

Planning Board Meeting
Regular Meeting of December 10, 2008 at 7:30 pm

The regular meeting of the Planning Board took place on the above date. Chairman McCabe read the Open Public Meeting Act and requested Board Secretary Mrs. Citterbart called the roll. Board Secretary Citterbart stated there was a quorum.

Members Present: Mr. Caffrey, Mrs. Fowler, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Vice Chairman White

ABSENT: Mr. Phalon, Mr. Elvidge, Chairwoman McCabe

ALSO PRESENT: Mr. David Soloway, Esq., of Vogel, Chait, Collins and Schneider, David Simmons, Board Engineer, Debra Millikin, Deputy Town Manager, Jessica Caldwell, Town Planner from the firm Harold Pellow and Associates, Board Secretary Mrs. Citterbart.

FLAG SALUTE

CONSIDERATION OF MINUTES

October 15, 2008

Mr. Vandyk made a motion to approve the October 15, 2008 minutes. Mr. Caffrey second the motion.

AYE: Mrs. Fowler, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White

ABSTAINED: Mr. Caffrey

October 1, 2008

Mr. Ricciardo made a motion to approve the October 1, 2008 minutes. Mr. Vandyk second the motion.

AYE: Mr. Ricciardo, Mr. Russo, Mr. Vandyk

September 10, 2008 - Special Meeting

Mr. Vandyk made a motion to approve the September 10, 2008 minutes. Mr. Caffrey second the motion.

AYE: Mrs. Fowler, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White, Mr. Caffrey

June 30, 2008 – Special Meeting

Mr. Vandyk made a motion to approve the June 30, 2008 minutes. Mr. Caffrey second the motion.

AYE: Mrs. Fowler, Mr. Ricciardo, Mr. Vandyk, Mr. White, Mr. Caffrey

ABSTAINED: Mr. Russo

April 2, 2008

Mr. Ricciardo made a motion to approve the June 30, 2008 minutes. Mr. Vandyk second the motion.

AYE: Mrs. Fowler, Mr. Ricciardo, Mr. Vandyk, Mr. White, Mr. Caffrey

ABSTAINED: Mr. Russo

RESOLUTION

Christ Community Church of the Christian & Missionary Alliance, Inc. Property Location: 274 Spring Street, Block 1301, Lot 1.02 C-4 Zone.

Mr. Caffrey made a motion to approve the resolution. Mr. Vandyk second the motion.

AYE: Mrs. Fowler, Mr. Russo, Mr. Vandyk, Mr. White, Mr. Caffrey

ABSTAINED: Mr. Ricciardo

HISTORIC RESOLUTIONS

#2008-0011 – DASI – Property Location: 105 Main Street

Mrs. Millikin stated: This is for a fire escape because they want to occupy the third floor which is required in the code that they need to have a fire escape for the third floor. The fire escape has to be painted the same color as the building. It is an ivory color. Upon structuring of the fire escape the Commission would then re-evaluate for screening or planting around the fire escape. They did approve it based on this requirement.

Mr. Caffrey made a motion to approve the historic resolution. Mrs. Fowler second the motion.

AYE: Mr. Ricciardo, Mrs. Fowler, Mr. Russo, Mr. Vandyk, Mr. White, Mr. Caffrey

#2008-012 – Bill Nutto – Property Location 59-61 High Street

Mrs. Millikin stated: This is an application to deny. Mr. Nutto was requesting to remove the existing beautiful slate roof on the building and replace it with asphalt shingle. The Commission did not approve it.

Mr. Ricciardo made a motion to approve the historic resolution. Mr. Caffrey second the motion.

AYE: Mr. Ricciardo, Mrs. Fowler, Mr. Russo, Mr. Vandyk, Mr. White, Mr. Caffrey

REQUEST FOR EXTENSION

EJ Brooks

Representing the applicant is Richard Clark, Laddey, Clark & Ryan, LLP, 60 Blue Heron Road, Suite 300, Sparta, NJ 07871.

Mr. Clark stated: I am representing the company of EJ Brooks. Bob Traino is here with me. Originally it was a request to extend an approval for a site plan for a 50,000 square feet manufacturing facility. This Board granted an extension of one year last year which expires January 19, 2009. Since last year we know the Permit Extension Act was passed statewide. Therefore, under the Permit Extension Act it is our belief that this approval qualifies for automatic extension through December 31, 2010. The reason for that is that the property is located in Newton in the Town Center and not in areas 4B or 5 where the Permit Extension Act doesn't apply. It does not affect you, but for the other towns we have to look at that issue. The extension would apply to this property because there are two facets to the Permit Extension Act. Everything that qualifies gets extended until at least July 1, 2010. However, if there was some additional time to run the approval which there was in this case and it gets extended even further but no later than December 31, 2010. You are going to face this with a lot of your approvals if you haven't already. We believe that it qualifies. There is also a second approval for this company SPV 106 which was a site plan approval. The first one I described was the 35,000 square foot addition to the existing building. There is also another one you approved for 50,600 square feet for warehousing and a standalone building. That was preliminary and final which you granted on May 17, 2006 by resolution. Ordinarily that would expire in 2 years on May 17, 2008. However, that property also would get the benefit of the Permit Extension Act because there was some additional time to run the approval and would go to December 31, 2010, in our opinion. I did find out today that your town center designation may have expired or lapsed in that category. As I understand, you are in the process of renewing it. Mrs. Millikin stated: Yes. Mr. Clark stated: My reading is that your center designation also gets extended under the Permit Extension Act I believe. You are covered also. There is an argument that if you don't have a center designation that you are back in area 4B and 5, therefore the Permit Extension Act does not apply. If you look at the State Planning Map which is the control we see Newton as being at the center and not in one of these other areas. I wanted to make sure this property was not in 4B or 5. It does not look it. I am satisfied with being under the Permit Extension Act at this time. I would like to withdraw at this time the request for an extension for one year. We may need that later. We may have to come back to you in 2011 depending on the financial circumstances of everybody and request an extension. There is no reason to use it now.

Mr. Soloway stated: Mr. Clark is saying that the request for the extension which they made by letter and is on the agenda now appears upon further examination not to be necessary at this time because he believes the Permit Extension Act has extended the protection of the approval as a matter of law. He is asking to withdraw the request without prejudice. The applicant may, in the future, may want to come back on another application for an extension which I believe is his right but the Board grants that request is not making any determination on whether the Permit Extension Act covers you that is up to you to determine. Mr. Clark stated: I understand that and I appreciate that.

Mr. Ricciardo questioned: We have been told directly that our center designation has expired and is no longer in existence. Mrs. Millikin stated: In fact, Ms. Caldwell and myself both met with OSG today and our center is still expired currently. Once we sign our Memorandum of Understanding with the State for our center to go into our action plan for plan endorsement will be extended for a two year period. It doesn't look like our MOU will be ready until January. Mr. Clark stated: We may reapply if it turns out a different determination. I don't think this property is in the environmentally sensitive area, at least as defined.

Mr. Soloway stated: The Permit Extension Act has certain exceptions and it is not applicable to anything that is deemed to be an environmentally sensitive area as defined in the act and exactly what that covers is not the simplest thing in the world to determine. Mr. Clark stated: With your permission we would like to withdraw the application, but we wanted to give you the reason why. Mr. Soloway questioned: Do you want a resolution formally withdrawing it? Mr. Clark stated: No, just noted on the record. Mr. Soloway stated: Just note it in the minutes that the application for an extension was withdrawn without prejudice. Mr. Ricciardo questioned: What is the need for the extension? They had an initial approval period and they were granted an extension. At what point are they? Mr. Traino stated: When we applied for it we had every intention in consolidating the operations then through economics it didn't appear as though it would be feasible for us at that point. Now it is in the second year and we are looking at it. It's another view coming in and by the way in the meantime we were approached for sale so a lot of things were put on hold. We are trying to get back into the swing of things and put everything in perspective where we were before. We still had the intent. There still is a possibility of the consolidation but again the way that the economics is today it's difficult to say you can positively do it. We didn't want this to expire on us and have to come back and do the site plan approval again.

Mrs. Citterbart questioned: What about the fees? Mr. Soloway stated: Some escrows were spent. If the Board wants to return the application fee maybe.

OLD BUSINESS

COAH – Newton's Housing Element & Fair Share Plan of the Master Plan.

Jessica Caldwell, Sworn.

Mr. Ricciardo stated: Everyone knows my position with COAH. As I have stated, they have placed a burden of proof on us. I don't think that is the right place for the burden to be. I think the burden should be on the Counsel of Affordable Housing to prove to us that their calculations are correct, which I don't think they have done. They have a potential economic growth and jobs of 2,108 potential new

employment opportunities in our community and they have not told us how they determined those figures or what they know that we don't know. Since we have lost 390 jobs since 2004 and now that the economics of this country and of this area are on a downslide the potential to lose more is there. I disagree completely with the way they have calculated those figures because I have no proof that they are correct. If there was a way to opt out of COAH and not jeopardize this communities ability to plan endorsement, the State grants or for any other funding that is available to us, I would motion my governing body to opt out of COAH. I think it is a ridiculous program and is based on a socialist principle and a society of a democratic society. It mandates without funding from the State. I would love to prolong it if we could. If we don't approve this by December we won't get plan endorsement, senate designation. I don't think there is a way around it.

Ms. Caldwell stated: Your point is well taken. I was thinking about it as a sporting event and you have your offense and you have signed on the League of Municipalities law suit. This plan is our defense. It protects the Town from losing our ability to plan and it keeps us under the umbrella of COAH while we continue to fight the rules. If you look at it in that respect it is a little easier to swallow. I hope the Board can consider it from that perspective. When we look at the plan tonight maybe we can look at it as is this best plan we can propose for the rules that we have before us today. We are hoping those rules are going to change. When they do we can amend this plan. It is not static and does not have to stay the same and if the rules change we will have to amend it. I hope the Town is successful in getting those rules changed but at the same time our protections will go away as of December 31st. This plan is of the utmost importance to the Town. Mr. Ricciardo stated to Ms. Caldwell: Based on what you have been faced with you have been an excellent job in protecting us as best you can with this plan.

Ms. Caldwell went over the Housing Element plan. The Housing Element contains a housing stock inventory; basic demographics about the town, employment characteristics, household employment projections, land use and zoning analysis using our new adopted Master Plan of where affordable housing might be able to be placed in the town, and a summary of the various locations where affordable housing might be able to be built. In general, we have an existing inclusionary zone that we are looking to utilize, the redevelopment zones, as well as using the exiting affordable housing. Ms. Caldwell read her report.

Mr. White opened the floor to the public.

Ken Hardmeyer, 70 Pine Street. I got lost in those numbers 20 minutes ago. Who enforces this? Who defines what the affordable price is and who sees that when it is sold and still stays affordable? How does all that work? Mr. Ricciardo stated: It is regulated by the Council of Affordable Housing which is a branch of the Department of Community Affairs. Mr. Hardmeyer questioned: Is there somebody here in town? Mr. Ricciardo stated: No. Mrs. Millikin stated: We don't have somebody who actually handles the marketing ability of those units. We only have somebody that is a municipal liaison to COAH to let them know we have changed, what we have done for the year, has our zoning stayed that way. We also have somebody who handles a trust fund too that we get in from developers. Mr. Ricciardo stated: It is up to the municipality to enforce it. We have to make sure that when a developer comes in he builds the COAH units. It is the Town's obligation. We have to find a way to get whoever is developing a piece of property to develop these affordable housing units. Mr. Hardmeyer questioned: How does the price get set? Mrs. Millikin stated: By COAH. They have a number that is bases it off of income. Ms. Caldwell stated: They have several formulas that are used to calculate based on income

level, number of people in the family, whether it is for rental or for sale. Mr. Hardmeyer questioned: If that unit gets resold, is that put on the deed? Mr. Soloway stated: It is deed restricted. Mr. Hardmeyer questioned: Somebody monitors those prices so the next time it is sold it stays at what somebody considers it affordable. Ms. Caldwell stated: They have another calculation when you resell to calculate how much it can be sold for and it still has to be sold for an affordable price for the deed. Mr. Soloway stated: That part is not necessarily unfair because the buyer is buying it cheap. It is monitored because they don't want the buyer to buy it that way to get a windfall and be able five years later to sell it at market prices. Mr. Hardmeyer questioned: Let me ask you this, in the development they want to put 40,000 retail space, supposing that goes through and I hope it doesn't, what does that do as far as triggering our obligation? How does it get fulfilled? Mr. Soloway stated: That would theoretically create an obligation. Mr. Hardmeyer questioned: On the town? Mr. Ricciardo stated: 40,000 square feet would trigger how many units? Ms. Caldwell stated: What is it storage? Retail space? 1.7 jobs per 1,000 square feet. So that would be 80 some jobs. Mr. Hardmeyer stated: Roughly 80 jobs? Mr. Soloway stated: It could also generate a cash contribution obligation on the part of the developer. Ms. Caldwell stated: Commercial was changed with the Roberts Bill this summer. Commercial is no longer allowed to be required to construct COAH. They have a 2.5 percent fee they have to pay and that is it. Ms. Millikin stated: It is based off their total assess value. Ms. Caldwell stated: That goes into our Housing Trust Fund here at the Town and we have to spend it on affordable housing. Mr. Hardmeyer stated: Either converting something or building something. Mr. Caldwell stated: We have our rehabilitation program. They require us to put affordability programs into place to assist existing affordable units. People in existing affordable units if they run into trouble paying their rent. Mr. Hardmeyer stated: Thank you. Mr. Ricciardo stated: The whole concept of how you were brought up is gone. You get a job, save your money, you get married, you save enough money for a down payment on a house you can afford to live in the community where you can afford to live. The Supreme Court said that is no longer in existence for a certain number of people. They can buy a house. If you pay \$400,000 they can pay \$186,000 for a house in that same development which you subsidize and everybody else subsidizes. The principle the way you were brought up is long gone. You are better off being poor today than you are working hard and making money.

Kevin Kelley, 61 Carriage Lane. I have lived here in Newton since sometime in the 1980's. I wish I could remember closer than that. I would like to make a few brief comments. When I read this report I respectfully disagreed with a couple things that Ms. Caldwell had to say. I think that giving this town 198 unit obligation is just a disgrace. This is almost a perfectly diverse town to start with. I think if you accept that obligation you are opening yourself to a builders remedy. I don't think you will ever be able to cover the obligation. I think you are really going to be opening yourself up when in fact you are protecting yourself. The methodologies are so flawed. You know they are being challenged. I don't know where your challenge happens to be now. Our town contributed to the overall challenge that is pending now. I don't know the status of that case. I don't know if Newton is a party to that case. I don't know if that case is challenging the methodology, I assume it is. But for you to buy into this is to be buying into a lot more trouble than you might realize at the moment. I particularly hope you don't buy into it for 20 years more than you did because I think what you will get out of that is a starting point and they will start adding from there. I would hope that you would fight this and see what the outcome is. I don't think anybody knows how these rules are going to turn out yet. I think the idea has never been answered in all these years of COAH. Who is going to pay for it? It is a town obligation. Of course as people say, we are going to make the builders do it. That is unconstitutional and you can't do that unless you give the builders a density bonus, which is going to throw everything else out of whack

in our areas and redevelopment zone. It is going to open up more problems than we can possibly answer. I support the Mayor completely in terms of what he is saying. I don't think we should be into this at all. Please be very cautious, we don't know what problems this is going to create but we can guess at a lot of them. I can just imagine a developer coming in and looking around and saying Newton gets 198 units. They can't possibly provide for them anywhere, we will do it. We have so much diverse housing here, so much affordable housing, so much diverse population. I can't imagine our town being given an obligation like this. It makes no sense. Ms. Caldwell stated: One thing I didn't note tonight is that the 198 units is a projected obligation. It is only bound on the town once the development is constructed. When you get the growth, when you get the units, when you get the c/o that is when the obligation is incurred. The 198 projection is there. It is actually 224, whether we opt into COAH or not. If we do not opt into COAH, we stay under COAH's umbrella that projection is there and that is when the Builders Remedy Law Suit comes, not when our plan is in. As long as we are with COAH, we can't have a Builders Remedy Law Suit they will throw it out. Mr. Soloway stated: I agree with Ms. Caldwell. I also note that presumably every Municipality's projection is pretty much out the window already because there is not going to be much in the way of development in the next couple of years. She is right when she says that you have to submit to get the protection from the Builders Remedy. Ms. Caldwell stated: Just because we submit a plan that says that we are planning for that obligation, if that obligation doesn't occur. If there was no development from here to 2018, our obligation is what has been constructed from 2004 until today. Regardless of what our plan says. Mr. White questioned: Is there a chance that this will ever get revamped because of other communities disagree with the COAH plan? Ms. Caldwell stated: That is what we are hoping for. Mr. Soloway stated: There is no way of knowing. Ms. Caldwell stated: This is the second iteration already for the third round. The first rules got thrown out. Mr. Soloway stated: There is discussion about changing parts of it by the legislature. The league of Municipalities is filing suit. Newton really can't assume anything and what Newton has to do at this point is adopt something like this and file and get the protection. You can always amend later. You can always react to things later. Mr. Ricciardo stated: I don't object to how they calculated the development numbers or the number of units based on development because you build so many units you are going to have so many units of obligation based on that. I am objecting to the 2,108 jobs. How did they reach that projection and haven't given us any calculations to show how they got there? I also object to the fact that they are mandating we do something without providing funds or how you are going to get there. I would love to say to the COAH to take a walk we don't want to see you again. We will send you all the development fees you will get them all and put them in your Trust Fund and you build housing anywhere you want. The minute we do that we are not going to get Senate Designation and we are not going to get Plan Endorsement. Before the DEP for water and sewer allocations, we won't get any of that and it won't be considered. As much as I object to this, I can't gamble with that. I object vehemently to round three, round one and round two on its socialist principles. Mr. White questioned: Do we know that for a fact that we will get nothing? Ms. Millikin stated: Yes. Mr. Ricciardo stated: If you don't agree to this you don't get Plan Endorsement. Without Plan Endorsement there goes your grants, there goes your sidewalk improvements and anything we have been getting from the State, the Department of Community Affairs, and the Senate Designation which will come from the Department of Community Affairs. You might as well just throw it away. They basically told us that you agree with this now or you don't get your designations which is vitally important to us. We have gotten over \$6,000,000 worth of grant since we have become a regional center which we will never get again if we don't agree to this hideous plan. COAH went retroactive because some court or some council said they hadn't done enough during round two so they made it retroactive to 2004. Now we have to go after guys like Ken Martin and any other developer who builds anything prior to round three

coming out and saying you have an obligation you have to fulfill. Do you know what it is like to chase somebody to get money from a building that is up and occupied? It's crazy yet they are making us do it. I agree with Mr. Kelley. Mr. White stated: So we have no choice. Mr. Ricciardo stated: We either adopt this and send it down and hope that the League of Municipalities, the Builders Association, all coalitions of Counties and Municipalities to which we contributed to the suit to have this overturned is successful or hope they change the rules and they give us some relief.

Mr. White stated: I agree with Mr. Kelly that this is one of the most diverse towns that you will find in Sussex County. Mr. Ricciardo stated: We are in Region 1. The median household income in Region 1 is \$77,000. The median income in Newton is \$43,000. That is a \$30,000 difference but yet you are in a Region with Bergen County which is nuts.

Mr. White closed the public portion of the meeting.

Mr. Soloway stated: I have prepared a Resolution that you don't have. I will read it. Under this Resolution you would adopt the Housing Element and Fair Share Plan. Then it would move on to the Council to act from there. For purposes of the Resolution the Board should make a determination first whether they would like to include this Appendix A. In the Housing Element and Fair Share Plan that you were provided and presumably reviewed before this hearing.

Mr. Ricciardo made a motion to include Appendix A as prepared by our Planner. Mr. White second the motion.

AYE: Mrs. Fowler, Mr. White, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. Caffrey

Mr. Caffrey made a motion to adopt the 2008 Housing Element and Fair Share Plan. Mrs. Fowler second the motion.

AYE: Mrs. Fowler, Mr. White, Mr. Russo, Mr. Vandyk, Mr. Caffrey

NO: Mr. Ricciardo

#SP 08-07 Martorana Enterprises, Block 1201, Lots 5 & 5.03, 100 & 104 Sparta Avenue. Applicant is seeking major site plan approval to construct two retail buildings for Preliminary Site Plan Approval. Representing the applicant was Kevin Kelly, Esq. with the firm of Kelly, Ward and Lamerse.

Hall Simoff, 466 Southern Boulevard, Chatham, New Jersey, sworn.

Mr. Donahue from the firm of Donahue Engineering, 34 East Prospect Street, Waldwick, NJ 07463, sworn.

Mr. Soloway stated to Mr. Kelly: We have 5 Board members sitting up here. All of them with the exception of Ms. Fowler either have attended all the previous hearings on this or read the transcripts on the 2 you provided or listened to a tape. We have 4 members eligible to vote. Ms. Fowler is not eligible

to vote but is entitled to participate. Mr. Kelly stated: I understand that Mr. Caffrey, Mr. Russo, Mr. Vandyk and Mr. White are eligible to vote this evening.

Mr. Kelly stated: I would like to give you a copy of our last transcript of our last hearing on October 15, 2008. Mr. Soloway stated: We never did receive the transcript from the meeting prior to that. Mr. Kelly stated: You have one for September. Mr. Soloway stated: The transcripts were provided for the first two hearings. Your clients file is so voluminous that I am no longer capable of bringing the file to the meeting. Mr. Kelly stated: That makes two of us and that makes us rely on our memories and that makes it even more difficult. I think we transcribed the first two meeting. Mr. Soloway stated: Those are the two that we received. Mr. Kelly stated: I think we did September and October as well. I think I handed September's to you just like I did the October. We had meetings in January, February, July, August, September, and October of 2008. Mr. Soloway stated: I think we have the received transcription in January and February and that is it. Mr. Kelly stated: Last September and October as well. July and August were very brief meetings if you recall. I'm not sure. The one there was no quorum too. I don't know if we have transcripts of those. Mr. Soloway stated: According to my notes you met on January 29, 2008, February 20, 2008, August 13, 2008 I think was the next meeting after that, September 12, 2008, October 15, 2008. Mr. Kelly stated: At the end of the last meeting of October 15, 2008. I think you will recall we had a very long meeting that night. We went through a very long list of everything that you all had wanted to see and have revised in terms of the site. It was a very extensive list. I believe that is why my request that you vote that night was rejected. I had asked since we couldn't come to an agreement on the revisions. I was trying to convince the Board to finish and vote that evening but the Board rejected that idea pretty much out of hand and said that basically you wanted to see the revisions because there was so many and wanted to have seen and reviewed before we came back and voted. What I wanted to do is to mark as Exhibit A-14 the revised plans prepared by Mr. Donahue. That would be up on the Board over here on my right. Mr. Soloway questioned Mrs. Citterbart: Is that where we are? Mrs. Citterbart stated: Mr. Soloway I just went to check it is the January and February transcripts. Mr. Soloway stated: Right, that is my recollection. According to my notes, the last reference I had was A-11. Mr. Kelly stated: I had A-13 being October 7, 2008 report from Mr. Wentink. Mr. Soloway stated: Typically we would not mark Mr. Wentink's report in as an exhibit. Mr. Kelly stated: The transcript of the October 15, 2008 meeting refers to an A-11 report dated October 7, 2008. So we are at Exhibit A-12 then. If we could have **Exhibit A-12** to be Mr. Donahue's map which you have up there pages 2 of 8. Mr. White questioned: Is that revision seven that we have in front of us here? Mr. Kelly stated: That is correct.

Mr. Kelly stated: We also prepared a traffic signing plan that you had asked us to do that Mr. Simoff did. I want to pass that out and use that tonight. I want to mark that **Exhibit A-13**. While you are passing that out I would like to introduce an exhibit that I prepared for our use and clarification of what we are going to talk about tonight and mark that as **Exhibit A-14**. Just to tell you what Exhibit A-14 is, I went through the transcript very thoroughly and took all the revisions that we talked about doing. There is a total of 18. I went and wrote down all 18 and I put the page in the transcript where you could go to find it. Mr. Soloway questioned: That being the October 15, 2008 transcript you just handed us one copy of? Mr. Kelly stated: That is correct. So that if you are looking for anything in particular revision that we agreed to do. For example, gravel area and the fence removal that is #9. You will find it on Page 46 of the transcript. So any issue that you have you can refer to right on this list. This list is a complete listing of all the revisions you asked to do and we said we would do and what we have in fact done on that exhibit. While we are doing that too, because we had two months in between meetings and

I think we agreed to this at the end of the October meeting. We submitted these revised plans to Mr. Wentink in advance. There was also a submission made to different people here in Town. That would be Bill Grinnelle from Water and Sewer, Joe Inga the Fire Official, Mr. Wentink, Debra Millikin. I believe Mr. Donahue and Mr. Martorana were at that meeting again going over the revised plans to see that all 18 of these items were in there. We have a report from Mr. Wentink with respect to the revisions dated December 9, 2008. We also have a report from Ms. Millikin and that is dated December 9, 2008. I think everyone up here has those. If I am mistaken, please let me know. Mr. Soloway stated: I believe we do and Ms. Millikin's report I will read it quickly because I assume it won't be discussed in the same way that Mr. Wentink's report will be. It is a memorandum from her to the Planning Board. Mr. Soloway read Ms. Millikin's report.

Mr. Soloway asked Mr. Kelly: Is the memo accurate in terms of the agreement and Martorana Enterprises to comply with the September 11, 2008 report? Mr. Kelly stated: Yes it is. Mr. Soloway questioned: I assume the applicant in the event that the Board does vote to approve this application would agree to a condition requiring compliance with that? Mr. Kelly stated: Yes we will.

Mr. Kelly stated: That leaves us with Mr. Wentink's report and we appreciate the opportunity to review it. It is also likewise acceptable to us and at this point I am going to assume you read all of those things. I am going to assume that if you have any questions about what the revisions are you have a full list of those and you have a report. I am going to say that we are available to answer any questions that you may have. Mr. Soloway stated: Mr. Kelly I'm not going to tell you how to run your case, but would suggest there are interested members of the public here who have not received any of these materials and it might not be the worst idea if you had Mr. Donahue summarize briefly what the changes were so the public can follow along. Mr. Kelly stated: I think that is a good idea. I think I have a couple of extra copies of what the revision list are if anybody is interested in seeing them. Mr. Donahue if you could step up to your map for a moment please. Mr. Soloway stated: Mr. Donahue was previously sworn and remains under oath. Mr. Kelly questioned Mr. Donahue: Could you go through these briefly?

Mr. Donahue stated: With regard to the truck route I will have Mr. Simoff discuss the issue with regarding Traffic and the Truck Route. I will skip down to Parking and Striping. At the last meeting there was a request to put in a 4 foot wide sidewalk which would connect the 12,000 square foot building to the 28,000 square foot building for pedestrians to walk from building to building. That was installed. As shown on the plans, the parking lot was expanded. We have crosswalks painted for people to direct them from one building to the other. Along with that we have entrances, island adjustments and signing plan. The Signing Plan Mr. Simoff will discuss. Along Sparta Avenue roadway we have indicated crosswalks to be painted, again that would be subject to the County Engineers office to review and approve. We have indicated those for pedestrians walking along Sparta Avenue to walk through. #4 - The islands were adjusted based on the prior truck route. #5 - The raised sidewalk. The Exit Only sign Mr. Simoff will discuss. #7 - The Striped Crosswalk, I just discussed that one. #8 - Proposed Fence. I believe the proposed fence is around the detention basin. Along with that, we have indicated a fence to be installed around the gravel area or the future parking area. We have highlighted that with proposed 6 foot high fence where that future area is for the stock piling of the snow should that be necessary. #9 - Gravel area and fence removal. We have indicated those with notations on the plan. Open Area - I'm not sure what that comment was regarding on Page 49.

Mr. Kelly stated: On Page 49 of the transcript that reference is to a comment that Mr. Simoff made in response to a question from Mr. Wentink about the underneath part of the building being open. We will raise that with Mr. Simoff.

Parking and Removal – I believe that was discussed with the parking removal of the truck movement adjacent to that truck area there was some parking stalls to be removed which is indicated on the final site plan. Sidewalks, Painted Crosswalks and Stop Bars – Same thing, I believe that relates to the construction to be installed along Sparta Avenue with the painted crosswalks, sidewalks and the stop bars for the exit. Those are indicated on the revised Site Plan and again, subject to the County Engineers approval. #13 – Birms and the Trees – As indicated on the Revised Grading and Utility Plan, the birmed area is adjacent to or south west of the 12,000 square foot building as indicated. Additional plantings are indicated on the Landscape Plan which have been placed within the island areas of the final layout. The Landscaping Plan needed to be revised based on the Concept Plan that was discussed. The retaining wall is indicated adjacent to the truck and car movement lane that is indicated on the revised plan.

The new building locations that is indicated on the plan showing their locations with the setbacks as we discussed. #17 Birms and Retaining Walls – Same thing. Car, truck and people navigation. I believe that relates to the sidewalk area connecting the two buildings along with the movement along Sparta Avenue. Those all have been revised and are indicated on the plans.

Mr. Kelly questioned Mr. Simoff: The first question for you is the first number on our list. The Truck Route Details that have been discussed with those pages indicated. Can you show us where those are? Mr. Simoff stated: At the last meeting we showed all truck activity will be at the eastern driveway. The trucks will come in, they will come around the back of the Quick Chek building, make a left, head west to go around the back of the building and either come back. All trucks have to leave around the perimeter of the site. There is also the ability for the truck to go in front of the western building and make the left so the trucks for the lower building don't have to go behind the western building. We also modified the parking layout behind the Quick Chek so that a truck can back into the existing building where they load and unload for the existing Quick Chek. Mr. Wentink had a comment about a 55 foot truck being able to get into the existing plumbing supply. I have to state that original we designed this for a single unit truck. In order to get this to work for a 55 foot truck we would have to take the island out. Mr. Soloway stated: Say that again. Mr. Simoff stated: There is an island on the east side of driveway that comes in the center of the property. Originally the design was developed for a single unit truck. Mr. Soloway questioned: What do you mean by a single unit truck? Mr. Simoff stated: Non-articulated. Straight truck, boxed truck. Mr. Soloway stated: Okay. Mr. Simoff stated: In order to get a 55 foot tractor trailer in this island has to be removed. Mr. Soloway questioned: Are you proposing to remove it? Mr. Simoff stated: Yes, we are proposing to take it off the plan. Mr. Wentink questioned: So you are going to lay that out to accommodate a WB 50? Mr. Simoff stated: So that the truck would come in the same route make the right and back in.

Mr. Wentink stated: You also do run into a problem with the 6 parking spaces. Mr. Simoff stated: I believe this is enough distance to get the truck in. Mr. Wentink stated: I was looking to make the swing out with a turning template the last two spaces in that row that are towards Sparta Avenue. Mr. Wentink stated: The WB-50 does hit them. Mr. Simoff stated: If we have to we will take them out. Mr. Kelly stated: Mr. Simoff let me, just for the record, see if this refreshes your recollection to what we agreed to do. At the last meeting, I'm referring to Page 36 of the transcript you said the following "I can assure

the Board that a WB-65 can go from the driveway at the lower edge of the property circulate through and get to the 12,000 square foot building and get around the back of the 12,000 square foot building and then also get around the back of the 28,000 square foot building. That is why we adjusted this island." Is that what you are referring to right now? Mr. Simoff stated: It was a misunderstanding and I have to take it upon myself. We designed this loading dock to the plumbing supply for a single unit truck. The request now come to make it through. Mr. Wentink asked for it. Mr. Wentink stated: I did not make that request. I just made a comment that WB-50 would cause a problem. If that is agreed with your tenant to bring it to a SU-30. I don't care. I don't know about the Board. Mr. Kelly stated: Just so the question is clear, the question was actually on Page 34 by Chairwoman McCabe when she asked Mr. Simoff to talk about the circulation. That didn't come from Mr. Wentink. Mr. Simoff stated: The 65 foot truck can circulate the site no problem. Mr. Wentink stated: No question. Mr. Simoff stated: The only issue is that we have to adjust the island to get a semi into the loading dock for the plumbing supply which may occur once a week or so. Mr. Soloway stated: Just for the record you are referencing Exhibit A-12 as where this is depicted? Mr. Russo stated: It's Exhibit A-13.

Mr. Simoff stated: We will take this island out and make the minor modifications that are necessary. Mr. Soloway questioned: Does Exhibit A-13 indicate that the island is going to be taken out? Mr. Simoff stated: No. Based on tonight's testimony we will take it out. Mr. Kelly stated: Can you mark that in some way so we can see that? Mr. Soloway stated: If I'm going to right this up I wouldn't know how to describe this. Mr. Kelly stated: That is why I gave you this nice list so that you can find it exactly. Mr. Soloway stated: He is telling us that he departed from the list. Mr. Kelly stated: That is why I asked him to show that on the Exhibit. Mrs. Fowler questioned: What kind of truck does the delivery for the plumbing supply store at the current time? Mr. Simoff stated: They do get semis. Mrs. Fowler questioned: A semi can get in there now? Mr. Simoff stated: They get in now and when we remove the island. Mr. Soloway questioned: You have marked that by hand on Exhibit A-13 as well Mr. Simoff? Mr. Simoff stated: Yes.

Mr. Kelly questioned: Mr. Simoff the next item you were discussing in the testimony at the last meeting was the signing plan that showed the truck route. We refer to that as #3 on your list in your hand where it says Signing Plan. Is that shown on your plan? Mr. Simoff stated: Yes, what this Signing Plan does is compiles all the signs. So it designates the truck route which one of these 4 arrows in each location and then below it with the signs for trucking. It also has a truck route. Some signs have what I refer to as an M4-4 and some have an R14-1. These are standard manual uniform traffic control device signs. What I tried to do is make the signage conform to the federal standards and the standards for what you see trucking on a roadway. I superimposed them to the site. So it is a mix of a placard and an arrow. I also did the same thing because we discussed in the presentation that you can't make a left turn from the center driveway so I placed signs through the center to direct traffic to the lower driveway in order to get to Newton. That was one of the comments.

~~Mr. Vandyk~~ questioned: I think we discussed at the bottom where the One Way comes out to go out the exit about putting some sort of Do Not Enter signs. Mr. Simoff stated: I have Do Not Enter signs at the top. If you look at the upper left the sign says R5-1 and then I placed them. Mr. Phalon stated: I am talking down towards the bottom behind Quick Chek. The One Way coming out behind Quick Chek. Mr. Simoff stated: - The One Way is just in front. Mr. Phalon stated: I am talking back by the new building. You have one there and there should be one down by the other building behind where you are coming out. That is a one way. Shouldn't there be a Do Not Enter sign there? Mr. Simoff stated: Yes.

I will have to add those. We will adjust the plan. They are Mr. Donahue's plan. Mr. Donahue stated: I can show them to you if you like. Mr. Kelly questioned: Yes, could you do that please so we are clear on the record? Mr. Donahue stated: The Do Not Enter signs are shown on my site plan and also are to be added to the signing plan. That will be adjacent to the One Way driveway at the 12,000 square foot building where the Exit Only is and that would be a Do Not Enter sign R5-1. Then also on the One Way movement behind the 28,000 square foot building where it changes from Two Way to One Way they would be Do Not Enter signs that are indicated on the site plan. Mr. Simoff stated: I show a One Way so the traffic comes out of the garage is directed to head towards Sparta Avenue.

Mr. Soloway questioned: Is there any other instances where your plan Mr. Simoff does not exactly correspond with Mr. Donahue's plan? In other words Exhibit A-12 and A-13 have to match up in terms of what is depicted on Exhibit A-13. Mr. Kelly stated: For the record, I disagree with that. The two plans have to add up together to do all the things we said they have to do. Mr. Soloway stated: I want to make sure there is nothing. Mr. Kelly questioned: Inconsistent? Mr. Soloway stated: Correct. Mr. Kelly stated: That I would agree with. Mr. Soloway stated: That's my point. Mr. Kelly stated: That will come out if we can go through the testimony and finish it. It wasn't as if we are having a contest here to see if. Mr. Soloway stated: I don't mean it is a contest Mr. Kelly. We were handed Exhibit A-13 this evening and one Board member asked a question and Mr. Simoff has indicated it's not on there, it's on Mr. Donahue's plan which is great, but if the applicant wants the Board to approve something we have to be straight on what exactly it is we are approving. We can't have the two of them being inconsistent. Mr. Kelly stated: I agree with you that they can't be inconsistent, but it is my position that when they are finished they will add up to a whole of what we agreed to do and what the record reflects we agreed to do. These two men practice different professions and do different things. So we have Mr. Donahue go over his area and now we are having Mr. Simoff go over his area. I don't mind the questions but I am going to say that I want to cover both of these witnesses. Mr. Simoff stated: May I suggest we add the Do Not Enters so they are consistent. Mr. Kelly questioned: Do you want to write it up right now so we are clear? Mr. Simoff stated: Sure. Mr. Kelly stated: We will right that on Exhibit A-13 so it is now on both plans. Mr. Soloway questioned: Mr. Donahue's plan is the site plan which is more or less intended to cover everything? It is understood that Mr. Simoff is addressing a rather limited subject. Then again, my point was there is an item within Mr. Simoff's subject area that was on Mr. Donahue's plan but not his. Mr. Kelly stated: Right. Mr. Simoff stated: I stand corrected. It is a typo. These two signs noted on either side of the island are Stop signs R5-1 not R1. I changed that 5 to a 1 and we are done. Mr. Soloway questioned: Is there supposed to be a Stop sign there also? Mr. Simoff stated: No. Mr. Phalon questioned: Who has to stop coming out of the base of the building or coming out? Mr. Simoff stated: That is standard practice when you are coming out to a T. We can add that sign. We don't have it at the end of any of the isles. Mr. Phalon stated: It's just that this is coming out from underneath the building. Mr. Simoff stated: At some places it just becomes sign clutter. Mr. White questioned: Are they proposing that we have a Stop sign? Mr. Phalon stated: You are coming out from under the building. I don't know how the visibility would be coming out. Mr. Simoff stated: That segway is to the next comment that your engineer Mr. Wentink suggested is that when you come out of the building number one this wall is intended to be open because it is a parking garage underneath. It is not the intent. It is to make it an open wall so you will be able to see out. In both cases the drive isle is further to the west so you will be out of the building looking to the right. As you can see we have striped it so the vehicles are to the eastern edge of the driveway so that the traffic has the ability to pull out and not be in the traffic. The other aspect of it is that these parking spaces will be intended

for employees. They are the last ones to leave the site. There is not a lot of activity. It won't turn over like the ones up above. We believe that they will operate safely and efficiently.

Mr. Kelly questioned: Mr. Simoff going back to Item #6 which we passed over. In response to a question by Mr. Vandyk on Pages 42 and 43 of the transcript we talked about putting Exit Only signs in 2 locations actually. Are those on your plan? Mr. Simoff stated: I made them Do Not Enter in front of the Quick Chek and along the drive-thru at the back of the site. Mr. Kelly stated: Okay. Now moving to Item #10 on our list the open area you just explained that and that was the last item we had for your testimony. Mr. Simoff stated: Yes.

Mrs. Fowler questioned: So there is not going to be a Stop sign there right? Coming out from under the building? Mr. Simoff stated: I don't think it's necessary. I don't have any strong objection to adding it to the plan. Mr. Soloway questioned: Is there a safety issue created by the fact of two-way traffic in affect up to the point where you would be driving into the building, correct? Is your question whether it would be desirable to have a Stop sign right at that point? Mr. Phalon stated: Yes that was my question. Mr. Simoff stated: The thought that I went through, and it is open for discussion, is that when you come to a T intersection the stem of the T naturally stops while the top of the T is the traveled way. That is the way they are designed. If the Board is more comfortable what I would suggest is we will paint a Stop bar and we will post the signs. Mr. Soloway stated: I guess and excuse my ignorance I am only an attorney and everyone knows we know very little about everything. Where you indicated that there was a typo on the plan near that parking area where R1-1 should read R5-1 it looks to me like we have two different ideas of what the T is. Mr. Simoff stated: No. The R5-1 is a Do Not Enter. It was never intended for that traffic to stop. Mr. Phalon stated: That was my question. Mr. Soloway stated: It is a two part question. You answered, Mr. Simoff, the question whether you think there should be a Stop sign coming out of the parking garage. What about coming down the One-Way at the southeasterly end of the site as you approach the area where that is? Mr. Simoff stated: No. I don't think it is needed. Let me cut the discussion. We will put the Stop signs R1-1 here and a R1-1 coming out of the two exits. I will put a Stop bar on each. Mr. Kelly questioned: That is the Board's preference that we do that? Mr. Soloway stated: Yes. Mr. Kelly stated: That is agreed to. Mr. Soloway stated: You are going to add two Stop signs in the area depicted on Exhibit A-13. Mr. Simoff stated: I am going to show the Stop bar as you come out of the building.

Mr. Kelly questioned: Any other questions for Mr. Simoff? Mr. Russo questioned: Mr. Simoff you had mentioned when you talked about the island that would be removed then you kind of glossed over a comment about two parking spaces and another island. I wasn't sure if you were suggesting there should be two parking spaces that should come off the plan. You kind of mentioned it and then it fell off the table. Mr. Simoff stated: I don't think you have to remove this island or any of these parking spaces. I believe they can get into this loading dock. They do it now. Mr. Martorana stated: These are proposed items not there now. The trucks do it now. Mr. Kelly stated: Tell us what it is that the trucks do. I want to be clear about this. Mr. Martorana stated: They are tractor trailers and they turn in here and back in.

Mr. Soloway questioned: Just so I understand, the traffic island depicted on Exhibit A-13. I understand that it is not there now but they are on the Exhibit, but it is going to be removed for the Exhibit, correct? Is that the same island you referred to when you said "I don't think it is necessary to remove it"? Mr. Simoff stated: No, they removed the parking. Mr. Soloway questioned: Mr. Wentink do you have a

comment on that you are the one that asked the question? Mr. Wentink stated: No. The WB50 the turning template runs over the two most westerly spaces. I just used the WB50 because I had no idea what truck they used. The WB50 is the largest typical truck we use. The truck that they used for their overlay of the whole thing, I doubt that you would ever see that truck in this project. That is an over the road truck. So, I used the WB50 which would more than likely be the largest truck anyone would ever get any delivery or take out a delivery. I just used it. They could possibly use an SU30. I do not know what the plumbing supply house has or what their suppliers have. Mr. Simoff stated: My understanding from the client is the articulated trucks semi comes once or twice a month. Mr. Kelly stated: Wait a minute. Please. Don't talk to each other. One talk, then the other talk. I want to get it on the record. Mr. Martoran stated: Currently the trucks that they have that come in here now we are talking about the WB he made it the circle. They are not used here currently. I have never seen one there. Mr. Kelly stated: So are you saying we use those as examples? Mr. Martorana stated: As an example, right, that it can make it but they don't use it.

Mr. Soloway questioned: I have a question for Mr. Donahue and Mr. Wentink. You are referencing Mr. Wentink's December 9, 2008 report and Mr. Kelly indicated, if I understood him correctly, that the applicant had reviewed that report and all recommendations in there would be acceptable as conditions of approval. As I looked through this I looked at Item #11 says "the necessary fabric tie backs to the proposed retaining wall the south corner of Lot 29 of Block 1201 will encroach into the lot. This area is covered in a corrective Deed recorded in the Book of Deeds. Also, the tie backs for the proposed wall at the south end of the high metal building will hit the building and excavation that close to the building may affect the integrity of the footings." I don't necessarily read that as a recommendation but as an issue. What is your suggestion? Mr. Donahue stated: I can explain. The two walls we are talking about are adjacent to Lot 29 the proposed wall there and the proposed wall adjacent to the metal building. Mr. Wentink stated: Exactly.

Mr. Donahue stated: Turning to the Grading and Building plan the wall is supporting the parking lot area so it is higher on the south side of the wall and it drops down to meet existing grade on the north side. Any fabric to hold the wall in place would be placed underneath the parking lot area. So there is no fabric. If they choose to use that type of wall, that would be placed on Lot 29. Similarly, the same condition exists or being proposed adjacent to the metal building where the higher side is in the parking lot and then it drops down to existing grade adjacent to the building. Any type of fabric they choose to use that type of wall would be underneath the proposed parking driveway. Mr. Soloway questioned: Just so we are clear. You are saying Mr. Donahue that the fabric tie backs will not encroach onto the other lot? Mr. Donahue stated: That is correct. Mr. Wentink stated: I will check it. Mr. Soloway stated: That would be a condition if the Board approves it. Mr. Donahue stated: You can check it right now. I have elevations which tie down the wall and the proposed conditions down to existing. There is no encroachment onto Lot 29. As proposed adjacent to the metal building same thing, the higher end is in the parking lot area and that ties down to the existing grade adjacent to the building. The fabric would be on the parking lot side that is indicated.

Mr. Soloway questioned: Also, this is a question for Mr. Wentink. You indicate in your report Mr. Wentink on Item 17 that Note 16 of the landscapes note is a very important note. Do you want to explain why? Mr. Wentink stated: Yes. He talks about trimming all the trees to certain heights that applies to the visibility. A big problem I find in a lot of parking lots is that they put shrubbery in and after a year or so you can't see any on-coming cars because the shrubbery grows. The plantings have to

be maintained by trimming so that you can see the on-coming vehicles. Mr. Donahue stated: I believe the note relates to an actual tree planting. Should there be any branches that extend out below that 6 foot height, they would be removed. Those shade trees are shown on the plan and they are indicated throughout the parking area by the double circles and labeled. Those are the ones that will be trimmed up. Mr. Soloway questioned: What is your recommendation Mr. Wentink? Mr. Wentink stated: I am just saying that that is an important note and it has to be respected and adhered to. Mr. Soloway stated: If it is on the plan it is part of the application and compliance is required. I just wanted to bring that to everybody's attention not indicating that it is an issue or problem. Mr. Wentink stated: No. Mr. Soloway stated: That is what I wanted to know.

Mr. Soloway stated: Mr. Wentink I have kind of lost count of how many, but there are prior reports that you issued here. Is your report of December 9, 2008 which is now A-15, does that now incorporate all of your recommendations regarding this application and anything else that you may have raised in the past and reports that may not be in this report have either been incorporated in the plan or you have been otherwise satisfied? Mr. Wentink stated: Yes.

Mr. Soloway stated: I take it the applicant has completed his direct presentation. Mr. Kelly stated: Yes. Mr. Soloway stated: I guess we are now at the point where we have opened it to the public previously although people have been sworn, it's mainly been in the nature of questions. At this point, if the presentation is concluded I would suggest to the Chairman that members of the public be allowed to testify without questioning. Mr. Kelly stated: I just want to note a potential objection to that because like I said we have had a number of extensive hearings here and the public has spoken at every opportunity. It's not my habit by the way to object to anything anybody wants to say. So I don't when people don't confine themselves to questions and they want to make statements. I have not objected to many, many statements. I have not objected to any statements except Mr. Hardmeyer. That was it. We have had a lot of testimony so far. Mr. Soloway stated: I think the Chairman can utilize reasonable discretion if it is repetitive in terms of something we have heard before. This is presumably going to be the public's last opportunity. Mr. Kelly stated: Yes, I don't want to cut people off.

Mr. White opened the floor to the public.

Andrew VanOrden, 1 Linmoor Avenue. If I understand you prefer comments as opposed to questions. Is that correct? Mr. Soloway stated: If you have a question you can ask a question if they are not questions you have asked before. Mr. VanOrden stated: I have not asked it. I have one question for Mr. Simoff about the traffic pattern. I just wanted to be sure. Basically three general areas where retail is going to be the current Quick Chek, the 18,000 square foot building and the 22,000 square foot building. The question was "where would my exit route be if I was to come out of the shopping center and turn left heading towards Newton center?" Mr. Simoff stated: You would be at what I would call the eastern driveway. Mr. Van Orden stated: That is the only location that I would be able to make a left? Mr. Simoff stated: Yes. Mr. Van Orden stated: Just a couple of comments I have. As I stated in my previous testimony, I am very concerned about the drainage issue. This lot is right up against the wetlands which is 100 year flood plain. Based on the current floor plain map, that flood plain comes within about 150 feet of the center line of Linmoor Avenue which is the development that is back to the western area of this. I'm very concerned that with the rain water runoff coming off this development that is going to cause back up into that wetlands area and may adjust the 100 year flood plain and cause flooding back up into that development. There is only one drainage area that goes underneath Newton-

Sparta Road and that is either a 24 inch or 36 inch pipe. I'm not sure. I am just concerned that increased rain water is going to cause some back up and flooding in that area. A couple of more comments about this. It looks like a bottleneck. There is just a lot of potential activity there and very limited egress and exiting into the area. I see that being a major, major problem and quite confusing. The other thing, another two comments I have is... based on the new Master Plan this area has been rezoned as a commercial. Mr. Soloway stated: A Master Plan is not a rezoning. There is a Master Plan that was adopted a few months ago that does make recommendations for some fairly substantial changes in the Zoning Ordinance but at this point it is a recommendation, it is a blue print. The ordinance itself has not been amended in response to that so that the applicant's obligation in terms of compliance is the same Zoning Ordinance not the new Master Plan. Mr. Van Orden stated: Then I apologize. The last comment I am concerned about is I feel it is a lose/lose situation because if this is developed and it is successful I see it pulling a lot of retail out of the Main Street/Spring Street Newton area which a lot of people have worked very hard to try to develop. This really goes against all the hard work those people have put in. The other end of it if this doesn't work out and it turns out we have a lot more empty store fronts I don't know how many more empty store fronts Newton wants to have. I don't see it really working out in Newton's best interest at all. That's all I have to say. Thank you. Mr. Kelly stated: I would like to say for the record that drainage issues and flooding issues were addressed extensively at the January and February meetings. I think you all recall them. That led to an Environmental Impact Statement that was not required but we did and then answered those issues completely. That is well confirmed in the record.]

Nanette Thomas, 7 Orchard Street. I realize they fall within all the guidelines to do what they would like to do. I am saddened because I know as I pointed out this town has spent a lot of time trying to make it a nicer town and one of our biggest issues and continues to be is traffic. Having said that and realizing that you will probably approve this tonight, my question is this and I don't know if you can answer this: Since we just had a town wide evaluation and I feel very strongly that if this is built it will change my property value, will the town come back in and re-evaluate or is that going to be at my cost also. It will affect my property. Mr. Soloway stated: No one can answer that question. Ms. Thomas questioned: No one can answer that? Do you want to buy my house? Thank you.

Dr. Sandra Dudek , 16 Orchard Street. My house would be facing a new development. This is the first time I have been here to actually hear what is going on because it has been cancelled or this or that or it just hasn't worked out. I feel it is a very ill conceived idea. I don't really care to have lights from a development and look at those instead of darkness. I think it's very nice to have a wooded buffer area in town adjacent to the wetlands. I agree with the woman that just spoke. It is definitely going to affect our property values, at least the homes that would be adjacent to what I consider something awful. Do we really need more retail stores in town? For the same kind of reasons. We are trying to fill the ones we have and make it an attractive cute town rather than sort of a small box/big box kind of complex. I also agree with the dangerous ingress and egress to Sparta Avenue. We don't currently have the restrictions about one-way only from the lower driveway but I could see where it would be necessary if there were additional development. That is a very dangerous street Sparta Avenue at two times a day or two situations. For one thing, if you are turning left to go towards town typically the cars are speeding. They are coming down a hill. I have seen a number of cars getting tickets. The other possibility or likelihood is the fact that if you are looking at the stream of traffic heading towards town later in the day, say 4:00 pm or 5:00 pm it just goes on forever. It goes to Drake Pond. This is only going to make

things worse. I think this is probably one of the worst things I have heard that could happen. Not only because it affects my immediate proximity.

Charles Briggs, 73 Pine Street. I might have missed this one. On the snow removal you say you are going to stock pile it in this gated area. Mr. Kelly questioned: Do you need us to answer that again? Mr. Soloway stated: I think we still have the right to question and the question is directed to the applicant so I would suggest that somebody respond. Mr. Kelly stated: Somebody respond, whoever wants to. Mr. Donahue stated: That was our intension and if it doesn't work out there, then the applicant will have it removed from the site. Mr. Briggs questioned: What size is the gated area they are going to try to stock pile the snow in? Mr. Donahue questioned: What size is it? Mr. Briggs stated: In like 1995 we got hit with like 32 inches of snow and I was wondering if that area is going to be able to handle it. Mr. Donahue stated: The statement that I just made is that they will either accommodate it there or they will remove it from the site. Mr. Briggs questioned: And there is drainage underneath so if it does melt down it won't go into flood areas or wetlands. Mr. Donahue stated: When it melts it will go into the drainage system that is being constructed. Mr. Briggs questioned: Underneath it? Mr. Donahue stated: Underneath the new parking lot. Mr. Briggs questioned: The fencing that is going to border the homes on Pine Street and around the properties is that going to be a chain link, board on board, what type of fencing is that going to be? Mr. Donahue questioned: Around the detention basin? Mr. Briggs stated: No, around the property area between the buildings and our homes. Is there going to be a fence? Mr. Donahue stated: There isn't any fence proposed. Mr. Briggs questioned: So there is no fence proposed? So you are just putting shrubs? Mr. Donahue stated: Correct. Mr. Briggs questioned: These are the evergreens? Mr. Donahue stated: Yes. Mr. Briggs questioned: 6 foot? Mr. Donahue stated: Yes, what was shown on the plan was 6 foot. Mr. Briggs questioned: So nothing is going to stop kids coming from whoever is renting or whatever property is going in there? Dunkin Donuts, another bank, we all need that. They are going to come walking through and there's nothing stopping skateboarders to go down there around the property or anything like that. Walking through our property. So there is no fencing stopping from commercial building to our homes? We are going to lose all our vegetation over there. Wildlife is all going to go. This seems to be putting 10 pounds of potatoes in a 5 pound bag. Like other people said, the traffic, coming out of Quick Chek. You are only going to make for one and that's it and make a left hand turn on one, you are not going to get to use the lower half. I've seen cars cut in and try to go out the other way just to beat the traffic. It does. It backs up to the pond. It's hard. You are going to have Darling Farms I guess. They have a tractor trailer. They make the deliveries to the Quick Chek. What happens when Ridgewood Corporation has their trucking at the same time? Then you have the regular buildings. I think you are making a mistake here and hurting this community a great deal not to mention the homes. The retail value to our homes. I have been here for 20 years. I dedicated my time coaching and everything. I'm not seeing anybody else just use the property to benefit themselves. We have been here for years Mr. Kelly fighting with this and going back and forth trying. I understand he has a property he has to develop, but to say that you don't object to people speaking. It's not in your back yard. It's in our back yard. Mr. Kelly stated: I live here. I travel the same roads as you. Just so we are clear about that. Mr. Briggs stated: No, I don't think we do. Mr. Kelly stated: We are both residents in the same town. Mr. Briggs stated: It's not in your back yard. It's a little different. Thank you.

Jack Schwartz, 4 Linwood Avenue: This whole plan is like fitting a round peg in a square hole. It is going to do a lot of damage and it's going to come back to haunt someone. I should never had been born.

Kent Hardmeyer, 70 Pine Street. I will repeat again that this is not in conformance of the new Master Plan which you folks worked so hard to devise, held hearings. I know I was at the hearing. It may be part of the current Zoning Plan, but it certainly is not in conformance with our new Master Plan. I'm sure you probably read the letter that was sent out by Nelessen and Associates last November. He had 7 or 8 major negatives for this development. A lot of them had the concern with this area is already over retail and we do not need any more retail space in this area. Your new Master Plan wisely reflected that and is now the plan calls for something else. This has never had any clients that we have heard of. We have 40,000 square feet of retail space but we never heard anything about a client. Basically all we have is a concept plan. We never heard any evidence of any sort of market survey indicating a need for this additional 1000 square feet of retail space. In fact, probably 40,000 square feet of retail space is probably what we have up on Spring Street if you added all those little stores up. Now do we need another 40,000 square feet? We have a bunch more going in on Clinton Street. Enough is enough. This development is neighborhood unfriendly. It is going to decrease property values. If you call at one of our earlier meetings and Mr. Kelly may have it in one of his transcripts, one of the neighbors asked "what is this going to do to my property values?" I believe it was Mrs. Unhoch who was sitting here at the time and said "we don't know but go down and ask the tax assessor maybe he can tell you." So I did go down and he said, of course he couldn't say what this development per say was going to do, but did say that in similar situations where you have homes backed up against retail it is very common that you a 5 to 10 percent decrease in property value. So if you do the math, we have 15 homes backing right up to this site and another 15 across the street. We are talking, according to my calculations, a good \$150,000 to \$200,000 worth of decreased property values. If we all go to the tax assessor's and get our properties reduced, there is a decrease of ratable for the Town of \$170,000. We don't have to talk about putting more COAH homes in because if this development goes in we are going to have 50 new COAH homes backing up to this place that's what it is going to do to the property values. It's also going to cause major uncertainty about selling a house. If you have a house backing up to this lot and you want to put it on the market, you are going to have to disclose that there is an approved development sitting right behind you. What do you think that is going to do to any buyer who might want to buy that house with that unknown? That is going to hurt a lot. You may be sitting on that house a long time. In this market it probably won't get built, there may be another permit extension act. You could be sitting here 5 or 10 years and have all this uncertainty. It has been mentioned it causes much sound and light pollution. It is very aesthetically unpleasing. As Mr. Van Orden mentioned and discussed the risk of flooding off site. I disagree with you Mr. Kelly this was not affirmatively answered when we discussed it. I remember specifically asking, I think it was Mr. Donahue, have any studies been made to show that the run off coming off this site running into the existing flood plain wetland that it will not increase flooding and the answer was "we don't know, we don't want to spend the money to find out." No we do not have an answer to that question. It is still unanswered. There is also an Ordinance 5-83 that requires flood damage prevention in any new development. We have not been proved to our satisfaction that this is not going to cause any increase flooding. This is very environmentally unfriendly. It can destroy all vegetation and wildlife living on this site. If don't have feet or wings you are toast because 5 acres is going to be completely destroyed. It is going to create polluted storm water which will flow into the natural conservancies or maybe in our back yards. It is going to destroy natural steep slopes in violation of our Ordinance 20-5.40 which concerns preserving environmentally sensitive lands. We had some discussion on that last week. I want to present at the end of my testimony a report I did which I think I have 5 proofs to indicate that we do have environmentally sensitive lands that according to our ordinance cannot be developed. There may be some encroachment on the wetlands transitions areas. I

noticed that on the eastern driveway was enlarged. I think it probably snuck over into the transition area and I don't know if they have discussed that with the wetlands folks or asked for an amendment or change to their permit that they have got. There was never any discussion by the applicant about using any sort of new green technology that is all the rage these days in new developments. With the environmental concerns there is a lot of green technology, less impact on the environment, all kinds of good stuff and we haven't heard word one of that. To a conclusion I ask that you deny the application. It does provide Newton what it needs or where it needs it. It will not protect or enhance the neighborhood, in fact it will do just the opposite. It is very harmful to the environment and it has no redeeming values. The applicant may get richer but all of us are going to get poorer. If the applicant wants to appeal your decision, so be it. If the judge overturns it, well it's out of your hands. Then you know you have done the right thing for the town and the neighborhood. Thank you very much for your time.

Mr. Hardmeyer requested his report entered into evidence.

Mr. Kelly questioned Mr. Hardmeyer: Since it's not signed, was this prepared by you? Mr. Hardmeyer stated: Yes it was. Do you want me to sign it? Mr. Kelly stated: No. I want to make sure this is identified appropriately. I have said for a long, long time I think that people have every right to say what they want to say about things. I won't contest that right of people to do that. The way I read this, I read it quickly of course, but it seems to me to be a summary of things that Mr. Hardmeyer has testified to about his interpretation of an ordinance for example. I think he basically said most of this to you in the record before. I don't have to agree with it to allow you to mark it. Mr. Soloway stated: So you have no objection to it being admitted as an Exhibit O-1? Mr. Kelly: As a summary of his testimony and his opinions, no. Mr. Soloway stated: It will be admitted as O-1. The only suggestion I would make is Mr. Hardmeyer if you want the Board to consider it they have to have five minutes to at least look at it. Would it be possible Mrs. Citterbart to run off a few copies that will only delay us a couple of minutes. This should be marked O-1 in evidence. Mr. White stated: While Mrs. Citterbart makes those copies we are going to take a ten minute break. That will give us a chance to take a look at it.

Mr. Soloway questioned: Mr. Kelly do you have a summation? Mr. Kelly stated: I think you will be very happy to know that I don't have what I refer to as a summation. I do want to make a couple of points. I will tell you why. I think that you all have done an incredibly thorough of this application. I can't remember. In 5 days I will have been a lawyer for 29 years. I can't remember an application that got such a thorough review for a permitted use ever in anything that I did. I think that you're to be commended for doing that. This application in some ways is over a year old. It has had many, many, many hearings. We are talking about seven reports from Mr. Wentink, review reports with multiple items, seven revisions, sets of plans, every square inch of this piece analyzed and dealt with and discussed. So I don't have much more to say about it. Whatever you could do in terms of reviewing a permitted use that requires no variance you have done and I think you have done it even more than one or two times. I think everybody certainly has had their input and their say on this. I would like you to keep in mind, especially since we closed on testimony that I didn't really object to because I wanted people to have their say, that you have professional testimony on all of the key issues here. You basically throughout the process, particularly at the end of the process, had several engineers including your own and our own who agree on the issues as professionals and then we had yet another professional, a third engineer, the gentleman that did our EIS and please just because it happened so long ago don't forget it. It was submitted to you on April 29, 2008. I'm not going to read it to you. If

you have any questions about any environmental issues that may be fresher in your mind because you haven't seen this in a while. I would ask you to take the time to look at the recommendations and look at the conclusions of this Environmental Impact Statement which took care of all the issues that you heard again tonight. Again, I'm not going to add much more to this grueling, grueling process. For an application of this size it is as thorough as anything I've ever seen. Again I think you can be very satisfied that you have given it the best, you have made the best recommendations, a multitude of revisions to it, you made it as good and even Mrs. McCabe had to say that it was about as good as you can get it to be. With that it is now time that we have an approval. There are going to be a lot of conditions in these reports and a lot of things we are going to have to do. I think you made it the very best application you can. With that in mind, we are entitled to an approval. If there are no questions for me, I will leave it there.

Mr. Soloway stated: At this point Mr. Chairman, the Board is free to discuss amongst themselves. It is an application for Site Plan approval with the Preliminary and the Final. No variances are required. The Board has essentially at this point two options in the broader sense. One of which is an off shoot. Obviously if the Board votes to deny, the votes to deny. If the Board is inclined to vote to approve the application consideration has to be given to what conditions appropriately should be tied to the approval. There may be enough of them so the Board could either vote the approval tonight and try to encapsulate all the conditions. I suppose the Board would also have the option, which Boards sometimes do, instead of voting to approve the application to vote to authorize the attorney to draft a proposed resolution so that everybody can see the conditions in writing before actually voting on it. The hearing is concluded and it is now time to make a determination.

Mrs. Fowler is not eligible to vote. There are 4 of you eligible. It will require 3 votes to approve the application. Mr. Russo questioned: When you reference the authorizing you to draft a resolution with the appropriate conditions means you are referencing a lot of the items that were addressed, like Mr. Kelly's memo, the things that we talked about tonight and just pulling it all together. Mr. Soloway stated: Yes, and double checking because we have been here since January that there isn't something that was discussed at some point and deemed to be appropriate but kind of got lost in the shuffle and not incorporated in any particular plan. I am not aware of anything but I'm sure there isn't. Mr. Wentink stated: I am not a fan of developer's agreements but I think this is a job that absolutely needs one. Mr. Soloway stated: I would certainly recommend that if the Board does approve it that that be made a condition. I also have to cover the subject of possible bonding for site improvements but that is strictly incorporated in the developer's agreement because it is a site plan. There would presumably be a right to require a bonding on certain items. It gets a little confusing here to because things relating to the road itself or the County Jurisdiction but that can kind of be straighten out in the compliance process. Obviously any approval is subject to the applicant obtaining all other required government approvals and states that obviously specifically includes the County which this Board well knows has jurisdiction of Sparta Road. It is also obviously compliance with all other legal requirements is in appropriate condition. There has been enough discussion that the development comes pretty close to the transition area and obviously staying on the right side of the line is an example of that type of requirement. Mr. White questioned: This is for Preliminary and Final Site Plan? Mr. Soloway stated: Correct. It is not unusual for Preliminary and Final to be separated but not withstanding the word Final. Preliminary is always the important approval on a subdivision or site plan because the law is even where you only have Preliminary when you come in on Final, if you have complied with the conditions of Preliminary and

any particular process requirements in the ordinance you are entitled to Final. Even when you are not granting Final, Preliminary is kind of Final, if that makes sense to you.

Mr. Wentink stated: Another thing here I believe we need Minor Subdivision Approval because of removal of the Lot line. Mr. Soloway stated: I don't agree with that. You would tie it into any approval. The reason I don't necessarily agree with that because I think that in the absence of any application I think the owner of two contiguous lots has the right to consolidate them into one lot by deed so as long as the consolidated lot complies with both requirements. You do not need an approval of the Board in my opinion. Obviously that is not a controversial aspect of this application and if it does get granted it would be in accordance with the proposed plans and that would be an outgrowth of that. I don't think that technically requires subdivision approval. The application is originally framed and did require subdivision approval because the Lot line was not be eliminated it was being changed. Now it is being eliminated and you are making two lots into one. That is the proposal. In the absence of this, the applicant can go out tomorrow and do that by deed and then doesn't require the approval of this Board.

Mr. Vandyk made a motion to deny the application. Mr. Caffrey second the motion.

YES to DENY: Mr. Caffrey, Mr. Vandyk, Mr. White

NO: Mr. Russo

RECUSED: Mr. Ricciardo

ABSTAINED: Mrs. Fowler

#MNSPV7-2007 North Park Urban Renewal Associates Block 303, Lots 26.02, 26.03, 26.04, 26.06, C-3 Zone Amendment to previously approved plans.

Mr. Fox – representing the applicant (Dunkin Donuts)

Ms. Elizabeth Dolan, sworn. Traffic Engineer for the firm of WD Consulting, Martinsville, NJ.

Frank Truilo, sworn. Resides at 8 Martin Place, Chatham, NJ. I am the architect for Dunkin Donuts.

Mr. Ricciardo returned at 10:20 pm.

Mr. Fox stated: This has to do with the property that currently houses the Dunkin Donuts and what used to be the Optical Center. As you know, the optician has now left and he is in his new

building up in Hampton so that building is vacant. I think we have provided the appropriate Proof of Notice to the land owner and publication in the newspaper. We have also provided the Proof in the packet and so on. We are here tonight because we need a very minor amendment to the site plan which was previously approved by this Board. What I would like to do is discuss a very technical request. You may recall there was a Lot Line Adjustment associated with the back end of this property. We refer to it in our testimony as the fish hook because it somewhat resembles a fish hook. That Lot Line Adjustment is technically a minor subdivision although the property is all owned by this applicant. The idea was to square off this property making it conforming and it didn't make sense. That was associated with the Wachovia site on the other side of the property. Accordingly, because we are beyond 190 day

time frame for having filed both the map and the deed, we are asking for an extension of an additional 190 days in order to file the map and the deed to create the subdivision. Mr. Soloway questioned: Do you intend to do it with the map and the deed? Mr. Fox stated: We have not decided yet, but we will confer with the Township Engineer to see what he would prefer. He may want both. We will go either way. Mr. Soloway questioned: The reason you haven't been able to do that I assume is because the project is in effect has been in suspense while you are pursuing approvals from the Department of Transportation? Mr. Fox stated: That is correct. In fact, we have now received our approvals and that is why we are back. The provisions of NJSA 40:55b-47 and to be specific letter f do permit and actually call for a one time, 190 day extension when an application is held up because of a permit process at the next government level. We think we are entitled to that and ask that the Board grant us that this evening.

Mr. Soloway questioned: Just so we are clear, I know you are also proposing to amend the subdivision. There is insufficient time to complete the application to amend tonight are you asking the Board to vote tonight and adopt a separate resolution on extending the 190 day time frame? Mr. Fox stated: I don't think so. I think we can include it in one. We just wanted to let the Board know that it was two separate and distinct types of applications. In any event the minor site plan amendment that we are seeking has to do with the DOT permit when we did go to Trenton so that we could have a driveway opening onto Route 206. The DOT requested that we move the location of the previously approved entranceway in a southerly direction on the same property but farther south. That is what you see on the current plan. In order to do that we had to move a few parking spaces that served the Walgreen's property so that we had an appropriate traffic flow. We did provide a revised plan. It was reviewed by Mr. Simmons. He was kind enough to give me some time in his office. We went over it all. We did address traffic concerns. Our Traffic Engineer is present this evening so if we have any concerns in that regard we will be more than happy to discuss them.

The only other changes are very minor in nature. For example, it turns out the freeze box that is associated with the Dunkin Donuts building is slightly larger. It is really not calculated in the square footage of the building because it is not used by the public. Because of that, we had to move the location of one of the entrance doors. There is one mistake that was apparently submitted to the Board regarding a sign which would have put us into position where we needed a sign variance. That was actually an error. That sign has been removed. The architect is present tonight if you have any questions. Mr. Soloway questioned: A mistake in the original approval or a mistake in this application? Mr. Fox stated: A mistake in the revision. So that the

original approval approved the signage, but then one of the revised submissions had an additional sign which was incorrectly shown on the property. There are no others changes to speak of. The only variance that we need has to do with the width apparently and Mr. Simmons certainly can address this. It has to do with the width of the lane in the parking lot supposed to be 25 feet and I believe we only 24 feet because we are trying to ensure the appropriate turn arounds for the emergency vehicles and the one-way traffic pattern so people can get in and out without causing any problems. Other than that, we are really asking to approve what the DOT has mandated. This was not our idea. The DOT demanded this location for this entranceway. Mr. Simmons was kind enough to give us a rather extensive review letter. My engineer is on vacation this evening and his partners have other hearings, so what we have done is that we have a written submission for the Board. I have given a copy to Mr. Simmons that I would like to give to the Board. I guess we can mark that as Exhibit Revised A-1.

Mr. Fox stated: You might recall that we have a requirement to put sidewalks in front of the property along Route 206 and then it turns up North Park Drive. The applicant is willing to do that. The DOT instructed us to do away with the handicap ramp portion on the corner. Their concern is that there is no connecting sidewalk on the other side of the intersection. If a person in a wheelchair were to roll across that intersection to get to the other side they would not be able to get up out of the intersection. They instructed us to not have a ramp on that side but to put it in when the sidewalk goes in across the street which we will agree to do. Mr. Soloway questioned: When you are referencing across the street what property in particular? Mr. Fox stated: The STS property. There is no sidewalk on that side of North Park Drive. We will agree on the record in the resolution to put that ramp in when the sidewalk is completed on the other property. We don't own that other property.

Ms. Elizabeth Dolan, Traffic Engineer for the firm of WD Consulting, Martinsville, NJ. I have a Bachelor of Science degree in Civil Engineering from Rutgers University. For the last 23 years I have practiced in the field of Traffic and Transportation Engineering. I am a licensed professional Engineer registered in NJ, PA, DE, NY. A member of Institute of Transportation Civil Engineers and American Society. During the course of career I have prepared many hundreds of Impact Studies and NJDOT applications and have the opportunity to present traffic Engineering testimony in over a hundred and fifty municipalities throughout the state although I don't think I've ever been in Newton before but I have been in Hampton and many other nearby Sussex County municipalities. I have also had the opportunity to review traffic impact and circulation and parking as related to land use applications on behalf of many Planning Boards and Zoning Boards. The Board accepted Ms. Dolans qualifications.

Mr. Fox questioned: Ms. Dolan would you explain your role in the DOT Permitting process in your firm? Ms. Dolan stated: Certainly. We have been involved in the access permitting aspect of this project for some time now. As Mr. Fox indicated, we do have the final executed issued NJDOT Access Permit for this site redevelopment. Just to take you through the plan modifications resulted in us coming back because of the DOT comments. What we had originally submitted and what was originally proposed and shown to the Board was one driveway on Route 206. That driveway would have allowed for left turn and right turn inbound

movements plus the right turn exiting movement. I know there was some concern on behalf of the police department and somewhat expressed by Mr. Simmons with regard to the traffic signal operation at North Park Drive and a lot of that north bound cuing and people coming into that dual left turn and blocking the opportunity to process through the intersection. The concern was that perhaps the signal should be modified so that we can process traffic a little bit differently. We took that to DOT and discussed it with DOT and discussed the access easement to this property, the traffic volumes that are processed through this intersection and what we came up with is a modified design such that there is now a second driveway. The southerly driveway has been introduced and approved by DOT so that we can accommodate left turns into the site further south of the intersection so that we have this hatched area as shown on the site plan to visibly limit that northbound left turn lane for the left turn onto North Park Drive. The idea is that people now won't be running up that two-way center turn lane to bypass any cues but they will wait. We also have a designated left turn lane for movements into the Walgreens and Dunkin Donuts site. What that did with the main site driveway is to convert it to right in and right out. We used to have the left in at that location. The left in will now happen as far as possible from the signalized intersection to help produce any potential for burdening that signal. In terms in any signal modification the DOT felt that there was none required by virtue of this application or in general. What

we have done is to achieve a means of helping to regulate the traffic flow in this area and get one of our conflicting movements further from that intersection. The plan the way it had been approved previously but for those access modifications and then a few enhancements that stem from the engineering review we received.

There was a comment that coming out of the Dunkin Donuts drive-thru there is a tight radius so that the letter that has been handed out from Vertant Engineering provides an attachment that shows how we can shift the parking of 18 parking spaces and get a better radius to ease that outbound movement. That is shown on Attachment A of the letter. The attachment talks about fire truck access. We can accommodate a fire truck at our main right in and right out access because there is an island that is mountable curb so the truck can drive over that. The concern is what if the truck needs to enter our new southerly driveway. The last page of the letter which is Attachment B shows how a mountable island can be provided for that radius of a truck so a truck can come in but we still define that driveway as being narrow enough to not entice someone to try and come out that driveway. So we kept the driveway narrow but we just added some mountable curb so that we could accommodate the swing of any larger vehicle should they come in that driveway. Otherwise, there was a comment regarding the isle width of 24 feet originally approved. We are still proposing 24 foot isle width that is considered acceptable and is routinely used in commercial and other uses to promote two-way traffic as well. I recognize it is a design requirement here in town but 24 feet was previously approved and we will continue to propose that as a width to the two-way circulation on site.

Mr. Fox questioned: What is the Town standard? Ms. Dolan stated: The 25 feet. Institute of Transportation Engineers standard is 24 or 25. The 24 is deemed appropriate and is used routinely.

Ms. Dolan stated: There was some comments about signage, regulatory signage and fire striping. All of those things are contained in the letter from Mr. Vertant. We agreed to and will provide revisions to finalize the site.

Mr. Phalon questioned: With the new entrance is there a stop sign coming in to the parking lot? Ms. Dolan stated: There will not be a stop sign coming into the parking lot because DOT wants people coming off the highway to be able to come in. Mr. Phalon questioned: What about people coming through the drive-thru? Ms. Dolan stated: There will be a stop sign there. Just to note one of the comments from the engineering too was that the isle in front of the Walgreens where we would be coming in at that new driveway that is going to be one-way in a northern direction only. Again, regulatory signage would be do not enter and one-way signs.

Mr. Ricciardo questioned: The DOT requested the second driveway or did you propose it? Ms. Dolan stated: It was a combination. It was a collaborative effort and in means to trying to address some of the concerns with the intersection and giving a definite into this left turn lane exists. Right now that two-way left turn lane comes right up and merges right into the left turn. There is no definition. What we have done is created this hatched area to define the northbound left turn lane at the intersection and a northbound left turn into this new driveway. That separates it from the two-way turn lane which is in effect for properties further to the south of the subject site.

Mr. Ricciardo stated: One of our concerns with the exiting of this site was the left turn to head north on Route 206. That would be now judging on this second driveway added would be incentive to make that left hand turn, especially the way the curb is shaped. Ms. Dolan stated: It's only 16 feet in width so it is only designed for one-way. The isle in front of Walgreens would be one-way in a north bound direction. It wouldn't be operational for egress and we have the ability to go out to North Park Drive to make that left. So there is no left turn egress to northbound Route 206 from the site.

Mr. Ricciardo questioned: You said it was a collaborative effort. What was the other option if you didn't put the second driveway in? Ms. Dolan stated: It would probably be to have only have a right in and right out driveway. If they knew the area they might use the driveway to the south. The concern was that anybody coming here and they missed that driveway would then start to impact the signal operation. So we thought it was appropriate to have that left turn ingress ability versus just having just right in and right out.

Mr. Ricciardo stated: I think it is going to be a hazard. I have a concern with it. Mr. Fox questioned: Isn't it true that there is a "do not enter" sign in that area that Mr. Ricciardo is concerned about so that it would warn a person not to go that way? Ms. Dolan stated: That is correct. The driveway would be designated for inbound movements only with "do not enter" signs. The "do not enter" signs will also be located at the northerly end of that drive isle because we are looking at having this as a one-way northbound isle in front of the Walgreens so that someone would first have to be traveling in the opposite direction against the one-way flow of the site in order to then access the driveway which is designed for inbound movements only.

Mr. Ricciardo questioned: How far is it from the main entrance to the beginning of the second entrance to the right in and right out? Ms. Dolan stated: The distance between the two driveways is approximately 80 feet. Mr. White suggested that it will ease the congestion and traffic. It will definitely help. Ms. Dolan stated: We want to be able to bring those lefts far away from the signal and not have to add any left hand movement to the left turn at the signal.

Mr. White questioned: How far is the distance from that new entrance to the entrance to Pizza Hut? Ms. Dolan stated: 130 to 140 feet. Mr. White stated: I don't think you would ever have a situation where you would be stacking that many cars. Ms. Dolan stated: No.

Mr. Fox questioned: Is there any questions about that sidewalk ramp that we discussed? Mr. Ricciardo stated: No. Mr. Soloway stated: While I appreciate the applicant's offer I don't know how you enforce that. Mr. Fox questioned: To put the ramp in? Mr. Ricciardo stated: Make it part of the Developer's Agreement and make it part of the approval. Mr. Fox stated: We have no problem with that. Mr. Soloway stated: You are not proposing to put a ramp in on the STS side if they ever put the sidewalk in right? Mr. Fox stated: No because that is not our property. Mr. Soloway stated: It would really be a sidewalk and a ramp that goes in on the other side. Otherwise you would have the same problem. Mr. Fox stated: Presumably it will though.

Mr. Ricciardo stated: Put in the resolution that the Town has the right to do it and assess Mr. Martin the cost. Mr. Soloway stated: It's not Mr. Martin's that is the point. I'm talking down the line. I don't anticipate a problem but I'm talking 70 years from now when Mr. Martin is no longer with us. Mr. White stated: Were there any changes done to the ingress and egress further down North Park Drive? Was that moved or is that where it always was? Ms. Dolan stated: No changes have been made. Mr.

Fox stated: That was the original approval. The DOT was not too concerned with that because it is not on a State highway.

Mr. Simmons stated: I went through the applicant's review letter in response to the report I did on December 5, 2008. Just as a suggestion they have agreed to most of the changes in the report but, would it be alright with the Board if I went through and highlighted the main issues because there are a few others? The Board agreed.

Mr. Simmons went through his report. The applicant redistributed the handicap parking. There has been a considerable amount of additional on-site directional signage added. I also talked to Officer Van Nieuwland. I discussed the proposed changes with him. With regard to traffic, as you look at the site plan he was still concerned about down at the Wachovia/Pizza Hut entrance as far as making sure no one made a left turn to go onto Route 206 North there. I explained to him that this applicant really was not dealing with that particular property and that on the revised plans that we got from Wachovia it is shown with an island with a directional flow out so that there is no left turn to go Route 206 North. Ms. Dolan stated: It is on the DOT approved plan for Wachovia through their access permit as well.

Mr. Simmons stated: The only issue of concern is the rear entrance to this site comes down onto North Park Drive. The applicant's engineer has revised the curbing and rating in response to our comments. Officer Van Nieuwland brought up a concern with exiting the site on North Park Drive. Right now if you were going to make a left and go up North Park Drive towards Route 519 Mill Street you have to cross the east bound lane of North park Drive, the left turn slot into the lower entrance to Home Depot and then get into the westbound lane. Based on his observation so far in recent years including on weekends the left turn lane going into the Home Depot he requested if possible that the striping for the dedicated left turn be reduced and shortened up so that if you are making that left going on North Park Drive you are not crossing as many lanes. Mr. Fox stated: We have no objection. Mr. Soloway questioned: Could you put that into language for a condition for approval? Mr. Simmons stated: Yes.

Mr. Simmons stated: I remember Mr. Fox discussing the handicap situation at the Route 206 North Park Drive intersection. Just so the Board is aware, for the Developer's Agreement the sidewalk in front of the Pizza Hut which is being pro-rated with Wachovia and Dunkin Donuts they have to make a separate DOT application for that because it is a separate block and lot. It doesn't show up as the DOT permit that they have right now. Mr. Fox stated: We were instructed by the DOT to handle that separately because it is on a different property. Mr. Simmons stated: Just so the Board is logistically aware that is something to be done. It is my understanding that this applicant will handle the permitting because they have most of it. Mr. Soloway questioned: That will be dealt with in the context of the Developer's Agreement for the extent required for the Newton level? Mr. Fox stated: Yes that is fine.

Mr. Simmons stated: With regard to the 24 foot. I do believe that was 24 foot for the previous site plan. I did check the resolution and I didn't catch it. While we are here making some amendments now is the time to make that legal. Mr. Fox stated: The signage issue that raised as we indicated really is not an issue because there is no additional sign being proposed on the Dunkin Donuts.

Mr. Simmons stated: Going back to Page 2 on the Dunkin Donuts, I just called out some of the minor changes because as I recall there is a different architect who did the Dunkin Donuts architectural renderings before. With this latest set of plans there was some minor changes in the interior of the

facility. They added the additional doorways because of the freezer. There was an addition of a soft serve area. I'm not seeing that as a problem. Additional Item 6D, that additional wall graphic if you recall the decal of a coffee cup my understanding is that is on the drive-thru but that is going to be eliminated. The side of the building towards where you will pick up your product there has been a change as far as the additional glass. There was a change in the limits of the lighter colored siding and some orange trim added. Mr. Fox stated: We think that is not correct that there was any additional orange trim added, that was in the original. The architect is present with a color rendering if you have questions.

Frank Truilo, sworn. 8 Martin Place, Chatham, NJ. I am the architect for Dunkin Donuts. In 1981 Graduate of the NJ School of Architecture and NJIT. License Architect since October 1986 and licensed in the State of CT, NY, MD, and VA. I have testified for approximately 50-60 Boards in the State of NJ. Member of the American Institute of Architects. The Board accepted Mr. Truilo's qualifications.

Mr. Fox questioned: Could you briefly describe the rendering and the minor revisions to the Board? This is the south elevation which has the drive-thru window. The signage that we had was in error. It was a coffee cup icon on the side. That has since been removed. Marked as Exhibit A-2 Colored Rendering of architectural sheet A-9. Mr. Ricciardo questioned: Mr. Simmons where did you think the added orange was? Mr. Simmons stated: When I looked at the previous architectural plans and looked at the color schedule I did see where it called for the startling orange. On part of the copy that I had it was colored brown. Mr. Truilo stated: The only orange band is the elevation facing Route 206. We do have the orange band across the front and the north elevation. Mr. Simmons stated: What I noticed is the changes looking at the southerly elevation where the driveway is shown there was glass if I recall correctly before where the bump out where the product is served, but just to the left of that there is some additional glass. On the horizontal siding, there was not as much of the horizontal siding before as I recall and that has been extended. There was more masonry block or a darker color material up toward the easterly side or the front as you would view it from Route 206 at the upper left. I don't know to the left of the glass in the upper view from Route 206, is that siding now or masonry units? Mr. Truilo stated: This is called hardy plank. It is a cement board that gives the impression of a wood siding. It requires low maintenance and does not rot like wood. Mr. Simmons questioned: Most of this is hardy board siding? Mr. Truilo stated: Yes it is hardy plank siding. Mr. Simmons questioned: The colors you have shown on the southerly side appear to be more like a pine color where on the previous rendering it was more like an off white or light sand. Mr. Truilo stated: The masonry base is a general Jackson 10. It is a medium brown. The predominant field color is called Yosemite sand. It is basically is the color of sand. It is a very light sand color. Mr. Ricciardo questioned: Both those materials are what? Mr. Truilo stated: Synthetic stucco and the base is a concrete block. Mr. Ricciardo questioned: Split face? Mr. Truilo stated: Yes. Mr. Soloway stated: Please mark as Exhibit A-3. Mr. Truilo stated: The trim is done in the sand color and the windows are in a dark brown color. Mr. Ricciardo questioned: Was that steaming coffee cup on that previous approval? Mr. Simmons questioned: That one was. Yes. Mr. Truilo stated: We had a smaller version on the south elevation which we took off.

Mr. Ricciardo questioned: What material is the freezer in the back? Is it metal? Mr. Truilo stated: It is a prefabricated metal box that we are painting to match the Jackson 10.

Mr. Simmons moved on the Walgreens building. There are some minor modifications based on the parking layout, some ingress curbs, additional sidewalks, minor relocations in some of the doorways, expansion of the trash compactor area, and narrowed down the canopy overhang. They did not cause a problem.

Mr. Simmons stated: With regard to the other items on Page 2 and Page 3 that is a summary of all the items. On Page 4 it talks about the subdivision plat. When we had this application in almost a year ago, at the time everyone knew where the subdivision line was supposed to go and we did not have the actual subdivision plat. That is now a part of the package in addition to the subdivision that also provided various easements. I think it is fair to say that the applicant is in agreement based on a response letter revising the map for the various comments that I have made. I would like to suggest to go to Page 5 Item M. I didn't make a lot of comments on the map as far as compliance with the map filing law. I wanted to determine whether it was going to be filed or not. In the Burton letter they seemed to indicate that they are not going to file the map. It may be a good idea to do it in this case. The reason I say that is because there are a lot of easements and cross easements here. For purposes of 40 years from now when they are figuring out what was done and who is responsible for what I think it would be worthwhile. Mr. Fox stated: We have no objection. Mr. Simmons stated: I think we will do the deeds and the file plat for historic purposes.

Mr. Simmons stated: On Page 5 with regard to the site plan issues. Most of these issues were mostly granted as variances. Ms. Dolan did talk about the tight radius that we mentioned coming out of the Dunkin Donuts. We talked about the turning radius coming out of the drive-thru. We were concerned with the passenger vehicle coming out and making the hard 90. I think the revision that they are talking about will help that situation.

Mr. Soloway stated: Just so we are clear. Item 4 in bold print you list two front yard variances. They were granted last time. Unless they are relocating some building we are not revisiting that. Mr. Simmons stated: Not that I am aware of. Mr. Soloway questioned: There is no variance required in this application for this? Mr. Fox stated: No. That has already been approved.

Mr. Simmons stated: Page 6 Item C. We talked about the 24 foot. They added some of the additional signage with regards to my comments on the Newton Ladder truck. They talked about the mountable island. That will help that situation. I kept Item F in just for the Town to continue to pursue that intersection as time goes by with any improvements they might consider at DOT for a left turn arrow. Item 5 on Storm Drainage the reason we included those items is because they were items of the previous approval. I don't believe we received that information to address those items in our package. If the applicant's engineer could send them to us that would be great. Mr. Fox stated: That is fine.

Utilities, Water and Sewer - Item 6. These comments were carried over from before. We are waiting for confirmation of the main size and fire flow from the applicant's engineer based on field tests and approval from the fire sub code official. Item 7, Grading. The main concern is the retaining walls. They may need easements before it is done, depending on the type of wall they choose and the length of any GO grids. That can be made a condition.

Page 8, Lighting. We did receive a revised lighting plan. The average in the middle of the access isles was around 2 foot candles and varies. We normally go between .5 and 1. The 2 wasn't too bad. The

canopy at the drive-thru for the Walgreens. The lighting intensity goes between approximately 23 to 70 foot candles. The Board might want to suggest that the applicant can tone the light down a little bit in that area. Mr. Fox stated: We have no objection. But there are no residents near this location. The reason for the brightness is that there are vehicles moving and we wanted to make sure they could see each other and the products they are picking up. We will work with Mr. Simmons. Signage for the Dunkin Donuts. They moved the one sign so that is a non-issue. Mr. Soloway questioned: It is in Item 9a 2, is that the thing that is removed? Mr. Simmons stated: The reason I brought that up is because we counted the door handle as signs because they were in the shape of a D and colored. They got a variance for 7 and the additional coffee cup would have made 8. We are back to 7. Mr. Soloway stated: I don't think you need a variance to reduce the extent of the prior variance. Mr. Simmons stated: the other sign they eliminated wasn't on the other application. Mr. Fox stated: We had approval 7 and the submission contained 8. Mr. Simmons stated: I don't believe a variance is needed for that. Some of the other comments that I made for the Dunkin Donuts and the Walgreens is basically a summary of what they did to revise the signs in accordance with the previous variances that were granted. The Board did not grant all the signage that was shown on the original site plan. They were approved for something less so these comments are to confirm that the applicant made those changes.

Mr. Soloway questioned: Page 8 Walgreens Item B3. Mr. Fox stated: Our position would be that these are directional signs not commercial advertising. They should be permitted because they are designed to help the public move in the right direction. Mr. Soloway questioned: What is your issue with them, because they are attached to the building? Mr. Simmons stated: The one that says "drive-thru pharmacy, clearance 12 feet" and on the other side toward Route 206 it says "exit." That is all it is. I didn't see anything in the resolution in the previous report about it. Mr. Soloway questioned: Were they shown on the plans approved previously? Mr. Simmons stated: They may have been but I didn't call them out. Mr. Soloway stated: If they were shown on the approved plans then they were already approved. If they weren't shown on the approved plans then they are new and we will have to decide how to treat them. Mr. Fox stated: You could have a motion that offers the resolution in that manner. If it was not previously approved then perhaps the Board could approve them this evening.

Mr. Simmons stated: On Page 9 Construction Details the applicant agreed to make all those changes. On Page 10 Item 12 Miscellaneous under the Developer's Agreement and on Page 11 the applicant agreed with all that.

Mr. White opened the floor to the public. With no public coming forward this part of the meeting was closed.

Mr. Soloway stated: The motion would be to approve the application for a 190 day extension of the allowable time period for filing both subdivision deeds and a plat to the satisfaction Mr. Simmons and myself and to also approve the application for amended subdivision approval in accordance with the approved plans subject to compliance with the recommendations set forth in the report of Mr. Simmons as addressed in their engineers response. I will also be granting a variance to allow the two-way driveway to have 24 feet instead of 25 feet. I would suggest that the motion also include to the extent it was not included in the approved plans to grant approval for the additional 3 signs totaling 14.08 square feet that are essentially directional signs. The way I would write it up would be to hedge it rather than setting a preference and indicate in the extent the variance is requires the Board grants it. The amended site plan would conform to all the plans presented, including these Exhibits. Usually they would

substantially conform to A-2 and A-3 and the resolution approving the site plan approval which they accept to the extent that is specifically amended by this approval. All prior conditions remain in effect.

Mrs. Fowler made the motion to approve. Mr. Ricciardo second the motion.

AYE: Mrs. Fowler, Mr. Ricciardo, Mr. Vandyk, Mr. White, Mr. Caffrey

ABSTAINED: Mr. Russo

Mr. Caffrey made motion to Adjourn. Mr. Vandyk second the motion. The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 11:23 pm. The next regular scheduled meeting will be held on ~~January 21, 2009~~ at 7:00 pm in the council chambers of the Municipal Building.

Respectfully submitted,



**Katherine Citterbart
Planning Board Secretary**

EXHIBITS

Exhibit A-12 - Mr. Donahue's map Pages 2 of 8 latest revision dated October 30, 2008

Exhibit A-13 – Mr. Simoff's traffic signing plan

~~Exhibit A-14 – Mr. Kelly's revisions talked about in previous meetings~~

Exhibit O-1 – Mr. Hardmeyer's report

#MNSPV7-2007 North Park Urban Renewal Associates Block 303, Lots 26.02, 26.03, 26.04, 26.06, C-3 Zone Amendment to previously approved plans.

Exhibit Revised A-1.

Exhibit A-2 Colored Rendering of architectural sheet A-9

Exhibit A-3 Colored Rendering from Mr. Truilo