

**Planning Board Meeting
Regular Meeting January 20, 2010 at 7:00 pm**

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

Members Present: Mr. LeFrois, Mr. Flaherty, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Chairwoman McCabe

ABSENT: Mr. Elvidge, Mr. Caffrey

ALSO PRESENT: Mr. David Soloway, Esq., of Vogel, Chait, Collins and Schneider, David Simmons, Board Engineer from the firm Harold E. Pellow & Associates, and Debra Millikin, Deputy Town Manager.

FLAG SALUTE

Sworn in: Gregory LeFrois

REORGANIZATION

Mr. Ricciardo made a motion to approve Mrs. McCabe as Chairwoman. Mr. Russo seconded the motion. The floor was open for discussion and closed. Mrs. McCabe was approved by a unanimous "aye" vote.

AYE: Mr. LeFrois, Mr. Flaherty, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Chairwoman McCabe

Mrs. McCabe made a motion to approve Mr. LeFrois as Vice Chairman. Mr. Ricciardo seconded the motion. The floor was open for discussion and closed. Mr. LeFrois was approved by a unanimous "aye" vote.

AYE: Mr. Flaherty, Mr. Ricciardo, Mr. Russo, Mr. LeFrois, Mr. Vandyk, Chairwoman McCabe

Mrs. McCabe made a motion to approve Mrs. Citterbart as Board Secretary. Mr. Russo seconded. The floor was open for discussion and closed. Mrs. Citterbart was approved by a unanimous "aye" vote.

AYE: Mr. Flaherty, Mr. Ricciardo, Mr. Russo, Mr. LeFrois, Mr. Vandyk, Chairwoman McCabe

PROFESSIONAL APPOINTMENTS FOR 2010

September 22, 2010
October 20, 2010
November 17, 2010
December 15, 2010
January 19, 2011

**Mr. Ricciardo made a motion to approve the meeting dates for 2010 at 7:00 pm.
Mr. Russo seconded the motion.**

AYE: Mr. LeFrois, Mr. VanDyk, Mr. Ricciardo, Mr. Russo, Mr. Flaherty and
Chairwomen McCabe

CONSIDERATION OF MINUTES

December 16, 2009

**Mr. Ricciardo made a motion to approve the minutes. Mr. Russo seconded the
motion.**

AYE: Mr. VanDyk, Mr. Ricciardo, Mr. Russo, Mr. Flaherty and Chairwomen McCabe

HISTORIC RESOLUTIONS: None

RESOLUTIONS

Ave Care @ Newton (PB#-09-2009)
Block 802, Lot 37, R-3 Zone
Property Location: 85 ½ Trinity Street
Preliminary Site Plan Approval

**Mr. VanDyk made a motion to approve the resolution. Mr. Flaherty seconded the
motion.**

AYE: Mr. Flaherty, Mr. Russo, Mr. Ricciardo, Mr. Vandyk, Chairwoman McCabe

Town Square Gardens and J&R Developers, Inc. (#SPSD 11-9-2003)
Property Location: Hillside Terrace & Cherry Street
Block 401, Lots 12, 13,30,32,32.01
Block 203, Lot 38

**Mr. Ricciardo made a motion to approve the resolution. Mr. Russo seconded the
motion.**

AYE: Mr. Flaherty, Mr. Russo, Mr. Ricciardo, Mr. Vandyk, Chairwoman McCabe

make it more functional. Mr. Bozek, Mr. Martin's engineer, basically proposed that they would reconstruct that outlet structure to make it more functional. Mr. Bozek was also the engineer with the Kohl's Store and that drainage also comes down to this basin. Mr. Martin did propose to make an updated outlet structure and had to apply to the DEP because of the wetland on the bottom of the basin to get a general permit. The outlet structure is a few feet on the Newton side town line. Mr. Simmons made a recommendation to Hampton that they keep Newton abreast with what is going on with that structure because they do share some common drainage in the basin. One of the conditions was to obtain approval from DEP to do the wetland permit so they could do the work. Mr. Martin and Mr. Bozek stated they have been trying to get the permit since March of 2009. Mr. Bozek forwarded up copies of correspondence with the DEP because they don't have the permit yet. I did speak with the DEP this week and they are working on the permit. They did not indicate there would be a problem with getting the permit. Just need to get the permit approved.

Chairwoman McCabe: Will there be any significant increase in the drainage into the retention basin on the Newton side because of this development. Mr. Simmons: The only increase will be from the surface area from the Home Goods store the rough area. There will be some increase in volume because of that and some miscellaneous paving behind the stores by the loading docks. There will be an increase in water quality. Due to the 2010 standards, will be adding in the back of the store one of the storm water management water quality chambers. This will help to filter out sand and grits from the road. So while there will be an increase in volume there will also be an increase with the quality of water. This is part of the requirements they have to put in.

Chairwoman McCabe opened this portion up to the public. With no one from the public stepping forward, this portion of the meeting was closed.

Mr. Ricciardo made a motion to approve the application for the improvements to the detention basin. Mr. Russo seconded the motion.

AYE: Mr. LeFrois, Mr. Flaherty, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Chairwoman McCabe

Martorana Enterprises (#SP 08-07), 100 & 104 Sparta Avenue, Block 1201, Lots 5 & 5.03, Applicant is seeking approval to allow construction of two retail buildings pursuant to a remand from the Superior Court.

RECUSED: David Simmons, Neil Flaherty

SWORN: Karl Pehnke, CMX Engineering

Representing Applicant is Anthony Fiorello, our traffic engineer.

Mr. Fiorello: We are here tonight to present testimony of Mr. Karl Pehnke of CMX Engineering. He has not testified before the Board before. He has met with Mr. Dean and hopefully has resolved some of the issues that have been presented here before. I do have our engineer here in case some engineering questions come up with the site plan.

Mr. Donohue and offer suggestions to modify the site plan to address several of the concerns and also offer an opinion as to the access design changes that are being implemented as part of this project. Mr. Pehnke: The best way to start with this is to the start with the Site Plan that was submitted by Mr. Donohue who has been the engineer of record on this project for Mr. Martorana for quite some time. He had numerous revisions to the plan through the course of the application from the latest being December 3, 2009 and those revisions I was involved with developing. I have also had the opportunity to meet with Mr. Dean last week and talked about some minor tweaks to the site plan that will be prepared to implement as additional approval of this application and that I will summarize this also.

The site has been laid out with regard to respecting the existing conditions on the site with some buildings that are on the site. Mr. Soloway: You are pointing to the latest revision for the site plan sheet 2/8. Mr. Pehnke: That is correct. Mr. Donohue is asked if that is the site plan he submitted. Mr. Pehnke: Yes. Mr. Soloway questions Mr. Pehnke is this the latest revision dated December 3, 2009. Mr. Pehnke: Yes.

Chairwomen McCabe stated that she, Mr. Vandyke and Mr. Ricciardo did not get it. It was not in their packet this week. Mr. Pehnke may need to mark it. The board took a 5 minutes recess to review it. Mr. Pehnke stated: The last meeting, one of the most significant issues that Mr. Dean raised was the configuration of the main access isle to the rear of the existing center. If you recall, there was a two lane road that came back and immediately turned to the rear of existing center if you recall we had a two lane road that came back and immediately turned to the rear of the existing center and worked it ways up to the remaining portion of internal access isle. Mr. Fiorella: That turned out to be the easterly most driveway. Mr. Pehnke stated: There was quite a bit of concern expressed at that location and there was concern with regard to the adequacy of the stacking lane approaching Sparta Avenue coming out of the site.

Mr. Pehnke continues: That was probably where the most significant change occurred and he spent quite a bit of time with Mr. Donohue and looking at the area and concerns expressed by Mr. Dean to address that situation and improve upon the site lay out and circulation from that stand point. Mr. Pehnke stated: What we accomplished were a couple of things. We eliminated that drastic bend in the circulation road to the rear of the building and the constraint that it had as being only a one lane in and one lane out at that location. We do that by modifying the existing frontage of the retail building. Today there is a very wide covered walkway boarded by a sidewalk before you get to the access road. What we looked at is modifying that portion of the building to maintain a 6 foot sidewalk against the building, eliminate the covered walk at that section of the building which gave us the opportunity to widen the driveway and with widening that driveway we are providing about 200 feet of two lane egress opportunity heading toward Sparta Avenue and maintaining the inbound flow. In addition, I was concerned with what Mr. Dean was with regard to the turn behind the building and the circulation on that. We really saw a better opportunity to extend that driveway more cleanly into the site and really make the access connection internally not was what was previously designed by subjugate it to and t it into the circulation element coming out from behind the 28,000 ft. retail building to the south east quadrant of the site. It really gave us the opportunity to clean that intersection up and create more order to the circulation in that particular area and I agreed with Mr. Dean evaluation with that and I think we have done

The last location where we will have to make a tweak is coming around the back of the building where there is not a lot of traffic doing that. Mr. Fiorello: What building for identification purposes? Mr. Pehnke the 28,000 sq. foot building comes around the south east quadrant of that location, Mr. Dean was a bit concerned with regard to site distances exiting the end of the building drive area and what we looked at that location is that we would provide a stop bar, a stop control so that the vehicles would have control at this location and that site distance issue would be overcome. So those are the tweaks to the site that would take care of as part of a condition. Mr. Pehnke stated that these conditions are not shown on his plan yet he talked about them last week and did not have the opportunity to make those final adjustments. Mr. Dean noted in his review letter that he received earlier this week; there were a couple of locations where he is suggesting some stop bars and stop signs. I did not have an opportunity to discuss those with him but he feels they are in the appropriate locations and would be willing to eliminate stop cars and stop signs where he thought were appropriate but certainly is not an issue from the site standpoint. Mr. Pehnke continues so basically the onsite circulation we have an appropriate hierarchy it is not your typical community center. It is respective of topography of the existing building and will work for this application and the design of this application. The other thing I would like to chat about is the access to this site and modifications that are being constructed here. Quite frankly they are significant and I think they are important for the site. Today, the site has several access points, three if you consider the westerly most one but two predominate ones that serve the existing retail building, the office and the common vacant warehouse building. Those two driveways are basically one way in one way out very tight turning radius. The western most has an offset to the hospice that really is not a great situation. The easterly most one does align across from the small commercial plaza located opposite us. As part of this application, we are moving forward we substantial improvements along Sparta Avenue and access management techniques that are consistent with what the county wishes to see out here and to improve safety of flow along Sparta Avenue. Those access management techniques include controlling points of access to the site, limiting the number of access points to the site, and improving and eliminating some poor safety conditions that have existed along the site today with regard to direct parking.

Mr. Fiorello: Referring yourself to the northern most building that is there and your discussion regarding direct access, as the site presently exists there is about 11 or 12 parking spaces existing in front of that building and those spaces back out, do they not right onto Sparta Avenue? Mr. Pehnke: That is correct. In front of the small office building there is a wide open expanse of pavement that is striped with direct parking. I believe there are 10 spaces that are actually in there. Those spaces are slightly angled and basically rely on circulation in the right of way as well as directly to and from Sparta Avenue to enter and exiting those locations. In the current day with the heavy traffic flow along Sparta Avenue that just is not a good situation to continue to exist. It is wide open expanses of pavement, uncontrolled movement of vehicles in and out of there, no definition to whether the vehicles can enter and exit off of Sparta Avenue; it just is not a condition that should continue to exist. This application is addressing that by removing those spaces in their entirety, the pavement area in its entirety, defining the curb line

applicant is currently working with the tenant at the 11,000 sq. feet of vacant warehouse space and right now that tenant will be a self storage type mini warehouse low volume low generation type of unit in that area and is appropriate for that type of building and renaming it as appropriate and that is what is happening currently with that area. Mr. Fiorella: stated he can represent to the Board that can enlist a testimony from Mr. Martorana that those plans are already filed with the building department to make that conversion so one of the conditions that were recommended by Mr. Dean was that the warehouse be designated as self storage and consideration the Board may have we will agree that that would be the utilization of those premises. Mr. Soloway: You are not making that a permanent condition of any improvement, are you? Mr. Fiorella: Not a permanent condition but that was what was recommended. The plans on file demonstrate internal compartmentalization of that building for self storage so it would be quite a change to reverse it and I think that plan will be utilized for a significant period of time. Mr. Fiorella: wanted the Board to know that was a recommendation or an observation by Mr. Dean and we concur with it even to the extent that those plans have already been filed.

Mr. Pehnke stated: At our meeting last week they are looking at the opportunity of widening to put the left turn into the site. It does create a shadow area or widening area in the left bound direction that with some minor changes to the way the widening is being done could create the opportunity to put a reciprocal left turn lane to service the small commercial plaza across the street and it does make sense with the opportunity there to do it. So we would be in agreement in approaching the county, subject to their approval, to make that modification to provide a reciprocal left turn lane into the commercial property across the street, which would add an additional degree of enhancements to the design of these improvements along Sparta Avenue. Mr. Fiorella: There was also some discussion concerning wheel base trucks that would access this site in Mr. Martorana's previous testimony that he would delimitated by lease to WB 50 vehicles. Mr. Pehnke: That's correct and we are going to need to mark this exhibit. Mr. Fiorella: May we have this next exhibit marked as **Exhibit AR-8**. Mr. Pehnke: Exhibit AR-8 dated 1/20/10 this evening is an exhibit entitled Truck Turning Plan as prepared by CMX utilizing the base plans as prepared by Mr. Donohue as submitted to the Board as of December 3, 2009. What this exhibit shows is the site plan lay out and provides the turning paths of a large delivery vehicle, a WB 50 as the design vehicle through the site and including addressing the turn locations as requested by Mr. Dean at their meeting last week and even as previous review letters. Mr. Pehnke stated: In the upper left hand quadrant of this particular exhibit, today the site does have active retail on it. It did use to have active warehouse on it as office. The site did and is serviced by larger vehicles such as a WB50. As I have indicated the existing driveway depicted in the upper left hand corner is the less restrictive driveway on the site today it would be the westerly driveway just to the west of the retail plaza and east of the existing office building. The existing driveways are rather tight, very tight turning radii into the site. In the upper most left box shows the exiting movement of a WB50 tractor trailer exiting the site today. You will see the tracking of that vehicle requires that vehicle to the entire ramp to Sparta Avenue to exit the site if it wishes to go two points to the east. Mr. Fiorella: So you are saying in a turning movement, the truck would use both lanes? Mr. Pehnke: That is correct to exit the site if its point end points to the east. Entering the

driveway would be able to exit that driveway it will encroach slightly in to the shadowed area of Sparta Avenue and then circulate out on to Sparta Avenue. That is probably more better shown at the easterly driveway where a truck exiting the eastern driveway if it wanted to go to the east would swing wide through that driveway and swing onto Sparta Avenue and would be a slight encroachment into the left turn lane. Mr. Pehnke is referring to the shadowed area and Mr. Ricciardo indicated that the Board does not have that plan up there. Mr. Pehnke showed them exactly where he is talking about.

Mr. Fiorello: On the westerly driveway the radius was controlled in designated by the county. Is that correct? Mr. Pehnke: The radii are establishing the criteria of the county and their driveway radii are 35 to 40 feet. Mr. Donohue has been working with the county on this so he has more of a history with county interaction that Mr. Pehnke has. But the geometry has been set based upon those discussions with the county.

Mr. Fiorello: If there were no such county restrictions and if the driveway were wider would there be any encroachment however slight? Mr. Pehnke: If you want to avoid encroachments you go to a wider driveway width and wider radii. For instance the State of New Jersey is a lot more liberal. They will allow state highways 50 feet. That is not where the county is. They control their roads a little more and use that 35 to 40 feet.

Mr. Soloway: is the county dictating the width of the driveway? Mr. Pehnke: It is basically dictated in the design standards in terms how the radius come together, driveway widths come together. If we want to have a little more interaction with the county and tweak it a little, Mr. Pehnke feel they could have some conversation with county. But it is following within the parameters that they have laid out in their design development standards.

Mr. Soloway: The answer is that the county is not telling you you can make the driveway wider. Mr. Pehnke: There is not one answer from an engineering standpoint, there is always room for some discussion so there may be an opportunity tweak the radius itself. Mr. Ricciardo: As I understand it. The county dictated the location of the driveway of the entrance and exit of the piece of property. And I think that is all they dictated. Am I wrong? Mr. Fiorello: No they dictated the width of the driveways. We were constrained. Do you remember we argued for greater width and they declined it? I am telling you what the testimony was before and we will confirm it with Mr. Donohue. Mr. Pehnke never met with the county officials. It was Mr. Donohue and Mr. Simoff who met and they were told what the dimensions were and we had to design to that dimension.

Mr. Pehnke: The County has a book with design standards in it. They are consistent with that. Mr. Donohue has been handling that and has a lot more knowledge with that history. Mr. Soloway: Is that true Mr. Donohue? Does the county dictate the width of the driveway? Mr. Donohue: Yes as also with that driveway they required them add the island in the center so all that information is dictated to us as indicated on the plans.

Mr. Fiorello: Now the plan you just laid out and discussed with the Board, Is that atypical approach to designing an ingress and egress to a community shopping center such as this? Mr. Pehnke: No it is not. It is fairly typical lay out given the existing site development that is on this site and the topography and access opportunities to the site. The access opportunities to this site are pretty much set. You only have opportunity between the two buildings. The existing Quick Check building and the existing office building with one opportunity to come in and out and the other opportunity is the eastern portion site and quite simply it is where

do know the general level of traffic flow on the site and we know that the left turns exiting the site are difficult. Where the remaining issue is, is making sure we design to accommodate the fact that vehicles exiting the site with experience delays and queuing. Where we get into a gray area as traffic engineers is unfortunately our tools are somewhat limited. The equations used and the calculations used in the analysis quickly break down when we get into over saturated or poor levels of service in the F conditions. You hear that before. Mr. Simoff that will operate in an F? Mr. Dean has told you it will operate in an F; I have told you it will operate in an F. Mr. Soloway: What does an F mean? Mr. Pehnke: An F is a Failing level of service by definition. This Board I am sure has heard traffic engineers using the rating system from A to F, A being the best and F being a failure level service. Which basically means there are delays in access of what has been theoretically calculated as the tolerable level of delay? This has been selected by traffic engineers what is a reasonable break line as to a level of service. Mr. Ricciardo: What is that reasonable level of service? Mr. Soloway: Table 8 of your report, you are indicating peak hour 13 minutes delay. Mr. Pehnke: The reality is what we know for this left turn is generally during that peak time at times could be anywhere from a minute to 2 minutes upward. He doesn't think it is 10 or 13 minutes. He thinks it is someplace between what the calculations specifically define it. What we do know is we need to be aware and we need to set up a queue area that can accommodate that. That is one of the keys things we have done and addressed in this site plan revision addressing Mr. Dean's concern and comment by setting up this 200 foot long left turn lane that would allow the queue by extending the ability to have the 1st conflict point of internal site beyond 300 feet by changing the way the internal 1st conflict point is organized so that even if a queue went back that far, it would not shut down; the internal site would still function well and safely and that traffic would have the ability to be accommodated on that easterly driveway and work well. As improvements occur in the future on Sparta Avenue that condition will change over time. And this is not a condition that is unique to this site, every driveway along this section of Sparta Avenue, every unsignaled light intersection along this section of Sparta Avenue has difficulties making a left out that will occur. The key is to set the geometry to accommodate it, provide for the safety, and in this case of this particular application I think the other key it the fact that we are putting in place quite a bit of safety enhancements and improvements to the driveways along Sparta Avenue itself which improves existing conditions quite a bit and enhance traffic along the frontage of this site. There is a large advantage to the construction of the driveway that is proposed and the elimination of direct parking spaces on Sparta Avenue and the improvement of the flow. So we can argue all day, quite frankly Mr. Dean doesn't have a way to get to that exact answer, I don't have a way to get to that exact answer. I am well aware that this Board knows this area. Residents here know this area; they know the flow and what they will experience. And what they experience today is what they will continue to experience in the future until such time as the County is able progress improvements whether it is improvements at Sussex Avenue at that intersection or the improvements they have been envisioning over the years.

Mr. Fiorello: Mr. Pehnke this analysis takes into consideration that these are peak times, is that correct? Mr. Pehnke: That is correct. We are looking at peak times. He would note that his traffic counts were conducted in late November and we were moving

broaden the lanes on the easterly entrance and exit you are alternating the front of the existing building? Mr. Pehnke: That is correct. There are no plans filed yet. Mr. Ricciardo stated: I would like to see what you intend to do. Are you going to redo the roofing and canopy that surround the existing building which Quick Check occupies and retail area and the laundry mat? You are going to reduce the size of that. How are you going to reconfigure that? Do you intend rebuild the same kind of roof now or are you going to do something to match the new construction at the rear of the back of the property. What will it look like? Mr. Martorana said we will recreate the look that is there presently. Mr. Ricciardo: I am still looking for a direct access to the building where I do not have to drive through parking lanes. Mr. Pehnke: Your direct access is through the crest of the driveway. That is your central driveway. Make a right in and you come right back and you are into the site and you are in to the parking lot. The intent is go get the people into the parking lot.

Chairwoman McCabe: Mr. Pehnke, how many feet would you calculate are between the eastern egress point and your new T in the parking area? Mr. Pehnke: About 300 feet. Chairwoman McCabe: So about 12 cars and queue? Is that correct? Mr. Pehnke: 12 to 15 depending how tight the car inside a slow movement when people get tired of 25 feet within traffic signal. Mr. LeFrois asked: Based on your estimates let just say it is 10 minute wait for the left turn lane. Would 12 cars queue up in that time period based on estimates that you have of vehicles exiting the site? How long would it take 15 cars to queue up based on the volume of traffic anticipated to be leaving the site during the peak period? It would depend. There will be periods of time when there are no gaps on the highway and that's when your queue occurs. And then there is a period of time where a gap occurs which let one vehicle out. There is a gap that might let 3 or 4 vehicles out and the queue dissipates. So it really depends on how many cars are on the highway at a particular time. During a peak hour or even a peak 15 minutes will probably be the worst case that you design for. Most of our analysis is designed to address the peak 15 minute or hour of the roadway. It really depends on the particular time and what the condition is on the roadway. But what causes the queue is when the gap disappears and isn't available for 15 to 20 seconds and a couple of cars are exiting the site that is when your queue starts to create. The other dynamic that occurs at a community center such as this is that people know there area and they know where they are shopping and they will adjust their driving habits to reflect that. So while we are working with worst case numbers and assuming everybody will want to be here and coming in and out during peak hours we all adjust our driving habits to pick up whatever odds and ends we have in a shopping center like this based upon what we know about e know about the areas. Mr. LeFrois: How many vehicles are going to want to turn left out of the driveway per a 15 minute period during the peak hour? Mr. Pehnke: During the peak hour based upon the standards that we have utilized, we have estimated you would have a demand of about 124 vehicles over the course of any hour so two per minute. Mr. LeFrois: we could handle roughly about a 7 minute queue time. So technically after about 7 minutes. So would have to have a blockage for 7 minutes for it and no vehicle to exit the site. You can get out it might just take longer on some occasions. Mr. LeFrois: So what we are doing today we are concentrating all the left turns at this one location and we are adding additional buildings in the back. It will make it worse because there is more volume so there is an increase in volume that is

includes improvements at that intersection. That will continue into 2012 and 2013 and where they are looking at right away analysis and construction. Mr. Fiorella: Will that continue to improve in a positive fashion the ingress and egress to the site. Mr. Pehnke: Certainly. As they get to that in the next couple of years improvements to that signal will eliminate the delays and queues that occur as seen by Mr. Dean and Us and improve flow as they get the center turn lane out there. That would give the opportunity for vehicles to turn it is a two center way turn lane that they are evaluating. It will give the opportunity for drivers to turn into a two way center turn lane to enter ingress and egress driveways. So there is a lot of benefit with that plan. It is a big plan. It has been around a long time in planning but it is still real. They are going to finish scoping by this summer of 2010 and hope to get into right of way acquisition and construction document in 2012 -2013 is what they said is the most recent status of that. Today Mr. Pehnke did ask them if there was an interim improvement they were going to look to try to do at Sussex Street. They were not forthcoming with anything in the immediate future at that location. Mr. Fiorella: These contemplated improvements which are in process but a little distance will tend to improve ingress and egress to the site. Is that correct? Mr. Pehnke: Yes. And flow around the entire corridor. Yes that is the intent of it. Mr. Fiorella: If the County wanted to surcharge the establishments that benefit from that they can do that? Mr. Pehnke: I do not know if they have any plans or any specific setup to do that. Mr. Ricciardo: So they may have it planned and scoped and ready to go by 2012 but there intent is to start in Sparta and work their way through Newton. So they will not get to Newton until 2020. Mr. Pehnke: The last I looked the website was 2007. So it is not the immediate savor but it is still real and right now with the type of economy we are in so government agency as the bonding that is needed. But it is a real solution that is being address on the appropriate level which is a government entity. In the interim we are assisting by putting in place the beginning of it at this location and the improving the access and egress from this site. Some of it will happen with private funding as a result of applications such as this.

Mr. Ricciardo: Did you review this turning lane with the county? The purposed turning lane, that all has been reviewed with the county? Mr. Pehnke: The left turn into the site is in performance with what the county wants. What we do need to do is follow up with Mr. Dean's suggestion which is to modify the design a little bit to put a reciprocal left turn lane into the small plaza that is across the street from us. Mr. Soloway stated:

Mr. Dean issued a report dated January 15, 2010. On pages three and four of that report he makes ten recommendations. Is the application agreeable with all those recommendations and understanding? Mr. Fiorella stated: Just to review them confirmation that the applicant's warehouse will only be used for self storage? I think we have addressed that. That is where we are in the process of modifying it with plans to make it self storage should sometime in the distance that changes that would require reconsideration by the Board, although it is permitted use one way or another but that that is agreeable. Lease restrictions are agreeable. Applicant to revise traffic control and the rear corner of the larger retail building to address site distance, I think we testified that has already been done and accommodated and will be done. Review site distance at the drive thru for the smaller building through stripping has been done and acceptable. Truck circulation plan will be presented that the ingress and egress path as well as onsite circulation access to/from was present. Handicap accessible spaces will

form of a restaurant I think it is Krave is it contemplated that a sign would be added to the sign now? Mr. Matarano: We will not have to. There is an open slot. I just have to take a plastic insert and slide it in. Mr. Fiorello: So I believe Mr. Donohue the answer is the present sign will accommodate a sign for the new tenant or any new tenant that may go into that location. Mr. Soloway: Are you relocating the Quick Check sign? Mr. Donohue: Yes. Mr. Ricciardo asks: Is the existing Quick Check internally lit? Mr. Matarano: It lights from the inside. Chairman McCabe states: That is a good question. Our code does not allow for internally lit signs. Mr. Ricciardo: So if he relocates it he has to get a permit to relocate it. Mr. Soloway states: You have to comply with the ordinance. Mr. Ricciardo: So you cannot have an internally lit sign. Mr. Soloway states: He can ask for a variance for that requirement. Mr. Dean asks: Did I hear correctly that a restaurant tenant is going into the Quick Check building? Mr. Dean continues: my concern is currently the parking standards is for parking based on a ratio on one space for every 200sq. feet of retail. All of the parking calculations that Mr. Donohue did with the exception of the fast food calculation are for retail. Your ordinance requires a much higher parking requirement for restaurant that is not reflected on these plans. And the plans only have a surplus of four parking spaces so if the restaurant needs to be included we may have an issue with the parking variance that has not been identified. Mr. Dean stated: The calculation of this new tenant and the parking needs to be looked at to address this issue because at this point the applicant hasn't sought relief for a parking variance. Mr. Soloway asks: As you prepared to address that Mr. Donohue? Mr. Donohue states: He is not aware of a restaurant going in so we would have to look into that again we picked conceptually uses that are indicated on the plan to come up with this parking account so we can review that. Mr. Soloway states to Mr. Donohue that this is for your information because you weren't brought up to speed with the restaurant coming in. Mr. Dean stated: In referring to Mr. Donohue's plans he has indicated that 3,000 sq. foot of restaurant. No?

Mr. Ricciardo: Mr. Soloway, who establishes the criteria by which we can review the interior circulation and safety? Is it what we as individuals or members of this Board think, or was it established by the Court. Who establishes that criteria? This still has not been answered. Mr. Soloway: The court determined was that the Board thought wasn't quite enough, that it wasn't grounded sufficiently with items in the record or in any expert testimony. The Court also concluded that on the traffic and circulation is that the applicant did not prove that was adequate and the Board didn't have a sufficient basis to definitively conclude that it was inadequate. So the only advice I can give to the Board is to make your determination based upon on all the evidence that is before you based on this hearing which is going to include a lot of expert testimony from traffic engineers. Mr. Fiorella stated: Mr. Simoff has been superceded by Mr. Pehnke. And while he laid some ground work in terms of the internal site plans it is still relevant because that hasn't changed. I think the testimony by Mr. Pehnke will supercede his. Mr. Soloway continues: You should access the evidence both documentary and testimony with particular emphasis on expert testimony but certainly based also on your own knowledge of the area and your own common sense.

that regard or perhaps the downsizing the size of the buildings a little bit. These are all issues that should be looked at.

Mr. Ricciardo stated: He did not say, the way I interpret it, that we can't discuss the location of the building if we honestly believe that the relocation of some of these buildings or one of these buildings would directly improve the circulation pattern and the general safety of the vehicular traffic within the site. Mr. Soloway: No he did not say that. You are correct. Mr. Ricciardo. So we can discuss that? Mr. Soloway: You can discuss it and I would suggest to the Board any findings the Board makes be grounded in some expert testimony. Mr. Ricciardo: If we need expert testimony regarding that discussion, we should have an engineer present to discuss and review it? Mr. Soloway: You have a traffic engineer present for the Board. We don't have Mr. Dean again as a licensed professional engineer but the Board elected to date in terms of this remand to proceed without the typical municipal engineer to guide it on the assumption that we really were limiting ourselves to what the court said. Mr. Ricciardo stated: I am trying to limit myself to what the court said that is why I am asking you if I am stepping out of bounds in discussing this. Mr Soloway states: I don't think you are stepping of bounds by addressing that question to the expert and raising the concern. Mr. Ricciardo: We did not engage the services of Mr. Dean to discuss the site plan as it is. We engaged his services to discuss traffic, did we not? Mr. Soloway: Correct but I would think he would be competent to answer the types of questions you asked. Mr. Ricciardo: I don't question his competence, I am just wondering if that would fall under the realm of what we hired him for. Chairwoman McCabe stated: He is a circulation engineer as well.

Mr. Ricciardo: Mr. Dean have you had the opportunity to review this site plan and even discuss or consider relocation of one or both of these buildings to improve the general circulation pattern with this site? Mr. Dean: I have not considered that possibility.

Mr. Ricciardo: Do you think the possibility of relocating one or possible both these buildings could improve the circulation pattern within the site? Mr. Dean stated: The short answer is yes. There are certain topographic constraints. The property has, I imagine, some fairly severe grades that necessitate painting walls and have resulted in the alignment of some of the driveways that you see particularly the westerly most driveway. I can't speak to every design nuisance of it. But I am aware of the general constraints on that end. There also is an environmental constraint on the easterly side of the property involving potential wetland buffers and things of that nature that exceed my expertise. So I have not undertaken a what if scenario, if you will, to move the different puzzle pieces around. Depending on your concerns, I do believe that exercise certainly is valid and could be done by somebody like Mr. Simmons or someone like him as a professional engineer but more of a site engineer. Mr. Ricciardo stated: He understands the applicant's concerns in doing this. If potentially these building could be relocated or reconfigured, it would involve cuts and fills of the soil in an area that may have rock in it and it is costly. But if it produces a safer and better traffic flow within the site, I think it is viable to study. That is just my opinion. We have asked this question from the very beginning and the answer was no we do not want to consider relocating the buildings. Mr. Fiorella: That was testimony by our engineer that was not possible from an engineering perspective and the planner. Mr. Ricciardo: You are saying that

Mr. Ricciardo: How are you going to propose and address that deficiency of 12 spaces with this site plan? Mr. Donohue discussed this with Mr. Martorana during the break; the proposed conceptual uses on this site plan indicate three fast food restaurants as proposed. The applicant would remove one of those conceptual fast food establishments therefore adding in 24 parking spaces back into the plans. We had a minus 12 plus a 24 now we are at plus 12. Now, if you subtract out the where the fast food was and add in the retail it is a minus five. So in total it would be plus seven spaces. Mr. Ricciardo: Which fast food is he eliminating? The 12,000 sq. feet? Mr. Donohue: That was not discussed as to which one.

Chairwomen McCabe asks: Now are you aware that least one parking space is going to be lost in the back as well for a freezer? Mr. Ricciardo states: There will be three spaces lost to the freezer in the back. Mr. Donohue stated: I was not aware of that for a freezer. Mr. Ricciardo states: There will be a walk-in freezer. The approval was based on losing spaces for a walk-in freezer in the back. Mr. Donohue states: The site plan for phase I it appears to have the freezer over one parking space. Mr. Soloway: stated: Showing the Board AR-9. Mr. Donohue: If that is the case then we are down to a plus six parking spaces. Mr. Dean: What is the dimension of the freezer as shown on that plan? Mr. Donohue: It indicates 10 x 12. But we have an island area that could be used or we can modify this to make it work. It would only be one space. Mr. Ricciardo asks: The screening around the freezer is part of the requirement. Mr. Donohue states: I don't know the size of the screening. What in total that will involve. Mr. Ricciardo states: At the very most it will take two spaces. Mr. Donohue: That will still leave us with a plus five. Mr. Soloway asks: You will submit something Mr. Donohue so that the Board can figure out this parking situation. Mr. Donohue states: Yes I will. Mr. Fiorello: It was your site plan that was prepared and we need to have you review it and indicate to the Board the items that have been discussed by Mr. Pehnke. It was submitted on or about December 3, 2009. You heard Mr. Pehnke testify to various dimensions of the driveways, the spaces and dimensions involved, you concur with that? Mr. Donohue: Yes I do. Mr. Fiorello: This is a plan that you prepared in consultation with him. Is that correct? Mr. Donohue: That is correct.

Mr. Soloway opens this portion of the meeting to the public.

Mr. Ricciardo would like to discuss the northern exit from the underground parking. Exiting from the underground parking, I see you have a stop bar there. Mr. Donohue: Yes that is correct. Mr. Ricciardo: What if there is a truck in the loading zone that obstructs the vision of the car coming out? Can we restrict the distance of the loading zone to increase the site line? Mr. Pehnke states: Yes. I could work to get this addressed and work with Mr. Dean on this matter. Mr. Ricciardo: Is the site line around the property sufficient? Mr. Dean stated: This is not sufficient. He introduced to the applicant a multi way stop control at that location so that the people coming down the ramp or from the drive through would stop as would the people at exiting the garage. The other alternative is an architectural style and you will note in the north east corner there is a revision that says open build wall instead of it just being solid block you can do it with columns so that people can see through and around the corner of the building.

Ricciardo stated: What you are telling me it is your opinion that this is safe this is a safe operation, safe parking layout and will it will function properly and safely. If I look at it a different way and say I think doing something different would be safer, that is my right to do that? Mr. Soloway: You can conclude what you want. For purposes of these proceedings, any conclusion that the Board fines has to be reasonably granted to the evidence. Mr. Ricciardo stated: Okay. I think he said there are a number of ways to do it. This happens to be the way they think it suites this design best. Mr. Soloway: He can speak for himself but as I heard him you can do it different ways. He didn't say which way is better but in his opinion this way is safe. Mr. Ricciardo stated: It is a matter of professional opinion. Mr. Pehnke: It is not even professional opinion. Some of it is bonafied like control of access and driveways and dimensions of driveways, stop sign locations, with access isles you have codified that all creates safe standards that that are assembled to create a safe environment. You can assembly it in many different ways; different professionals will assembly it different ways but if we are all using the same standards we are creating a safe environment. So that is what you look for those codified elements and those codified elements are in the site plan. You do have a code it has been followed Mr. Donohue. He has testified to it. He evaluated it for site circulation truck accessible. It works. Proper radii have been put in place. And that is what creates the safe environment. Could some else design this and spend two years with you with a different looking plan, sure.

Mr. Ricciardo stated: I want to go to the 12,000 building the loading zone. Will trucks be able to pull up there? It that a curbed area? Mr. Pehnke stated: It is a curbed area adjacent to the building block and there is a designated loading zone where a truck will be able to pull into. Mr. Ricciardo stated: It is a curbed area. A truck will be able to pull up where it says loading area. Mr. Pehnke stated: That is correct. Mr. Ricciardo: They will be out of the flow of traffic time. Mr. Pehnke stated: Mr. Dean at our meeting last week specifically asked me to recheck that because both previous truck plans by Mr. Simoff as well as my initial one that I showed him last week to show the circulating routes so we specifically double checked that per Mr. Dean's request.

Mr. LeFrois questions: The loading area is not curbed right it is just painted. Mr. Pehnke stated: Yes, it is just a painted surface area. Mr. LeFrois: So the curb is at the end of the sidewalk. Mr. LeFrois stated: I thought Mr. Ricciardo thought he was pulling up to a curb. Mr. Ricciardo: I understand the curb is at the end of the sidewalk.

Mr. LeFrois stated: He has a question regarding the circulation route through the site. Once you get back into the new area behind the existing buildings, you are kind of meandering through the parking isle as we just talked about. Is there a way to provide guidance to people that want to go back to the 12,000 sq. foot building use this isle or this isle, because technically if they go a little too far and they will not be able to go through the drive thru and that drive thru is a one way so they would have to come back around. Is there any delineation or signage? Mr. Pehnke: We can always add elements of way finding signage to the site. Mr. LeFrois asks: Is that common? Mr. Pehnke: For a center of this size, No. Mr. LeFois stated: If your designation is the drive thru that it is not clear. Mr. Pehnke: You are correct. It is very typical when you have a drive thru system depending on the tenant that would probably be part of an

that a connection could be done if you wanted, yes. Mr. Hardmeyer stated: Questioned letter of interpretation. Mr. Martarana stated: This is an extension of the existing permit for the wetlands.

Mr. Andrew VanOrden, 1 Linmor Avenue, sworn in previously. Questioned: if the buildings were moved to different locations would that or could that change the circulation pattern of the site plan? Mr. Pehnke stated: The site plan has been laid out to achieve the build outs permitted by zoning that is the plan that has been presented to this Board. Mr. VanOrden: Next question was for Mr. Donohue. Mr. Donohue: Could a different foot print allow these building to be built in different locations? You had stated that those buildings have to go where they are because based on their size it would be topographically inconceivable and not practical to build them in different locations but if they were at a smaller size could they be built at a different location with nominal or zero increase in the engineering required. Mr. Donohue stated: This is the plan being laid out and proposed. It is approved. There are no variances and no requirements. Mr. VanOrden stated: I understand that and I apologize but my question was: Could a different size building be built in a different location? Mr. Donohue: Yes, it could be done. You could have the entire back property as a large building as an entire big box unit.

With no one else coming forward from the public, Chairwoman McCabe closed the public part of the meeting.

Mr. Ricciardo stated: I would clarification on something. I think Chairwomen McCabe and him disagree on something. Mr. Ricciardo continues: You are saying the court approved this layout. Ms. McCabe answered: I am saying the court said this plan was in compliance with our zoning ordinances and the only thing we can address is the safety of the circulation plan. Mr. Ricciardo asks: Do you agree with that? Mr. Soloway stated: Essentially yes. The remaining burden of the applicant is to demonstrate to the reasonable satisfaction of the Board that the application provides for safe and efficient traffic and pedestrian circulation; I think if the applicant does that then it is case closed. Chairwomen McCabe questioned Mr. Soloway: Do the circulations issues on this site included ingress and egress. Mr. Soloway: That is a very tricky question. The applicant would argue that the ingress and egress is dictated by the County that there is case law that indicates but he is quoting from the Lionel Case "the planning board may deny a site plan application only if the ingress and egress proposed by the plan be unsafe and insufficient state for circulation. So the answer to your question is yes to the extent that the ingress and egress again designed by the county in essences becomes unsafe because of what the proposal funnels into it. Chairwomen McCabe stated: So the ingress and egress doesn't cause the unsafe circumstance there? Mr. Soloway does not feel that the ingress and egress is a Board issue because the County dictates this. This means though that the Board does not have to absolutely accept it if what the applicant is proposing is creating an unsafe condition there then the Board does have a legitimate issue.

Mr. Dean brings up that the ordinance requires a different parking standard for supermarkets and food stores. There is evidence from the free standing sign posted at

medical or dental offices have a higher parking requirement and supermarkets or food stores would need to be reviewed. Mr. Soloway stated: I believe the ordinance requires for commercial tenant any time there is a change in the parking requirement they have to get site plan approval. Mr. Dean stated: If that is covered by ordinance I apologize for the over redundancy. I just know there was some discussion of what constitutes a more intensive tenant and your ordinance applies retail universally so I cannot advise you on what constitutes a busier retail than other. Your ordinance presumably anticipates that by having a one size fits all parking standard. But for any of those other uses certainly it would be appropriate to discuss that much like when you discuss for the additional restaurant space. The one area where there is remaining concern with regard to the site plan and the traffic engineering two locations. The first is and I will describe it as the south eastern corner of the existing building where I certainly commend Mr. Pehnke and Mr. Donohue for straightening out where the proposed internal access had very sharp radii of only five feet. There was a potential for a head on condition and efforts have been taken to create a more uniform and a straighter alignment running in a north to south direction around the south east corner of that existing building. The center line radius does not meet what I consider to be a minimum of appropriate standard of 100 feet. That comes from residential site improvement standards for low speed or interior road ways. I think what has been proposed is somewhere in the order of 35 or so feet. There is still a fairly pronounced kink in that direction. I recognize there has been an effort to avoid what is depicted on the plan as a wetland buffer; however, I also note that there is currently an encroachment in that wetland buffer under current safety zone and I think a modification in that area to flatten that curve out would be an appropriate design exercise. I also note that there is a sewerage easement running right in that wetland buffer so any disturbances or improvements to that sewerage easement digs up the buffer. I am not an environmental expert but I do know that the combination of those two factors resisting encroachment in the buffer and the sewerage easement which has a presumption of disturbance at some point to maintain the sewerage line I am not sure the value of that buffer or what type of requirements there may be to respect that. I would urge for a safer design and to bring that into conformance with what I have considered to be a recognize design standard should be undertaken. The last issue is the level of service, the delays, the queues and the calculations leaving the driveway. Mr. Pehnke conducted his gap analysis using a mechanical means, two rubber tubes across the road. The problem is when traffic is not moving and it is backed up the tubes think there is a very big gap but there really isn't one. It is bumper to bumper conditions on Sparta Avenue. Mr. Dean's office videotaped in mid December the evening peak hour conditions so over the course of an hour and half you can see exactly how many gaps there are. They were measured twice and error on the high side. They found there were 62 gaps to make a safe left hand turn out of the plaza. The problem we have is there is a projection of 124 left turns. So we are only at half the capacity to accommodate the projected demand. We have performed the same capacity calculations and delay calculations and queue calculations that Mr. Pehnke did using the actual gaps, those that we measured as exist and appended to our report of those calculations they follow the exact same methodology that Mr. Pehnke used and we anticipated a queue of just under twelve vehicles in the peak hours extending all along the site driveway and the site interior.

stated: I do not see a safety concern. There was some original discussion I had about site distance and the free standing sign, but that has been addressed to my satisfaction. You will see by the exhibit that there is plenty of clear distance under the sign. Unquestionably it necessitates a left turn movement back into the site to leave but that simply is a function of the design. Intuitively, I thought what if the traffic flow were reversed in that parking isle and the problem you have is trying to exit more easterly where that queue of traffic exits which mean you could potentially block the ingress portion of the driveway.

Chairwomen McCabe stated: Mr. Dean I should tell you that by way of history that when this applicant came with the design initially, this design was the one we came up with together simply for that reason that if anyone wanted to exit out of the Quick Check lot on the eastern end and there was a queue there, they would never get out. This was the only way we could see the traffic continue to flow. It is inefficient by all means. But it was so horribly unsafe the other way, that we couldn't condone it. This was the only way we could get traffic to at least get in and get out of that lot. Mr. Dean stated: Going back to the driveways and the queuing and the absence of capacity to accommodate the demand, a few things happened as Mr. Pehnke mentioned there are people who are familiar with the environment and may very well not come to the site. I don't know if that is realistic and it is secondarily suggesting that the site is not accessible at the time when people want it to be principally on their way home from work. The concern with having insufficient number of gaps is that people become impatient. There is a 10 minute way to leave the site and even if it is 5 minutes it seems like an eternity when you are waiting to get out of the property. People then tend to get very creative in their driving habits and accept much shorter gaps and with two way traffic flow and if it is not already stopped on Sparta Avenue that means people are taking greater chances. And there is a corresponding safety impact associated with this type of behavior where you have conditions operating under that type of constraint

Chairwomen McCabe brings up a concern she has. It was discussed creating a left only into the property across the street as well in front of the Quick Check. My concern is that while it will keep traffic from backing up at that point if someone wants to make a left hand turn across the street any one egressing from the property to make a left hand turn now has to watch two lanes of traffic to their left instead of one. Mr. Dean stated: I do not disagree with that. Chairwoman McCabe stated: Is that sort of a tossup? Mr. Dean stated: My approach is there is in excess of 1500, 1600 vehicles on Sparta Avenue, and if one person turning left in to the office or retail plaza backs traffic up all the way up to Dillar Avenue or Sussex Avenue, that is a real problem. I think you are impairing safer traffic movement for 660 vehicles in the peak hour where as simply providing the left turn lane it much safer and it's appropriate. I do agree with your concerns with the person leaving the driveway than is negotiating two lanes. Just looking at the counts we conducted with Mr. Pehnke in the evening peak hours there are 6 vehicles that turn left into that plaza one every 10 minutes. It's inconsequential. Chairwomen McCabe stated: They are actually negotiating 4 lanes, two to the left and two to the right. Mr. Dean stated: You are correct. The one in the middle is the same. You are absolutely correct. The introduction to that left hand turn however is a recognized design technique to better manage access to abutting properties. Putting

traffic at any one driveway to a magnitude of four times more left turning traffic at one driveway because you can only make a left turn at one driveway under this plan. We definitely have different conditions that exist today. Again our gap analysis only focused on the easterly driveway and the traffic that is being accommodated there. Now we have to put all the site traffic at that one location and then all the new traffic arising from the buildings. Mr. Fiorella: You understand that is a condition imposed upon the developer by the Sussex County Engineers and Board. Mr. Dean: I understand they approved the plan as we have before us. I did participate as to whether this Board participated in the process and whether the county more importantly has reviewed the latest information which in my opinion is so vastly different than Mr. Simoff's for all the reasons we have discussed in prior hearings, I believe the county perhaps would not of made the same decision in light of the proper traffic engineering analysis. Mr. Fiorella: Have you consulted with the county at all? Mr. Dean: I have not. Discussion ensued.

Chairwoman McCabe asked if there are any other questions from the Board with no other questions from the Board Mrs. McCabe opens this portion up to the public.

Mr. Hardmeyer, 70 Pine Street, asked Mr. Dean to summarize the circulation around the existing Quick Check what was your opinion on that? Mr. Dean stated: I don't know. I have been asked to evaluate the plan before you. I know the Board and the Chairwoman McCabe expressed that they work with the applicant to design this angled parking scheme in from of Quick Check. I are probable a few opinions to be considered. I have not done that exercise. But it necessitates that anyone who wants to visit the Quick Check, the Krave Café, or the other tenants at the eastern end all of that traffic must come from Sparta Avenue into the easterly driveway and proceeds back in a westerly direction to the angled parking spaces. It the traffic is going back to the east it can make a right hand turn going towards Sparta. If it wants to go back to the center of Newton, it than exits the angled parking field at the westerly driveway, makes a left hand turn, travels probably 300 feet, than turns left at the northerly end of the larger retail building continues in a counter clockwise direction into the easterly isle stops at Sparta Avenue and then makes a left had turn to go back into town. That is the plan. Is it the most sufficient? No. To travel 800 to 900 feet around just to leave. Mr. Hardmeyer stated: Is a better one is available? Mr. Dean stated: A lot of talented people have worked on this including the Board. Mr. Hardmeyer wants to know if anyone has talked with Quick Check. He feels is not going to anything but decrease their business. Mr. Dean stated: This is a decision for the applicant. Mr. Dean submits that the principal challenge is it has worked now relates to if speculates if the front access were two way we still have the concern of people trying to leave to go back toward Sparta at the eastern end in the face of a particular queue of traffic. So that starts to gum up and constrain that operation leaving the parking field. It also results in fairly a quick weave, which is if you are coming from the center of Newton and making a right and quick left into the parking field, again in the face of exiting outbound traffic creates a point of conflict all of 35 to 40 feet off the curb line of Sparta Avenue that is not an ideal situation. So I think the building location itself presents a constraint and I thought it was as good of a design as could be effectuated by going that one-way street in the front but one-way always have their imitations.

Mr. Hardmeyer stated: Walking from Sparta Avenue back to the 1,200 sq foot building. Can you do a side walk on that? Mr. Fiorella stated: This is a question and not part of the testimony. Chairwoman McCabe reminds Mr. Hardmeyer that the public portion is closed at this time.

Mr. Dean stated while talking with Mr. Donohue: He will be able to place some type of sidewalk between the islands which were originally landscaped islands. They were currently proposed as landscape islands with trees. They would be removed and sidewalks would be installed. The proposal was to have these islands with trees. As you enter the site you would have trees on both side and landscaped areas. To provide that walkway you would have to put sidewalks in and remove the trees. You can have a sidewalk adjacent to the buildings and across painted line striping and then down across those islands to sidewalk adjacent to the 28,000 square foot building and then you run up to the crosswalk and then up to the sidewalk. Mr. Soloway stated: That would be the connection the two proposed building you would not have to remove any landscape islands to connect this Sparta Avenue sidewalk to the existing buildings would you. Chairwoman McCabe stated: No. Mrs. McCabe questioned is this acceptable to the Board or would you prefer to have the trees? Mr. Dean: stated: It is probably important to maintain pedestrian safety over a few trees. Mr. LeFrois stated: So remove the landscape on these islands and create the sidewalk pattern. Mr. Ricciardo stated: Was two or three islands Mr. Donohue? Mr. Donohue stated: It will actually be four. Mrs. McCabe questioned Mr. Soloway: Have we covered all our bases? Mr. Soloway stated: The applicant has completed its presentation, the public has completed its testimony and the Board can decide whether or not it wants to put this up to a vote. Chairwoman McCabe stated: Is there a motion from the floor. Mr. Ricciardo stated: What kind of motion are you looking for? A motion to act on? Mrs. McCabe stated: I think we have to act on it if we are finished with our testimony.

Mr. Soloway states he has notes from the last time not sure if they made it into this plan or whether they would be items deemed to be conditions. There was some discussion last time was the parking under the building to be limited to employees. Mr. Dean stated: I do not see this noted on this plan. Mr. Soloway stated: I have a note saying the driveway would be limited to exiting employees plus exiting the drive through so that would be a condition if you granted the approval. WB50 trucks prohibited on site. There was discussion list time to restrict delivery times for the trucks of certain size to no peak hours. Greg Martarano had testified UPS and Fed x would agree to do this as would garage trucks and he would enforce that by lease provisions. Coming back through the site plan with certain tendencies as we have discussed. The approval for preliminary site plan only and subject to verification that there no parking variances required and would be subject to the sidewalk plan which we would describe and can be put up for final review at the time of final site plan. I would recommend the Board make this subject to before final site plan one more look by a municipal engineer or a substitute. If only to make sure none of these changes creates any kind of engineer issues. I don't think it would if you are creating any additional impervious surfaces. But I recommend that type of review be done at a certain point. You would have the stand conditions, no deliveries to store fronts was a suggestion made by Mr. Dean. Not sure how you would enforce that. Mr. Donohue stated: There also will be signage detail that would be subject to the 10 conditions made in Mr. Dean's report. Mr. Ricciardo stated:

further research that you are going to do or confirmation? Is it going to be improved for safety and efficiency of the site to a degree that would make you comfortable that this is a safe and efficient site based on its current configuration?

Mr. Dean stated: it is a difficult to answer because to answer it require a degree of hypotheticals, which we don't have on the plan before us. So if you are considering the plan as you have it before you, with the radii as they are presented, the stacking lengths at the south east corner of the building on this plan, I believe there are deficiencies on this plan as presented. It is not to say they cannot be cured.

Mr. Ricciardo stated: We are to base decision on the plan before us not on some hypothetical or discussed possibility?

Mr. Soloway stated: You are deciding on the application that has been presented to you based on the evidence that has been presented.

Mr. Russo stated: I am not saying there shouldn't or couldn't be something there. The safety of cars coming in and out, pedestrians walking either in there, on the road, on the sidewalk whatever it may be, I just think there are too many speculatively that could possible happen and I think it would be a danger to possible people in this area.

Chairwoman McCabe stated: I agree. This applicant has every right to develop his property. Mr. Russo continues: My question is than why are we not working with the professionals to get it right as opposed to denying it. Have it go back to the Judge to come back to the Planning Board to deny it and keep going? I just don't understand the logic of these types of decisions that this time of night. What do we have to lose if we keep working on modifying the plan because that is what the judge wants us to do?

Mr. Ricciardo stated: The applicant has to be willing to modify the plan. Mr. Russo stated: How do we get them to modify the plan when we do a motion to deny the application? Mr. Ricciardo stated: We have asked a number of times would they consider relocation the buildings, would they reconsider reconfiguration of the lay out and we were told that this is the best configuration they can come up with to design this facility on this particular piece of property and we heard that not one, we have heard that a dozen times so how many times do we have to ask if they would consider reconfiguring the location of the buildings, the design, the traffic pattern and they keep coming back and saying this is what we think in best for the property. The judge used the word compromise, how are we compromising?

Mr. Soloway stated: The judge encouraged compromising. I understand your point, in terms of compromise, the applicant can speak for itself, but I suspect the applicant's position will be, we are not reducing the size of the building, we are not moving the building and we have done all kinds of other things during the course of 2 or 3 years. That is probably what the applicant will say to you. In terms of compromise, if that is where you are, I don't know where you go from there. I can have the professionals sit down and try and knock out something but I don't think it gets anywhere. We have been at this for several years. It is a very limiting inquiry as the Board knows. Again, I

Mrs. McCabe stated: This is the first time we are hearing this. This was never brought up prior to this meeting. Mr. Ricciardo stated: He read the judge's order and this modification was never proposed by you, your attorneys or professional to the plan presented to us and build it in phases. Build one building and then go back and determine if indeed the road way and traffic counts will accommodate another building. That has never been presented, sir.

Mr. Vandyk stated: There never was a question that you weren't going to build a nice site. That was never an issue.

Mr. Fiorella stated: This was a court suggestion. There idea in terms of phasing was to building one unit see if they can rent it, rent it up and go to a second unit. They were not going to come in and build two spec buildings, put all that money and wait for rentals to come in. That was the procession, however, since the judge said talk to each other and compromise. We had to ask permission to speak with Mr. Dean. He at first did not want to do that until he got your permission. When we were able to speak to him, great strives were made. It took three meetings to get to that. This is an application of two years actually three years when we started. Almost half of a million later, these are small business people, this is not a big track, these are not big moguls, or big corporate executives. They have limited means and limited funds so when the Judge said try Lionel and see if that will work I discussed it with them. It was not an idea that came into decision making stage. You heard it from Mr. Martorana that he is prepared to do exactly what he said which will be develop this in phases so that the larger of the building is built first and then come back to the Board to see what the condition exist in reality.

Mr. Martorana stated: I have tried hard to be a good landlord. I worked hard to get Krave there. When they were doing work on Sparta Avenue a couple of years back, they wanted to know if they could leave all the construction on his property and obliged to it. The Board of Education did not have money for funds for shelving units, we donated all our shelves. I really try to be a good landlord in the community. I think if we work with the Lionel case and let me build the one building and then if it is bad as everyone is saying it is then we can deny the fact. If is true to what I did, I built a nice community and it is working and flowing nice. The ultimate thing is that I want it to work financially. I do not want to build something that is not going to work. We have put a lot of time and effort into this. I am not going to invest millions of dollars for it to fail.

Mrs. McCabe reassured Mr. Martorano: We do not you to fail. I want you to build something that is going to successful for you and for the town. And this is the first time we are have had any indication that you are willing to work with us in phasing.

Mr. Martarano stated: I thought this was mentioned years ago.

Mr. Soloway suggested that the Board discuss the concept of phasing and carry it one month and allow Mr. Dean to review the traffic circulation plan. Allow the professionals with approval of the chair if they deem it appropriate to get together and discuss things. Get the few open items from Mr. Donohue closed. I will work up a detailed list of possible conditions and have the applicant come up with a more detail on the phasing plan. It is a very interesting concept. Mr. Fiorella stated: I am not trying to undermine you but let's just fix exactly what it is and how it will work. Mr. Fiorella stated: Just for

EXHIBITS

Martorana

Exhibit AR-8 Truck Turning Plan prepared by CMX dated 1/20/10

Exhibit AR-9 Spector Associates Architects proposed restaurant tenant's space for Krave Café and Caters- Concept Plan dated 12/11/2009