

**HILLSBOROUGH TOWNSHIP PLANNING BOARD**  
**PUBLIC MEETING MINUTES**  
**March 01, 2012**

Chairman Sireci called the regular Planning Board meeting of March 01, 2012 to order at 7:30 p.m. All stood for the Pledge of Allegiance. The meeting took place in the courtroom of the Municipal Complex.

Chairman Sireci announced the meeting has been duly advertised according to the Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 ("Sunshine Law").

**ROLL CALL**

Deputy Mayor Gloria McCauley - Present  
Greg Burchette - Present  
Committeeman Frank DelCore - Present  
**Steve Cohen, Vice Chairman** - Present  
Tod Mershon, *Secretary*- Absent  
Neil Julian - Present

Sam Conard - Present  
**Steven Sireci, Jr., Chairman** - Present  
Marian Fenwick - Present  
Daniel Marulli (Alt. #1) - Present  
Robert Peason (Alt. #2) - Present

Also present were Robert Ringelheim, P.P., A.I.C.P., Township Planner; Eric M. Bernstein, Esq., Attorney (Eric M. Bernstein & Associates); William H.R. White, III, P.E., P.P., C.M.E., Board Engineer (Maser Consulting, P.A.); John Jahr, P.E., Board Traffic Engineer (Maser Consulting, P.A.); and Lucille Grozinski, C.C.R.

**ACCEPTANCE OF MINUTES**

None

**ACCEPTANCE OF RESOLUTIONS**

Pat Richard, LLC (Phase III – File #11-PB-18-SR)

A motion to approve was made by Mr. Burchette, seconded by Vice Chairman Cohen.

**Roll Call:** Ms. Fenwick – yes; Mr. Julian – yes; Mr. Burchette – yes; Committeeman DelCore – yes; Deputy Mayor McCauley – yes; Vice Chairman Cohen – yes; Chairman Sireci - yes. Motion carries.

**PLANNING BOARD BUSINESS**

None

**SPECIAL COMMITTEE REPORTS**

None

**BUSINESS FROM THE FLOOR**

None

**CONSIDERATION OF ORDINANCES**

**Ordinance 2012-08** – Amend Section 188-112 to Revise the Requirements for the Minimum Tract Size and Minimum Lot Size in the ED, Economic Development District.

Eric Bernstein, Esq., Board Attorney, said this is the final part of the puzzle for the Hillsborough Properties case and Judge Buchsbaum's decision which he found in favor of the ED District as it was zoned except he had issues involving the lot size. It was in this vein that the Township Committee along with consultation from my office as both the Attorney for the Board and the Township reviewed the options available and consulted with the township's outside Planner, Scarlet Doyle. The recommendation is to concur with an ordinance that has been introduced by the Township Committee reducing the minimum lot size in the ED District from 50 acres to 25.

A motion to recommend Ordinance 2012-08 to the Township Committee for adoption was made by Mr. Burchette, seconded by Mr. Conard.

**Roll Call:** Ms. Fenwick – yes; Mr. Julian – yes; Mr. Burchette – yes; Mr. Conard – yes; Dr. Marulli – yes; Vice Chairman Cohen – yes; Committeeman DelCore – yes; Deputy Mayor McCauley – yes; Chairman Sireci – yes. Motion carries.

**Ordinance 2012-10** – To Change the Zone Designation for Block 143, Lot 3 in the AG, and Block 143, lot 4 in the ED to the GI District; Block 151.09, Lots 218, 219 & 224 and Block 150, Lots 1, 1.01, 1.02, 3, 4, 4.01, 5, 6, 7, 8, 8.01, 8.02, 9 & 20 in the ED District to the AG District; and Block 150, Lots 10 & 11 from ED District to the R District.

Robert Ringelheim, Township Planner, indicated that at the February 28<sup>th</sup> meeting, the Township Committee introduced this ordinance and referred it to the Board for review. The public hearing is scheduled for March 27<sup>th</sup>. The subject area is displayed in color on the map. The area is the western portion of Valley Road where it comes into Auten Road and extending across to Beekman Lane. There are 3 proposed zone changes. The two pieces shown in orange are under the same ownership. The

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bottom piece is in the ED Zone which is currently a 50 acre zone, which it is not; the top piece is in the AG Zone. The proposal is to change both pieces to the GI Zone which has a smaller minimum lot area to make them developable. The remaining pieces shown in green are also in the ED Zone. We are recommending that these properties be put in the AG Zone.

Finally, the Auten Road School and the house next to it in the ED Zone that are recommended to be changed to the R Zone.

The changes being proposed will implement the recommendations contained in the Master Plan Amendment and recognize the following considerations for rezoning:

A majority of the existing uses in the Ed District are farmland and agriculture-related uses, shown in green on the map.

Only the largest lot in the subject area contains enough area to comply with the ED District lot size requirement. This lot has already been farmland preserved.

There is a lack of adequate infrastructure, including highway access to support the permitted uses in the Ed District at this location.

There are 2 vacant lots under common ownership that are currently in the AG and ED Districts that would benefit from being placed in the GI District.

Chairman Sireci added "GI" stands for General Industrial. This area is along railroad tracks and in the general area of other industrial developments along Valley Road. "AG" stands for Agricultural. Most of the land that is going to be going to this zone is already farmland preserved. "R" is for Residential.

A motion to recommend Ordinance 2012-10 to the Township Committee for adoption was made by, seconded Mr. Conard, seconded by Mr. Burchette.

**Roll Call:** Ms. Fenwick – yes; Mr. Julian – yes; Mr. Burchette – yes; Mr. Conard – yes; Dr. Marulli – yes; Vice Chairman Cohen – yes; Committeeman DelCore – yes; Deputy Mayor McCauley – yes; Chairman Sireci – yes. Motion carries.

**Ordinance 2012-11** – To Change the Zone Designation for Block 180.01, Lots 42, 43, 44, 45, 46, 47, 48, 49 & 50 in the AG District to the HS District.

Mr. Ringelheim indicated that this ordinance was introduced by the Township Committee at the February 28<sup>th</sup> meeting and referred back to the Board for review. The public hearing is scheduled for March 27<sup>th</sup>.

The properties in question are to the west, Route 206 is the north-south road along the easterly boundary of the properties. The Montgomery – Hillsborough municipal boundary runs on the south of these properties. This change will implement the recommendations contained in the 2011 Master Plan Amendment and recognizes the following considerations for rezoning:

Even though it is zoned AG, there are no agricultural activities conducted on any of the properties in the existing zone. The subject area is adjacent to the HS District, immediately to the north.

Combined with this property to the north, a southern 'gateway' along the Route 206 corridor would be established with the same zoning.

The proposed rezoning would also enable potential access through these properties to an area in the rear of the HS District which appears to be developable and is separated from the other part of the HS District by a stream corridor.

A motion to recommend Ordinance 2012-11 to the Township Committee for adoption was made by Mr. Burchette, seconded by Mr. Conard.

**Roll Call:** Ms. Fenwick – yes; Mr. Julian – yes; Mr. Burchette – yes; Mr. Conard – yes; Dr. Marulli – yes; Vice Chairman Cohen – yes; Committeeman DelCore – yes; Deputy Mayor McCauley – yes; Chairman Sireci – yes. Motion carries.

**Ordinance 2012-14** – To Change the Zone Designation for Block 202, Lots 3, 4 & 23 in the LI District to the HS District.

Chairman Sireci said this property is on the east side of Route 206 at the southern edge of the township. The road going through is the southern end of the Bypass.

Mr. Ringelheim said this ordinance was also introduced at the February 28<sup>th</sup> meeting by the Township Committee. The public hearing is on March 27<sup>th</sup>. The change proposed will implement the recommendations of the 2011 Master Plan Amendment and recognizes the following considerations for rezoning:

The Route 206 Bypass which hooks into Mountain View Road across the street will physically isolate the southern portion of this area from the rest of the LI District. The LI District extends from the rail line going up to the north. The existing and proposed zoning across Route 206 from the subject area contains a large area containing the HS District.

The combined HS District on both sides of Route 206, as being proposed, will serve as a coordinated southern 'gateway' into the township along the Route 206 corridor.

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In order to avoid a split-lot district, we are recommending that Lots 3, 4 and 23 all be included in the proposed HS District.

Mr. Conard asked if DOT is buying the property for the right-of-way.

Mr. Ringelheim said I believe DOT is buying almost all of the upper lot, Lot 3 for the Bypass right-of-way so technically there will not be much development on that anyway. Rather than split the lot between two zones we recommend it all be put in the HS District. It should have no relevant impact to whichever district it is in. The bigger lot, Lot 4 below it contains about 28 acres and would be developable.

A motion to recommend Ordinance 2012-14 to the Township Committee for adoption was made by Mr. Burchette, seconded by Mr. Cohen.

**Roll Call:** Ms. Fenwick – yes; Mr. Julian – yes; Mr. Burchette – yes; Mr. Conard – yes; Dr. Marulli – yes; Vice Chairman Cohen – yes; Committeeman DelCore – yes; Deputy Mayor McCauley – yes; Chairman Sireci – yes. Motion carries.

### EXECUTIVE SESSION

RE: Green Village – File #11-PB-11-SR - The Board will convene to discuss potential litigation and attorney-client privilege matters.

Eric Bernstein, Esq. stated the Board will take an Executive Session.

Motion to move to Executive Session was made by Mr. Conard, seconded by Deputy Mayor McCauley. All in favor.

Executive Session 7:47 – 8:28

A motion and second was made to come out of Executive Session to public hearing. All in favor.

Mr. Bernstein gave an overview of the Executive Session for the public.

### PUBLIC HEARING – SUBDIVISION/SITE PLAN APPLICATIONS

**GREEN VILLAGE** – File #11-PB-11-SR (*previously referenced as 11-PB-11-MJFSR*) – Block 141, Lot 30 – Route 206 North. (**AMENDED Application**) Applicant requesting Preliminary and Final Major Site Plan approval **Carried from January 05, 2012 without further notice.**

**Exhibits:** **A1** – Color Exhibit Plan Overlay/Aerial (12-01-11)  
**A2** - Color Exhibit Site Plan (12-01-11)  
**A3** - Color Phasing Plan (03-01-12)

Chairman Sireci called for a motion to open the public portion of the meeting (continued from last meeting). A motion was made and seconded. All in favor.

William B. Savo, Esq. appearing for the applicant said this is the third public hearing for this application. We previously had testimony from our engineer, Mr. Heibell and our traffic consultant, Mr. Dean. Mr. Dean is here again this evening. He was qualified and remains under oath. At the last hearing we recommended that the project be phased and described the phasing. Pursuant with the County, traffic consultant and township traffic consultant, we came up with a monitoring program. Based on that monitoring program there would be a requirement for remediation activity there would only be a right turn out. The Board requested an additional condition we consider which would have to do with the number of accidents at the site which would trigger remediation. We agreed to give broader discretion to the township so that if the township believed there was a safety issue, left turns would be eliminated at the site.

Gary Dean, P.E., P.P. of Dolan and Dean recapped the idea of traffic monitoring that would allow a certain critical mass to be developed and occupied that would allow our office and the Board's consultant in conjunction with NJDOT to estimate the maximum amount of traffic that could be generated at a threshold of 199 peak hour trips. Through discussions with your traffic consultant, we felt that 180 occupied units would give us a statistically valid critical mass to monitor the actual amount of traffic that comes in and out of the project and forecast at what unit count we would reach 199 trips. That would in essence constitute a Phase I of development allowable as shown on Mr. Heibell's plan that permit full left-turns at the southerly driveway and right-turn in and right-turn out at our northerly driveway.

The second prong of this monitoring traffic program would be to then ensure some form of mitigation was physically implemented to allow the balance of the project to be developed. The 3 options discussed were a traffic light, NJDOT's advancement of the 15N Project, and lastly, to physically restrict left-turn movements from the site and all that would entail. Even though we can project this traffic to do our counts, there may be a period when accidents become more prevalent and safety becomes the overriding issue. The criteria commonly adopted by NJDOT and the Federal Highway Administration is a frequency of 5 motor vehicle accidents per year sustained over a 3 year period. If we were to achieve that type of frequency directly attributed to left turns at the site; we would be able to construct the remediation within 120 days of notice because it

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would be previously approved by NJDOT. On top of that, we discussed with your professionals this week that we would afford the township through your Police Department or Engineering Office the ability to state in your reasonable discretion that there is a safety problem that you want remediation implemented within 120 days of notice. I think we have a fairly broad spectrum

of objective and subjective criteria to ensure the situation is continuously monitored, that safety is the number one priority and that there is a plan immediately to implement upon any of the parties identifying a safety concern at the driveway. Your consultants, Mr. White and Mr. Jahr have prepared a memorandum that I think accurately summarizes those conditions.

John Jahr, P.E., Board Traffic Consultant, said Mr. Dean has represented most of what has transpired recently. However, there are some things that were not reviewed. The developer indicated at the last meeting that he asked NJDOT permission to provide a traffic light for this site. DOT said they were not comfortable with that. The public and the Board spoke out and asked that we request that DOT reconsider with the assistance of Deputy Mayor McCauley and Somerset County Counsel. We met with NJDOT on January 20<sup>th</sup> and made a formal request for reconsideration based on us providing additional information. We provided them with additional analysis of how the lights would work and a traffic signal warrant report justifying that a light was warranted at this location. The State took that information. We requested of them more details regarding what Mr. Dean had brought to the Board, which was the DOT Concept Approval.

Mr. Jahr entered into the record the NJDOT letter dated March 2, 2011 which he read for the public. He said I had not seen this letter until the January 20<sup>th</sup> meeting. We also asked for a copy of the concept plan which could not be provided. However they did provide this plan that I would like to make certain is the concept plan that is approved.

Mr. Dean said it is not. This plan only shows one driveway. The letter of March 2, 2011 from the State makes reference to a southerly driveway and the concept plan also included a northerly driveway restricted to right-in and right-out. What has submitted to this Board is consistent with the DOT approval.

Mr. Jahr said we now have further investigating to do because the DOT has given us incorrect information. I certainly have a problem with not having the plan the DOT approved. We did receive the letter from Mr. Dean yesterday regarding the conditions he spoke of. We refined it slightly and produced a memorandum that the Board received late today.

Chairman Sireci asked Mr. Jahr to interpret for the Board what the DOT is saying the last paragraph of the letter.

Mr. Jahr said for the primary reason why the Board asked for additional traffic help on this. The DOT is pointing out to this Board that they are concerned with left turns out of this site. We have had an ongoing collaboration with this Board, the applicant, and the County to some extent since we do have concerns about it, and rightfully so. Hillsborough has prohibited left turns out of most of the sites on that side of the road. There is certainly a level of fairness that you have prohibited left turns for most of the development along this side of the road.

Chairman Sireci asked what is the implication of their saying that if we did this, the Bureau of Traffic Engineering as part of the DOT, would then initiate a post-construction field evaluation. Would they come out and see how it was working?

Mr. Jahr said yes, that is the idea.

Chairman Sireci asked Mr. Bernstein, I know you are not specifically a liability lawyer but what would you advise us about what the DOT has stated in that sentence regarding any future accidents from that site?

Mr. Bernstein said it is not uncommon for a potential plaintiff to name multiple defendants in a lawsuit. Chances are any such litigation that would occur would probably inevitably involve the State as a party, the developer as a party and the township as party. The Planning Board might be named as a party but ostensibly the Planning Board is part of the township. That is another issue that the Board needs to address and get recommendation from it engineering consultants relative to the matter at hand.

Mr. White addressed his March 01, 2011 report. Basically what I did was take Mr. Dean's memorandum with the triggers we discussed in meetings here previously and tighten them up a bit where I thought there were loopholes so that it is clearer to understand. One condition I suggested is that should DOT come back and say we are absolutely not going to permit a light, that should be a trigger. I think one of the concerns of the Board is should we start with one configuration for egress then change it 2 years later. People are creatures of habit. They will be trying to find a way to get around. If you start it from the beginning they will follow it.

Deputy Mayor McCauley said the Board should be given some time to review the Maser report since it was provided so late.

Chairman Sireci asked Mr. Jahr to review what he was told by DOT about the consideration of a traffic light at the site.

Mr. Jahr said only just this evening I received a memorandum from NJDOT outlining their review of our request to them. The review did not say we could not have a traffic light but said it did not meet the spacing criteria and that it is their opinion to not recommend a light under those circumstances. They went on further to request substantial substantiation with regard to the Warrant Study. The study I provided them was done under some haste. There are asking for some substantiation that this is

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going to be a warranted light. They asked for some information as far as gapping and some other back-up with regards to the counts and further clarification. I think we have made a bit of progress in the correct direction in that the DOT has asked for additional information. I believe they are honestly thinking about it and there is consideration. I believe if we continue to work together with the developer and the County to come up with the solution, I think we have a good shot.

For the operational we run it through a program called SYNCRO which has a video interface that shows you how the traffic works. It lets us see how things would work in the real world. I would be more than happy to bring it to show you how it works.

Mr. Dean said as previously explained to the Board, we initiated this process with DOT in 2009. Our primary objective, much as yours, was to ensure the plan was developed would be safe, work for the project and not burden Route 206. After submitting 6 to 10 different schemes for access, turning restrictions, one or two driveways, signal or no signal, what was approved by the State is identical to the plan we have submitted to you. I was not present at the meeting with Mr. Jahr so I am not familiar with which of the 10 plans they provided him with. I will say that the plans we submitted to the State have not been rejected. Our plan is consistent with the approved concept review. Their letter clearly makes reference to a southerly driveway which logically implies there is a northerly driveway.

Chairman Sireci expressed his thoughts on the matter and said that Mr. Jahr went down to DOT to try to get a sense of what their thinking is so we can reconstruct the DOT's logic since the town, County and even yourselves would say there really needs to be a light here and they are not doing it. We need to provide them with the cover they need to do something out of the norm. What is disturbing is that the letter seems to be dropping it on the township saying that the town *may* restrict left-hand turns. That is a pretty broad hint from a bureaucrat.

Mr. Savo clarified the final plans based on the concept were submitted to the town.

Deputy Mayor McCauley said when we met with the DOT they were not sure which plan they had in their hands so I want to know which plans were approved and not approved, regardless of what you submitted to the township.

Mr. Jahr asked the applicant to submit a full paper copy of the major access application and all of the plans that went with it to the officials at the township so we have a copy for our records.

Mr. Dean said certainly. In my experience with working with DOT is that they will objectively review an application and look at all of their criteria and approve an access that is the least restrictive. As is always the case, they will give deference to the subordinate jurisdictions and always essentially state that you reserve the right to impose restrictions if they are necessary. They are saying as stewards of the highway, we are comfortable approving the design that was submitted; in this case it did not involve a signal. I do not know that they are burdening you necessarily but suggesting that if you believe additional changes are necessary, you reserve that right. It states that the Bureau of Traffic and Investigations would then give a post construction field evaluation. Traffic safety is a dynamic concept. It is not approved and then has to stay that way into perpetuity. If it warrants closer scrutiny even after the job is constructed, they will always entertain those kinds of considerations to improve safety. What they are saying is right out of the box, it is not necessary.

Mr. Jahr said I am not certain I agree with Mr. Dean's comments. I am sure you have seen many applications come to this Board and I am not sure we have ever seen that in a letter before; I know I have not. Sadly, the State has put the onus on us to look more carefully at this.

Mr. Dean said DOT is ready to issue the Access Permit because it is consistent with their concept approval.

Chairman Sireci asked Mr. Jahr, if you provide DOT with a new Warrant Study in hopes of getting their permission for a light, what kind of timeframe are you looking at?

Mr. Jahr said it should be able to be accomplished in weeks. My suggestion is that we respond to the DOT's letter in kind and as soon as possible. It should take me 1 to 2 weeks to provide them with the information they asked for. Based on their first review which was 4 weeks, I think it will take DOT another 4 weeks or longer to review this information. I would think that if the next letter does not say absolutely, positively not; then we are on to something.

Chairman Sireci said I would also like to thank the County Engineering Dept. for being so helpful with this and interacting with the DOT.

Mr. Dean said we prepared the Warrant Study 3 years ago so we can save 2 weeks and give Mr. Jahr the benefit of that data. DOT agreed then that the signal was warranted. The issue is how to implement it in their system. We are happy to revisit it with the interest and support of the County and township. It is largely redundant but we are happy to provide it to assist with whatever data they are compiling.

Mr. Jahr said there is also the SYNCRO study that needs to be done.

Chairman Sireci said working together to expedite it would be great.

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Open to the Public

**Mike Avolio** – Owner of United Rental

Mr. Avolio said I am glad to hear that a traffic light is a possibility for traffic leaving the project. I have another consideration as to how many cars can be stacked going into the site going south past Valley Road. The width goes from 25 ft. at the bridge to 45 ft. at my store and then it flares out. I think there may be remediation to put a stacking lane into the project.

Mr. Dean said we do have a stacking lane as shown on Exhibit A-3 Phasing Plan which depicts the highway plan on Route 206. There is a stacking lane not only for this property but also to turn into Mr. Avolio's property in the northbound direction. We have already anticipated that concern with DOT.

Mr. Jahr said their plan does call for improving the stacking lanes in front of the site. It appears the stacking lanes they will provide will be adequate for the project.

**Marilyn Rodriguez** – Elmendorf Circle

Ms. Rodriguez asked what will happen to the light at Valley Road. Will it be removed or will there be 3 consecutive lights before you get to the light at K-Mart?

Chairman Sireci said it would not be removed. All of the lights have to be synchronized so that you have the best possible flow through them.

Mr. Dean said that is correct. Either through a physical connection or through the current technology which is GPS; the signals would be connected so that motorists are not confronted with a stop and go condition between Valley and Partridge, including this location. That is part of this entire evaluation.

Robert Heibell, P.E., L.S., P.P. was recalled to testify.

Mr. Savo stated Mr. Heibell is still under oath. The first time Mr. Heibell testified we had a review letter from Mr. White but the plans we submitted as an exhibit did not show all of those changes. We were waiting until we were further along in the process. Since that time we have submitted a full set of plans to Mr. White which he has reviewed and provided his comment letter. We have addressed basically all of the comments from his previous review letter.

Mr. Heibell said I told the Board I would not piece-meal the application but would wait until I had every report from every agency. I resubmitted a complete set of plans addressing every comment from every agency on February 7th. Since that time I have heard from HTMUA which has now issued a Resolution of Approval. Our next step on the sanitary sewer is to go to SRVSA and then NJDEP. I cannot submit to SRVSA until I have a Resolution of Approval from this Board. We also received the responses of Mr. White and Mr. Ringelheim. I have personally gone over the comments of Mr. White with him. There is only one comment that the applicant has not agreed to do which Mr. White and I agreed we would discuss with the Board this evening. We agree to revise the plans accordingly for the next round.

We have 3 stormwater detention basins on the property. Mr. White is suggesting that the Board review putting a chainlink fence around the basin. If the Board decides to request the 4 ft. high non-climbable chainlink fence around the stormwater detention basins, we will put it on the plan.

Mr. White said there is going to be a relatively high density with this project with detention basins that are going to be tucked away. The concern is for children. If you are in a large 1 acre subdivision, the basins are pretty open but these are tucked away. We try to make them as safe as possible but kids can climb.

Chairman Sireci said these are detention basins that have water in them only some of the time; not retention basins that are more like ponds and we do not fence them. Chairman Sireci called for comments from the Board.

Mr. Burchette asked how deep the detention basin is.

Mr. Heibell said under the maximum 100 year storm conditions, 1 of the 3 could get as deep as 7 ft., the other 2 about 5 ft. Some depth of water could last the duration of 70 hours.

Mr. Ringelheim said these basins are going to be landscaped so there will be some delineation provided through the landscaping.

Mr. Heibell agreed. There are no vertical walls. It is a 3 to 1 slope but I am giving you the maximum from the bottom of the invert.

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Board discussion expressed that fences were not necessary.

Mr. Heibell said we are still deficient in tree mitigation and will be required to pay a sum of money for that but we have added 189 additional shade trees on the property. This would bring the total money due to the Tree Mitigation Fund to \$46,150.00 which is for the shortfall of 142 trees. We do not oppose any of the 8 comments in Mr. Ringelheim's report. I have reworked the plan so that some small variances around the retail were eliminated; one of the dumpsters has been relocated; and the sign plans have been revised, eliminating some small variances and waivers. We have put bollards and a chain gate for the

emergency access from this project to the Gateway at Sunnymeade project. Mr. Ringelheim's report verifies all of this.

The Phasing Plan is now included as one of the sheets of the plan, shown here as Exhibit A3. This Phasing Plan shows that the applicant would start on the northerly side of the project and build the 352 residential units shown in green and 3 of the 5 COAH building. The remainder of the project will be built depending on the ultimate outcome of the traffic aspect, with our without a light. We have yet to hear back from the D&R Canal Commission and the SCPB.

Public comments on the general engineering of the project were taken.

**Claire Liptak – Amwell Road**

Ms. Liptak said I am a Horticulturist and Certified New Jersey Tree Expert (license made available). She expressed her opinion on the plantings within the retention basins and her concerns with the removal of the number of trees. The basins can be fully planted and a plus to the neighborhood in terms of reducing landscape pest problems.

**Joan McGee – Stony Brook Watershed Association**

Ms. McGee said the Stony Brook Watershed has been protecting clean water, the local environment and healthy habitats for over 60 years. I have some questions and comments.

Ms. McGee was sworn in and said the following: I did not see Mr. White's February 22<sup>nd</sup> report; I was only able to see the first report where he reviewed some stormwater issues. I know the D&R Canal Commission denied your application for a number of stormwater issues.

Mr. Heibell said that is not correct.

Ms. McGee read from the DRCC report.

Mr. Heibell responded by saying prior to submitting a formal application one submits to the DRCC for a Staff Report. There is a lot of difference between that of a Staff Report and a denial; this is not a denial. We submitted for the Staff Report and then met with the DRCC Director and Staff Engineer on January 27<sup>th</sup>. Subsequent to that meeting and that Staff Report along with comments from the SCPB and comments from Mr. White, we modified the stormwater detention basins on February 27<sup>th</sup> to all agencies. We believe the revised plans are in total compliance with that report. I have stated that I am still waiting for their response back. They will issue a secondary Staff Report; there is no formal hearing. Until I receive an approval from the Board, I cannot receive an approval from the DRCC. We are not requesting any waivers or exemptions from them.

As for the runoff, none of our stormwater from our impervious surface flows to any adjacent property. It all ultimately winds up in our stormwater detention basins. Our basins all outlet to the existing stream on site.

Ms. McGee asked if there will be any disturbance to soil erosion or vegetation in reference to the local 150 ft. Stream Corridor Ordinance.

Mr. Heibell said we are not disturbing that with the exception of the outflows from the detention basins which go towards the stream. It does not require a waiver. We cannot build the detention basins within there or disturb it but we are allowed to build the outlets.

Ms. McGee said only if there is no practical alternative. What is your proof that there is no practical alternative?

Mr. Heibell said we have to outlet it to the ground. If we were to outlet it beyond a certain point which is where the flood hazard area is and consistent with where the stream corridor is, the pipe would never daylight.

Ms. McGee asked if the outlet could be reduced and moved back towards the development if the size of the development was reduced.

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Mr. Heibell said the project as designed complies with all of the requirements as far as the density, etc. that is allowed. We would have to substantially fill the entire project in order to daylight it to that point. Again, that exact point is going to get reviewed by NJDEP subject to their issuing a permit for that.

Ms. McGee said I wanted to make sure that since it is a local ordinance and since it is in the Greenway, that all alternatives have been explored.

Mr. Heibell said it is my opinion that the way we have designed the project is in the best interest, rather than adding 3 to 5 ft. of fill throughout the project to allow the drainage pipe to be a little further back from the stream.

Ms. McGee asked if you reduced the size and density of the project and moved it further away from the stream; would that change your mind about having to add fill to the entire project?

Mr. Heibell said sooner or later you can reduce any project on any piece of property not to have to do what you are suggesting.

Ms. McGee asked about the Tree Mitigation Variance, not the mitigation.

Mr. Savo said at the first hearing I explained to the Board that I thought there was a consistency between the COAH Ordinance which substantially provides most of the affordable housing obligation for the township with the 25% set aside and a density bonus. This project allows for another totally inclusive COAH project to be eliminated. We have COAH regulations which say that you cannot have undue requirements on reforestation and tree mitigation. If you did not have a variance nothing could be built on this site, including a COAH project which has been submitted to the Courts as part of the township's affordable housing obligation. Our Architectural Planner will testify a little more on this issue.

Chairman Sireci said I will point out that the Judiciary of New Jersey is not interested in trees and streams when it comes to affordable housing. As a board, we are under that judicial edict from 30 years ago. My understanding is that the affordable housing decision supersedes local zoning completely. That is the problem we are up against.

Mr. Savo said I gave Mr. Bernstein a memo on this very issue about the COAH regulations superseding the local ordinances and case law on that and also some legislative law the township governing body does not adopt an ordinance that is a nullity; it cannot work if there is another ordinance that precedes it. No one thought about it at the time but it should have been an automatic waiver in the Affordable Housing Ordinance but it was not addressed.

Ms. McGee said I disagree. The affordable housing can still be built and save quite a number of trees. I request that you consider having the affordable housing done first in the phasing process to be built.

### **Tom Biro – East Mountain Road**

Mr. Biro noted he is a landscape architect and has lived in Hillsborough for 25 years. He spoke of his recollection of how the idea of a "Downtown" to Hillsborough was originally presented. He questioned why the applicant was allowed to create this project in the Overlay Zone.

Mr. Ringelheim said the Architectural Design Standards were meant to address the design of buildings. Town Center requirements are a separate issue and in a different area of town.

Mr. Biro said I was on the ADS Committee which came up with the standards.

Mr. Cohen said the standards were dismissed because they were over reach; included such things as what paint colors to have and where to buy the paint.

Chairman Sireci said the overlay has mainly to do with the design of the buildings. He asked Mr. Ringelheim if the applicant has complied with site design standards and architectural standards in general?

Mr. Ringelheim said in general, yes. The site design standards are very limited in this area. The Overlay Zone was really based on the architectural design of buildings. It was not meant to lay out a Town Center.

Chairman Sireci noted the tree lined downtown area of Town Center is in a different area of town.

Mr. Biro said I disagree.

Chairman Sireci reiterated because this involves an affordable housing situation the local standards do not apply and do not trump the affordable housing component.

Mr. Biro asked are there any public areas, bike paths, or bio-swales in this plan.

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Mr. Heibell said no there are not; nor are any required by ordinance. The plan complies with the ordinance the township adopted when they adopted the ordinance to have COAH on this property in totality, with the exception of the trees which was discussed.

**Marilyn Rodriguez – Elmendorf Circle**

Ms. Rodriguez asked about the creek that goes through the property and extends down to Valley Road. Considering that you are asking for a waiver to remove 70% of the trees, what controls have you put into place to protect the residents who live on the right side of Valley Road from flooding when the 3 basins release their water? There is brush within the stream and under the bridge at Valley Road that has obviously been brought there by traveling water from your property.

Mr. Heibell said that is primarily why there is a Stormwater Control Ordinance for Hillsborough Township which we have met and has been reviewed by the Planning Board Engineer. This plan was submitted in compliance with the requirements of Somerset County which was reviewed by its engineering department. The D&R Canal Commission also needs to approve this project and also looks at stormwater controls. We already have a certification from the Somerset Union Soil Erosion and Sediment Control Plan. All 4 of these agencies which have some overlapping requirements have to approve all of the stormwater criteria. They develop standards which we have to abide by. We have to reduce the rate of runoff from various storm frequencies in order to get the approval. If we cannot reduce the rate then those agencies will not give approval and there will be no project. The calculations provided, including the modifications on February 7<sup>th</sup> abide by the stormwater regulations.

The stream runs away from this property. It does not matter that this property is upstream; we are not allowed to have the rate of runoff as the stream exits the property. Everyone is concerned with all of the properties which include the upstreams and downstreams.

Ms. Rodriguez said my property is not by the stream. My concern is that my neighbor 2 doors down could not get an in-ground pool because the water table was so high. In my yard there is a strip of property that gets soaked with any rain which takes days for the water to seep back in. Ms. Rodriguez stated her concerns again for the removal of so many trees.

Mr. Heibell said I am familiar with Ms. Rodriguez's development which is one of the many consent judgment developments built in the town. Apparently there is a localized drainage problem in this area. We happen to be substantially downstream of the property but we are not allowed to increase anyone's water. Even if we were to increase it, it would go upstream towards Manville. There is a problem on her property but it is not caused by this property; nor is this project going to make her problem worse.

Ms. Rodriguez asked how the removal of so many trees can be better for the environment and our town in general. How would this be a benefit to us environmentally?

Mr. Heibell said the tree removal requires a variance but the overall project has only met the allowable impervious lot coverage; we have not exceeded it. If this was grass, we would not have a single variance. When the ordinance was created, the southerly 35 acres was a wooded lot, the northerly 15 acres is hardly wooded at all. That creates the necessity to build a project in conformance with the density allowable within the ordinance. The two ordinances conflict with each other.

Ms. Rodriguez repeated her earlier comments.

Mr. Savo objected stating there was no question being asked and that the comments were argumentative.

Chairman Sireci agreed.

Mr. Heibell stated that the maximum impervious coverage for the Green Village District is 65%; we are proposing 44%.

Chairman Sireci said the Board recognizes the difference between surface coverage and perc which is the soaking of water down into the ground vs. the clearance of stormwater and the drainage of a basin from its water runoff. They are two different issues. You have sufficient pervious coverage here so that the water can go down and in. What is going on with the stream is the overflow and have to deal with how you are discharging stormwater so that you are not overloading a stream. The trees are a third matter which has been explained several times that there is a Tree Ordinance but when setting up the ordinance for this zone, unfortunately no mention was made about tree removal within this zone, even though it was the intent. Again, the reason is that in the Mt. Laurel Affordable Housing world, the judges do not care about the trees. If you try to stop or reduce a development on the basis of cutting down trees, the developer will sue, the judge will agree with the developer and the township will lose. The judge will impose the settlement which could worse with fewer trees than this settlement. The New Jersey Judiciary has set up an absolute right for affordable housing to trump all other regulations, laws and ordinances of local

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governments. The best you can do is go with a plan that meets basic standards described and standards of health and safety. Judges do not want to hear you have to save the trees. That is just the way it goes whether you like it or not. We have to take that under consideration with this application and understand the legal environment that we live in New Jersey.

### **Thuy Anh Le – Ivy Lane**

Ms. Le said I appreciate the situation we are in. If we are doing a phase in project, how do the affordable units meet the COAH requirement?

Mr. Heibell clarified there are 5 building of COAH units consisting of 117 COAH units which makes up 25% of the project.

What I have shown in the phasing plan is that 3 of the 5 buildings totaling 65 COAH units would be built in Phase I which is about 60% of the total COAH units.

Ms. Le asked would all of the trees be but for the Phase I portion?

Mr. Heibell said the applicant has voluntarily agreed to keep the 130 ft. buffer along the existing properties to the east and to the south. At no time will those trees be cut down.

Ms. Le said I understand that 75% of the trees have to be cut down but I do not understand the economic hardship. The township could benefit from getting compensation for re-forestation in other areas or to preserve open space. I think we have to be careful about the decision of removing 75% of the trees in terms of flooding.

Chairman Sireci asked Mr. Heibell to review how the trees factor into the stormwater plan.

Mr. Heibell said it depends on the type of vegetation on a property. An open field would be different than if you are modifying a wooded area. All of these agencies have factored that into the design of the stormwater. Mr. Heibell again reviewed the 5 agencies involved for approval of the stormwater plan. We need approval from each and every one of those agencies. Some agencies look at the water quality where others look at the water quantity. The rate of runoff cannot be any greater than it is today. The regulations get more stringent all the time.

Mr. White added you are not only not exceeding the existing, you have to reduce the flow by 50% of the 2 year storm conditions, 75% of the 10 year storm conditions and 80% of the 100 year storm peak.

Chairman Sireci said the concept that you cut down all of the trees and the water runs off is not correct; it is engineered for that not to happen.

Ms. Le said we have a lot of flooding in town plus our town is being proactive on such matters. I do not want to make it worse for the township.

Mr. Heibell said the detention basins of 10 years ago are probably smaller since the regulations get increased as time goes on.

### **Susan Gulliford – Hunt Club Road**

Ms. Gulliford asked what the tree mitigation fee would be if the waiver was denied.

Mr. Heibell said I did not even figure it out because I abided by the ordinance.

Chairman Sireci said before a vote is taken I would like the Board Attorney or Board Planner to explain what the waiver is and how it works out.

Ms. Gulliford asked what the difference is between the affordable housing buildings and the market rate buildings.

Chairman Sireci said we are still to hear testimony from the Architect and Planner.

Ms. Gulliford asked about Mr. Savo's earlier comment that without the tree variance nothing could be built on the site and it would be unusable.

The statement was confirmed.

Chairman Sireci said no judge would permit that.

A continuation date was discussed.

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Anatol Hiller, applicant, said I have been building for 20 years and do not expect a response from DOT in 6 or 16 weeks. We have set down in good faith and negotiated and came up with the language. If the question is safety, I am willing to give up left hand turns out right now to put the discussion to an end. I would like to start the permitting process.

Mr. Bernstein said while I understand Mr. Hiller's comment, I believe we need the input of the traffic engineer and engineer regarding how to address this at the appropriate time when this Board chooses to take an action. We can take the developer's comments according.

Mr. Bernstein asked if the applicant is willing to extend the time of decision clock that expires on March 30<sup>th</sup>.

Mr. Savo said the applicant is willing to give up the left hand turn right now until there is a light so there is no traffic issue. I would like to continue this to March 22<sup>nd</sup>.

Mr. Bernstein said your client said no left turn period. If you would like to provide testimony from your architect and planner on March 22, that is fine. I want the matter of giving up the left turn in writing so that there is not a discrepancy down the road.

Mr. Jahr asked if the applicant is abandoning the light.

Mr. Hiller said I am not abandoning the light. I have been fighting for a light since I bought the property 27 years ago. I have intensified the fight for a light but want to get the project going in the permitting process which will probably be another year plus. I will voluntarily eliminate the left out. If the signal does happen then I will have full movement. I will give it to you in writing.

Mr. Ringelheim said if the MLUL clock is not extended, the application will have to be heard on the 22<sup>nd</sup> but there already is another application on that night.

A motion to continue this application to March 22<sup>nd</sup> without further notice was made and seconded. All in favor.

Mr. Ringelheim said there is nothing on the agenda of March 8<sup>th</sup>.

A motion to cancel the March 8<sup>th</sup> meeting was made and seconded. All in favor.

**ADJOURNMENT**

The meeting adjourned at 10:29 p.m.

Submitted by:  
Debora Padgett  
Planning Board Clerk