

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

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

**MEMBERS PRESENT:** Mr. Caffrey, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Chairwoman McCabe

**EXCUSED:** Mr. Flaherty, Mr. LeFrois

**ALSO PRESENT:** Mr. David Soloway, Esq., of Vogel, Chait, Collins and Schneider, Dave Simmons, Board Engineer from the Firm Harold E. Pellow & Associates, Gary Dean of Dolan & Dean, David C. Krueger of Environmental Technology Inc., Paul Ferriero of Ferriero Engineering, Debra Millikin, Deputy Town Manager and Kathy Citterbart, Board Secretary.

**FLAG SALUTE**

**CONSIDERATION OF MINUTES**

None

**HISTORIC RESOLUTIONS**

None

**RESOLUTIONS**

None

**E.J. Brooks Real Estate Associates, Limited**  
**Property: 1 Brook Plaza, Lot 13.08, Lot 4, M1 Zone**  
**Applicant is seeking preliminary and final site plan approval.**  
**Carried to March 17, 2010 at 7 p.m.**

Mrs. McCabe read the letter dated February 9, 2010, Dear Ms. Citterbart: The Applicant requests that the hearing in this matter be carried from the February 17, 2010, meeting to your march 17, 2010, meeting, with no further notice being required. The reason for this request is that additional engineering changes are required and the plans will not be completed in time for the February meeting. Please confirm the adjourned hearing date. Thank you for your consideration.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

**OLD BUSINESS**

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

Representing the applicant was Anthony Fiorello, Esq.,

**PREVIOUSLY SWORN:** Thomas Donahue, from the firm Donahue Engineering, 34 East Prospect Street, Waldwick, NJ 07463 and Karl Pehnke of CMX, 200 State Highway Nine, Manalapan, NJ 07726.

Mr. Fiorello stated: It was a special hearing date for the Martorana Enterprises's application.

Mr. Soloway stated: The applicant completed his case and the Board was going to vote. At that point, Mr. Greg Martorana made an interesting and fairly sufficient proposal. I thought it might be appropriate if we understand it correctly. Mr. Martorana's proposal is a way to address some of the traffic issues. Have a phased development which means building only one building the first time and then after that building has been built, and substantially occupied for some period of time so that we have something to look at and before there could be authorization to build the second building, the Board would have the opportunity and the right to look at the traffic safety and circulation issues within the concerns during this remand hearing to see what has been happening, see how it works, whether it would work with another building. That was something Judge Bozonelis, when we were in court, did throw out there as a suggestion as to something he thought could be a way to deal with this problem. There is case law that sanctions this. The case is called Lionel's Appliance Center, Inc. vs. Citta. What happened there was there were multiple buildings; they phased it. They allowed one to open and put in a resolution in a condition that no building permit be issued for a proposed office building which was part of the same site plan for a period of at least 18 months from the date of approval and thereafter until further action by the Planning Board in this case and with the intention with this condition was the applicant return to the Planning Board after the expiration of the 18 month period so that the Planning Board can evaluate the than existing situation. When this subsequent application was made, the Planning Board made prove the immediate issues of the building permit further extend the period of delay of the issuance of the permit. In making this determination, the Planning Board shall consider than existing physical conditions in the area such as road patterns and concerns and any plans for future changes and significantly, the experience that has been gained on the effect of the site on traffic conditions and safety at the purposed site. As I understood, Mr. Martorana's proposal, that was essentially it. But before we go on tonight we need to make sure that the applicant is what they are suggesting. After that suggestion, it was

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

decided that it would be prudent for the Board to engage an engineer, Mr. Ferriero to evaluate the phasing plan. That in fact has been done.

Mr. Soloway asked: Is that the correct understanding?

Mr. Fiorello stated: Mr. Soloway you have correctly expressed exactly what my client's position was and how we are to proceed this evening on that aspect.

Mr. Ricciardo asked council: If this were to be approved, it would be approved for both Phase I and Phase II; only having them to come back for traffic and safety?

Mr. Soloway stated: Essentially it would be an approval preliminary because this Board does not do final at this point. It would be a full preliminary approval for just Phase I. For Phase II, it would be a preliminary to be fair for the non- traffic safety and circulation issues; or it would be preliminary subject to further proofs on that. It would not be a full unconditional preliminary approval. It would be subject to the normal conditions and with the conditions that will be applied here. If there were any specific conditions that it would be subject to evaluations and further discussion of traffic safety and circulation based upon what the situation is at that time and based upon the track records it develops over whatever period of time that Phase I would of been up and running. You would have to tie that into a time period and substantial occupancy as well. If you have an empty building, it will not tell us anything.

Mr. Fiorello stated: I agree with that analysis. I think if you were inclined to grant approval it would be Phase I with conditions some of which we agreed to that have been placed on record last time we were here Mr. Soloway. Phase II has been approved in so far as drainage, buffering, and what have you. However Phase II would be reserved specifically for the traffic and safety conditions considerations we have been discussing since the remand.

Mr. Fiorello called Mr. Thomas Donahue for his testimony. **AR-10** is presented to the Planning Board. It is a site plan for Lots 5 and 5.03 and block 1201 consisting of page 2/8 prepared by Donahue Engineering, last revision date of January 16, 2010.

Mr. Fiorello asked: Mr. Donahue, you had occasion to prepare a phasing plan?

Mr. Donahue stated: Yes, part of the revised site plan I have indicated Phase I and Phase II I requested from the last meeting, those are indicated by a heavy dash line which outlines the areas depicted for Phase I which occupies the existing building, parking areas and the 28,390 sq. foot building and its parking area to the north. That would terminate at the isle way between the 12,000 sq. foot building and the 28,390 sq. foot building. Phase II would be to the north of this isle way Phase I to the south more or less so everything in that area would be constructed. We chose that area because of the site circulations. So circulating around the 28,000 sq. foot building we can provide that through that main isle way that would provide truck access going around to the

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

rear of the 28,000 sq. foot building. Along with that we have indicated as requested, concrete sidewalks in the island areas to provide access from the street; sidewalk to the back or the new development. We were able to keep a couple of green areas on those islands and those concrete islands are depicted by shaded areas. We also have some stripping crosswalk areas to provide a means of access to the sidewalk adjacent to the 28,000 sq. foot building. We have also indicated on the site plan the 100 foot radius areas for center line for the exit driveway on the eastern side. We have indicated self storage as the future or potential uses where the warehouse use was prior. We have added in the 10 x 20 box unit which is associated with the new restaurant area which occupied one parking space that is on the building we revised. The parking calculations to calculate that the required 265 parking spaces would be needed for the uses that are shown and we are proposing 371 parking spaces on the site plan. We have moved two of the 88 parking spaces towards the center area or parking lot associated with the 28,000 sq. foot building. We have also added a second 88 parking space adjacent to the existing retail building.

Mr. Fiorello asked: Are those the handicap spaces you are referring to?

Mr. Donahue: Yes. Mr. Donahue continues: We have also added a stop sign; stop bar adjacent to the western exit driveway from the garage area from the 28,000 sq. foot building. We striped out an area so that no loading/unloading would take place adjacent to the 28,000 sq. foot building. Now it will provides some access or site visibility from someone exiting the eastern driveway from the garage looking to the west for oncoming traffic. We have also painted out or striped out an area associated to the 12,000 sq. foot for a 1 foot wide stripe in the 25 foot wide isle way to provide some additional site distance when traffic would be circulating around the 12,000 sq. foot building. Those are the modifications to the site plan itself.

Mr. Fiorello asked: How would you conceive the phasing to work in terms of construction itself?

Mr. Donahue stated: We progress through grading, drainage issues, traffic with the parking areas, but the front area would more or less stay in operation and an area would be cordoned off so that truck traffic and other construction activity would take place prior or behind that area.

Mr. Fiorello asked: What would happen with Phase II, would that we left in its natural condition or would it be paved and cordoned off?

Mr. Donahue stated: That would be left in a natural condition. Presently it is a wooded condition which would remain. There would be some site modifications associated with connecting the proposed grades constructed in Phase I up to the existing grades that are presently in Phase II.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Fiorello asked: Did you have occasion to review the record issued by Ferriero Engineer dated February 12, 2010?

Mr. Donahue: Yes I did.

Mr. Fiorello asked: Can you comment on with respects to areas within your discipline items 3 through 9?

Mr. Donahue stated: Yes, I will start with item number 4. Numbers 1, 2, 3 would be addressed by our other consultant this evening. Item no. four is a comment that states that the engineer has reviewed the lay out for phasing and it appears that Phase I has adequate parking associated with the 28,000 sq. foot building and also Phase II appears to have adequate parking for itself when that takes place.

Mr. Fiorello asked: Do you concur with that?

Mr. Donahue stated: Yes I would I.

Mr. Donahue stated: Number 5 talks about the other plans within the site, plan steps that need to be revised to indicate a break or where a terminus point would be for utilities, drainage structures, paving connecting back to existing conditions for Phase II, those other plans will be revised and submitted to indicate a full Phase I only construction and then Phase II.

Mr. Fiorello stated: With respects to paragraph 6 of Mr. Ferriero's report.

Mr. Donahue stated: That is a continuation of what I am saying of the proposed underground utilities would be indicated as a terminus point. They would end for Phase I construction except for the water line which would be constructed entirely and stubbed off prior to servicing the 12,000 sq. foot building. The fire official in town would require that to be looped as indicated on the plans; fire hydrants in place as also indicated on the plan and there is also a note. Number 8 on the site plan 2/8 will be built in Phase II. The water main hydrants will be constructed regardless of the proposed building phases. That has been addressed on the plan.

Mr. Fiorello stated: In paragraph seven, there is an inquiry concerning construction and storage trailers as you move into Phase II. Do you have a view or an opinion on that?

Mr. Donahue stated: We will reviewing that in the revised plans. We will indicate areas that will be used for construction equipment when Phase I is in operation and Phase II under construction will indicate where those construction trailers and also the construction equipment would be stored for that construction and that will be indicated on the revised plans to be submitted.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Fiorello stated: Item number 8 talks about the buffering and the landscape. Since Phase II will be left in its natural condition, we are not going to install any of the proposed buffering associated with that area or Phase II construction because we would have to go in and disturb the existing area. There is also regrading that needs to place so that area will remain in its natural state. We will provide the buffering associated with the Phase I construction to the south.

Mr. Fiorello asked: You are referring to sheet five of eight of the site plan I referred to in the beginning of our discussion?

Mr. Donahue: Yes that is correct? Yes sheet 5/8 and again this sheet will be revised indicate what buffering will be planted for each phase. Indicating that it will be Phase II will remain in its natural condition and Phase I will be constructed associated with that buffer.

Mr. Fiorello asked: With respect to paragraph 9 of Mr. Fiorello's report, do you have an observation with regard to it?

Mr. Donahue stated: He request that Phase I improvements be constructed completely which we agree so everything will be constructed all utilities, pavements, lighting, drainage all that will be constructed prior to Phase II building being occupied. We will add a note on the plan indicated as such.

Mr. Fiorello asked: Do you have any other observations with respect to his report within your scope of expertise?

Mr. Donahue stated: No I don't.

Mr. Fiorello stated: I have no other further questions of Mr. Donahue.

Mr. Ricciardo asked: Mr. Donahue go back to the transition from the natural to the disturbed area that will be constructed. The topographically surveys that presently exist is going to cause some type of transition to occur? How do you intend to address that change in topography between new area for Phase I and undisturbed area for Phase II?

Mr. Donahue stated: There will be a slight regrading that will take place adjacent to that isle way tied back to existing grade adjacent to that isle way.

Mr. Ricciardo asked: But that will occur in Phase I or Phase II?

Mr. Donahue stated: That will occur in Phase I because Phase I has to operate as itself and so Phase II will be a natural condition. We will tie back proposed grades to existing adjacent to or between Phase I and Phase II lines. That will take place in Phase I.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Phase I will operate and then when we get to Phase II will continue on from where we disturbed to the north.

Chairwomen McCabe asked: How far into Phase II do you anticipate the disturbance to go?

Mr. Donahue stated: We have not review it but probably I would say about 10 feet to 15 feet. That would probably be the maximum that we would have to go into it.

Kevin Elvidge asked: On the proposed parking calculations, the numbers 365 and 371 are they based on parking requirements of Phase I or Phase I and Phase II?

Mr. Donahue stated: Those are the totals of parking required. So that is a combination of Phase I and Phase II.

Mr. Ferriero stated: I would like to make a couple of comments. Mr. Donahue did address a number of items in my letter and I just want to give the board some perspective on where this came from. When you have phased project like this, it is a little more complex than drawing a line on the plan in two dimensions and I think some of the board members have picked up on it with the transitional grading and those sorts of things. When I wrote the letter, I did not know if there was going to be a balance of cut and fill where the Phase II area would have to be striped and regraded that is not going to occur. That changes, in my opinion, what you can do with the buffering. I agree with Mr. Donahue that you don't want to cut out the trees and put in new trees because something may happen differently between now and then. I agree with him in that regard.

Mr. Fiorello asked: Mr. Donahue with respect to the question that Mr. Elvidge raised, your parking calculations are for the entire site Phase I and Phase II?

Mr. Donahue stated: That is correct.

Mr. Fiorello asked: Focusing just on Phase I is there a sufficiency of parking associated with the 28,390 sq. foot building?

Mr. Donahue stated: Yes, in my estimation we have sufficient parking throughout the existing, plus the 28,000 sq. foot building area and associated parking to the north to accommodate the construction of that building.

Mr. Fiorello stated: So there are no variances needed for parking in Phase I.

Mr. Donahue stated: No.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Ricciardo stated: You are saying that the new building and all of the existing buildings, the parking that is required for all of the existing structures plus the new building is provided in Phase I.

Mr. Donahue stated: Yes, I didn't entirely calculate it out space for space but it appears that is the case.

Chairwoman McCabe opened this portion of the meeting to the public as to this expert specifically as to what he testified.

Nanette Thomas, 7 Orchard Street stated: My question is about the parking spots. Are those including the ones that are already at Quick Chek, the numbers that were being given? Mr. Donahue stated: Yes. There are existing parking spaces now which will be restriped in the proposed plan. Mrs. Thomas stated: How many parking spaces that will be going there are already on the lot? Mr. Donahue stated: I do not have numbers for that. Mrs. Thomas stated: I am questioning it just seems like an awful lot of parking spots. Does anyone know how many parking spots are at the lot across from the building? How many spots are there just to give me an idea how many we are talking about? Mr. Donahue stated: The parking is based on the current zoning in the town. Mrs. Thomas stated: So we have to have that many parking spots. Mr. Donahue: Yes.

Kent Hardmeyer, 70 Pine Street, stated: Mr. Donahue, wasn't the plan suppose to be a cut and fill where you were going to take quite a bit from the top and use it on the bottom. Mr. Donahue stated: That was never discussed. Mr. Hardmeyer stated: There was going to be a lot of cutting on the top. Where will all that material go? Mr. Donahue stated: Some of it will go on site. Mr. Hardmeyer stated: Are you going to need fill to be brought in to make up for that? Mr. Donahue stated: We haven't gone through that calculation yet, so we do not know. Mr. Hardmeyer stated: What are you planning to do about the detention phase? Will they stay the same size? Mr. Donahue stated: Yes, if that is required for Phase I and Phase II construction. Mr. Hardmeyer stated: What is there is no Phase II? Mr. Donahue stated: We are building Phase I as needed with the anticipation of Phase II.

Charles Briggs, 73 Pine Street, Will you be posting some type of bond for this in case it fails?

Mr. Fiorello stated: Any public improvements are required by statue that they be secured by a bond. This is a legal question and I think Mr. Soloway will agree with me. If there is an approval, the engineer will calculate the public improvements and recommend the amount of the bond which than must be posted by the applicant in order secure continuation of his approvals and get building permits.

Mr. Ricciardo asked: If it were approved as one Phase for both buildings, there would be cuts and fills as required. The Phase II area would be cut and that material would be used for fill for Phase I, correct?

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Donahue stated: Yes. Mr. Ricciardo stated: That was the original plan.

Mr. Donahue stated: Yes. Mr. Ricciardo continues: Now you are not doing any cutting in Phase I and you are going to truck fill in for Phase II? Mr. Donahue stated: I never said that we were not going any cutting at Phase I.

Mr. Ricciardo stated: I am sorry I mean Phase II. You are not going any cutting, not doing any disturbing which means there is no material that needs to be cut to use as fill for Phase I, correct? Mr. Donahue stated: That is correct. It will be staying in its natural state. Mr. Ricciardo stated: So you will be import fill? Mr. Donahue stated: If you need to do that, then that is what I have stated. Mr. Ricciardo stated: Shouldn't you know if you are going to do that. Because won't that determine the topography? Mr. Donahue stated: Again, that is not necessary. Mr. Ricciardo stated: That will come when you have a completed plan. Mr. Donahue stated: Yes we are going to revise the set of plans. Mr. Ricciardo stated: So that would mean you will have to come back with a revised set of plans or do you want us to approve something based on something we cannot see? Mr. Donahue stated: No, we are not modifying the proposed grades. They are staying as is. If the applicant needs to bring in fill, they may need to but at this point I cannot state that needs to or does not need to until we run through the revised plan. Mr. Ricciardo stated: How do you intend to make up the fill that you were going to get from what is presently Phase II to be used in Phase I if you are not disturbing Phase II? Mr. Donahue stated: Like I said, we are doing some cuts in Phase I. That material will be used in Phase I and then if the applicant needs additional fill, then they will bring that in if necessary and they will modify our construction at Phase II as needed. Mr. Ricciardo stated: So you may have to do more severe cuts in Phase II? Mr. Donahue stated: No, that is not correct. Like I said, the proposed grades on the site plan are staying as is.

Chairwoman McCabe stated: If you need fill for Phase I you will bring in and if you need to remove fill from Phase II you will take it out. Mr. Donahue stated: That is correct.

Mr. Fiorello called in next witness and recalled Mr. Karl Pehnke. Karl as you may recall is our traffic engineer. Mr. Fiorello asked: Mr. Pehnke you had occasioned to review the proposed site plan. Is that correct? Mr. Pehnke stated: Yes. Mr. Fiorello stated: Focusing then on Phase I, will Phase I being constructed have any impact on your analysis of the south easterly driveway? Mr. Pehnke stated: Yes, in terms of what we discussed at our last meeting in taking a phased approach to the project obviously by not building the 12,000 sq. foot building will be generating less traffic associated with the construction of the Phase I building. I have estimated that the left turn into the site will be a 22% reduction in volume on that particular movement. What that does is two things. The first thing is the information that Mr. Dean presented to you at the last meeting, we are looking at a maximum potential of some place of eight to nine vehicles where we have that two lane approach coming out to Sparta Avenue so that works very well. The internal circulation has been adjusted over the course of this

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

application and works well for the project as proposed and the integrity of that circulation will remain with the construction of Phase I, the primary circulation elements, the driveways, the substantial safety improvements along Sparta Avenue all occur with Phase I. In fact when you are not building the parking field of the building that is not part and parcel to the integrity of the main circulation elements through the site, so that is important to understand that Phase I put in place those important elements. Lastly, in line with the conversation that was held at the end of last meeting, it gives the opportunity to create a monitoring program at some point probably at 75% occupancy or better of the new building of the driveway system and that monitoring program will get us real time data as to what occurs so the Board can consider that prior to the grant of any future approval for the remaining 12,000 sq. feet. We will expect that to be a condition of approval and provides that benefit to look at this site in a stepped process rather than a full approval at this time.

Mr. Fiorello stated: You have had an occasion to review Mr. Ferriero's letter of February 12, 2010. Have you not? Mr. Pehnke stated: I did. Mr. Fiorello stated: Paragraph one deals with your area of your particular expertise. Mr. Pehnke stated: That is correct and that goes the discussion on the queues and the length of queue lanes on the easterly most driveway which we discussed a length at the last meeting and Mr. Dean has been looking at and as discussed with have a 215 foot design of two lanes exiting onto sparta in addition to that it is a little more than 300 feet back to first turn point. We have really separated any issues associated with queuing on that driveway from impacting any of the internal circulation of the site. That should work very well. Again, that gives us the opportunity to go back and look at that before proceeding to the next building.

Mr. Soloway questioned: You are having the left turn lane at 300 feet? Mr. Pehnke stated: The left hand turn lane is 215 feet in length and 300 feet to the first internal intersection based upon the revised design as results of suggestions by Mr. Dean and my review of this. The only remaining element of the site plan where Mr. Dean did provide for my attention some suggestions to provide stop bar locations and stop sign locations throughout the site and they are not on the plan yet. That came to me directly and I will recommend to the Board that we will incorporate those suggestions in to the final plans as a conditional of approval.

Chairwoman McCabe asked: Mr. Pehnke, at the last meeting, we suggested that the applicant go back to the County to discuss any alternatives to what they are allowing. Has the applicant done that? Mr. Pehnke stated: I have not been involved with any conversations with the county. Mr. Donahue has been handling the coordination with the county and basically at the last meeting I think he represented that to the design here is what we currently have that the county has provided to them. Chairwoman McCabe asked: So that is the one you going with? Mr. Pehnke stated: Yes, I think what we have indicated is we will discuss with the county final details of the design; and maybe some adjustments to shadow in a left turn lane as requested by Mr. Dean into the rental place across the street and any final tweaks in the radius that the county might consider as part of final designs along the frontage.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Chairwoman McCabe asked: With the max of the eight or nine vehicles in the queue what is the time frame for that last car to get out at, at peak? Mr. Pehnke stated: If you go with the straight calculation using the p.m. peak, Mr. Dean's calculations suggest it would occur at about 429 seconds. I do not believe that is the actually the case but that is by straight calculations. Chairwoman McCabe stated: So about eight minutes. Mr. Pehnke stated: Yes, if you believe that calculation. As I said, those equations break down once you get over a certain point in the analysis so they really are meaningless.

Chairwoman McCabe asked: Do you concur, Mr. Dean? Mr. Dean stated: I agree with Karl's map and I also agree with the chair's identification that it is about an eight minute delay potentially to leave the site. I think, and Mr. Ferriero raises an excellent point, I would like to hear from the applicant, Mr. Pehnke, or Mr. Donahue, is there anything that makes putting the left turn lane in at 300 feet; is there anything that precludes that from being done and this phase? Mr. Pehnke stated: I will have to leave the specifics of that to Mr. Donahue but it would require a further impact into the wetlands regulated areas and into the buffer area to do that. It really becomes a balance and is it really necessary to move into and to deal with the buffer areas for the wetlands to provide that additional length of queue area. That becomes an environmental and permitting issue. Mr. Dean stated: That becomes a threshold issue in my opinion. Mr. Pehnke: That could be and that is one of the reasons why being able to go out and take a look at that at that time and see what the real delays are, what the real time constraints, if the county moves forward with Sparta Avenue within the next couple of years. All of those are factors that could change and weigh into a future decision by this Board.

Chairwoman McCabe stated: We are still dealing with a potential eight minute wait there. Mr. Pehnke stated: Which the queue is designed to handle. Chairwoman McCabe stated: I am not concerned with whether the queue can handle it. I am concerned about whether or not an eight minute wait creates a safety issue at the egress point. Mr. Pehnke stated: As we discussed at the last meeting, again, I don't think the calculations are really telling because of the way the equations don't really factor in or work very well when you get to a certain point. That is all going to be mitigated by gapping availability, courtesy gaps and so forth with the traffic flow along Sparta Avenue, which is typical for something like this.

Mr. Ricciardo asked: Wouldn't it be wise to design that stacking lane now and approach the permitting issue with the wetlands and the DEP at this point in time so we don't get to 85 - 90% occupancy and then you want to build Phase II and we find out you have to do it then and then it adds a total disturbance of that stacking lane and the exiting at that particular point during the construction if it is necessary to extend it? Wouldn't you want to do that now and get it out of the way rather than wait and have all of Phase II and all of the exits disturbed when you build Phase II? Mr. Pehnke stated: The environmental permitting and what that would take is beyond my expertise and what that would do at this point in time. Certainly it would be nice to build the whole site at this point in time but what we have in the present that we know what we can move

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

forward with and this point in time and the permitting works at this point in time, it is a risk for my client that he has to come back to this Board and either show that the reality is, it is working and queues are not reaching that or the risk may be that he needs to come back and is part of Phase II and do a little further construction in this area. It is not significant construction in terms of building and disruption to site flow. That would certainly be risk for my client.

Mr. Ricciardo asks: It is a disturbance to the traffic flow and it is a disturbance to the stacking. You are going to be working the area. You might have to reduce it to one lane. Mr. Pehnke stated: Your traffic control in this area would have to be worked out to maintain traffic flow that is correct. What that would entail for some minor work that will not extend over an extended period of time. I do not think it is a big issue. It certainly is a risk that my client would have to accept and bring back to this Board at some time in the future.

Chairwoman McCabe asked: Mr. Dean, does the reduction in the queue number mitigate the safety issue in your estimation? Mr. Dean stated: I think at that point, if the safety issues have been primarily addressed, we have worked pretty hard with the applicant and this Board with your input to devise a plan that corrected a lot of the problems that we saw. I will leave that decision to the Board, envision if you will a 200 foot queue with conceivable even if it is a 6 minute delay or a 5 minute delay to get out of the site, that is a long time and that is an eternity if you are a customer and you are making a decision. Having been in Mr. Pehnke's shoes often enough, I understand we have certain limitations as far as the book values and calculations and they are the best tools we have available. It does limit somebody's ability to re-circulate and to agree possible re-circulate and come back into Quick Chek if they visited one of the other stores first with a standing queue of 200 feet, in that it does block that entrance to Quick Chek. However, somebody can park behind Quick Chek and walk around front. So those are some balancing situations. I think if the Board is entertaining a favorable action, we need to hear some input from the applicant as to the monitoring and what are the objective standards that would limit or allow Phase II to move forward? We had a similar instance with Sussex County where we had to go through a certain holiday period. The store had to be at a certain level of maturity; I think Mr. Pehnke suggested 75% occupancy. But we want a mature operation; we don't want a store that just opened. They could be in the honeymoon stage and abnormally busy or they have not reach their full potential. But what if, we have to look at all those what if scenarios. What if there are five or six minute delays in leaving the site? In my opinion, is adding more to that queue, and that congestion an appropriate planning exercise? It is a rhetorical question, but I leave that to you to answer. But we need to hear from the applicant those types of objective standards or at least have a dialogue as to how we better define those. Whether the answer is no Phase II or whether the answer is yes Phase II is permissible if you are even willing to entertain that.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Chairwoman McCabe asked: Mr. Pehnke has the applicant been discussing those objectives and how they will be approached when and if the time comes? Mr. Pehnke stated: From a monitoring standpoint, the objectives would, one thing we would want to do is 75% occupancy or better. As Mr. Dean as indicated, you certainly would want to do that probably at least two months following or no earlier than two months following the opening of that store that triggers that 75 vehicles. We want to get over that honeymoon period so two to three months after that you are in a good shape to look at a normalized situation. At that point, the standards that you look at is traffic count during the peak periods to see what the volumes are, who is turning left, who is turning right how that compares to established traffic study. The key is the queue will include maximum queue observations during those peak periods of that lane so that we are identifying the queue 1,2,3,5 8 cars so that we have that information for the Board to consider. And you will probably want to obtain accident data from that point in time from the police department. That would create the data base for evaluation of how the driveway operation is. The baseline is the data that has already been submitted to this Board the traffic study, the calculations that Mr. Dean have done as well as myself. You can draw a comparison to that and then it would be both a combination of professional review by your professionals if it is Mr. Dean at that point and me at that point in time. Of course it would be the Board that would evaluate that information upon any further progression of approval.

Mr. Ricciardo stated: I would like to stay with the percentage of occupancy before anything is done. It all depends on the type of tenant. If he gets the 75% occupied and the fast food restaurant is not occupied yet it is not a truly accurate traffic count because the fast food restaurant is going to generate far more traffic than a dress store or a shoe store would. Mr. Pehnke stated: I probably should amend what I am saying. At 75% that is probably the first time you do a monitor but you have to do it again at 100 percent before you proceed. You need to look at that 100 percent at some point in time.

Mr. Pehnke stated: It is important to look at it around 75% anything lower is not going to give you a true feeling. 75% or better is going to give you an idea of what is happening. But you certainly want to recheck at 100 percent.

Mr. Ferriero stated: It is very important on when you do it and how you do it. If you are at 100 percent and that happens to be July 1 or June 1 and two months later you are in the middle of August, everybody knows that the traffic is less on the highways. Obviously you cannot monitor the entire year but you have to get it at a seasonal time where the traffic levels are higher, either in the spring or the fall generally those are the highest areas.

Mr. Ricciardo asked: Why can't you monitor for an entire year? Mr. Ferriero stated: I have never seen done. Mr. Pehnke stated: It is a picture in time but I think your comment is a good comment and I would have to discuss with Mr. Dean the seasonality up here and identify the appropriate months. The monitoring program

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

would ago restrict that the monitoring be done during such and such months so that we can get a good picture.

Mr. Dean stated: I concur. In the few instances where monitoring has been included as a condition of approval, I think some timelines were set and it was not less than three months after a store opened but not more than 12 months. The intent was to get through the seasonal factors and as Mr. Ferriero indicated doing counts in August is not really appropriate.

Mr. Pehnke and I we can certainly discuss what months are representative and maybe have black out months where monitoring would not be appropriate. The other thing I would like to interject is how to conduct the studies and only one thing I would add to Mr. Pehnke's list is the delay, the delay that we are actually seeing. The queue is one thing but if it is an eight car queue with only a minute and a minute and half delay that is not such a problem because it is dissipating very quickly. If is a five car queue but it is a 10-minute delay, that is a whole different situation. The delay which can be done, can be done following the procedure that is adheres to that would certainly be appropriate. But in addition on how to conduct the studies is what's to be done with the data? I think that is the more relevant part of this analysis. For example, let's say there is a pattern of one accident a week at this driveway that is a safety issue. I would suggest that the applicant bear some responsibility to ameliorate those types of conditions not only if it a condition of Phase I but certainly before proceeding to Phase II if there is a safety issue that surfaces.

Mr. Soloway stated: I think that if there is a safety issue that surfaces as a result of monitoring at the end of Phase I, if it is not satisfactorily addressed, than there is no Phase II.

Chairwoman McCabe stated: The point being is if Phase I creates a safety issue not only is there no Phase II but how do you fix the safety issue for Phase I?

Mr. Dean stated: The problem in I am not suggesting the applicant would but there are certainly instances where an individual gets there approval, builds the job, leases it out, and flips it; there gone. You never see from them again. They have sold the project and the subsequent owner says I have met all the conditions of the resolution and sure there is an accident once a week but that is not my problem. We need to make it their problem to remedy.

Chairwoman McCabe asked: How does this Board, if we proceed with any qualms about the safety of this egress, how do we proceed and then tell people sorry for your accident?

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Ricciardo stated: Madam Chair if there is a question in anybody's mind that this is a safety issue, I don't see how anyone could vote in favor of it. If you have a true question in your mind that this is going to create a real safety issue at this intersection or the traffic flow within the site or whatever question is being raised that tells you there is a potential safety issue here you have the general public, that is your primary goal to protect the public them. If it is a question in your mind you have to answer it yourself. Each Board member has to answer the question.

Mr. Fiorello stated: The case law is clear that the safety on Sparta Avenue is a county function not a municipality function. The county that you heard has plans for Sparta Avenue they do not want to put a light where a light might be helpful. We cannot do anything that will help us with those issued which are county jurisdictions.

Mr. Ricciardo stated: Whether it is a county or a municipal issue, or it is a state issue, if you think there is a question of safety at that intersection, why add to the safety issue that exist.

Mr. Fiorello asked: Suppose there are two cars queued up and one pulls out and there is an accident, or there are three cars queued up, or there are 10 and there are no accidents, there are so many variable that it is incalculable. One car could present a problem on Sparta Avenue. Nobody goes anyway. You have to take a practical look at it. My engineer says it possible. The queue is the queue and the phasing aspect under the Lionel case is exactly a scope to address that problem.

Mr. Ricciardo asked: The circulation in and out of the Quick Chek is another questions. There are going to be so many cars that will get aggravated waiting for eight minutes to make that left hand turn. They are going to go back through the Quick Chek site if they can reach the entrance and make the left hand turn where they are not suppose to at the other entrance. We all know people they are not going to sit there for eight minutes knowing that to get out they are going to have to sit there they are going to go through and go through the light again. Mr. Fiorello stated: They can back in the back and walk through. Mr. Ricciardo stated: We all know human nature, they will park 6,000 feet away from the mall door but they will not park in a parking lot in the back of a store on Spring Street. We all know that. Like I said the Board will have to decide for themselves.

Chairwoman McCabe asked if there were any further questions for Mr. Dean or Mr. Pehnke.

Mr. Ferriero stated: I agree with Mr. Ricciardo. If it was my application I think I would want to get the entire thing approve. I can understand the alternative as well. Since the applicant will be coming back for Phase II eventually, then you can deal with that extension of the driveway for Phase II. I think the other aspect of it is I think the major concern is the left turn move and how it backs up and how it is a problem. If there is a

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

way to establish it during Phase I and if there is a real safety issue and inconsistent with what the engineers have presented in their testimony, basically they are saying it is going to work, it will be slow but it is going to work, but if it is contrary to that then maybe there is a change where there is no left hand turn sometime in the future during Phase I. If it comes out that there is a safety issue then you just restrict a no left hand turn until they come back with an alternative solution, lobby the county to create some other access to it something along those line. I understand the Boards concern, we as engineers love to do these calucations and we love to come up with these numbers. But try as you might, these calculations don't always tell you exactly what will happen. You do the best you can do but it is always nice to have some buffer to come back and tweak things later. Phase II gives us some of that. It would be nice to do something relative to Phase I as well in case those safety issues may or may not occur would be addressed.

Mr. Dean stated: Prohibition on the left turn is but one option and I would say there are a myriad of options available to the applicant that might include putting in a traffic signal, using left turns at the other driveway in a petition for the county. I don't know if this Board needs to come up with every possible scenario to address the "what if" issue in the future. My concern is that there is a condition or a requirement if Phase I is disproved that obligates the applicant to do something about it if there are safety problem. Mr. Ferriero said we can calculate all we want. I disagree with Mr. Fiorello that if an accident happens on Sparta it is not the applicant's problem. It is the applicant's site and he is generating the traffic. This Board is the party to the action that potential approves a development, it aggravates a condition. The fact that is happens at a county right-of-way I don't know if it is material because it originates from the applicant's property. This is a decision time as to whether that occurs.

Mr. Elvidge questions: As far as what we had heard in prior testimony with the parking spaces available required and provided. Again it is my understanding that the 365 spaces currently required is for the entire site with these second buildings Phase II in that scenario, correct? Mr. Dean stated: Yes. Mr. Elvidge continues: and 371 are provided incorporating that building in Phase II if we take that out of the scenario what are just the required spaces on site for Phase I. Because we are providing an abundant amount of spaces in my estimation by providing them now without Phase II in effect yet. So wouldn't you lighten up the spaces because you are providing for fewer cars in Phase I? The problem is the exiting at the moment and if we just provided for the required spaces in Phase I, one that would lessen the impact on the cars exiting the site we would have a better indication of just how that site works at Phase I only. I don't know how many spaces it might be. It might be 20 or 30 spaces.

Mr. Soloway stated: The sq. footage of the two buildings, the sq. footage of this building in a little over 70 feet in total if that helps you. Mr. Ricciardo stated: There is more to consider than just these two buildings. Mr. Pehnke stated: We would be building 89 less spaces. So of the 371 spaces 89 less spaces would be built.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Donahue stated: Based on the proposed uses of the 12,000, it requires 75 spaces.

Chairwoman McCabe stated: Your queue calculation is based on the 89 spaces left?

Mr. Pehnke stated: The queue calculations are based upon the full construction of the 28,300 sq. foot building. Chairwoman McCabe stated: And all the parking? Mr. Pehnke stated: The parking is by ordinance. It is the building that generates the traffic not the parking.

Mr. Elvidge stated: So actually Phase I is 75 less required spaces than we previously heard and 89 less provided spaces? Mr. Pehnke stated: That will be correct.

Chairwoman McCabe stated: I see where you were going with this. If we pull back some of the parking it might mitigate some of the traffic.

Mr. Ricciardo stated: It is based on size and occupancy. Mr. Pehnke stated: That is correct.

Mr. Soloway questioned Mr. Dean: If they start out with a 210 foot left hand turn lane, is that adequate for Phase I? Is it going to stack back to the intersection?

Mr. Dean asked: Do you mean the internal intersection? Mr. Dean stated: Mr. Pehnke ran a calculation for you and we verified it. The queue would be eight to nine vehicles and would extend to 215 or perhaps somewhere between 180 to 220 feet and that is right in line of what is depicted on the plans so to answer your question no it would not extend back to the internal intersection and that is based on gap analysis and queuing we found. Mr. Pehnke stated: Correct.

Mr. Ricciardo asked: Is there anything that can be done to reduce the volume? All I am looking for here, Mr. Dean, is they are coming in at the upper entrance going all around and through the stacking lane to get into Quick Chek.

Chairwoman McCabe stated: You can come in on Sparta Avenue from either direction but to get out you do have to go all around through the stacking lane.

Mr. Elvidge stated: It just seems like so much volume on this site. We keep focusing on the queuing up just getting onto Sparta Avenue and have we even looked at the queuing internally on here? In the heart of this site itself either leaving the parking for the established building, the parking for Quick Chek, and the people just proceeding into the site, have we done any studies on that just to exit the interior site?

Mr. Dean stated: I have not done any calculations internally with one exception and that is the right turn movement at the westerly driveway the right turn out, I think the queue is one or two vehicles so it would not block the people leaving the Quick Chek

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

or the restaurant parking from making a left turn that was an initial concern I had. I am satisfied based on the levels of servicing queuing that won't regularly extend and block that Quick Chek area. I can't say that will never happen but because going to be very short in duration. The only caveat is customers who find using the easterly driveway to make a left so problematic human nature being what it is, they will tend to disregard the turn prohibition at the other driveway and if that occurs it will start to impact but that is an enforcement issue on that turning prohibition.

Mr. Dean stated: That is an enforcement and design issue. This design is not just a no left it is also reinforced with the concrete channelizing island to the county standards to enforce the right turn. So by design we are forcing that right turn.

Mr. Ricciardo stated: I still believe that if you went back to the county and approached them and said this plan is just not working for what you want to do they may reconsider. I really think that is a valid idea and I know you don't want to do it. But I still think it is a valid approach.

Mr. Fiorello stated: I think the testimony was that the applicant through its engineers have been to the county two or three occasions. And as the court has pointed out this is what the county has given us.

Chairwoman McCabe asked: Do any other of our professional have any comments before I open it up to the public?

Mr. Ferriero stated: If the Board is going to consider going back with Phase II that it specially say in the resolution that the Board could consider extending the queue to 300 foot line.

Mr. Soloway stated: I would recommend if the Board says for purposes of Phase I, to 210 foot left turn lane I would absolutely reserve the right as a condition to any approval to extend that out to 300 feet for Phase II. That is my recommendation, I am making to the Board. Frankly, I have never heard the applicant say that if the entire project gets built, they are not agreeable to that.

Mr. Dean stated: You are correct. Having to come back before the Board for Phase II, you would analyze that driveway again. If you determine it to be 300 feet or 350 feet that would be something we would have to deal with during that discussion. So I do not disagree with Mr. Soloway.

Mr. Soloway stated: I think the interesting issue that was raised on that is what the impact would be if doing the additional 100 feet of construction more or less when the entire thing is suppose to be over.

Mr. Dean stated: For a practical discussion, it is not going to be done at the peak hour, during the peak holiday season, it will probably be an early morning operation or an

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

early evening operation or late evening operation when there wouldn't be traffic concerns. Mr. Donahue can us tell how long the project will last. He would give us some information to that unanswered question.

Mr. Dean asked Mr. Donahue: If we have to extend driveway additional 300 feet an extra 80 to 90 feet, how big of a project would that be and how long would that undertake?

Mr. Donahue stated: Possible two weeks. Again, that would all be outside the existing conditions. So you have the existing lanes that are there. This work would take place beyond the future curb line that is there. So there really would not be any impact to what is actually functioning in Phase I if we did need to improve or modify that driveway.

Mr. Dean stated: I agree with Mr. Donahue. The state does it all the time adding a right turn lane at an intersection. The only caveat is and it is not depicted on the plan there is a heavy black line parallel to that access driveway. I am assuming that is a retaining wall.

Mr. Pehnke stated: That is correct. And that would need to be adjusted.

Mr. Dean stated: Whether it is practical to anticipate that need now or the applicant runs the risk of having to take out the retaining wall and do some regrading to get the proper tapers and transitions if the lane gets extended to 300 feet.

Mr. Fiorello stated: Mr. Donahue is saying that he would reconstruct it.

Mr. Donahue stated: It is a small section of that wall. It does not extend all the way down to where the driveway splits so it will be a small section of that retaining wall that we would reconstruct if necessary.

Mr. Ricciardo asked: You are going to do all that construction, all that extended road construction, all the new curb work and reduction and revamping of the retaining wall and not disturb any traffic flow in that lane?

Mr. Pehnke stated: At some point in time there might be a concrete truck that comes in, basically you are looking wall work that's done by hand, and upgrading so forth.

Mr. Ricciardo asked: And you are going to do all that without disturbing the wetlands?

Mr. Pehnke stated: That would be a permit that would have to be dealt with at that time. If indeed there were wetlands being disturbed. That is a permitting issue with the DPW.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Dean stated: My recommendation to the Board that the applicant demonstrate that is feasible before coming in with Phase II. As opposed to we need this permit and if we cannot get it well that is a condition we can't comply with then that changes the dynamic of the application.

Mr. Pehnke stated: If we are at the point in discussing the wetland, we may be finding something that the Board does not want to approve any way. What we are anticipating is that this is going to work better than what we are anticipating and that you are not going to have those queues and need for that. That would only be considered if the Board was amendable to approving Phase II and sort of seems to be contrary to the conversation we are having tonight because we are suggesting to the Board what will happen is that the queues will not be as bad then we really should not be needing to extend that lane and if the Board is considering that than I suspect that there is a whole different conversation going on anyway.

Mr. Elvidge stated: If we entertain a motion, and some of the comments that have been mentioned earlier especially by Mr. Dean is I am just trying to get some continuity here monitoring of the site is a condition of approval. We would have to state the certain months that we want this to be monitored with again certain black out months and until this monitoring is evaluated and would be at 75% occupancy -100% occupancy but until that time, Phase II will not occur. If Phase I meets favorable conditions, which we have to define what they are, then at that point review of Phase II is possible and if they do not meet the favorable conditions, then Phase II will not be considered at that point. I think there needs to be a point even in Phase I after the monitoring is done and especially with the queuing issue if you were at eight minutes queue at Phase I than Phase II may never happen. If you are at six minutes maybe we can entertain if all the other monitoring provides basic satisfactory results than you can entertain that. I do not think if what we are considering the maximum queuing at Phase I at a certain point we can even entertain putting more volume on the site. I think that is the next step, how do you evaluate what the required results of Phase I are going to be for the Board?

Mr. Fiorello stated: I think they have been enunciated. Last week, Mr. Soloway gave some examples which were embraced by Mr. Dean and Mr. Pehnke. And just to review them three months of monitoring I think was a minimum and 75% and 100% occupancy, doing the monitoring during certain months that are blacked out so as to embrace peak seasonal traffic be it spring and fall as was suggested.

Mr. Soloway stated: I think what you really need to do is peak, peak is Christmas and that is what you are really interested in.

Mr. Dean stated: We usually don't design for that 5 or 6 day block that probably is the worst time. Even malls don't design to accommodate that so it would probably be

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

November where seasonality is picking up October, November and then stay off the summer and then in the spring and fall some certain months.

Mr. Soloway stated: What we would have to do here and if the Board approves this, obviously I will have to draft a resolution to define this, but I don't think you can define it now in terms of an absolute formula. I think what you can do is define what the areas of concern are, what you are going to monitor, what the trigger periods are but the whole idea is after that is done if the applicant wants to come in and proceed on Phase II you are going to have another hearing. It will set up with a notice to the public and will hear from their experts and will presumably hear from Mr. Dean. You will hear it. You will access it as the ultimate issue of whether it is safe and efficient to justify going forward with Phase II. I do not think it is possible now to work up a mathematical formula if you pass this line your are okay . It will have to be adjusted in a hearing.

Mr. Fiorello stated: What the professional said is some of the areas are a concern to continue. The holiday season, professional review that's the people doing the monitoring talking to the Board's experts and I would suggest any other factor that may impact upon queuing and safety that would come forward. During that exercise over the next year for example the applicant may come to the conclusion based upon on its own experts and dialogue with the Board's experts that Phase II is not possible or it may come to the opinion that Phase II is possible with certain modifications such as a 300 foot queue or other modifications. While you cannot have an exact formula, I think the basis for what you are looking at has been enunciated and I think Mr. Soloway will draft something to call upon that. I think you can use the catch phrase any other factors that affect ingress and egress from the south west/south easterly driveway.

Mr. Ricciardo stated: Let me raise another question. Say we get to the point at the end of the study period whether it is one year, 18 months, two years before they reach 100% occupancy and then we do the study for the three month period or whatever it takes, and there is a problem that exist here that has to be corrected, and we have determined that is has to be corrected and at the same time they want to do Phase II and the Board has determined based on the traffic and safety and every conditional that exist here, Phase II is really not something that should be constructed, how do we get them to correct all the flaws in Phase I?

Mr. Soloway stated: That is a very good questions. I do not know if we can.

Mr. Ricciardo stated: You don't know if we can. Okay thank you.

Mr. Soloway stated: I am not sure you have the ability to impose requirements on a final site plan that is already in operation. It is beyond what ever requirements exist, code enforcement, non fulfillment of some particular requirement of the site plan. I do not know if you have the ability to say that "You know what, now that we see it, we don't think it works well enough we want you to fix this, this, this and that. I can not guarantee you can do that.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Fiorello stated: I have a suggestion and one that the courts do all the time. The Board retains jurisdiction so that when you get to the point of your seeing a problem,

with Phase I, let's assume the problem is you want a 300 foot queue in lieu of the 210, than you retain jurisdiction and say it didn't work the traffic analysis we have given you did not work out; it really is eight cars instead of six and we would implement Mr. Dean suggested for 300 feet as an example.

Mr. Soloway stated: I think you can do that if you can think of something today. That is an easy example and that I would think of.

Mr. Ricciardo stated: If something exist and it really becomes a safety issue and it is not included in whatever the resolution is if the Board approves a resolution this evening. It is not included in that resolution or it is not a stipulation of that resolution and in fact whether it is staking or internal flow that causes accidents, we have no way to go back and have them correct that situation is what you are telling me?

Mr. Pehnke stated: That occurs in any site plan approval based on standards of design. We believe we presented a plan that works internal circulation wise, access design with the queuing and so forth by the phasing that we have proposed. You certainly are facing that issue on any site plan you approve based on no matter what jurisdiction you are what town you are. In this instance you are little extra protection in terms of monitoring program, the ability to do a condition that would retain jurisdiction to revisit that issue. It is unusual but it certainly something the Board can consider because of your concern on this. However, where we are right now and I know if have thrown out a lot of what ifs, and what ifs can create all sorts of crazy what ifs and not that they are not real concerns but that is something that is in all application. In this case, we believe that we have presented an application that not only meets your ordinances in terms of parking lay out circulation. We have adjusted things in order to meet concerns. We set up a stacking lane that works in Phase I based on the availability of the calculations with what Mr. Dean has done and what I have done. We had a little disagreement but I think it is going to be better. Mr. Dean has presented his thoughts. We are working with his thoughts. So that really is what the Board we request consider in this terms of evaluating approval of this site and approaching it with the Phase which gives a little more latitude than you normally would have in an application to actually revisit this in the future.

Mr. Ricciardo stated: I disagree with one statement you said. I have always questioned and I think other Board members have questions the internal circulation as a safety issue. I still don't agree that you addressed it in a manner that is acceptable to me. I will make that statement right now.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Pehnke stated: I understand your opinion. But again it meets standards of circulation. You can lay out circulation many different ways. There is a hierarchy here and it works and we are moving people in and out of parking spaces.

Mr. Ferriero stated: The Board wants to retain jurisdiction and to retain jurisdiction over a site act that is circulation. As Mr. Pehnke said before there are 100 different ways to do a 100 different things on this plan. As you get into it and this site is fully developed you might find out that in one of these isles that it really does not work as a two-way isle. Maybe it should be angled parking and one way. And when they come back on for Phase II you modify circulation and maybe it works better than. Those are the kinds of things you retain jurisdiction over site application and circulation. You can tweak those as you get into it as the buildings that occupy in the site start to fill up.

Mr. Soloway stated: I think that is the scenario that Mr. Ricciardo was worried about or the one that I was responding to. I think if they come back for Phase II and there is something approvable in that application, whether it is what they applied for or something that is modified. Then I think you are okay because in effect the Board has some leverage. The scenario that Mr. Ricciardo is worried about is a scenario where it is in the Board's mind is a disaster or near a disaster and not only does the Board believe that there should not be anything else but if the Board believes that what is there now needs some fixing and that is the scenario I am interested in. I cannot guarantee to the Board that there is anything we can do about that. As Mr. Pehnke said and he is correct, essentially that is the situation with any site plan or any subdivision that gets approved and built. That is just the way of the world. But Mr. Ricciardo asked the question and I responded.

Mr. Elvidge stated: To concur with Mr. Ricciardo although you say the plan meets all the conditions, in all my years in reading plans there has never been a plan in front of me that has hurt my eyes so much as trying to figure my way around a site. That is the sheer honest truth. It is very hard to picture this site working. Again in all the years that I have reviewed, looked at plans, to transverse this site, hurts your eyes. Hopefully, not in real life. It is very hard to move about in this site.

Mr. Dean stated: The concern I have to a degree we are planning for an element of failure. We have heard queues of eight or nine vehicles, delays from eight to ten minutes even after five minutes, those are fairly extraordinary conditions and I think Mr. Pehnke would have to concur that there's no questions this is a level of service F condition that we have been discussing. The concern I have is, what is the remedy if Phase I just doesn't work. There needs to be some tweak. Monitoring is great but all that is going to do is confirm that there is a problem. But there needs to be a remedy associated with it. And that is why if the applicant is obligated with objective criteria that relates to safety, if there is a discernable traffic safety pattern as Mr. Pehnke indicated queues won't be as long and delays won't be as long because people will make courtesy gaps. That means that traffic is so congested somebody waives you out. That is when accidents occasionally happen. Now they are not high impact or

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

fatality or severe injuries, but never the less they are accidents; I don't think that is an appropriate way go about planning a site but I respect the applicant's position to develop their property within the zoning standards but they also need to play a role in solving the problem that they created. My concern is the applicant arguable could say Phase I really is a problem and I am done with this project and this Board/community is labeled with a substandard traffic situation with no remedies.

Mr. Soloway stated: The only thing I can think is that the applicant is agreeable to maybe doing something with the certificate of occupancy.

Mr. Fiorello stated: That is practically difficult because you can't ask a tenant to come in set up have his location there and then say guess what we are going to pull your certificate of occupancy. That is not practical.

Mr. Dean stated: The point of the certificate of occupancy, I understand from the tenant's perspective is obligating the applicant to go find a solution. The tenant is unfortunately is the guy who is relied on for all the host of approvals and invested money and setting up a building but those solutions include repetitioning the county, traffic signals turning prohibitions that Mr. Ferriero suggested. There are a host of options that are available. I do not what to see it remain static as the problem with no opportunity for mechanism to fix it.

Mrs. McCabe stated: But than it becomes the teeth.

Mr. Dean stated: Correct.

Mr. Fiorello stated: My suggestion was retention of jurisdiction that you have an opportunity to review that and I gave the example to increase the queue to 300 feet as opposed to the 210 feet.

Mr. Dean asked: So you are talking about retaining jurisdiction over Phase I and just retaining jurisdiction over Phase II. Mr. Fiorello stated: That is correct.

Chairwoman McCabe stated: However, extending the queue lane is not going to mitigate accidents at the egress.

Mr. Pehnke stated: Correct. But it may be that you need than at that point to revisit the other opportunities which might be restricting a left turn, going back to the county and talking about the signalization or in lieu of looking at all the negatives that might happen, looking at some of the positives that could happen in the things coming in the future years is Sparta Avenue changes becomes a three lane sectional shoulder as the county is looking to pursue which actually would further enhance the improvements that are being done by this applicant on the site. So there are a lot of things that could happen. Some that could happen by the applicant but some that would happen by county agency that could conditions.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Ricciardo asked: When do you intend to do the corrective work at the entrances, at the end of your construction period, or at the beginning?

Mr. Pehnke stated: In terms of the way construction staging is done, it would probably be under one contract to move forward with all the site work. So it would be done as we go with proper construction staging.

Mr. Ricciardo stated: You do all the construction work from the back of the Quick Chek on back before you address any entrance work?

Mr. Pehnke stated: You might do all your site work in the back before you disrupted the front. The contractor might want to do that because it is an easier place to work. They would probably want to stage back there.

Gregory Martorana previously sworn.

Gregory Martorana stated: In my opinion as a developer you can do the mouth of the driveways up front first therefore we give people time to get familiar with the new traffic patterns before the building is even up during the construction. There is a time period when people need to get adjusted to the traffic patterns. You do this before you start doing your building. There is a time in your construction that people coming into your development will start getting used to the flow of the traffic pattern. The repeat customers will get used to it.

Mr. Ricciardo questioned: Are you going to limited one of the lanes as a construction entrance only for trucks and equipment? Whether it is wise or not I want to know what he intends to do. I want to know how he is going to handle construction traffic.

Mr. Martorana stated: It was not in my thought process to do that. If it pleases this Board then we can do that.

Mr. Ricciardo stated: No matter how you enter this site, you are entering this site off Sparta Avenue, whether it is for retail, Quick Chek or whether is it for construction equipment. So I want to know, are you going to limit them to one driveway?

Mr. Martorana stated: It was not in my thought process to do that.

Mr. Ricciardo stated: What part of the construction are you phasing. You told me how you are going to Phase this work this way; I want to know how you are going to Phase the construction traffic.

Mr. Martorana stated: I answered you. We build the mouth first. He is looking at the drawing and indicates that these are set up to this point indicating the rear of Quick Chek. We could have a temporary construction access if you want. We could put it up with red fence- construction vehicles only if you like.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Ricciardo stated: That is what I want to know. How are you going to handle it, how are you going to phase it. So you are just going to fence off the construction entrance?

Mr. Martorana stated: If that is what you like, than that is what we will do.

Mr. Ricciardo stated: it is not what I like; it is what you propose to do.

Mr. Martorana stated: In my mind I do not think it is needed.

Mr. Ferriero stated: However the details of construction phasing do require a lot of thought. There are a lot of things going on at this site. Just forgetting about separating construction traffic from customer traffic, you are going to have a whole series of soil erosion sediment control items put on there. For example there will be a construction tracking pad. You will have the customers going across that. So that requires this to be done in a couple of stages going back and forth. That is why a detailed construction sequence plan is required to make anything like this work. It is hard to get a site that is partially occupied and have construction going on at the same time. It will not get figured out at a Board meeting.

Chairwomen McCabe stated: Are there any other comments from the Board for Mr. Pehnke?

Chairwomen McCabe opened this portion up to the public for this witness. I know how concerned everyone is especially the neighbors with this project and this Board is very sympathetic with those concerns however with that being said I will not tolerate theatrics. Your questions and comments must be limited to the testimony you heard from Mr. Pehnke. Anything else you will be asked to leave. So I ask you to do this in an orderly fashion and we will listen to everything you have to say.

Charles Briggs, 73 Pine Street. Are we allowed to make a statement before you vote?

Chairwoman McCabe stated: Yes

Mr. Hardmeyer, 70 Pine Street, asked: Mr. Pehnke you mentioned before at some point you might have to move that lower retaining wall. Can you explain that a little bit?

Mr. Pehnke stated: The retaining wall that we were discussing is where this dark line on sheet 2/8. If indeed we came back to the Board and made a determination that we go forward with Phase II but we would extend the left turn lane this curb line would have to be extended back about 100 feet which would require this retaining wall to out in front of it. It would shift over probably 10 feet or so within the limits of where it is so you can move that curb line in there.

Mr. Hardmeyer asked: How far is the retaining wall from the sewage easement?

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Pehnke stated: It is probably about 10 feet from the sewage easement.

Mr. Hardmeyer stated: In case you are not aware of it that sewer line serves our whole neighborhood and there are problems with that now so moving it could cause some more problems.

Mr. Pehnke stated: Any construction is zone regulated with the cooperation of the township engineer. If we encroached on the easement, that would require some involvement with the owner of easement. It looks like it would be outside the easement. There is a very short stretch of the wall that would need to be modified to get that lane in but any construction activity that would impact that would have to have the proper coordination.

Mr. Hardmeyer asked: Would you know if your proposed development would be out letting any sewage in that line?

Mr. Pehnke stated: I would have to let Mr. Donahue answer that question.

Mr. Hardmeyer asked: Have there been any discussions with the town water sewer authority on that?

Mr. Pehnke stated: Yes, we have had discussions.

Mr. Hardmeyer asked: Did they give it their blessings?

Mr. Dean stated: We submitted that as part of the application process last time.

Nanette Thomas 70 Orchard Street. How will they monitor the traffic? I hear a couple of people say that August is not a very big month. I just want to remind you of the Sussex County Horse show, there is only one way in and one way out. I don't know if any of you are from this area, but having traveled this road every day, in my opinion the only slow time might be at midnight. There are ambulances, fire trucks anything all it takes is one accident around the green and everything backs up. If you prohibit a left hand turn I am not sure how that is possible. I know going into Quick Chek right now, I wait and wait. If you prohibited a left hand turn, I will be buying my newspaper someplace else. I will not be buying my newspaper at Quick Chek. Quick Chek is supposed to be quick. I am concerned about the traffic only because it is ongoing. There is not a slow time.

Mrs. McCabe stated: I do thank you for your comments about August because you are absolutely right it is a very busy time.

Mrs. Thomas stated: I think you could pick any month any time and you can get a very good count of just how heavily traveled that road is. I am not against the development; I am just very concerned about one more business adding more traffic

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

to this town. It is a small town, there is only one way in and one way and one way out. And we all learned that after the Able Explosion.

Chairwoman McCabe stated: Thank you.

Chairwoman McCabe closed that portion of the meeting.

Mr. Fiorello stated: I would like to call our last witness.

**SWORN:** David Krueger, 535 East Main Street, Chester, NJ

Mr. Fiorello asked: Mr. Krueger are you associated with an Environmental Technology Inc.?

Mr. Krueger stated: Yes.

Mr. Fiorello asked: To what capacity?

Mr. Krueger stated: I am the president.

Mr. Fiorello stated: Can you give the Board your professional qualifications.

Mr. Krueger stated: I have a Master of Science Degree from Cook College in Rutgers' University 1987.

Mr. Fiorello asked: Do you specialize in any particular area?

Mr. Krueger stated: Yes, We perform wetland delineations obtain wetland permits, wetland jurisdictional waivers to the Department of Environmental Protection.

Mr. Fiorello asked: Have you testified before Boards and courts in connection in wetlands delineations?

Mr. Krueger: stated: Yes I have.

Mr. Fiorello stated: I would like to submit Mr. Krueger as an expertise in wetland and wetland science.

Mrs. McCabe stated: Approved.

Mr. Fiorello questioned Mr. Krueger on Mr. Ferriero's report of 1/12/2010. Did you review a particular paragraph 2 that extends into your particular area of expertise?

Mr. Krueger stated: Yes.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Fiorello stated: Could you provide the Board with your analysis and response to question No. 2 of the Mr. Ferriero's report?

Mr. Krueger stated: The comment on Mr. Ferriero's regarding number 2 was basically in relation to the wetland transitory boundary along this easterly access road including curbing, retaining wall in the entrance way and also whether the transitory boundary was shown accurately. Mr. Ferriero pointed out accurately that technically the transitory boundary does extend into the roadway improvements so I would agree with that. Along with that based on our review of the encroachment and the limited encroachment to that buffer, yes we agree there will be a proper environmental protection approval required but we believe it is fairly straight forward and will be obtained without any difficulties.

Mr. Fiorello asked: Do you deem this as a condition that the Board would approve?

Mr. Krueger stated: Yes we would have to obtain that approval and all the authorizations for the curbing obtainable and the approvable parking spaces.

Mr. Fiorello asked: There are parking spaces within those described distances, is that correct.

Mr. Krueger stated: Right now there are, yes.

Mr. Fiorello asked: And it proposed by the applicant that they will be eliminated. Does that meliorate with the transition area?

Mr. Krueger stated: I do not believe that the removal of the spaces themselves need approval. We would depict that on any plans submitted to the DEP. As part of our request for the access roadway and the improvements along there.

Mr. Fiorello stated: Part of the access road lies slightly within that transition area?

Mr. Krueger stated: correct.

Mr. Fiorello stated: That has been there for however long that driveway has been in existence.

Mr. Krueger stated: The majority of the improvements within the wetlands buffer are curbing and there is a minor encroachment at the immediate access where we are going to be widening that access which is in an area that is not now paved.

Mr. Fiorello asked: Is that a permitting or waiver process at NJDEP?

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Krueger stated: Yes that would technically be a general permit number 10 for the access and for the improvements along here. Like I said most of the improvements are on existing paved surfaces already.

Mr. Fiorello asked: Does that all go well for favorable consideration by NJDEP in your experience?

Mr. Krueger stated: Yes.

Mr. Fiorello stated: You have indicated you have specialized in practicing before them in connection with wetlands and wetlands permits, is that correct?

Mr. Krueger stated: Yes.

Mr. Fiorello asked: You do not foresee any significant difficulties?

Mr. Krueger stated: No I do not.

Mr. Fiorello asked: Do you have any other observations or comments with respect to paragraph 2 in Mr. Ferriero's report?

Mr. Krueger stated: Only that I believe the transition area would be shown on the final plans. To depict all the changes that Mr. Ferriero pointed out.

Mr. Fiorello asked: You are aware or are you not that this applicant has obtained an extension of their LOI from NJDEP.

Mr. Krueger stated: Yes. We received that letter in the mail.

Mr. Fiorello stated: I provided Mr. Ferriero with a copy of this and I would like to submit it to the Board. We had indicated when we started this application that we had to obtain a LOI that was five years ago, however, the five years have passed rather quickly so we needed an extension to that permit and we have obtained it.

Chairwoman McCabe asked: Did we get that Kathy? I thought I read a letter from the DEP.

Mr. Ricciardo stated: It is right here.

Mr. Krueger stated: Is it stamped February 3, 2010.

Mrs. McCabe stated: We have it.

Mrs. McCabe asked Mr. Krueger: Are there any benefits of the applicant seeking a waiver in lieu of an extension to that ingress and egress lane at 203 point mark early on

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

as part of this application would there be any benefit to getting that waiver now rather going after it separately at a later date?

Mr. Krueger stated: It really does not matter. It could be done either way. I have not seen any details to the extent of what that would be so I have not really looked at that but it does not appear that it will be a great deal of encroachment so I would expect to have an issue with it based on what I can see. It would be the same type of permit just a little more disturbance but based on the amount of disturbance that we are allowed on the permit; I would not anticipate any difficulties in obtaining that.

Mr. Soloway asked: Would it be the same type of permit?

Mr. Krueger stated: It would be the same type of permit, there would just be a little more disturbance.

Mr. Ricciardo asked: If it is the same type of permit, why not do it all at once?

Mr. Krueger stated: It can be reviewed. It is not something I personally looked at.

Mr. Ricciardo asked: In your opinion it can be done all at once?

Mr. Krueger stated: Yes.

Mr. Dean asked Mr. Krueger: Is there any presumptive right of that disturbance by virtue of the sewer line that runs through there and the need to maintain an access there? At some point in time there might be a need to access it, isn't there a right to encroach that area to service that line?

Mr. Krueger stated: I think our reasons for getting the permit would be the access issue and possibly a safety issue; I do not think getting past the argument to DEP won't allow it is not a significant issue. Like I said it really doesn't appear to be a great deal of disturbance and if it is an issue that is a safety or circulation issue, it could be argued successfully without too much difficulty.

Mr. Dean asked: If one needed to make a repair to that sewer line, would one have to get that kind of permit?

Mr. Krueger stated: If it is in the wetlands buffer as an existing utility and you are going in to access it, it depends what it looks like. If you are going to cut down trees to do it than yes you would need a permit. It is one of those gray areas. Technically there is not a permit for maintenance in the buffer, there is an existing feature that says you can theoretically go in there and maintain that in the transitional as long as you do not change it significantly. I don't know if it is a black and white answer on that question.

Chairwoman McCabe stated: I am just thinking if they have to go in and tie in to that.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Krueger stated: If they are going to tie into it, they would need a permit because that would be a new pipe.

Mrs. McCabe stated: But once they get in there, like the neighbors said there are problems with that pipe, you do not know what you are going to find. You may find you have to dig up the whole pipe out to the street to replace it. This is something for the applicant to consider and to keep in mind.

Mr. Krueger stated: I have no idea about that. But if it was the case there are certainly permits that are allowable to do that. It is not an issue. Even if it was in the wetlands it would be something that would be permitted. Most of it appears to be in the buffer from what I recall looking at.

Mr. Ricciardo asked Mr. Donahue: Where do you intend to tie in to your sanitary sewer which one of the manholes or are you going to build a new manhole? I don't have those plans here so I cannot see.

Mr. Donahue asked: Over top of the existing line within the existing pavement area where it is shown on sheet of 3 of 8. The existing sewer line travels underneath the nine parking spaces that we are referring to. At that location we are going to construct a new manhole.

Mr. Ricciardo asked Mr. Donahue: And that is where you are going to tie into the entire site?

Mr. Donahue stated: Yes. It is in an area that is paved right now which will be changed to a grassy area.

Mr. Ricciardo stated: I understand that answer. Thank you.

Mr. Fiorello asked Mr. Krueger: Paragraph 3 or Mr. Ferriero's report also addresses issues within your area of expertise. Could you advise the Board concerning that?

Mr. Krueger stated: There was a question about the water course off to the eastern site of this area. Right now during high water, I don't know if there is a discernable challenge sometimes there might be. We looked at all the down stream waters within this drainage area. There is the questions that had to do with the flood hazard area control act. We know there is not a 300 foot buffer required adjacent to this category I water. It is not upstream from any category I water within this drainage so the 300 foot buffer would not apply based on what we have looked at, we expecting the buffer to only be 50 feet from any water course that may be over there to be regulated. We do not expect that to impact anything we are doing on our site.

Mr. Fiorello stated: I have no further questions.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Chairwoman McCabe stated: With no further questions I will open this portion up to the public.

Kent Hardmeyer, 70 Pine Street asked Mr. Krueger: Is this your first time you have testified before the Board about this site?

Mr. Krueger stated: Yes.

Mr. Hardmeyer asked: Did you write an environmental impact statement about this site?

Mr. Krueger stated: Yes.

Mr. Hardmeyer asked: Do you recall when that was written?

Mr. Krueger stated: April of 2008.

Mr. Hardmeyer asked: Could you tell us how familiar you are with this site? I mean have you walked it totally from one end to the other?

Mr. Krueger stated: Yes. I have been to the site several times.

Mr. Hardmeyer asked: What effect does Phase I and Phase II have on the topography of this site?

Mr. Soloway objected to that question. He stated: That is outside the scope of his testimony. He testified very acutely as to paragraphs in Mr. Ferriero's report. We have been over the environmental statement months ago.

Mr. Hardmeyer stated: No we have not been over it.

Mr. Soloway stated: Well, I disagree.

Chairwoman McCabe stated: Mr. Hardmeyer any questions tonight must refer to Mr. Krueger's testimony tonight. We have had opportunity in the pass to discuss these things.

Mr. Soloway stated: My I clarify this, just to remind everybody this has already been to court and back and the court has determined that the Board subject only to traffic safety and circulation. Essentially the court has approved this.

Mr. Ricciardo asked: What do you mean by essentially required to approve this?

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Soloway stated: If the court held that the applicant was entitled to site plan approval subject only to traffic safety and circulation.

Mr. Ricciardo asked: If there is a question regarding traffic safety you are saying we still have to approve it?

Mr. Soloway stated: No. What I am saying is this is a very limited category and we can't go beyond traffic safety and circulation.

Mr. Ricciardo stated: I think everything affects the traffic safety and circulation. The placement of buildings which we were told we cannot discuss. I think the size of the building affects the traffic safety. I think a lot of it affects the traffic safety and circulation.

With no more testimony Chairwomen McCabe opened this portion up for discussion from the Board

Mr. Ricciardo stated: My concern is with the traffic safety and circulation within the site. I have severe reservations about the impact of the traffic and the safety of vehicular traffic. Unfortunately that is what I have.

Mr. Elvidge stated: Similar to Joe's comments, I am happy that we got to a point where we have a Phase I and Phase II option where we can lessen the impact on the site until we have it monitored. But monitored to a point where we could react to any problems we may have in Phase I and get those corrected.

Mr. Russo stated: My only question is trying to bring this to a conclusion and a reasonable one. We talked about favorable conditions and how to define them so I am still unsure where to go with that. Mr. Soloway would have to guide us through that and then we talked about the site access circulation retaining jurisdiction over them for Phase I. There is a problem here; how does it get remedied that still is a question in my head. I would like to hang my hat on something that says yes if A than B if there is an issue than we can remedied it. But I am not sure if Dave or anybody is giving us that concrete piece yet. I am still waiting for that piece of information.

Chairwoman McCabe stated my question for Mr. Soloway is: Do we have enough should the Board proceed with approval for a Phase I, do we have enough tonight to do that? It seems like there still is a lot of unknown as far as retaining jurisdiction and restrictions and monitoring?

Mr. Soloway stated: There are two broad categories. One is the monitoring that we have discussed and obviously. That comes with the whole content rather than defining it we obviously cannot get that information now because it comes with experience. The other area where there are still some open things I guess is what I will call the

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

engineering details of the phasing plan. Different Boards are more hands on than others in terms of technical details. If this Board is inclined to approve it, there will be conditions which will have to be satisfied before final and before any permits get issued. All those details are provided to the satisfaction of Mr. Ferriero. I think they were technical engineering things. There was some discussion about construction coordination, still some more information in an engineering sense we would need between the transitioning between Phase I and Phase II. I am not sure if the Board needs to ask to make an informed decision or I will put it another way, I am not sure if the Board is so inclined to grant approval couldn't do that and still be well protected on those engineering items. One study that I would do at some point I am not sure if we have done this. I did make a note of various things that would be conditions and then approvals.

With no more discussion from the Board, Chairwoman opens this portion up to the public. Keep in mind this Board is restricted into what we can do and what we can't do as Mr. Soloway has said. The court has already approved this pipe plan. Our focus is very narrow. We do understand and we are trying to be cognizant of the neighbors and the impact has on all of you. If you have any comments, please come forward.

Charles Briggs, 73 Pine Street, made a statement: This project is going right in the back of my house, 28 feet off of my property line. If Phase I fails, I am going to have a brick building that I can play racquet ball on. It is too large. We have asked them just shrink the building a little and push it forward. Everybody would have been a lot happier. But he is trying to take every square inch of property, every tree down, to plant 50 or 60 more and hind a brick building from all of our homes. Is anyone taking into consideration the tax dollars we pay and have invested into this town? There are citizens here at this very meeting that has put the majority of their lives into this town, community some more than others. They have been on the town councils, coaches of various sports. We do not want to see our community become anymore built up and then a building goes empty and wildlife has no refuge. Thank you.

Ken Hardmeyer, 70 Pine Street, stated: I still think something can be built in there that could still satisfy the town, but this isn't it. I think if he went to one building, turned that building 90 degrees and moved it back off the property line, reduce the sq. footage, that could probably work. But for whatever reason, they do not want to think about that. In that regard I would urge the Board to do or tell them the same thing the Republicans are telling the democrats about their health plans tear everything up and start over. I think the court would be amendable to that you aren't saying no you can't build you are saying yes you call build but build something that suits the site better, suits the neighborhood better and suits the town and their plans better. Thank you.

Mr. Martorana stated: I have been before this Board for 4 ½ years with different applications for first for residential, town homes, Mr. Fiorello has been council for the whole time. I am tried in every way to make all the necessary revisions. You still have

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

the right to completely deny second Phase that is way we are doing phasing. I understand that the Board is most likely going to listen to the town people. Since I have taken over the property, my vacant fee ratio is superior comparison to before I purchased the property even currently in a recession. I am full except for one small office space. That was my decision to let the tenant go. I think that record stands. Mr. Pehnke and Mr. Donohue were hired to review all this to get everything flowing for two buildings and we have reduced it by a third. I have tried everything to please the Board I don't know if you will vote favorable for me or not but I think my record in this town and my projects that I have owned for the last 6 years show that. My vacant ratio is non-existence in a recession. I have signed people to a very long lease twenty year leases. I have brought in Kraves, Quick Chek. I have heard a lot of hearsay tonight. The fact of the matter is that I have brought in some pretty good leases for people who want them to stay and they are staying. In fact Quick Chek reviewed it. Quick Chek personnel were here reviewing it. They did not have a comment. I want to see it work but and the end of the day it is my dime. I do not want to put something up that is going to fail. I know you still hold the right at this point to deny that. If you feel it doesn't work put all the monitoring systems in you want? This is meant to hold both of the buildings. We come back in front of the Board we have six accidents, no accidents or Mr. Martorana you cannot put retail in it has to be changed to something else or Mr. Martorana you cannot build that building, you have to at least give me the opportunity to try. I do not want to design something so it does not work. I keep hearing this for 3 ½ years. The ultimate thing is for it to work. Again, nobody in this room wants this work other than me wants it to work more. That is the fact of the matter. Nobody wants this to work more than me. At the end of the day, it is my dime. I am not going to put something up to go bankrupt. Thank you.

Mr. Fiorello stated: I have some observations. I carry the burden of proof, even though Mr. Martorana took some of my thoughts; I feel a constraint to do a brief summary.

Chairman McCabe closed the public portion.

Mr. Fiorello stated: I said before in jest and though half true that I was a young man when I started this application. Going before the Planning Board and hearing the same people from the public making the same comments, they didn't want construction, they didn't want town houses; we have people dumping tires, grass clipping, tree limbs. It is nice to have a park in the back of your house to see the deer play. The fact of the matter is your Master Plan in your zoning ordinance deemed this to be a business zone permitting an application to be made for conforming businesses in retail. As you know and verified by Judge Bozanelis, this is an application that pours within the four squares of your zoning ordinance. Matorana's came here with their application. The original site plan was dated July 30, 2007. And we have dialogued at great length and Judge Bozanelis noted that each and every time you requested something more than the ordinance required, we accommodated. We accommodated buffers. We did everything that you asked. I just looked at the site plan review by our engineer,

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

October 11, 2007 revised pursuant to Board engineer's comments. January 4, 2008, revised pursuant to Board engineer's comments. February 7, 2008, revised pursuant to this Board's comments. April 2, 2008, revised pursuant to this Board's comments. June 11, 2008, revised per the town and planning board comments. September 23, 2008, revised per town planning board comments. October 30, 2008, revised per town planning board comments. October 20, 2009, per planning board and traffic engineer comments, December 3, 2009, per planning board and traffic engineers' comments, January 16, 2010 per planning board and traffic engineers' comments. I think Martorana Enterprises and Mr. Martorana has at every turn tried to accommodate citizens' concerns. Two meetings ago someone requested sidewalks be installed. And after all the review the Martorana's said yes and they went back to their professionals spending over \$300,000 to get them to redesign and co design and amend their site plans. They took the Board's comments in terms of buffers and things that would help the neighbors they did that. They complied with the county planning board recommendations, tried to get them to adjust them and amend them to something more beneficial not only to the applicant but to the town as well as and couldn't get to do that. We have less of stick than dealing with the county respectively than the Town of Newton does or this Board does and yet we cannot get them to change their attitude toward stop lines, toward widening the road way, to striped lines to anything. They have plans and they will do it in their own good time but they certainly won't do it for the Martorana's. As the court and the law points out you can't surcharge the applicant because of conditions on Sparta Avenue. You will tell me well anything that makes it worse you have a right to review. What really makes it worse is Sparta Avenue the county owned and controlled road way, which is their sole jurisdiction. Judge Bozonelis indicated that the matter should come back before the Board and he has some concerns cooperation between the applicant and the Board about trying a phased approach under the Lionel Case and Mr. Soloway has made reference to that. Let's try to work together to achieve something that is livable with. He notes again that the county has dealt them this hand. If it weren't for that other things might be done. So we are constrained in the final analysis with what the county will allow us to do. We wanted wider driveways, we wanted different ingress and egress configurations, the county said no. They have long term plans; they don't know what they are. We have heard some testimony concerning them and you have your internal knowledge based upon the fact that this surely would indicate that the county is part of one their municipal entities. We came back before the Board and we presented internal circulation scenarios. We adopted some of your considerations and remarks as you can see from the amendments. We changed configurations, we changed dimensions, we changed ratios, we have done all that you could ask and despite some comments that this is a disastrous internal circulation program. Strangely enough none of the experts that have testified while you are not bound by that testimony, you have heard cooperation between the experts on behalf of the applicant as well as though induced on your behalf indicating that this internal circulation plan will work. It is not safety. Mr. Elvidge thinks it is the worst plan he has seen. The beauty of a plan is not a concern. The court said this site plan is okay, you might not like the buildings, their color,

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

their placement on the site, but the court has determined that this is appropriate site plan. Your concern of course is internal traffic and the vehicular safety. And that is what we have tried to address in these five or so meetings that we have tried to come back before the Board with. There is no testimony that this entire circulation plan is dangerous, that it is not safe and whether it will work or whether it will not work is really not the question. The experts have indicated that this is an acceptable internal circulation plan. A great deal of our testimony and concern deals on the south eastern driveway, where access to Sparta Avenue is a concern. It is a little less level of service. There is testimony concerning the queues that can be expected there. I think Mr. Pehnke and Mr. Dean are in sort of harmony that there is going to be some queuing and cars will back up six or eight cars. How they will get out to Sparta Avenue remains to be seen. And really an expression of gratitude for Mr. Dean's expertise and Mr. Ferriero, we were able to focus on that issue. Judge Bozonelis's suggestion was let's try to reach a compromise and have a Phase approach to this. Reduce the size of the buildings mainly by one which reduces it by 1/3 reduces the amount of parking, reduces the amount of ingress and egress, reduces amount of queue, reduces amount of cars. Then visit the site over the next x amount of months, the Lionel Case was 18 months but I think Mr. Dean and Mr. Pehnke indicated that a 12 month vista would be sufficient, monitor what goes on, see how the queue works; if it doesn't work you don't have to approve or consider Phase II, you have to consider it, but you don't have to approve it. You can even retain jurisdiction for instance making the south easterly driveway to 300 feet if the statistics warrant the same. I think Mr. Soloway enunciated and I have enunciated the expert testimony the criteria that would enable you to visit the site and their objective criteria and more need to be developed that is a detail that could be worked out between the engineers. We would not object to anything that was rational and made sense. In the first instance I reviewed them in the record without reviewing them again at length, traffic counts being taken at peak hours over an extended period of months after three months of 75% occupancy than again at 100% occupancy derive any accidents data that might come in to play of course the period of inspection over holidays and anything else that is germane to that type of review is a logical application of retention of jurisdiction and monitoring the site after Phase I. We have indicated over and over again if these statistics don't bode well for Phase II than it is in your power to refuse to grant permission for Phase II. With respects to Phase I we have indicated further if there are problems that have developed from the queuing, we would certainly increase and allow you to retain jurisdiction to increase that driveway to 300 feet and we would move retaining wall back, you heard from Mr. Krueger that is it not a big deal to go to DEP. There are already structures within the distance; there is a roadway within the prescribed distance; so it is not a big deal to get the general permit 10. You can also see the retaining wall they are talking about need not be entirely removed; there is only a small portion of it and most of that portion lies without the restricted area as well. So I think the applicant has made a good faith effort throughout these many many months of hearings and certainly Mr. Matorana was remanded to address areas of concern that he can control. He cannot control the county and that seems to be the main problem. We are willing to do everything reasonable. We have indicated on the record when Mr. Soloway at our last full session

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

indicated conditions, we expressed our approval of those conditions. They were conditions that were specified by your experts. The record speaks to those conditions in our acquiescence in granting our permission to embrace those conditions. I hear your concerns; I hear your constraints. Some of them are taken right from the judge's opinion but I believe this is an application that should be granted. The applicant has worked hard to stabilize his property. He has brought in tenants. You heard 20 year leases. He is not going any place. He is not a fellow that is going to flip. Some of you have visited his other sites. This is a small family run business and they are in this for the long haul. They improved their property not only in respects to stabilizing tenancies but they took a warehouse which was a quasar industrial use with heavy trucks; perhaps delivering warehouse goods and converting it to a mini warehouse type of operation which is certainly less impactful upon this property on Sparta Road and the community. We have wasted a lot of time determining whether WB 65 or WB 45 will enter the site. I think that was a canard. I think it was misdirection. It is clear that the tenants that will occupy these premises and not band box stores and they are not going to be receiving trailer truck loads of goods. You are going to see florists, shoe stores and maybe some office space. But certainly not the type of trucks that we were talking about and how they would make their turns and course through the site and how wide were the driveways and could they turn right and left and where do we have to put signs. That is certainly not the type of operation that will go here and I think you know that. Point out to me rhetorically a bank that will go in the back of an existing building. Every bank I know wants a corner where there is a red light. Tell me a McDonalds or a Burger King or Taco Dan's that is going to want to go in the back of a building. They are not going to do that because we all know logically (I don't think there is a Taco Dan's but I couldn't remember who it was) that will want to do in the back of these buildings. These are local community businesses that will be there. Not the ones you find on Rt. 95 not the Home Depots, not the Lowes, not those big places. Places like one of the witnesses testified to, places where you can take your car ride your bike or walk and go to the florist or go to the Quick Chek or go to the shoe store or go to the type of businesses that this will attract. I think you know that intuitively. This is no big major operation. 28,000 sq. foot building is a small building with contemplation of the 10 areas that are on this site. So for all those reasons and all those those are inheriting the application, I would ask you to favorable consider the Matorana Enterprises' application. And give a vote of approval with conditions whether they be DEP conditions, conditions that we have already agreed upon, and conditions that are proper for this application this evening. I thank you for your cooperation and courtesy. When I first met Mr. Matorana, he was single, he is now married, and he has a fine set of twins which are a year old. Mr. Matorana, Sr. was not yet collecting social security, he is now and I have many more gray hairs and have gone from a relatively young man to a person feeling a lot older. I have enjoyed my experience in Newton. I come often in your court system and I have spent a lot of time before you. I thank you for your courtesies and your professionalism and the way we have been treated. I thank you for your accommodations to our schedules, scheduling special meetings. I enjoyed working

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

with your professionals, they were rationale, reasonable, they testified, I think forthrightly. I think we received a different level of cooperation when we took a look at things and changed professional approaches in terms of parking and I thank them and commend them for their cooperation in dealing not only with you but also me as a professional as well. So I thank you for your consideration and your courtesies.

Chairwoman McCabe asked: If the Board approves a Phase I and this Board retains jurisdiction and enters into some kind of restrictive language when it comes to monitoring and let's say in the future this Board determines that for safety reasons after monitoring this site that Phase II is not doable. I have a concern that Mr. Martorana would then again fight the decision of this Board and take us back to court.

Mr. Fiorello stated: As an attorney, I do not like a concern we would fight you again. I think, if the data that would be generated by your review of the site after a Phase I construction, would probably entirely be of professional nature. I am talking about engineers, traffic engineers, Mr. Donahue's, Mr. Ferriero's, the Mr. Dean's and the Mr. Pehnke's of the world, coming to the same conclusion. Did you see how closely Mr. Dean and Mr. Pehnke worked once they were able to speak to one another and review their plans? They came up with pretty much the same approach. There were some variances but they worked pretty well together. I think that is the case with Mr. Ferriero and Mr. Donahue. There was a remarkable level of professionalism between them. They were not advisories. There was at some point some adversarial friction, but I think that was abated. They can determine by the objective criteria that I have suggested and that you may add too whether if it will work or not. If it does not work, how can we convince you that it will work and in light of our engineers saying with your engineers that it won't work? Can we take you court, you can sue a ham sandwich I guess that is a correction of an old lawyer saying but I would be hard breast in the light of actual data generated on the site. Actual data, not theoretical, not could there be accidents, well there were five accidents and they all occurred when people misused the courtesy gaps so to speak. I would be hard pressed to encourage my clients to move forward with Phase II in light of what I would see. Our hope is that we can convince you that Phase I that all of the dire projections and positions which are all premised upon peak hours are not as dire they seem given the nature of the stores that I can foresee occupying the site.

Chairwoman McCabe stated: While I agree with you that we have some highly professional people who have come to pretty much the same conclusion when it comes to the numbers and the stacking and the time and such, in the end they do disagree where one says it is perfectly safe and other says not necessarily so. So, two professionals can look at the same data and come up with different determinations with that same data.

Mr. Fiorello stated: But ultimately you will be the arbiter of that. You will have data. If Mr. Dean points out that there are 10 accidents I don't think Mr. Pehnke will deny that and the Board will hark into that statistic that is a hypothetical. In the same respect if

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

we show you there are no accidents there and Mr. Pehnke elicits that information and Mr. Dean reviews it that is what it is. You take each criteria and go down them I think they are objective enough that there is little room for argument. Can anybody argue in court, certainly? It happens all the time when people sue and there really is little basis for it. I don't think the Martorana's are bent on spending any additional monies. I indicated a number. They are bleeding financially and that is not the condition one way or another; they needed to do what they needed to do. They have spent a lot of money and time before your Board of Adjustment, before your redevelopment commission and ultimately before this Board to willy nilly throw money away.

Chairwomen McCabe asked Mr. Soloway: What protections does this Board have in the future?

Mr. Soloway stated: I suppose I should discuss conditions with any approvals. We have done this exercise a month or so ago. This is for preliminary only and Phase as we will discuss. The condition of entering into a developer's agreement with the town council what it would cover would be up to the council but I would anticipate it cover among other things phasing, connections to water and sewer, if there are any required easements, improvements, bonding, any co-obligations. The applicant would be required to provide such performance and maintenance bonds as they are determined by the council based upon input from the engineers. The applicant would comply with the extent incorporated because the applicant has agreed to do this. There was a December 9, 2008 report by Kenneth Wentink which the applicant agreed a long time ago to comply with. That should be a condition except to the extent that it may have been modified with anything that happened since. The applicant would comply with all the recommendations set forth in the September 11, 2008 memorandum of Mr. Grennille, Newton Water and Sewer superintendent. I would recommend that this be a condition in the issuance of the certificate of occupancy, the applicant be required to submit an as don't survey by a licensed surveyor and the typical conditions that we have discussed in the last few months. Other agency approvals compliance with ordinances, pay off taxes, escrows and so forth.

Mr. Soloway continued: In dealing with my notes on the remand hearing and some of these may have been changed by events; I am just going I wrote down. I had a note hear that the applicant is going to provide architectural plans for final site plan approval showing adequate site distance and that would be on the 28,000 sq. foot building. I believe the applicant agreed to that. There was some discussion about limiting the parking under this building to employees, I don't know if it got to the point where the applicant stimulated it would do that if the Board required it but it was discussed.

Chairwoman McCabe stated: I believe they did.

Mr. Soloway continued: The applicant is willing to have a condition that WB65 trucks will be prohibited. The applicant is willing to restrict deliveries times for trucks of a certain size to non-peak hours. Certain size would be UPS and Fed x type trucks. Greg

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Martorana agreed to do this as with garage trucks. He could not enforce this immediately; it would be something he would be required to enforce on going forward basis by lease. I don't think you can go to a tenant now and tell them now you cannot do that. You can do it as a condition on future leases. You can do that for the 28,000 foot building but remember you do have existing tenants on the site.

Mr. Soloway continued: I am going from oldest to newest that we talked about tonight. I think Mr. Donahue testified that this has already been done but he was going to move the two handicap spaces more toward the center of the site, per the suggestion of Mr. Dean. There were some items from Mr. Dean's January 15<sup>th</sup> letter on pages three and four that the applicant agreed to do. I don't know if they have been incorporated or not. There are some bullet points at the bottom of that. One would be confirmation of the warehouse space will it be used for self storage. I don't think you can impose it as a permanent condition but apparently that is the intention for the next occupancy. The applicant is going to revise the traffic control at the rear corner of the larger retail building to address site distance issues exiting the garage.

Mr. Dean stated: I think it is an architectural review or I think Mr. Pehnke had recommended creating a multi way stop condition at that location either solution is acceptable for me.

Chairwoman McCabe stated: It is on the plans.

Mr. Soloway continues: Applicant will do site distance at the drive through exit at the smaller building.

Mr. Dean stated: It has been addressed.

Mr. Soloway continues: Truck circulation plan will be presented. That was done. Handicap accessible spaces – that has been done. Applicant will review the Sparta Avenue stripe with the County in the imposing left turn lane into the existing retail plaza; I think the applicant agreed to address that with the county.

Mr. Fiorello stated: That is correct.

Mr. Soloway continued: Mr. Dean recommended onsite stop signs, stop bars.

Mr. Dean stated: It has not been as Mr. Pehnke referred to and subject to Mr. Pehnke's review.

Mr. Soloway continued: The applicant will present final site plan approval menu board striping in the traffic circulation for any fast food or other uses that would use a drive through lane that would be a condition that would need to be address at the final or continuing site plan because I don't know if whether the applicant can be fair at time of final. One of the conditions will certainly require revisit by this Board if there is a fast

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

food restaurant tenant among these other potential uses.

Mr. Dean stated: anything that use a drive through? Mr. Soloway stated: correct.

Mr. Soloway continues: There was some discussion at the one meeting that the applicant intends to move the Quick Chek sign. This approval would not be deemed an approval today because the applicant indicated the sign is internally lighted so if he moves that sign and keeps it an internally lighted sign it would be subject to variance approval. If they move the sign and it is not internally lighted and it otherwise would comply with ordinance requirements, the applicant would be allowed to do that as long as they show an internal site plan approval. The suggestion that there be no deliveries to store fronts particularly the Quick Chek, site plan should be required for any drive through establishments or any natured type tenants. It certainly would be something with a drive through. I think it is one of those things I think everyone knows what we are talking about but it is hard to say but if a shoe shop or dress shop going in there, we do not need site plan to get a banker or fast food they do. It is the in between that will be difficult.

Mr Fiorello stated: I have my notes on that. It looks like supermarkets, medical dental clinics. That was the jist of it.

Mr. Soloway stated: As required by ordinance. There was a question about possible landscaping, I don't know if we are done with that subject area or not. We are going to tie in the Sparta Avenue sidewalks coming in both driveways to connect to the two front buildings and the applicant agreed to do that. That takes us to Mr. Ferrerio's report certainly items 4 through 9. Item 4 is really common. Items 5 through 9 except number 8. Number 8 is the recommendation that all perimeter landscaping and buffering go in now. That is not going to be required as to what surrounds Phase II. As long as Phase II is not clear. We are going to have to provide a transition grading plan to Mr. Ferrerio, the understanding is that the area occupied by Phase II will be left substantially in its natural condition except maybe it is necessary to adequately complete the improvements required for Phase I. That would include transition grading; there may be a few other things that might be determined by the engineer. But that is the intent. Regarding monitoring, any approval by the Board would be inclined to grant would be preliminary. Site plan approval only if it would be full preliminary site plan approval subject to all of these conditions for Phase I. For Phase II it would be a more limited site plan approval subject not only to the conditions but to the results of the traffic monitoring. The traffic monitoring would be tied into these items. It would not commence until there were at least 75% occupancy in the 28,000 sq. foot building. It wouldn't finish until there was 100% occupancy unless I would say Mr. Dean recommends otherwise. We would want at least three months of experience thereafter but no more than 12 for the monitoring to occur at appropriate seasonal bench marks as ultimately recommended by Mr. Dean who will be in consultation with Mr. Pehnke. The monitoring will include taking traffic counts during peak periods. It would include

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

observing the queues during that peak period and as part as observing the queues accessing the delay time to make that left turn. It would include accumulating accident data before and after basis so that there is a point of comparison. It would include professional review by the Board's consultant and ultimately it would require another hearing before this Board. I suggest that it is a condition of the approval no matter what no matter where we go. We direct that we have that monitoring and ultimately that hearing. The idea is in terms of Phase II which is the second smaller building the Board would have the right to revisit the traffic safety and circulation issues in full in a public hearing on notice to everybody before making a final determination on Phase II. It goes without saying that depending on the results of that it could be that Phase II goes through as proposed, it goes through modified, whether minor or major ways or it doesn't go through at all. That is the whole purpose of this exercise. There would also be a condition that if it is determined as a result of the monitoring process and there is a safety issue in terms of the circulation simply as a result of Phase I the applicant would be required to take reasonable steps to remedy that.

Mr. Ricciardo stated: Why don't you say appropriate steps not reasonable? Mr. Soloway stated: fine.

Mr. Soloway continued: There is one tricky part to this. I am making a recommendation to the Board. The applicant had agreed at prior hearings before making the phasing proposal, that he would provide a 300 foot left turn driveway in order to accommodate the forecasting stacking. Tonight the applicant has presented for Phase I he only wants to do roughly 200-210 feet because Mr. Pehnke has indicated that the stacking from Phase I only will not go back as far and there will not be any blocking with the intersection. At a minimum, any approval with the Board should reserve the right in the Board as a condition of granting any kind of approval for Phase II or at any time after reviewing the results of the monitoring to require that be changed to a 300 foot driveway as suggested. What concerns me slightly about reserving that, is there is a DEP permit required in order to that. I suppose it is conceivable that the DEP does not grant that permit and if the DEP doesn't grant that permit I am not sure where the Board is. Mr. Krueger indicated that it is really the same kind of permit this general permit #10 as the permit they acknowledge they have to have in order to do Phase I. The Board might consider requiring the applicant to roll the 300 feet into the Phase I conditions just to be sure there is ability to that. If deemed necessary down the road.

Chairwoman McCabe asked Mr. Dean: Is there a time frame once you get a permit that you have to construct? Mr. Dean stated: Five years.

Mr. Soloway stated: It will be subject to a detailed construction phasing plan to the approval of Mr. Ferriero and probably it is in his report and if it is not it should be specific. The Board would retain jurisdiction over site circulation issues. That is about it. I don't know if I left anything out.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Fiorello stated: If you did, the transcript will reflect that.

Mr. Soloway stated: Would you provide me with a transcript, if you are having them made.

Mr. Dean stated: I would like the opportunity to work with Mr. Soloway and obviously subject to the applicant's review on fine tuning some of these points, blackout dates, and those things of that nature.

Board members stated: They have no objection to that.

Mr. Soloway stated: I would point out again this is for preliminary. We could either fine tune that if the Board approves this with a preliminary resolution or fine tune it for final. Final site plan approval for Phase I will be a prerequisite for further development.

Chairwoman McCabe stated: With no more questions or discussion from the Board, I am asking for a motion.

**Mr. Russo made a motion to approve with the conditions as outlined by Mr. Soloway. Mr. Caffery seconded the motion.**

Mr. Elvidge stated: I have never taken an application personally. I think the applicant has to make the case. I haven't been on this case fully from the beginning but I have been on a major part of it. In my consideration for my decision, I truly feel with the latest round with the phasing my belief is if the applicant is potentially willing to sacrifice 1/3 of the property with a non approval in the future, I feel the plan could be significantly improved if that second Phase was abandoned now. I do believe strongly that the comments by Mr. Hardmeyer that were made earlier that this plan on this site could definitely succeed and could be a benefit for both the town, conceptually, functionally, if the layout changes and for that reason I think there is a better fit. I don't feel right now, I don't think I have seen this many conditions in ten years sitting on zoning board and probably six years sitting on a planning board to make an application work. To respond to the attorney's comments I have seen a number of applications and I believe that professional presentations are simply that and I believe they are accredited and they have a lot of experience. However, on this side of the desk I get the opportunity to see a presentation and a possible acceptance by this Board and then I get to see the application in process because I live in town. On far too many occasions what is perceived as an appropriate and satisfactory plan, doesn't necessary work out that way in real life. I want this to succeed; my vote is no this evening because I think there is a good plan and a perfect plan hidden between what we have discussed tonight and I think it could be worked out. From what I have seen right now, I can't say that I am confident that the circulation plan is functional and safe.

Mr. Ricciardo stated: For safety reasons I am voting no.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Mr. Russo stated: Yes

Chairwomen McCabe stated: I knew it would be a tie breaker. Mr. Fiorello you said that the applicant has done everything we have asked. All but one thing and that is to make this site smaller. For me smaller equals safer. I am very disappointed that up until the last meeting the applicant was not even willing to discuss phasing and that was a great disappointment to me. There probably is only one person in this room that I feel cares more about that site than Mr. Martorana does and that is me. Because I can very deeply about the future of this town and the success of this site and I know that everybody on this Board does. I know the passion that I have for the success of this town. I am in this for the long haul for the rest of my life and every single building that goes up in this town and every single tenant that goes in effect me personally and the future of my town. I do care very deeply and I want you to be successful nothing means more to me than that. I am feeling better about the project now that it is in phases. I have great trepidation about the safety of this site especially about the egress. I believe that our language needs to include something that talks about remediation if we find that this egress is not safe. I would hate for that to be a right turn only going out of this site. This is one site plan that I do not know all the answers and it is very frustrating to me. This is one site plan that I do not have all the answers. It is very frustrating to me. I wish that I had a crystal ball and I could see what is going to happen here. But I don't and none of us do. We can listen to our professional and talk about safety and circulation and numbers and time and all that but when it comes right down to it until you do it you just don't know if it is going to work and if it doesn't work what are you stuck with? I think if the applicant is willing to work with us and do what needs to be done and we have very strict monitoring on this site and some kind of remediation and if it doesn't work and you professionals are the one who are going to have to work that out. With that condition I vote yes. It is with a heavy heart that I do so. Congratulations.

Mr. Fiorello stated: I thank you again I have said it before I have been impressed with your courtesies, the manner in which you conducted the meetings. I have been at this for 45 years. I represent municipalities and I sit as attorneys on different planning boards and I am impressed with the quality of consideration you have given this and I thank you on behalf of Mr. Martorana.

**AYE:** Mr. Russo, Mr. Caffrey, Chairwoman McCabe

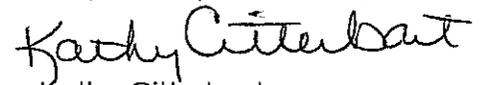
**Nay:** Mr. Elvidge, Mr. Ricciardo

**ADJOURNMENT**

Mr. Caffrey made a motion to adjourn the meeting. Mr. Ricciardo seconded the motion. The meeting adjourned at 10:20 pm. The next regular scheduled meeting will be held on March 17, 2010 at 7:00 pm in the Council Chambers of the Municipal Building.

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

Respectfully submitted,

A handwritten signature in black ink that reads "Kathy Citterbart". The signature is written in a cursive style with a large, prominent "K" and "C".

Kathy Citterbart  
Board Secretary

**Planning Board Meeting**  
**Special Meeting March 1, 2010 at 7:00 p.m.**

**EXHIBITS**

Martorana

AR-10, Site plan for lots 5 and 5.03 and block 1201 consisting of page 2/8 prepared by Donahue Engineering, last revision date of January 16, 2010