the litigation on the open space issue, then these would be the conditions she thinks the board would certainly listen to, but they would have to look at the whole picture and not just address it one piece at a time. They would be willing to try to work with the proviso that whatever this board did on this application would be subject to reversal by the Superior Court of New Jersey in the litigation they are presently involved in.

Mr. Stern said this board cannot create whatever these milestones might be and the details. She is sure Ms. Donato has her traffic engineer, who they have not heard from yet, would want to opine. If in theory, they could have a meeting of the minds of what those milestones might look like then that would be useful to the board.

Mr. Schneider said they will try to produce some proposed language.

A motion was made and seconded to carry the application to the Wednesday, June 5th, 2019 meeting.

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

The meeting was hereby adjourned. All were in favor.

Respectfully submitted  
Sarah L. Forsyth  
Planning Board Recording Secretary