

Offered By: Mr. Lavan
Second: Mr. DeMatteo
Date: December 19, 2013

Minutes of December 5, 2013 Planning Board Meeting

Regular Meeting of the Hazlet Township Planning Board of Adjustment scheduled for December 5, 2013 was called to order at 7:30PM with a Salute to the Flag followed by a moment of Silent Prayer and a Reading of the Letter of Compliance.

ROLL CALL:

Present: Mr. Bace, Deputy Mayor DiNardo, Mr. Solomeno, Mr. DeMatteo, Chairman Mr. Tyler, Mr. Pobega, Mr. Glackin, Mr. Vignola, Mr. Lavan

Professionals- Mr. Kittner, Mr. Vella, Mrs. Keegan

Absent: Mr. Mann, Mayor Belasco,

Mr. Vella- Mr. Chairman I have reviewed the notice to the adjoining property owners and the affidavit of publication they are in order and the board has jurisdiction in this matter. Mark A-1 as major subdivision show case center subdivision consisting of one sheet prepared by Maser consulting dated May 31, 2013 last revised October 17, 2013.

Mr. Inglima- My name is Robert Inglima Jr. I'm an attorney with offices in Ho-Ho-Kus and I'm here representing Rave SL Tenant, LLC and EPT Nineteen Inc. The applicants for a preliminary and final subdivision with respect to the property known as 2821 Route 35 block 192 lot 4 in Hazlet. We'll mark the Major Subdivision Plan entitles "Showcase Center Subdivision" as A-1 and the boundary and topographic survey mark as A-2.

Mr. Vella- We will mark A-2 as the boundary topographic prepared by Maser dated May 14, 2013 last revised September 11, 2013. Can you please clarify Rave SL Tenant LLC and EPT? EPT is the property owner and who's Rave SL Tenant?

Mr. Inglima- Rave SL Tenant is an agent it's a subsidiary of the tenant of the property which is Rave Cinemas and is involved in proposing the subdivision because they may be involved as an agent for an EPT in securing a buyer for the property.

Mr. Vella- Ok Rave's the tenant and EPT is the owner and the owner extended the application.

Mr. Inglima- We have filed with the board both application forms and the affidavit of owners consent that indicates that both parties have agreed to file the application. We will be marking a number of exhibits as we go through with the witnesses also we will be marking some documents that relate to the title to the property a title search which we have submitted to the board as part of our application packet. A couple of documents that refer to the cross access and parking easements that exist with respect to the property that have for quite some time and we will cover those with the testimony of Mr. Allan Benjamin who is a representative of the applicants and then we will submit testimony from Justin Thornton who is a professional engineer with Maser Consulting and his firm has created the survey and also the subdivision plat and last we will have testimony from Mr. Peter Stack who's a professional planner. All of these elements of the application were included in the notice of hearing. We are also seeking a number of waivers some are design and others are submission waivers that are required for development for new construction. One of the important aspects of the application that we are noting is we are not proposing to change anything about the physical condition of the site. This application does not call for the remove of greenery, changes to any parking areas, paved areas, nothing of that sort. There are no new buildings that are to be constructed in this application and there are no changes in the existing uses of this property as part of this application.

Chairman Tyler- For the audience who is here if you're here with interest with this application you will have every opportunity to speak at the end of the presentation and before the board completes its deliberations and votes if we come to that tonight.

Mr. Inglima- I would like to call Alan Benjamin please.

Attorney Greg Vella swearing in Alan Benjamin.

Mr. Inglima- Please tell the board your relationship to the applicants.

Mr. Benjamin- I'm representing Rave SL Tenant.

Mr. Inglima- You currently work with Rave SL Tenant in connection with the real estate development activities and property management activities?

Mr. Benjamin- Yes

Mr. Inglima- Could you describe briefly what the objectives are of the applicants with the respect of the creation of the new lot.

Mr. Benjamin- The objective is to create a parcel which can be developed.

Mr. Inglima- Now your familiar with the development history of the site generally are you not?

Mr. Benjamin- Yes

Mr. Inglima- You've been involved with the site for a number of years?

Mr. Benjamin- Yes for a couple of years.

Mr. Inglima- In the course for preparation for filing this application did you request from the First American Title Insurance Company a title report with respect to the property?

Mr. Benjamin- Yes

Mr. Inglima- I'd like to show a document that I've placed in front of you, is this complete copy of the title report that you've requested and also a copy that was submitted to the board as part of the application?

Mr. Benjamin- Yes

Mr. Inglima- Doe this document that I will mark as A-3 does this reflect all of the title conditions involving conveying, financing, easements and other encumbrances upon the property that's a subject of the application?

Mr. Benjamin- Yes

Mr. Inglima- I'd like to submit A-3.

Mr. Vella- We will mark as A-3 title binder from First American Title Agency.

Mr. Inglima- Mr. Benjamin are you familiar with a couple of documents that are contained within the title binder that deal with reciprocal rights of access and parking among the applicant site and the adjoining parcel Costco.

Mr. Benjamin- Yes

Mr. Inglima- I'm showing you documents which bares the heading 'Construction Operation and Reciprocal Easement Agreement' bind between the Price Company and National Amusements. Is it your understanding that this is a document that first established those rights and benefits?

Mr. Benjamin- Yes

Mr. Inglima- I'd like to mark as A-4 a copy of the document that the witness just identified. Is this included in the title binder that you just identified?

Mr. Benjamin- Yes

Mr. Inglima- Does A-4 include in it all of the details of common operation, access and parking that effect both the Costco property and lot 4?

Mr. Benjamin- Yes

Mr. Inglima- In the course of operating those properties do both of the property owners and the tenant enjoy the right to use the access driveways that have been developed on both lots?

Mr. Benjamin- Yes

Mr. Inglima- If I was visiting the Costco store on lot 3 I would be able to use driveways and parking areas on lot 4?

Mr. Benjamin- Yes

Mr. Inglima- If I was going to the theater I might find it convenient to come in through or exit from a driveway on lot 3 in order to go back and forth to that site?

Mr. Benjamin- Yes

Mr. Inglima- There were also depictions of the buildings that were originally contemplated based on approvals granted by the board that are contained within this exhibit?

Mr. Benjamin- Yes

Mr. Inglima- And it shows site improvements that were originally approved with the exception of the construction of the building in the rear of lot 4?

Mr. Benjamin- Yes

Mr. Inglima- I would offer this as A-4.

Mr. Vella- We will mark A-4 as Construction Operation Reciprocal Easement Agreement dated August 2, 1991.

Mr. Inglima- Is it your understanding that A-4 was amended by the parties?

Mr. Benjamin- Yes

Mr. Inglima- A-5 'First Amendment to Construction Operation and Reciprocal Easement Agreement' with a date of March 9, 2001. Are you familiar with this document?

Mr. Benjamin- Yes

Mr. Inglima- Does this document marked A-5 set forth additional rights and benefits that were conferred upon each of the property owners under the original easement agreement?

Mr. Benjamin- Yes

Mr. Inglima- It talks of issues of what might be done in the future as far as effecting the development of the site and the continued rights of access and parking?

Mr. Benjamin- Yes

Mr. Inglima- Is this document that I'm marked as A-5 also included within A-3 title binder?

Mr. Benjamin- Yes

Mr. Inglima- I'd like to offer A-5.

Mr. Vella- A-5 'First Amendment to Construction Operation and Reciprocal Easement Agreement' dated March 9, 2001.

Mr. Inglima- Mr. Benjamin did you request that a search be made of municipal records and also obtain records yourself independently with respect to prior approvals effecting the site?

Mr. Benjamin- Yes

Mr. Inglima- I'd like to show you a document that I'm going to mark as A-6 for identification. It has a resolution of the Planning Board of the Township of Hazlet lots 1 & 3 block 192 which has a date of December 15, 1988. Is it your understanding that this is the approval resolution for the preliminary site plan and variances for this site as well as the Costco site?

Mr. Benjamin- Yes

Mr. Inglima- Does A-6 also include a resolution of this board for lots 1, 3, & 4 in block 192 and lots 3 & 18 in block 193 that was granted on June 26, 1991 where by the board had granted final site plan approval for the site.

Mr. Benjamin- Yes

Mr. Inglima- Does it have another resolution in it that says it is a resolution of this board for block 192 lots 1, 1.01, 3, and 4 and block 193 lot 3 dated May 7, 1992?

Mr. Benjamin- Yes

Mr. Inglima- This is a resolution with respect to signs that were being constructed at this site. Is that correct?

Mr. Benjamin- Yes

Mr. Inglima- There is a letter enclosed from October 30, 1994 issued by Jeffrey B. Gale who was the attorney for National Amusements Inc. which sets forth the development history of the property in request an extension of approval.

Mr. Benjamin- Yes

Mr. Inglima- Planning Board resolution which deals with the extension of time that was requested.

Mr. Benjamin- Yes

Mr. Inglima- Last but not least there was a resolution of the Planning Board for block 192 lots 3 & 4 for a cardboard compactor dated April 20, 1995.

Mr. Benjamin- Yes

Mr. Inglima- And there are all documents that relate to the applicant site?

Mr. Benjamin- Yes

Mr. Inglima- There was another document included at the end of the exhibit that is a resolution for the application of the Price Club Company and Bertucci's Brick Oven Pizzeria. Are you familiar with this resolution?

Mr. Benjamin- Yes

Mr. Inglima- And this is dated December 16, 1993. To assist the board members in going through this testimony I have prepared copies of each of these documents that I'll hand out now.

Mr. Vella- We will mark that A-6 prior resolution of subject property.

Mr. Inglima- Mr. Benjamin do you find from your review of the resolutions and the understanding of the site and its development history that the letter dated October 31, 1994 from Mr. Gale accurately describes the original development?

Mr. Benjamin- Yes

Mr. Inglima- When final site plan approval was granted in 1991 there was the theater approved, Costco, and two other structures approved at that time a 70,000 square foot building in the rear of lot 4 and a 25,000 square foot building in the front of lot 3. Is that correct?

Mr. Benjamin- Yes

Mr. Inglima- Is it your understanding that the last resolution which is the Bertucci's restaurant involved a swapping of the approval of the 25,000 square foot building in front of lot 3 for the Bertucci's restaurant which is about 6,870 square feet. Your understanding that this point is that was the development history of the property and it gives some idea to the board of what exactly had been contemplated for development at that time.

Mr. Benjamin- Yes

Mr. Inglima- Just to be clear for the board and the public we are not asserting there are any remaining site plan approvals in effect for the 70,000 square foot building. We are simply referring you to the prior history of development so that you have some idea of what it was originally conceived of by the Planning Board when they approved the original site plan. At this point Mr. Benjamin, is it true that your company is interested in trying to stimulate some development of the rear of lot 4?

Mr. Benjamin- Yes

Mr. Inglima- Are there reasons why it's necessary to create a separate lot for the purpose?

Mr. Benjamin- Yes. In order to develop this site we need to create a separate parcel so we can sell that parcel to a developer.

Mr. Inglima- In the case of National Amusements they could never find a reason to build that building. Is it true in the course of operating managing the property that the current owners have found it necessary to create the possibility of future development by creating a separate lot that can be owned by developer user?

Mr. Benjamin- Yes

Mr. Inglima- Is the development that is being proposed by your company by subdividing this lot- is it consistent with the original development plan?

Mr. Benjamin- Yes

Mr. Inglima- As part of this application is your company proposing any structures, buildings, new uses on this property?

Mr. Benjamin- no

Mr. Inglima-So you just want a sub division?

Mr. Benjamin- Yes

Mr. Inglima- You are aware that if in the future a developer came forward and wanted to propose a particular development plan for the rear lot that it would be subject to come back to this board and obtaining approvals of whatever aspects of that development would be required under the ordinances?

Mr. Benjamin- Yes

Mr. Inglima- There's no claim being made that there's some light that will be achieved to develop the lot by the sub division.

Mr. Benjamin- Yes we understand.

Mr. Inglima- I assume your company would be willing to stipulate that for the record so that there's no confusion.

Mr. Benjamin- Yes

Mr. Inglima- I had referred you to a number of easement agreements that deal with the existing site. I take that the original approvals contemplated and those easement agreements effectuated a series of arrangements between Costco and lot 4. Is it your understanding that those arrangements permit the free movement of vehicle and pedestrian and the use of interior roadways and parking spaces for both sites?

Mr. Benjamin- Yes

Mr. Inglima- So if somebody was to use one set of driveways on one lot they can go to the other lot?

Mr. Benjamin- Yes

Mr. Inglima- A-7 Mounted subdivision plan. The driveway that extends to the Miller Avenue (inaudible) all the way to the site to the rear and runs all the way to the theater and the back. There's another interior roadway that runs from the area where there is a right turn in and out from Route 35 that runs all the way to the site?

Mr. Benjamin- Yes

Mr. Inglima- Are there any restrictions for travel on those roadways besides trucks?

Mr. Benjamin- No

Chairman Tyler- The prior application which was approved had an overall development plan for the site, Costco's property is there property yours is yours and your property included the out parcel in the back that perhaps in some time Rave may have decided to be the developer and find a tenant and an application would have come before the board. The only way for you to get around that based upon what has been previously approved for the overall site is for you to sell the property to some other developer. That is basically the purpose of you coming tonight.

Mr. Bace- Does your company have anyone looking to buy that property if it's subdivided?

Mr. Benjamin- No. We engaged RJB Milling to list the property however we have no buyers at this time.

Mr. Vella- Did you list it as its own separate parcel or as develop and lease the property back?

Mr. Benjamin- It was intended to lease as its own separate parcel to sell.

Mr. Inglima- Lot 5 cannot be developed because of the retention basin. That is not part of the application.

Mr. Vella- If the application is deemed favorable and they sell the separate lot to a third party developer the third party developer would come back before the board for approval and say what use he wants but the easements will always be attached to the property. There will be some technical variances because there is no frontage on Route 35 but it has the ability to get to the frontage from the cross access agreements. The other major variance is the size of the lot and that zoning requires 10 acres. By creating an 8.22 acre lot you're creating an undersized lot for the zone which means you'll have a smaller building there.

Mr. Glackin- Does the easements have to re-written?

Mr. Vella- No

Mr. Benjamin- The easement agreements have detailed meet and bounds descriptions of the entire parcel so the outer boundaries of the parcels are defined by reference of the survey data in the agreements.

Mr. Glackin- (inaudible)

Mr. Vella- My understand is its EPT or Rave's responsibility to maintain the basin.

Mr. Solomeno- In terms of utilities there was some storm pipe that encroached on to your new lot. Who is maintaining that system and are there proper easements in effect for the utilities?

Mr. Benjamin- Ray Vastello is and then bills Costco for their part of the share.

Mr. Solomeno- My point is that some of the storm pipe is on this new lot. Is Rave going to continue to maintain this system or is the new owner going to be responsible?

Mr. Inglima- None of this will change. It's not going to leave a gap in who's responsible for what and whether those responsibilities end at one property line. Right now there's a comprehensive system of drainage that serves both lot 3 & 4 and the pipes run from proposed lot 4.02 so those will all have to be covered by any subsequent approvals and they will be subject to all of the rights and remedies of the parties of the existing easement agreements. If there is a development that comes in and seeks site plan approval for a particular building in lot 4.02 there going to have to come in with all details of development including drainage, any performance requirements that are imposed by the board, any further requirements in terms of guarantees that certain things are going to be done so the board will always have control over that aspect the same way it does with any other site plan application.

Mr. Glackin- That goes back to my original question who will oversee all of the new amendments to easements and past agreements?

Mr. Inglima- If a requirement of an approval absolutely.

Mr. Glackin- Just so we understand that there will always be somebody responsible for this and that the easements makes sense.

Mr. Vella- We would put an provision in it if the board deemed it applicable to any amendments and any easements that affect any lot 4 the mother lot.

Mr. Solomeno- Is all the drainage owned by the mother lot or is there financial responsibility to each of the sub lots?

Mr. Inglima- The board has the power to impose a requirement for developers agreement with respect to any new development to lot 4.02 and in the context of the developers agreement you could require that certain primary responsibility be held by one party that reimbursements would have to be made rather than maintenance would have to be done in disputes over reimbursements.

Mr. Tyler- Your set up already because Costco is there and all there doing is cutting off another piece of property so that they can sell it.

Mr. Inglima- We have some very detailed agreements in place and there's tremendous amount of detail as to cost allocation reimbursement and responsibility.

Mr. Tyler- Rave is on the hook for getting it right for doing all of the maintenance and passing the cost on to the other land owner or tenants.

Mr. Glackin- (Inaudible)

Mr. Inglima- My understanding was there was a developer's agreement. I don't know if anyone can find it.

Mrs. Keegan- There's a developer's agreement dates April 25, 1991 but we are not able to locate it.

Mr. Tyler- I would assume council you have that agreement?

Mr. Inglima- No we do not.

Mr. Solomeno- So then why are we saying there is an agreement when there is no copy of it?

Mr. Inglima- The agreements that we are talking about are recorded against the property and they were required by the original approval resolution and the developer's agreement. To effectuate the objectives and goals of the board when they originally approved everything in 1991 the owners of the property had to enter into a comprehensive agreement "COREA" in which they addressed all these issues.

Mr. Glackin- (inaudible) recorded easements that are in the title to the developer's agreement between the owners of lot 4 soon to be 4.01 and the township so that if someone is going to be responsible it's going to be in that agreement.

Mr. Inglima- We will do our best to track it down.

Mr. Vella- What I'd say is if the board deems the application favorable provide a copy of the developers agreement that's already been signed if it's unable to be located by prior council or the efforts we will enter into a new developers agreement.

Mr. Pobega- Are there any restriction between the different people using the property?

Mr. Inglima- Not that I'm aware of.

Mr. Solomeno- You handed out this package marked A-6 is this just for our information purposes because we're talking about lot 4 and I'm looking through this and there is nothing relevant to the subdivision that you're talking about.

Mr. Inglima- It does approve the original Preliminary Site Plan and Final Site Plan for lot 4 and there was a subsequent approval for a couple of other signs for example, cardboard compactor, and then Bertucci's.

Mr. Solomeno- Mrs. Keegan do we have a copy of the original site plan?

Mrs. Keegan- We have it.

Mr. Pobega- With the lot being less than 10 acres we are not bound by 70,000 square foot so whoever comes in to develop that property if they want to put 70,000 square foot we have the right to sit there and say no you don't have 10 acres and we think 50 makes more sense.

Mr. Vella- It depends if the 70,000 square foot creates any variances.

Mr. Tyler- Perhaps we move on and one question I have is your decision to put in of the size. How did you come up with the acreage to 8.82 and help us understand where that's coming from.

Mr. Inglima- It runs up through the middle of an East West interior roadway.

Mr. Benjamin- There was a concern earlier about the size of the site and how much would be developed on it so that would be a way to constrict it.

Mr. Tyler- So we have a logical demarcation that goes the center of the drive and it winds up creating a parcel that's slightly smaller than your minimum 10 acre which requires then a variance on lot size.

Mr. Pobega- Is it common for a sub line to go right through the middle of the road and not to be on one side or the other?

Mr. Kittner- It is common to see that in this type of scenario. If the board were looking to increase the size of the area of this parcel then you may want to consider shifting the line.

Mr. Tyler- At this point there is one entity that's maintaining the entire place until another application comes in your not certain whether that would continue to be the case or not. Will you require that as part of the sale of the property that they continue to allow Rave to do maintenance on the entire property and they become a party to that?

Mr. Benjamin- We haven't contemplated that yet. We haven't had negotiations.

Mr. Inglima- It's possible that someone would come in and want to do it themselves but I think the economy at scale will result in less cost for them if they were to have the same company that is clearing everybody's snow and driveways.

Mr. Tyler- I just wanted to establish that this isn't something that's being decided right now. It is possible to go either way.

Mr. Inglima- If you look at the line that differentiates lot 3 from lot 4 it runs right up to the middle of an anterior roadway in the same manner so we are simply trying to continue that. I'd like to call Justin Thornton please.

Swearing in Justin Thornton.

Mr. Inglima- Exhibit A-8 Qualifications resume of Mr. Justin Thornton Professional engineer. Have you heard the testimony of Mr. Benjamin and are familiar with the matters he discussed and the matters he discussed and documents that he identified?

Mr. Thornton- Yes I did.

Mr. Inglima- Your familiar with the site and have been to it many times have you not?

Mr. Thornton- Yes I have.

Mr. Inglima- Your firm prepared what has been marked A-1 and A-2 the survey and subdivision plan for the site?

Mr. Thornton- That is correct

Mr. Inglima- Were those documents prepared by a licensed surveyor in your firm under your direct supervision?

Mr. Thornton- Yes it was.

Mr. Inglima- Did you review the title information that was reference in the plan and all of the other back ground to the property as far as easements and other agreements?

Mr. Thornton- I did review them.

Mr. Inglima- Did you find that they are accurately reflected on the subdivision plan as well as the survey?

Mr. Thornton- Yes.

Mr. Inglima- Did you obtain copies of any filed maps or deeds that effects the property?

Mr. Thornton- Yes

Mr. Inglima- You performed a detailed site inspection of the property?

Mr. Thornton- Yes I did

Mr. Inglima- When you prepared the survey did you note any conditions of the property that would affect adversely the subdivision of the property?

Mr. Thornton- No I did not.

Mr. Inglima-Is it your professional opinion that the survey and the plan accurately depict the conditions of the subject property?

Mr. Thornton- Yes

Mr. Inglima- If you could just briefly take us through the bulk table located on the major subdivision plan A-2.

Mr. Thornton- It lists the bulk requirements such as lot area depth, frontage, impervious coverage, and setbacks.

Mr. Inglima- The applicants are requesting variances with respect to minimum lot area and minimum lot depth of lot 4.02.

Mr. Thornton- That is correct.

Mr. Inglima- So your measuring from approximately 599 feet in length east west between the two lots to the rear line of the property.

Mr. Thornton- That is correct.

Mr. Inglima- That's an average depth?

Mr. Thornton- Yes

Mr. Inglima- So that reflects the depth of the lot that would be measured more or less around the midpoint of that dividing line?

Mr. Thornton- Yes.

Mr. Inglima- With respect to the front lot are there any variances necessary for lot area or lot depth?

Mr. Thornton- Not lot area or depth.

Mr. Inglima- Lot 4.01 will conform to all requirements of the zoning ordinance.

Mr. Thornton- Yes other than impervious coverage.

Mr. Inglima- You've also indicated lot frontage of 400 feet your indicating that there's no street frontage for proposed lot 4.02 and that's because it doesn't touch Route 35.

Mr. Thornton- Correct.

Mr. Inglima- With respect with the impervious coverage for lot 4.01 that was only with respect to the improvements that are shown on proposed 4.01?

Mr. Thornton- Correct.

Mr. Inglima- That doesn't include any of the lot areas that are located to the East that are under common ownership that are owned by EPT Nineteen?

Mr. Thornton- No it does not.

Mr. Inglima- Is it true that most of lot 5 is undeveloped

Mr. Thornton- Correct.

Mr. Inglima- You're indicating a slight variance 77.9% impervious coverage where 75% is required?

Mr. Thornton- That's correct.

Mr. Inglima- If you were to include lot 5 in that calculation, what would that be to that number?

Mr. Thornton- We would be complying it would bring us significantly under the 75%.

Mr. Inglima- Somewhere around 40-45%?

Mr. Thornton- Approximately.

Mr. Inglima- With respect to the rear lot 4.02 are there any variance required with respect to impervious coverage?

Mr. Thornton- No

Mr. Inglima- That lot already has improvements on it and they are shown on the plan correct?

Mr. Thornton- Yes.

Mr. Inglima- If a building was erected within the envelop that's shown as grass between all those parking lots obviously that would add impervious coverage but if you were building what was originally approved for 70,000 square feet would you still be below the 75% coverage?

Mr. Thornton- You'd be right at it.

Mr. Inglima-And that would be if you were to build a building and put some additional parking around it.

Mr. Thornton- Yes.

Mr. Inglima- Is it your opinion that rear lot 4.02 can be developed in according to the zoning ordinance?

Mr. Thornton- Yes it can.

Mr. Inglima- Have you reviewed the existing roadway access to the site?

Mr. Thornton- Yes I have.

Mr. Inglima- So you're familiar with the Miller Avenue interchange at Route 35 as well as the other access driveways that are on lot 3?

Mr. Thornton- Yes I am.

Mr. Inglima- Are you aware of the provisions of the cross access agreements?

Mr. Thornton- Yes I am.

Mr. Inglima- Do you have an opinion with respect to whether or not there will be free and proper access for vehicles to proposed lot 4.02 from the highway frontage?

Mr. Thornton- Yes

Mr. Inglima- Based on the design of the roadway improvements that are in place today do you feel that those will provide free and clear access to the rear of the property?

Mr. Thornton- Do you know of any conditions affecting the property that would impede in any way the access to proposed lot 4.02 for either patrons or emergency vehicles?

Mr. Thornton- No I'm not aware of any.

Mr. Inglima- With respect to the subdivision application, does the applicant propose to change any of the existing structures that are found on lots 4.01 or 4.02?

Mr. Thornton- No.

Mr. Inglima- In order to approve this subdivision would it be necessary to make any changes to the condition of the site?

Mr. Thornton- No.

Mr. Inglima- Have you prepared an exhibit that shows an aerial view of the site and mount it on a board? Mark as exhibit A-9.

Mr. Thornton explaining exhibit A-9

Mr. Inglima- Do you have information on the date or year the picture was taken?

Mr. Thornton- 2007 or 2008.

Mr. Inglima- Does it reflect the conditions to your knowledge the conditions that are found at the site with the exception of changes of tenancy?

Mr. Thornton- Yes it appears to be accurate.

Mr. Inglima- Does the aerial photo graph A-9 also show the existing conditions of buffering and greenery that are located to the north of the site?

Mr. Thornton- Yes.

Mr. Inglima- Have you personally inspected those areas?

Mr. Thornton- Yes I've walked all the areas multiple times.

Mr. Inglima- Your familiar with the retention basin that's on lot 5 that's shown?

Mr. Thornton- Yes I am.

Mr. Inglima- Can you describe the recent efforts of the applicant to respond to concerns of the municipality with respect to the retention basin?

Mr. Thornton- Just recently the applicant has put a significant amount of effort into that basin to remove the silt that was built up in there, I believe they've done some work to the fence around the outlet control structure and they are still working with Dennis Dayback to find out what there next step in moving forward to maintaining the basin.

Mr. Inglima- Is there additional work that needs to be done with the fence around the outfall structure?

Mr. Thornton- There is still work that needs to be done.

Mr. Inglima- Will the applicant continue to do that work under your firm supervision and completed in accordance with the municipal requirements?

Mr. Thornton- Yes

Mr. Inglima- With respect to the buffer area the berm plantings, can you describe your inspections of that area and recommendations.

Mr. Thornton- At the north end of the site there's an 8-10 foot high berm that's right behind the proposed pad. On top of that berm is a row of evergreen trees.

Mr. Inglima- Would you say that the bulk of the existing landscaped area that's north of proposed lot 4.02 the bulk is a naturally vegetated area and then you have the berm that's closed to the parking lot.

Mr. Thornton- That's correct.

Mr. Inglima- Is it your recommendation that the trees have fallen down that they be removed from that area?

Mr. Thornton- Yes.

Mr. Inglima- Is it your recommendation that the applicant continue to work with the municipal officials in order to create whatever infill is required to replace plantings?

Mr. Thornton- Yes.

Mr. Inglima- Is it your opinion that at the end of doing that work that the buffer will be able to provide a full year screening from areas to the north.

Mr. Thornton- Yes.

Mr. Inglima- With respect to the variances that are requested from frontage and access requirements of the ordinance, are you familiar that the applicant is creating a lot that doesn't have frontage along the highway but that it's relying upon rights of access on interior roadways. Do you feel in your opinion has an engineer based of site design and layout that the use of the arrangements will have a functional equivalent of having frontage directly on the street.

Mr. Thornton- I do.

Mr. Inglima- Do you feel that the arrangements that are being proposed by the applicant are equivalent to the existing arrangements that are in place with respect to lots 3 and 4?

Mr. Thornton- Yes I do.

Mr. Inglima- Do you see any reason why the rear lot couldn't be developed without the dividing line being created?

Mr. Thornton- Yes.

Mr. Inglima- There are a number of waivers from both submission and design requirements of the ordinances that have been requested with connection of this application. Have you read the letter report from Mr. Kittner?

Mr. Thornton- Yes.

Mr. Inglima- With respect to each of the requirements set forth in there for submission and design waivers is it your opinion that they are requirements that would be applicable to new development and not to the creation of a new lot?

Mr. Thornton- Yes I do.

Mr. Inglima- Are you aware of any harm that would occur in the board's review if those design details that you say are appropriate for site plan and development were not provided at this time?

Mr. Thornton- There is no harm in not providing them.

Mr. Inglima- With respect to lot 4.02 I know from your prior testimony that it is partially developed.

Mr. Thornton- That is correct.

Mr. Inglima- Is it your opinion that the envelope that is determined by the outer curb has already determined the extent to which the property can be developed?

Mr. Thornton- Yes.

Mr. Inglima- Do you know any reason why if someone wanted to develop on that lot that they wouldn't be able to use any of the existing improvements?

Mr. Thornton- No they would be able to use the parking, curbing, and outside perimeter.

Mr. Inglima- If someone was to develop that lot in the future do you know of any environmental conditions of the property that would be affected by that development?

Mr. Thornton- No.

Mr. Inglima- With respect to any requirements that are imposed by the engineering staff of the municipality would be applicant be able to address them in the course of the development of the final subdivision plat or in the course of the site plan approval process?

Mr. Thornton- Yes.

Mr. Inglima- Do you anything in Mr. Kittner letter that is not addressed?

Mr. Thornton- I don't not see anything.

Mr. Inglima- With respect to DOT approvals do you know of any DOT approvals that would be necessary at this time?

Mr. Thornton- We do have to apply to DOT for a subdivision application.

Mr. Inglima- With respect to Monmouth County is it the applicants intention to seek a waiver from their requirements?

Mr. Thornton- Yes. I do not see any reason why they would deny any waivers.

Mr. Inglima- Do you feel the subdivision plan is a proper and sound engineering in subdivision design?

Mr. Thornton- I do.

Mr. Inglima- Do you find that the final subdivision map will be able to comply with the map filing law with the Monmouth County clerk?

Mr. Thornton- Yes.

Mr. Inglima- Do you recommend approval of this application?

Mr. Thornton- Yes.

Mr. Pobega- You talked about the impervious and lot coverage and made some comments regarding lot 5 that would help us meet the 75% lot coverage. How much of lot 5 is being utilized by lot 4.01? Is there enough open space on lot 5 to calculate correctly for both the proposed lots?

Mr. Thornton- I believe there would be enough

Mr. Kittner- It appears it would count towards that calculation and I think if he included it it would comply.

Mr. Solomeno- We are not talking about lot 5 we are talking about lot 5, why are we even hearing about lot 5?

Mr. Inglima- The theater site is more than just lot 4. Lot 5 has a portion of the parking area and driveway that goes from lot 4 onto lot 5 and the entire retention basin is on lot 5.

Mr. DeMatteo- With regarding to getting this parcel to 10 acres is there another configuration that we can do to get it to a 10 acre parcel?

Mr. Inglima- If a lot is being creating by a subdivision from a larger parcel the subsequent developer cannot make a hardship argument based on the size of the lot.

Mr. Chairman Tyler- It absolutely does. The line of the property you show on this application makes perfect sense because it runs through the middle of an access way.

Mr. Solomeno- Do we know the distance from the nearest residential zone?

Mr. Thornton- From the curb to the nearest property line is minimum 145 feet.

Mr. Solomeno- Mr. Kittner do we know the buffer between Costco and the nearest residential property?

Mr. Kittner- I believe it was 600 feet along Stanford. Along Fleetwood it was reduced in size.

Mr. Solomeno- It was 145 feet?

Mr. Kittner- Along Stanford no.

Mr. Kittner- Costco to Fleetwood would be about 150 feet.

Mr. Solomeno- Obviously we are not looking at a specific proposal we are looking at subdividing this lot. Mr. Vella am I correct that by approving this we have no idea would could be constructed on that lot?

Mr. Vella- An applicant can come in for one or two uses retail, offices, etc. or there could also be a developer that could do a use that is not permitted at all.

Mr. Solomeno- My point with this area is we as a board just dealt with an issue where residents were impacted significantly with noise as a result of a commercial building that was the same distance from the residential properties to where that building is. I'm concerned with the impact of the residential properties within 145 feet of this proposed subdivision.

Mr. Vella- The property has been designed and approved for a project in this rear portion. It's been many years and nothings been put there. What our review should be is whether the subdivision makes sense, does the variance they create satisfy the burden? The idea is whether this subdivision line makes sense and that does it have any impact over the overall project.

Mr. DeMatteo- If we move that line to the right does that allow us to mitigate any variance we would have to have on this property later on for buffers?

Mr. Vella- The footprint stays the same we cannot shift that footprint.

Mr. Kittner- The CD zone requires a 125 foot buffer and that's what the applicant is showing on their plans. When I did my site inspection there were numerous trees that seemed like they were in bad shape so I think there's a number of improvements that we can make to this site to help that buffer.

Mr. Inglima- We just want to create the lot so that we can move to the next step which is to try to jump start a development of that lot.

Mr. DeMatteo- With respect to the argument before about hardship if that would be the case I wouldn't have a hardship agreement before me on any case that comes here so maybe you want to expand on that.

Mr. Inglima- A self-created hardship is when an applicant has themselves in a situation that they now seek to establish as a basis for gaining relief from the ordinance. One in which the lot owner has failed to take action that is the reason why they are before the board.

Mr. Vella- The site was designed and approved to build some type of structure where that grass is whether it's subdivided or not. With parking the grass area you see there that's where they are locked into.

Mr. Chairman Tyler- All the parking is there already. It's possible they might want to come in with an application to do that. All we're looking at tonight is give us the ability to sell our land so someone else can develop it.

Mr. Vella- The reality is by creating the subdivision line you are reducing the pads site because you're creating another lot line.

Mr. Solomeno- I would just ask everyone on this board to just think about what was said is the only way this gets developed is if we subdivide it.

Mr. Chairman Tyler- Rave does not want to be the developer. If we disapprove this they can come in with an application now you don't have the restriction of the smaller property but they have to go through the process it's just a different (inaudible).

Mr. Solomeno- Mr. Vella just made this very plain and to pretend otherwise would be doing a disservice to the people we represent.

Mr. Chairman Tyler- I would like Mr. Vella to correct that statement.

Mr. Vella- It was my characterization of what it is.

Swearing in Mr. Peter Steck

A-10- Resume of Mr. Steck accepted as expert in land use area and A-11 a variance hand out prepared by Mr. Steck.

Mr. Steck- If you read your introductory purpose statement in the CD Zone it has several sentences that says to encourage coordinating commercial development. The purpose of the zone is to encourage

commercial development, reduce curb cuts and have appearance of being an integrated development opposed to individual lots. All of the lots are interconnected and the access points from Route 35 are not changing. If you tried to extend lot 4.02 into lot 5 not only would there be problems with the detention basin it would be meaningless extension because that's wetlands. This subdivision does not change the zoning requirements for buffer area that was about 8.22 acres and brings it down to about 70% lot coverage max. The real impact of this is that we now have a new lot line that we need to stay 50 feet away from. This subdivision changes nothing in terms of relationship to the rear yards at Stanford Drive, it does nothing with the types of uses that are permitted, and it simply enhances the marketability of the property. The purpose of this subdivision of the developer happens to be the same purpose of the CD zone it was intended to encourage commercial development. The cross easements, buffer, setbacks will remain the same also with ingress and egress and for drainage. (*Explaining exhibit A-11 variance hand out*). In summary you're not going to see anything different on the ground. When you drive on the property you don't know that they are two different owners or where the property lines are because it's a unified whole. There are no substantial detriments I can see on this and again we don't know who the user is or the future site plan but this board gets a crack at reviewing that as due your professionals at that time.

Mr. Inglima- Based on prior testimony and comments on hardships on the new line do you have any feeling with respect to that kind of hardship?

Mr. Steck- I do. In terms of hardship for someone to come in and say 'I need a bigger building' 'I need to pave 80% of the lot' the answer is any future developer is going to stand in the shoes of this applicant and if they enter into this knowing that the amount of development that can concur will be less because of the lot size of 8 acres that applicant can't come before you and say there's a hardship because I'm less than 10 acres. That's a classic situation where the developers have put that argument off the table. I don't think someone could get the same 70,000 square feet because of the front line and 50 foot setback. That buffer in the back is going to constrain development because he's already down to 70% impervious coverage so it's going to limit the amount of development and retain the 125 foot buffer in the rear.

Mr. Inglima- Are you familiar with all the design and submission waivers that have been requested?

Mr. Steck- Yes

Mr. Inglima- Do you have an opinion whether the board should grant approval of those waivers?

Mr. Steck- Yes because this is only a request for a subdivision.

Mr. Chairman Tyler- I think the board has discussed this at length and heard from all of the witnesses at this time I'd like to open the floor to the citizens.

Swearing in Tony Bernard 27 Stanford Drive.

Mr. Bernard- You're not looking at the futuristic problems that will occur if you make this move. What you're elevating is the back lot because he wants to sell it but what you're increasing is what the

property will be used for in the future. The traffic pattern is heavy between Costco and the movie theater and creates hazards to the customers that exist there. We have a quality of like problem in the Costco parking lot, buffer zone with wild life, and the residential area. The traffic pattern is not going to increase. The theater just wants to make more money but not at the cost of the quality of life.

Swearing in James Dericks 41 Stanford Drive

Mr. Dericks- This whole area is residential it's all R-100 the planning board and township committee were able to develop what we see now. The concern I have is once you have a potential buyer they will need parking why isn't that addressed now.

Mr. Vella- Because they are creating a new lot line that 50 feet from that lot line into that grass area becomes a setback line that they are not able to develop. When this site was designed the parking was provided for Costco, pizza place, Movie Theater and for this site at the same time. Keep in mind one thing is facts. Costco uses the theater spaces and the theater uses Costco's. Also I read that there is a law that there has to be a certain amount of feet from wetlands.

Mr. Steck- The federal government court takes control of wetlands and the State of New Jersey regulates wetlands.

Swearing in Sam Surowitz 73 Cornell Drive

Mr. Surowitz- I just wanted to ask about the property line, even though they are sharing the parking lot they share the parking spaces. I'm curious why not have the 10 acres and allow them to have to the lot space and Mr. Thornton do you know any flaws in the property which would make it unusable for any purpose which is currently zoned for.

Mr. Thornton- No.

Mr. Surowitz- Mr. Steck you said the subdivision is what going to allow them to sell it if it's limited to under the 10 acre which would limit the development why sell it in a way that's going to limit the development?

Mr. Steck- To allow someone to own the property that's going to develop it will open the mix of people who are interested in it. There's not much of a market for super stores anymore. The promise of this is that there is going to be more interest from a wider range of developers than there has historically been the case.

Mr. Surowitz- Did it flood during Sandy?

Mr. Benjamin- It did not.

Mr. Pobega- One of things I heard that I like is access to more potential buyers which is key. A daycare would make sense back there.

Mr. Chairman Tyler- The fact remains that the movie theater owned this property and wanted to redevelop it and it remained a movie theater. This application is about a piece of land that today if we approve this application we restrict the amount of building that can occur on the property by roughly 50 or something like that. It is definitely going to be a smaller impact to the town and to the neighbors if we approve this application. If we do not approve this application Rave Cinema can opt to whatever application that comes forward and they have the right to build a larger building on this property.

Mr. Vella- If the board deems this application favorable I have conditions of approval but revisions to any easements or maintenance are subject to view of approval the planning board engineer or attorney. The applicant shall provide a copy of the developer's agreement that occurred in 1991 or required to enter into a new developer's agreement with the township. There will be no modification to the maintenance agreement that's in place today. With respect to responsibility to maintenance there will be no modification without board approval. Applicant will remove trees that have fallen down replace with trees. Any other comments that they agreed to CME's letter

Mrs. Keegan- Earlier it was discussed with Dennis Dayback that the basin will now go with Paul Kittner CME.

Mr. Vella- Mr. Kittner do you have any other comments in your resolution that I should incorporate?

Mr. Kittner- No just that they would comply with the CME letter.

Offered By: Deputy Mayor DiNardo **2nd By:** Mr. Bace

Yes: Mr. Glackin, Mr. Pobega, Mr. Vignola, Mr. DeMatteo, Mr. Bace, Chairman Mr. Tyler, Deputy Mayor DiNardo, Mr. Lavan

No: Mr. Solomeno

Other Items for Discussion:

Citizen Hearing:

Offered: Mr. Lavan **2nd:** Mr. Solomeno

Voice Vote: YES

Motion to Adjourn:

Offered: Mr. Solomeno **2nd:** Mr. Vignola

Voice Vote: YES

Next Meeting: December 19, 2013

Respectfully submitted,

Patricia Cullen

Planning Board Secretary