

I. CERTIFICATION OF COMPLIANCE

Chairman Neiman called the meeting to order at 6:00 p.m. with the Pledge of Allegiance and Mr. Kielt read the Certification of Compliance with the NJ Open Public Meetings Act:

“The time, date and location of this meeting was published in the *Asbury Park Press* and posted on the bulletin board in the office of the Township of Lakewood. Advance written Notice has been filed with the Township Clerk for purpose of public inspection and, a copy of this Agenda has been mailed, faxed or delivered to the following newspapers: *The Asbury Park Press, and The Tri-Town News* at least 48 hours in advance. This meeting meets all the criteria of the Open Public Meetings Act.”

2. ROLL CALL

Mr. Herzl, Mr. Neiman, Mrs. Koutsouris, Mr. Banas, Mr. Schmuckler, Mr. Percal

3. SWEARING IN OF PROFESSIONALS

Mr. Vogt was sworn in.

Mr. Kielt said there were 3 changes to the agenda- item #1- SD 1686 Levi Steiner will be carried to a future meeting- no notice was provided.

Item #4 – SD 1689 David Schmuckler, the attorney requested it be tabled. Mr. Penzer said he would like to table it to the next meeting without further notice- he was made aware that there are a number of neighbors that have serious objections and they would like to have the time to speak with them.

Motion was made by Mr. Herzl, seconded by Mrs. Koutsouris, to table to meeting of October 13, 2009 without further notice

ROLL CALL: Mr. Herzl; yes, Mr. Neiman; yes, Mrs. Koutsouris; yes, Mr. Banas; yes, Mr. Schmuckler; abstain, Mr. Percal; yes

Item #5 – SD 1690 Chaim Abadi- will be carried to the next meeting because it was not noticed

4. PLAN REVIEW ITEMS

1. SD # 1686 (Variance Requested)
Applicant: Levi Steiner
Location: Edgewood Court, west of River Avenue
Block 414 Lot 13
Minor Subdivision to create 2 lots

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Tabled to a future meeting

2. **SD # 1687 (Variance Requested)**
Applicant: Eli Schwab/Open Apple LLC
Location: corner of Carlton Ave. South, Lafayette Blvd. & Thorndike Ave.
Block 266 Lot 4
Minor Subdivision to create 2 lots

Mr. Vogt prepared a letter dated August 19, 2009 and is entered in its entirety. The applicant seeks minor subdivision approval to subdivide an existing 36,049.1 square foot lot into two (2) proposed residential lots. The existing property, Lot 4, is an existing vacant, wooded tract with frontages on three (3) streets. Carlton Avenue South borders the property on the east side and is a fully improved street in a developed residential neighborhood. Thorndike Avenue borders the site to the west and is a newly paved street of an otherwise undeveloped cul-de-sac. Lafayette Boulevard is an unimproved street on the south side of the lot and connects the right-of-ways of Thorndike Avenue and Carlton Avenue South. The right-of-ways of all three (3) streets are sixty feet (60') wide. The applicant proposes to subdivide the property into two (2) residential lots. Proposed Lot 4.01 will contain 20,081 square feet and have frontages on Thorndike Avenue and Lafayette Boulevard. Proposed Lot 4.02 will contain 15,968.1 square feet and have frontages on Carlton Avenue South and Lafayette Boulevard. A variance for lot width will be required for proposed Lot 4.02 because of the existing curved configuration of Lafayette Boulevard. No improvements are proposed for Lafayette Boulevard. The proposed lots are situated within the R-12, Single-Family Residential Zone. The surrounding land uses are predominantly residential. Except for frontage improvements along Thorndike Avenue and Carlton Avenue South, no construction is proposed. We have the following comments and recommendations: Zoning- The parcels are located in the R-12 Single-Family Residential Zone District. Single-family detached dwellings are a permitted use in the zone. Per review of the Subdivision Map and the zone requirements, the following variance is required for proposed Lot 4.02: Lot Width – ninety feet (90') is required and 65.32' is proposed. The applicant must address the positive and negative criteria in support of the requested variance. Review Comments -The NJ R.S.I.S. requires 2.5 off-street parking spaces for a single-family dwelling when the number of bedrooms is not specified. No specific parking data for the existing and proposed lots is provided. Therefore, the zoning table rounds up to three (3) off-street parking spaces being required. Parking shall be provided to the satisfaction of the Board. We note that sidewalk and curbing is proposed along the property's Carlton Avenue South and Thorndike Avenue frontages. No improvements are proposed for Lafayette Boulevard. The proposed concrete sidewalk and concrete curb details require corrections. Concrete sidewalk shall be four feet (4') wide with joints provided at a maximum of twenty feet (20'). Concrete curb shall be a full depth of eighteen inches (18"), even where it is depressed. The Concrete Walk Detail shown is not applicable to this project and shall be removed from the plan. A Pavement Repair Detail must be added. The sidewalk proposed along the Carlton Avenue South frontage will be an extension to the existing sidewalk directly north of the property. Dimensioning within the right-of-way is required for the proposed sidewalk and its location along the Thorndike Avenue frontage. Should minor subdivision approval be granted, the Board may wish to consider having the applicant bond for improvements since no other construction is proposed at this time. Per review of the subdivision plan, we note that the proposed lots will be served by public water and sewer supplied by New Jersey American Water Company. The lot numbers should be consistent with the numbers assigned by the Tax Assessor. Proposed six foot (6') wide shade tree and utility easements are shown along the Thorndike Avenue and Carlton Avenue South frontages. However, no easement is shown along the Lafayette Boulevard frontages of the

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proposed lots. No shade trees are shown within the proposed six foot (6') wide shade tree/utility easement on the subdivision plan. Shade trees should be provided to the satisfaction of the Board (or waiver sought). Metes and bounds information must be provided for the proposed easements. A chain link fence encroaches on to the property from adjoining Lot 6. The disposition of the fence must be addressed. Compliance with the Map Filing Law is required. Should approval be granted, the necessary monuments to be set (for the proposed lot line) must be in place prior to signing the map for filing with the County. Outside agency approvals for this project may include, but are not limited to the following: Ocean County Planning Board; Water and Sewer Approvals (if necessary); Ocean County Soil Conservation District (if necessary); and all other required outside agency approvals.

Mrs. Weinstein Esq. appeared on behalf of the applicant with Mr. Rich Albers of NJ Land Group. Mrs. Weinstein said most of the items in the review letter are acceptable to them but she wanted to address a few of them. With regard to the sidewalk and curb fronting on Lafayette Street she said they did not propose curb and sidewalk and they don't want to put in those items because it is not a paved road, the other 2 street which it fronts on (Carlton and Thorndike) are both paved roads and this road is unpaved. They will put in sidewalks and curbs on the 2 paved road. Mr. Neiman said he thinks they should tell the applicant now that they need to come to the public meeting with sidewalks.

Mr. Banas said what the board has done in the past with unpaved streets is that they have not required the curb and sidewalk until the final development of the project; however, if there is going to be any building, that would be done at that point in time. Mr. Vogt asked how they would do that and Mr. Neiman said they can put it in the resolution and it will be bonded.

Mr. Albers said his understanding of the ordinance is when you are on 2 streets, you are required to have frontage on one improved street and that is what the applicant is proposing. Mrs. Weinstein said what she interpreted from what Mr. Banas said what they were not required to put in curb and sidewalk until the street was improved, but they would have to post a bond. Mr. Banas agreed and Mrs. Weinstein said they agree to those terms.

Mr. Kielt said they are building on the improved street and that Lafayette will not be improved for this project and will not be used and is a paper street and Mrs. Weinstein said proposed Lot 4.02 fronts on Carlton Avenue South which is an existing paved road and Lot 4.01 fronts on Thorndike Avenue which is also an existing paved road- there is no need for them to pave Lafayette because they do not need it for access to either lot and would prefer not to bond for something that they are not going to do anything with.

Mrs. Weinstein said the other item is regarding the chain link fence that is encroaching on the property and said it appears to be the neighbors fence from Lot 6 that is encroaching on both Lots 4.01 and 4.02 and the applicant will work with the neighbors and will remove it if the need arises.

Motion was made by Mr. Herzl, seconded by Mrs. Koutsouris, to advance to meeting of October 27, 2009

ROLL CALL: Mr. Herzl; yes, Mr. Neiman; yes, Mrs. Koutsouris; yes, Mr. Banas; yes, Mr. Schmuckler; yes, Mr. Percal; yes

3. SD # 1688 (Variance Requested)

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Applicant: YNG Management LLC
Location: southwest corner of Clifton Avenue and First Street
Block 89 Lot 4
Minor Subdivision to create 2 lots

Mr. Vogt prepared a letter dated August 20, 2009 and is entered in its entirety. The applicant seeks minor subdivision approval to subdivide existing Lot 4 in Block 89, an existing 50' X 100' five thousand square foot (5,000 SF) property, along the common wall between the front building (corner of Clifton Avenue and First Street) and the rear building (fronting First Street). An existing three-story brick building is currently situated on the existing part of Lot 4 fronting both Clifton Avenue and First Street, which is proposed as New Lot 4.01. An unoccupied existing new addition to the building is currently situated on the existing part of Lot 4 fronting First Street, which is proposed as New Lot 4.02. This new addition to the building is under construction. The surrounding land uses are predominantly business. We have the following comments and recommendations: Survey- An updated Outbound and Topographic Survey is required. No elevations are indicated and they are required. Construction associated with the one-story addition has damaged the monuments and property corners previously set. Furthermore, the existing conditions are not accurately depicted; this is partly due to the construction in progress. We observed property line encroachments associated with the adjacent building on existing Lot 5 which are also not shown. Zoning- The parcels are located in the B-2 Central Business Zone District. The existing three-story building on proposed Lot 4.01 appears to contain retail use on the first floor and residential use on the second and third floors. The one-story addition under construction on proposed Lot 4.02 appears it will contain retail use as its future use. Testimony must be given with respect to the buildings present and future uses. The plan only indicates "business" as the use. The project may require approval as an existing nonconforming use. Per review of the Subdivision Map and the zone requirements, a rear yard setback variance is required for both proposed lots. The correct rear yard setback of proposed Lot 4.01 is 4.1'. The rear yard setback of proposed Lot 4.02 is 5.7'. A rear yard setback of ten feet (10') is required. In accordance with UDO Section 18-903B.3.b., a side yard setback of seven feet (7'), with an aggregate of fifteen feet (15') is required. However, a side yard setback is not required between two (2) businesses. A side yard setback variance is required for the side yard of proposed Lot 4.02 which does not abut a business since a setback of only 4.7' is proposed. The applicant must address the positive and negative criteria in support of the requested variances. Review Comments- The plan partially shows the existing streetscape improvements in front of the three-story building on proposed Lot 4.01. As previously noted an updated topographic survey is necessary. Some of the streetscape improvements are in disrepair and require replacement. New curb and detectable warning surface with truncated domes are required for the existing handicapped ramp at the intersection of Clifton Avenue and First Street since it no longer complies with current NJDOT Standards. A brick and concrete porch which serves as access to the three-story building encroaches into the Clifton Avenue right-of-way. Neighboring buildings to the south on Clifton Avenue have similar type access points and encroachments. Proposed improvements along First Street in front of the one-story building on proposed Lot 4.02 will be required. A depressed curb from an old driveway requires replacement with full height curb and the associated sidewalk behind it must be replaced. Construction details are required for proposed improvements. Per our field review, new public water and sewer connections for the one-story addition on proposed Lot 4.02 have recently been made on First Street. The proposed lot numbers must be approved by the Lakewood Tax Assessor's office. A new air conditioner condenser which is not shown on the plan has been installed behind the existing three-story building on proposed Lot 4.01. An "L" shaped cross access easement to Lot 4.01 is shown on proposed Lot 4.02 from an existing utility pole to the proposed subdivision line. We believe the proposed cross access easement

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is for utility purposes. An area of 295 square feet is proposed for the cross access easement, but no bearings and distances have been provided. Minor corrections to the proposed lot areas appear to be required. We calculate New Lot 4.01 to be 3,203.75 square feet and New Lot 4.02 to be 1,796.25 square feet. A new section of concrete sidewalk not shown on the plan, which appears to be associated with the construction on proposed Lot 4.02, must be removed. It is constructed below the existing top of curb elevation of the adjoining parking lot and creates a tripping hazard. Encroachments of the property (air conditioners, vents) from the adjoining building on existing Lot 5 must be addressed. Compliance with the Map Filing Law is required. Outside agency approvals for this project may include, but are not limited to the following: Ocean County Planning Board; Water and Sewer Approvals; all other required outside agency approvals.

Mr. John Doyle Esq. appeared on behalf of the applicant. He said this is located on the corner of Clifton and 1st Street and there has been a long standing existing building which is 3 stories used for commercial purposes. There was also an approval for a 1 story building to the rear of that that will also be used for commercial purposes. He said the building on 1st Street will operate separate from the pre existing 3 story building and the applicant is trying to recognize with a lot line that would separate the 1 story building under construction and fronting on 1st Street from the 3 story building and that is what this Minor Subdivision is for.

Mr. Doyle said with regard to the review letter he stated they did do a survey in July and will update if needed. The topographic survey was not done because they will have to do an as built as part of the plot plan if that will be accepted as a condition they understand that. With respect to the streetscape improvements that were requested including a new handicapped ramp that would be consistent with NJDOT standards he said there is an existing ramp located on public property and they think they should respond to the handicap ramp but the brickwork that was part of a public improvement has a few missing bricks and he doesn't think the issue should fall with the adjacent property owner- he didn't put it in and he didn't cause it so he does not think the repair should be their responsibility. They will submit proof of the variances at the public hearing and said they will comply with the comment for a need for a better metes and bounds cross access easement. With respect to the encroachments, the neighbors have an air conditioning unit on the applicant's property and they have adopted a live and let live attitude and don't want them to have to rip it out and acknowledge the encroachment and are willing to live with it.

Mr. Neiman asked why they wanted to do this and Mr. Doyle said the buildings are 2 different kinds of buildings and each operates on its' own. The new addition will only have access on 1st Street and Mr. Neiman asked if they can access one building from the other and Mr. Doyle said no. Mr. Neiman asked if this was a financial decision and Mr. Doyle said it would enable him to separately mortgage and separately convey without doing violence to what the whole idea of what the downtown is- it is historic, it needs renovation and cleaning up the site.

Mr. Schmuckler asked if they were changing the building envelope and Mr. Doyle said what has previously existed will still exist and what has been authorized with the new building is what is going up-they are not adding to the footprint.

Mr. Banas said he heard that the Tax Assessor has always moved to take property that is joint owned and join it and make one piece of property and he doesn't understand why they are taking this one property and separating it and said it is not for discussion now but he will ask it at the public meeting. He also said if they know there is difficulty with lack of bricks at this point of time and it will probably was an eyesore to you or you would not have mentioned it,

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clean it up before you come to the public hearing and insert the bricks that are necessary and understand that the board is going to be looking at both properties with a keen eye to see that they are going to be presentable at the time of approval. Mr. Doyle said the newer building is under construction but the bricks comment was raised by Mr. Vogt in his review letter- and Mr. Doyle said the brickwork was originally built and paid for by the township and the disrepair was not caused by his client. Mr. Banas said it is on his client's property and they are exposed to it and it is theirs-likewise, it takes more than just a gentleman's agreement to leave that air conditioning structure and thinks some legal documentation needs to be done and Mr. Doyle said he understand it and said the brickwork is not on theirs but the air conditioning is.

Mr. Schmuckler asked who is responsible for maintaining the sidewalks downtown and Mr. Doyle said he would think typically the municipality and Mr. Schmuckler suggested they check with Public Works. Mr. Banas said the planners want to see sidewalks and curbs on all properties and once it is there it is maintained by the owner of the lot.

Mr. Neiman asked Mr. Vogt if, from an ordinance point, there is anything wrong with subdividing this type of building and Mr. Vogt said not that he is aware of.

Motion was made by Mr. Banas, seconded by Mr. Herzl, to advance to meeting of October 27, 2009

ROLL CALL: Mr. Herzl; yes, Mr. Neiman; yes, Mrs. Koutsouris; yes, Mr. Banas; yes, Mr. Schmuckler; yes, Mr. Percal; yes

4. SD # 1689 (Variance Requested)
Applicant: David Schmuckler
Location: northwest corner of 14th Street & Pinemere Street
Block 39 Lot 2
Minor Subdivision to create 2 lots

Tabled to October 13, 2009

5. SD # 1690 (Variance Requested)
Applicant: Chaim Abadi
Location: southwest corner of Central Avenue & Hollywood Avenue
Block 284.18 Lot 3
Minor Subdivision to create 2 lots

Tabled to October 13, 2009

5. PUBLIC HEARING ITEMS

1. SP # 1924 (Variance Requested)
Applicant: Bais Chinuch L'bonos Bayis Rochel Inc.
Location: Carey & Twelfth Streets, between Monmouth & Lexington

Block 136 Lot s 6 & 7
Preliminary & Final Site Plan- addition to school

Mr. Herzl recused himself from this application.

Mr. Vogt prepared a letter dated August 27, 2009 and is entered in its entirety. The applicant is seeking Preliminary and Final Site Plan approval for an expansion to the existing Carey Street School located on Carey Street, 150 feet west of the intersection with Monmouth Avenue. A two-story addition with an unfinished basement is proposed, connecting to the west side of the existing two-story school building. Various interior parking and site improvements are also proposed within the property, including additional parking and a bus drop-off area proposed along 12th Street in the northern portion of the site. The following comments (*bold*) are in response to review of the revised submission per comments made in our original review letter dated 7/29/09: Zoning- The parcels are located in the R-10 Residential District. Schools are a permitted use in the zone. *Statements of fact.* Per review of the Site Plan and the zone requirements, the following variances are required for proposed Lot 21.01: Front Yard setback (17.3 ft proposed, 30 ft required) – existing condition. *Improvements are shown to the front of the existing building on the architectural plans which are not shown on the site plans. It appears a more stringent front yard variance is required than that requested. Testimony is required from the applicant's professionals.* Maximum Building Coverage (33.9% proposed, 25% required) – new condition. *The latest plans indicate a proposed building coverage of 33.8%.* Parking (13 spaces proposed, 18 spaces required) – new condition. *As discussed at the Plan Review Meeting, the proposed number of parking spaces has been reduced to eight (8) off-street parking spaces on the revised plans.* The applicant must address the positive and negative criteria in support of the requested variances. *The applicant's professionals indicate that testimony will be provided.* Review Comments- Site Plan/Circulation/Parking- As indicated previously, a variance is necessary and requested (18 spaces required for the existing school and proposed addition per the Code. Thirteen (13) spaces are proposed, including seven (7) spaces off of 12th street, and six (6) parallel spaces along the east side of the existing building. One (1) of the parallel spaces, at the southeast corner of the building, will be handicap accessible. *The revised plans still include the proposed seven (7) off-street parking spaces off of 12th Street. The proposed six (6) parallel spaces along the east side of the building have been eliminated and a recreation area is proposed on the east side of the building. A handicapped parking space with a driveway is proposed at the southeast corner of the building. The space should be relocated since the access aisle conflicts with improvements to the existing building, and lengthened to eighteen feet (18') measured from the property line. The proposed fence should be moved accordingly. Therefore, a total of eight (8) off-street parking spaces are proposed.* A bus drop off area is proposed along 12th Street as well. The drop off area will be in front of the seven (7) parking spaces proposed in that area. *The limit of the proposed depressed curb needs to be clarified, and the proposed grading completed and corrected.* Testimony is necessary from the applicant's professionals regarding how the bus drop off area will be used, including but not limited to times, and sizes and numbers of vehicles anticipated (i.e., buses, vans, cars, others). Testimony is also necessary regarding how the drop-off and proposed 12th Street parking spaces will function together (since the proposed drop off area is between the parking spaces and 12th Street). *Testimony has been provided at the Plan Review Meeting and should be reiterated at the Public Hearing.* Testimony is necessary from the applicant's professionals regarding how the six (6) proposed parallel parking spaces will function, both ingress and egress from these spaces. These spaces are designated on the plans as "Proposed Overflow Parking Spaces". It appears that vehicles will enter this parking area via a proposed concrete apron and depressed curb to be installed along Carey Street. It is unclear how these vehicles will exit the site. *The overflow parking has been replaced with a proposed*

recreation area. Construction details along with an acceptable safety surface for the playground area are required. In addition, playground accessibility must be addressed along with any associated details. Code compliance of the existing playground, assuming it remains, must also be considered. The area between the playground and the proposed 12th Street parking spaces is designated as "Bituminous Concrete Parking Area". Testimony is required from the applicant and/or its professionals regarding whether this area can or will be used as parking. The applicant's professionals indicate this area is currently used as a recreation area for the children. Although it appears that adequate turning movements will be provided for the proposed bus drop off area, a vehicle circulation plan should be provided as confirmation. Vehicular circulation is still outstanding. Summary testimony regarding future bus drop-offs and pickups, and general use of the proposed site should be provided to the Board's satisfaction (as well as deliveries to the buildings). The applicant's professionals indicate that testimony will be provided. Per our 7/24/09 site inspection, we note that sidewalk and curbing exist along Carey Street, and curbing along 12th Street, but are deteriorating. Replacement of sidewalk and/or curbing should be considered, particularly if some students walk to the school. The applicant's professionals defer this item to the Board for a decision. The existing improvements along 12th Street are improperly shown and require correction. Sidewalk replacement with handicapped ramps and detectable warning surfaces are required at the bus drop off area. A proposed refuse enclosure is depicted in the northeast corner of the property, off of 12th Street. Testimony is required from the applicant's professionals addressing how the enclosure will be accessed, and who will collect the trash. If Township pickup is proposed, approval from the DPW Director is necessary. The applicant's professionals indicate refuse pickup will be before school hours and picked up by a private hauler. Confirming testimony is required. A note on Plan Sheet 3 indicates that the existing lot line between Lots 6 and 7 will be removed. The applicant's professionals must testify how this will be accomplished (i.e., lot consolidation plan, other). The applicant's professionals indicate a lot consolidation plan will be provided as a condition of approval should site plan approval be granted. Architectural- Per review of the architectural plans, they appear generally well-prepared. The proposed addition per the architectural plans is 42' by 92' in size, and accurately depicted on the site plans. However, we recommend that the site plans include the proposed building dimensions for clarity during construction. The site plans need to depict improvements to the front of the existing building. The finished floor of the proposed addition is shown almost a foot above the existing building without any step ups. An emergency exit from the addition is shown four feet (4') above proposed grade. As noted on the architectural plans, an unfinished basement and a two-story building are included with the proposed addition. Testimony is required regarding ADA access to floors, other than the first floor. Testimony should be provided as to whether the proposed addition will include a sprinkler system. Testimony should be provided. We recommend that the location of proposed air conditioning equipment should be shown. Said equipment should be adequately screened. The site plans contain a note on the side of the existing building indicating "existing air conditioning units to be relocated as required". However, the location of proposed air conditioning equipment is not clear. The architectural plans show three (3) existing units being partially screened in front of the existing building. We recommend that color renderings of the building be provided for the Board's use at the forthcoming public hearing for the application. A rendering is recommended. Grading- Very limited grading information is provided on the current design plans, other than existing elevations and the finished floor elevations of the existing building and proposed addition. Additional grading information has been provided. While the design is feasible, additional information will be required during compliance (if approved). Per review of the existing elevations and per review of site conditions during our 7/24/09 site inspection, on-site grades are relatively flat. As a result, the proposed site plan appears feasible without major grade changes or retaining walls. However, a more detailed grading plan must be developed, at a

minimum, as a condition of Planning Board approval if/when forthcoming for compliance review. *The detailed grading plan lacks the existing spot grades from the topographic survey plan. Additional information will be required during compliance (if approved).* Detailed grading information is required, at a minimum, for the proposed 12th Street parking area, the proposed bus drop-off area and proposed depressed concrete curb and parking apron at the Carey Street entrance to the proposed parking spaces. *A gutter must be designed along the old curb line to eliminate the collection of stormwater runoff. The grading corrections need to extend to the centerline of 12th Street as well as onto the subject property.* A final grading review will be performed during compliance review. *Statement of fact.* The site plans reference a survey dated 7/15/09 prepared by Clearpoint Services, LLC. A signed and sealed copy of this survey should be provided as part of this application. *A Topographic Survey, revised 8-11-09 has been provided. Existing curb and gutter elevations are required to be added since the street frontages are flat enough to collect existing stormwater runoff. This should be addressed during compliance review.* Stormwater Management- Per review of the design plans and "Drywell Design Calculations" report provided with the application, less than 0.25 acres of new impervious coverage is proposed for the addition and site improvements. Since site disturbance will be less than one (1) acre, the project will be exempt from the "major development" stormwater design regulations per NJAC 7:8 and contained within the Township Code. *Statements of fact.* As noted on the Site Plan, a 900-gallon drywell is proposed to recharge stormwater from the proposed addition. Per hydrographs provided in summary report, one drywell appears capable of recharging the post-development increase for the 10-year storm event. More detailed drainage calculations, addressing pre-development and post-development conditions are necessary for the entire site. *Revised drainage calculations have been provided. The dry wells concept is a viable solution. We recommend meeting with the applicant's engineer to review the design criteria.* While the stormwater management concept for this project appears viable, additional design information must be provided during compliance review, including the following items at a minimum: Soils information, including depth to seasonal high ground water and percolation rate. *Soils information has been provided and the depth to seasonal high water table is estimated at ninety-six inches (96"). The location of the test hole must be indicated.* Proposed dimensions and elevations of the drywell(s). *Proposed dimensions and details of the dry wells have been provided.* Information regarding the proposed roof leaders and their discharge(s) into the existing and proposed stormwater collection systems must be provided. *Roof leader information has been provided. Invert information and cleanouts must be added. A detail of the proposed yard inlet should be added.* While we cannot confirm based on available grading information, it appears that the proposed 12th Street parking spaces and bus drop off area will drain directly into the 12th Street cartway. The applicant's engineer must provide an impact assessment for the project flow increase onto the roadway. *The applicant's engineer has confirmed that no increase in impervious surface is proposed in the area of the 12th Street parking. Currently this area is either pavement or sidewalk; therefore no adverse impact is expected.* Landscaping and Lighting- Although a dedicated landscaping plan is not provided with the submission, proposed landscaping is depicted on Sheet 3 of the plans. As proposed, eleven (11) Eastern Red Cedars are proposed along the westerly property line. *A Landscape Plan has been provided and is Sheet 5 of the plans.* Additionally, the plans note that the existing chain link fence along the westerly property line will be replaced with "Privacy Screening". Testimony must be provided from the applicant's professionals as to what this screening will consist of (i.e., board on board fence, other). *Proposed chain link fencing with privacy slats have been noted on the plans. The proposed fence height between Lot 6 and Lot 2 is six feet (6'). The proposed fence height between Lot 7 and adjoining Lots 2 and 8 is eight feet (8'). Eight foot (8') high fence is also proposed between the front building corners and the adjoining lots. No new fencing is proposed on the eastern property line of the site.* Two (2) mature maple trees will be removed from Lot 7 to accommodate

the proposed addition. Testimony should be provided as to whether compensatory landscaping is proposed (or necessary). It should be noted that tree protection details are provided on the plans for mature vegetation that is salvageable during construction. *The applicant's engineer notes that no compensatory landscaping is required because less than three (3) specimen trees are to be removed. The applicant has not provided any shade trees or shade tree and utility easements for the proposed project. Should the Board require any easements, the applicant must show the easements and should provide legal descriptions and easement language for review. The easements shall be filed as a condition of approval.* Landscaping should be provided to the satisfaction of the Board. *The only landscaping proposed is screening between Lots 7 and 8. No shade trees or any other landscaping is proposed.* Neither existing nor proposed lighting is illustrated on the current design plans. Testimony must be provided from the applicant's professionals to address existing and proposed conditions. Lighting should be provided to the satisfaction of the Board (and/or waivers sought). *The applicant's engineer indicates that no site lighting is proposed, but decorative building mounted entrance lights will be provided. Testimony shall be provided.* Utilities- The plans indicate the site is served by public water and sewer. Proposed (new) utility services to the addition from Carey Street are depicted on the plan. *Statements of fact.* The applicant must receive necessary approvals (if any) for the increased demand resulting from the proposed addition. *Statement of fact.* Construction Details- All proposed construction details must comply with applicable Township and/or applicable standards unless specific relief is requested in the current application (and justification for relief). Details shall be site specific, and use a minimum of Class B concrete @ 4,500 psi. A more detailed review of construction details will occur during compliance review; if/when this application is approved. *A review of construction details will be undertaken with a resolution compliance submission should the project receive site plan approval.* Performance guarantees should be posted for any required improvements in accordance with Ordinance provisions. *Statement of fact.* Environmental - No Environmental Impact Statement (EIS) was prepared for this project, nor is one required by Township Code. *Statement of fact.* To assess the site for environmental concerns, our office performed a limited natural resources search of the property and surroundings using NJ Department of Environmental Protection (NJDEP) Geographic Information Mapping (GIS) system data, including review of aerial photography and various environmental constraints data assembled and published by the NJDEP. The following data layers were reviewed to evaluate potential environmental issues associated with development of this property: Known contaminated sites (including deed notices of contaminated areas); Bald Eagle foraging and Urban Peregrine habitat areas; and NJDEP Landscape Project areas, including known forested wetlands, emergent wetlands, forest, grassland, and wood turtle habitat areas. Per NJDEP mapping, the site and surroundings have no known environmentally-constrained areas (although an occurrence typical of an auto accident and/or fuel spill is recorded near the site's Carey Street drive entrance). Testimony should be provided by the applicant's professionals as to whether any known areas of environmental concern (i.e. fuel tanks, fuel spills, etc.) exist within the property. *Testimony should be provided.* We recommend that all on-site materials from the proposed demolition activities be removed and disposed in accordance with applicable local and state regulations. *Statement of fact.* Outside agency approvals for this project may include, but are not limited to the following: Ocean County Planning Board; Water and Sewer Service (if necessary); Ocean County Soil Conservation District; and all other required outside agency approvals. *Evidence of regulatory approvals shall be provided.* Contingent upon the Board acting favorably on this application, we recommend a meeting be held with the applicant's professionals prior to providing a revised submission addressing the above-referenced comments. The revised submission should include a point-by-point summary letter of revisions.

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Mr. Vogt said they had an existing front yard setback variance on the existing building and it will be exacerbated and there are further improvements on the existing building that are going to require further encroachment on the frontyard setback variance.

Mr. Abe Penzer Esq. appeared on behalf of the applicant. Walter Hopkin is the engineer and Baruch Framovitz is the architect. Mr. Penzer said they are not increasing the student population-instead they are making it more comfortable. Right now the children eat at their seats, they can assemble together in one room, they are crowded and this will give them room. This application will give them a library, a dining room, a place to assemble and a place to live. This school prohibits any teacher from driving except the catapult teachers therefore they asked for permission to make recreation from the additional spaces and they have done so. Mr. Penzer said they can meet every single item in the report. He marked into exhibit A1 which is the proposed building and the wall that they put up was constructed to hide a host of sins and exhibit A2 shows the air conditioning units plus the ramp that has been covered up, so the choice is encroaching and having a nice wall that will cover it or to leave it exposed and ugly. The third exhibit which was marked A3 and is the colored rendering of the site plan.

Mr. Neiman asked where the bus stop was located and Mr. Hopkin said on 12th Street they depressed the curb and cutting out an area to meet the existing pavements, there will be some parking stripes there and there is an aisle that has been striped to allow the drop off so the children can move between the cars; there will be a designated space for them to go from the bus directly to the school. Mr. Neiman said there was no parking on 12th Street and Mr. Penzer said that was correct. Mr. Penzer said they made other changes as well, the board did not like the idea of the unequal fence being 8 ft. then 6 ft. and they went 8 ft. straight across so they need a variance.

Mr. Penzer said he wanted Mr. Framovitz to talk about the items in the report and one of the items was if there was going to be a sprinkler and Mr. Framovitz said yes. Mr. Framovitz said the existing building has a ramp so it is ADA compliant and the new building will be a bit higher than the old one and there is room to create a ramp so they should be able to put in a ramp.

Mr. Framovitz said one of the neighbors was concerned with the door to the left and there will be a bunch of girls coming out that door and spilling onto his property, even though they have a fence there and he suggested that they should have the door be an exit only and not an entrance. He said he is nervous about it in case of a fire. Mr. Framovitz said the neighbor was concerned about people congregating at that door, so if it was exit only, they would have to go around to the front to enter and so on the plans they put emergency exit only which would mean it would not be used on a daily basis and if you see the plans, it will probably not be used on a daily basis anyhow and Mr. Neiman said that was more of a building inspection department decision, not this board's. Mr. Hopkin told Mr. Penzer that they have a fence across so it makes it pretty hard to get back there anyway.

Mr. Penzer said they can meet every single comment in the report and agree to every comment and the only issue is the wall. Mr. Neiman said his comment is he would rather hide those air conditioning units and he is for that wall.

Mr. Banas said Mr. Penzer presented a case that is very interesting in his opening comments and he asked that this school be approved under the conditions of certain requirements-the students are xx number and they won't increase or decrease, they are going to remain there, have all the facilities that they need for education and feeding purposes and this sounds good to him. However, is this going to be part of the approval and will it be a condition by which the

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school will be conducted. Once they approve a school with these conditions, this will be carried forth and asked if this is what Mr. Penzer is suggesting or is he saying that these are the conditions for this school and a future sale or transfer could make other conditions because if that is the case, he has serious questions about what they have.

Mr. Penzer said he is presenting what the conditions are at present and physically it is not going to be possible to put more children. He said they do not intend to sell this in the future and the only question that will come up is if anyone else will sell them any more houses but he does not think so, they are maxed out. He can just tell the board that these are the conditions in what they are doing. Mr. Banas said he does not know of any other building that exceeded 25% coverage-they have now gone to 33-34% coverage and that is excessive. Mr. Penzer said that because there is a shortage of schools most of the schools that have come before the board are probably 40-50%. The yeshiva itself is at 48% if not more and he can go through school by school and tell them they greatly exceed those requirements. They are growing so rapidly and the one thing they can create more is land so they have to maximize that land. Mr. Banas said he understands the problems with the schools, the property and the amount of land but said he would suggest he do something to try to change that ordinance so that we are not constantly faced with that problem. Mr. Banas said it is a problem for him to go and consider approval of this or any other project with the standpoint that possibly anything is for sale. Mr. Neiman said if he was looking to buy a school he doesn't know if he would want to buy this school because there isn't enough parking there-for this school it works. He said they are here to stay and Mr. Banas said he hopes that is true. Mr. Banas said he saw the wall and the façade of the building and he likes it.

Mr. Percal asked Mr. Penzer if there will be any additional classrooms built, they are only talking about a library, lunchroom, assembly room and Mr. Penzer said yes. Mr. Neiman asked who approved the school without all these amenities in the first place.

Mr. Neiman opened the microphone to the public

Mr. Penzer said the people in the audience are parents and he asked them to stand to say they support this application to save time? Mr. Neiman saw who stood and said thank you.

Seeing no one come forward, this portion was closed to the public

Motion was made by Mr. Schmuckler, seconded by Mr. Percal, to approve the application with the wall.

ROLL CALL: Mr. Neiman; yes, Mrs. Koutsouris; yes, Mr. Banas; yes, Mr. Schmuckler; yes, Mr. Percal; yes

Mr. Penzer said he understands the next application is lengthy and he has a letter under correspondence and asked if that could be heard next. Mr. Neiman agreed so the item listed under correspondence was heard next.

2. SD # 1509B (Variance Requested)
Applicant: Majestic Contracting
Location: Massachusetts Avenue, south of Prospect Street

Block 445 Lot 18
Preliminary & Final Subdivision & Site Plan for 17 two family townhouses

Mr. Vogt prepared a letter dated July 16, 2009 and is entered in its entirety. The applicant proposes to develop this property for multi-family development, including seventeen townhomes within three (3) proposed on-site buildings. Proposed amenities include but are not limited to a privately-owned cul-de-sac (Alpine Court), seventy-five (75) parking spaces, a proposed tot lot, an underground detention systems and an above-ground recharge basin. The property is located in the Residential Multifamily (RM) Zone. Per our interpretation of the submitted documents, including the Final Major Subdivision Plan, the property will be maintained through a future Homeowners' Association with the proposed lots being Fee Simple. Per our review of the documents, an earlier version of this application was denied by the Planning Board at its November 21, 2006 meeting due to Board and public concerns expressed including but not limited to three (3) primary issues: **Parking** – Due to the potential for basements proposed within the development being converted into inhabited basements, the Board expressed concerns regarding the number of parking spaces (75) proposed. **Buffer** – The Board felt that Lakewood buffer ordinance for multi-family or townhouse development adjacent to single-family development/zoning, Section 18-803(E)(2)(b) should be applied to the project. **Cul-de-sac** – The Board requested a Cul-de-sac turnaround for the proposed Alpine Court terminus in lieu of “other suitable means” such as hammerheads allowed by RSIS standards for multifamily cul-de-sac stems (NJAC 5:21-4.5(m)). Per review of the Findings in Judge Vincent Grasso’s March 5, 2009 (written) Court decision, the Court found that the Board’s denial of the proposed seventy-five parking spaces was “arbitrary and not based on credible evidence in the record”. However, our interpretation of the Findings indicates that the Court found that the Planning Board was entitled to request a cul-de-sac turnaround for Alpine Court, as well as the landscape buffer to single family-development/zoning stipulated in Section 18-803(E)(2)(b) of the UDO. *The following design revisions have been made per site plan review at the June 2, 2009 hearing: Proposed handicap spaces have been shifted closer to the main building units on both sides of Alpine Court, and are accessible to proposed sidewalks (via ramps that are also necessary). Proposed parallel parking on Alpine Court has been reduced to three (3) spaces, and the minimum 24’ wide access aisle from the Alpine Court 90 degree parking spaces is now provided per RSIS standards. A separate lighting plan has been provided with design data as requested. Soil test data has been provided as requested. Various plans revisions and clarifications per our initial site plan review.* We offer the following comments and recommendations per review of the current application, the above referenced Planning Board resolution of denial, the Findings of the Court, prior engineering and planning review letters by T&M Associates dated September 15, 2006, and comments from our initial review letter dated May 26, 2009: **Zoning**- The property is located in the Residential Multifamily (RM) Zone. Townhouses are a permitted principal use in this zone. **Fact.**- No variances are requested with this application. **Fact.** -In response to Code Section 18-900(H)(10) requiring structures with more than two (2) units having a variation in offset of at least two (2) feet, the architectural drawings were revised to show an offset of two (2) feet per unit (as scaled from the First floor Plan provided on Sheet P2). Testimony should be provided from the applicant’s professionals indicating that the two-foot minimum standard will be met. **Testimony is required.** **Review Comments- General** - As indicated on the site plans, and as upheld by the Court’s decision, a Cul-de-sac bulb is now proposed at the terminus of Alpine Court. **Fact.** The proposed Cul-de-sac bulb has a design radius of only 30 feet as depicted on the submitted plans. Per RSIS standards for Cul-de-sacs for “Multifamily access” (NJAC 5:21-4.5(m)), “Cul-de-sacs shall provide for a cartway turning radius of 40 feet or other suitable means for vehicles to turn around, such as hammerheads”. Since the applicant is providing a Cul-de-sac are required by the Board, and upheld by the Court’s decision, vs. “other suitable means”, our interpretation of

the design requirements is that the Cul-de-sac bulb must meet the minimum 40' cartway turning radius identified in the RSIS. The road should be redesigned accordingly. *Per testimony at the June 2 workshop hearing, the applicant is requesting a design waiver to allow a 30 foot diameter cul-de-sac bulb vs. the minimum 40 foot radius requirement in the RSIS. It is our opinion that this request would not constitute a 'deminimus' waiver, and would therefore require a waiver request and approval from the New Jersey Department of Community Affairs' (NJDCAs) Site Improvement Advisory Board as described in NJAC 5:21-3.2. Per subsection (b) of this statute, the Advisory Board "may approve a request for a waiver based on any danger to the public health and safety that would be caused by adherence to a standard specified in (the regulations)". Unless information or testimony is provided that would satisfy the above referenced statute, and the Board decides in favor of the requested reduction, we do not support this waiver request.* We defer detailed review of the road design, including proposed grades and alignment, until review of the above referenced design revision. *Fact.* The applicant proposes seventy-five (75) parking spaces to serve seventeen (17) townhomes, or 4.4 spaces per unit. These are the same numbers and ratios proposed in the prior application. The Court Findings (page 28) indicated that the Board's denial of the proposed parking was arbitrary. Therefore, our interpretation of the Court findings is that the proposed number of parking spaces (75), or 4.4 parking spaces per unit is adequate for the project. *Fact.* We note that the requested cul-de-sac bulb cartway width revision could impact parking proposed along the northwesterly portion of Alpine Court, providing 75 spaces as proposed may not be feasible. *Fact.* The plans show four (4) proposed parallel spaces proposed within the northerly cartway portion of Alpine Court, across from 90-degree spaces proposed for units in Buildings One and Two. Based on a scaled cartway width of 28 feet, and (minimum) 7-foot wide parallel spaces, an aisle width of only 21 feet would be provided for the Alpine Court parking spaces across from these parallel spaces. Per RSIS (NJAC 5:21-4.16) Table 4.5, "Parking Angles and Aisle Widths", a minimum 24' wide aisle width must be provided to for all of the 90-degree parking spaces. Design revisions are necessary. *As noted previously, the plans have been revised to provide the minimum 24-foot aisle width. This item has been addressed.* The revised plans depict two (2) proposed handicap accessible spaces across from Building #2. Unfortunately, there would be no sidewalk access from these spaces to any of the proposed units. We recommend that the applicant consider relocating these spaces to be directly in front of one of the proposed Buildings. If the design could accommodate, providing one accessible space for Building #3, and one accessible space for Buildings #1 and #2 would be an improvement. *As noted previously, the plans have been revised to provide to relocate the proposed spaces. Handicap ramps to the sidewalks are required. Otherwise, this item has been addressed.* Sidewalks are now proposed along Massachusetts Avenue, as well as in front of the residential units. *Fact.* - Testimony should be required to address accessibility to, and the adequacy of the proposed trash enclosure at the Alpine Court terminus. *Testimony is required.* As requested in T&M's 9/15/06 engineering review letter, the Alpine Court Access is proposed to be right-in, right-out. This is satisfactory. *Fact.*- as requested in T&M's 9/15/06 engineering review letter, the Alpine Court Access turning aisle widths were recommended to be a minimum of sixteen (16) feet, vs. 14 feet as proposed unless the design engineer could provide a turning plan indicating the proposed width's adequacy for trash truck access. This issue must be addressed by the applicant's engineer. *This item remains outstanding. Testimony is required.* The proposed Alpine Court access design is subject to Ocean County approval. *Fact.* One (1) new road name, Alpine Court, has been proposed for the project. The proposed road name is subject to approval from the Township and proof of approval shall be provided. *Fact.* The applicant must provide proof that all proposed Block and Lot numbers have been approved by the Lakewood Tax Assessor. *Fact.* Plan Review- If this project is approved by the Planning Board, metes and bounds will be necessary for the proposed Sight Triangle Easements dedicated to the Township of Lakewood as shown at Alpine Court's intersection with Massachusetts Avenue. This

easement should be depicted on the Subdivision Plan as well. *Fact.* A fifteen-foot (15') drainage easement is proposed along the property's Massachusetts Avenue frontage as depicted on the Subdivision Plan. *Fact.* A tot lot is proposed immediately west of Building #3. A detail is provided on Sheet 5 of the plans. All play equipment must be installed over an impact-absorbing surface. We recommend that a CPSI (Certified Playground Safety Inspector) certify that the equipment is installed properly prior to project release by the Township, and that the tot lot is ADA-accessible. These conditions shall be met prior to issuing a certificate of occupancy. *Fact.* Homeowners documents must be provided for Township review in accordance with UDO requirements if/when this project receives Board approval. *Fact.* Grading- Proposed grading is provided in sufficient detail on Sheet 4, "Grading and Drainage Plan. The grading design as indicated is generally acceptable for preliminary approval purposes. *Fact.* Five (5) retaining walls are proposed along the property perimeter as part of the grading design. If this project is approved by the Board, design information for each of the wall systems will be required during compliance review. *Fact.* *Additionally, grading easements are likely necessary with adjacent owners/properties for construction of several of these walls as designed. Per further review of the proposed grading at the intersection of Alpine Court and Massachusetts Avenue, there is a proposed cross-slope of over 2 feet at the end of the Court as currently graded. Revisions will be necessary, at a minimum, as a condition of Planning Board approval if/when forthcoming.* Stormwater Management- as depicted on the plans and in the stormwater report, two (2) proposed basins will provide stormwater management for the facility. An underground detention system, consisting of a network of 36" diameter HDPE perforated piping is proposed underneath of the Cul-de-sac, with an overflow discharge to a "bubbler" inlet to be constructed along the southern edge of Prospect Avenue. A "Stormceptor" pretreatment unit is provided to meet the NJ Stormwater Rule's Total Suspended Solids (TSS) removal requirement. In addition, an above ground retention basin is proposed in the southeast corner of the property, along the Massachusetts Avenue frontage. *Fact.* A stormwater management report is provided, indicating that the two (2) proposed basins are designed per the NJ Stormwater Rule. *Fact.* No site-specific soil information is provided for the proposed stormwater design. Soils information must be provided via borings or test pits, including information on soil lithology, percolation rates, and depth to seasonal high water table (SHWT). *As indicated previously, soil data has been provided in the vicinity of both proposed stormwater systems. Existing depths to water table and permeability rates appear favorable. This item has been addressed.* An impact analysis of the proposed "bubbler" discharge onto Prospect Avenue must be provided by the applicant's engineer. A drop manhole should be considered in lieu of the proposed 15" diameter outfall pipe slopes for energy dissipation purposes. *Fact.* An overflow weir should be provided for the proposed above ground basin. *Fact.* A stormwater maintenance manual will be required in accordance with NJ Stormwater Rule (NJAC 7:8) and Township standards. *Fact.* A final review of the stormwater design will be performed upon receipt and review of forthcoming soils information and design revisions. *Fact.* Landscaping- Proposed landscaping is depicted on Sheet 5, "Lighting and Landscape Plan" of the revised submission. The proposed design includes evergreen trees along the majority of the property's perimeter, to consist of White pines, Norway spruces, Leyland Cypress, interspersed with Littleleaf lindens, Red oaks and Red Maples. A double row of evergreens is proposed along the southerly property line, and residentially zoned Lot 2. *Fact.* The applicant's engineer should testify whether any mature vegetation with this site can be preserved. If so, tree protection measures should be provided on the plan. Additionally, final plans for this project (if approved by the Board) must include proposed root protection for trees to remain at the property line with adjacent Lot 2. *Testimony is required at the public hearing. Shade tree easements are depicted on both sides of Alpine Court. While we recognize that these easements are proposed by the applicant in an effort to comply with the Township ordinance, they are not functional for shade trees as proposed since the underlying areas will be occupied by paved and/or developed areas as currently designed.*

*It may be more appropriate to limit these easements as utility (only) and waive the Shade Tree easement requirement. As evidenced in the Board's resolution and Court Findings, the issue of the proposed buffer provided to adjacent (residential) Lot 2 was discussed in detail. Our interpretation of the Court Findings (Page 24) indicated that the Board has a right to require buffer to adjacent (residential and residentially zoned) Lot 2 as referenced in Section 18-803(E) (2)(b), specifically: "Multi-family or townhouse adjacent to an existing single-family residential development or an area zone for single-family residential land uses shall provide a buffer area of at least thirty (30) feet in width, as measured from the property line toward the proposed use. The Board may reduce the required buffer to fifteen (15) feet in width if the developer provides a dense landscape screen." Per review of the plan, a 10-wide buffer (as scaled) is proposed along the southerly property line abutting Lot 2. Unless a design waiver is requested and granted by the Board, this buffer must be widened to at least 15 feet (if the Board is satisfied with the proposed buffer), or the buffer must be revised to a minimum 30 feet in width. **Fact.** Additionally, per further review of the plan and the Court decision (Page 24), it appears that the same (15 foot or 30 foot landscape) buffer requirement may also apply to adjacent Lot 1 to the west of the site, since it is in the same (RM) zone as Lot 2. Testimony is required from the applicant's professionals regarding this issue. If applicable, additional relief will be necessary for the current design. Landscaping should be provided to the satisfaction of the Board. Additionally, compensatory tree plantings for specimen trees that will be lost (or equivalent monetary contribution) must be provided in accordance with the Township's Tree Protection Ordinance. **Fact.** Lighting - A separate *Lighting Plan (Sheet 6)* has been provided as requested with supporting data. Ten (10) lantern pole lights appear to be proposed along portions of Alpine Court and the proposed Tot Lot. Light intensities as depicted appear generally adequate. Shielding of several of the proposed lights along Lot 17 appears necessary to minimize spillover. A light pole and foundation detail(s) must be provided, including the proposed pole height(s). Several of the lights proposed along the southerly curb line of Alpine Court appear to be in conflict with the underling parking spaces. Design revisions appear necessary. Utilities- Existing and proposed water and sewer utility services are provided on the Grading and Drainage Plan. If this project is approved by the Board, more detailed utility information, including individual water and sewer services proposed (per unit) will be required during compliance review. **Fact.** Similarly, additional services (telephone, gas, cable, electric) will be required during compliance review if this application is approved. **Fact.** Signage- Traffic, parking and directional signage details are provided on the plans. **Fact.** Per further review of the design, one of the proposed "Fire Lane signs is proposed between the edge of the cul-de-sac bulb and the four (4) adjacent parking spaces, and must be relocated. The applicant should indicate whether any additional signage is proposed for this project. If so, details must be provided. **Fact.** -Environmental- An Environmental Impact Statement was provided for review, and is generally satisfactory. Additionally, locations, sizes (diameters) and types of mature trees are provided on the plans. **Fact.** To assess the site for environmental concerns, our office performed a limited natural resources search of the property and surroundings using NJ Department of Environmental Protection (NJDEP) Geographic Information Mapping (GIS) system data, including review of aerial photography and various environmental constraints data assembled and published by the NJDEP. The following data layers were reviewed to evaluate potential environmental issues associated with development of this property: Known Contaminated sites (including deed notices of contaminated areas) Bald Eagle foraging and Urban Peregrine habitat areas; and NJDEP Landscape Project areas, including known forested wetlands, emergent wetlands, forest, grassland and wood turtle habitat areas. Per NJDEP mapping, the wooded area in the northwest corner of the site, and along the northerly property line is mapped as potential state-threatened species habitat. While this wooded area is not likely "critical" habitat due to surrounding development, we recommend that the applicant retain a qualified consultant to investigate the site habitat based on a request for NJDEP natural*

heritage database information, and provide a summary report of findings. *This information is still required.* Phase I/Areas of Environmental Concern (AOCs) as depicted on the plans, there is an existing well near Massachusetts Avenue that will be sealed per NJDEP requirements. The applicant's professionals should testify whether there are any known areas of environmental concern (AOCs) within the site (e.g., underground or above ground fuel tanks). A Phase I study for the property, if existing, should be submitted for review. *Fact.* At a minimum, Board approval for this project should be conditioned upon the applicant removing and disposing of all on-site structures, materials and debris in accordance with applicable State and Local requirements, including on-site septic systems (if any). *Fact.* Construction Details- Construction details are provided on the plans. *Fact.* Except for inverts, which may be constructed of Class S concrete, any concrete shall be a minimum of Class B. The strength of Class B concrete is 4,500 psi. All references to Class C and D concrete shall be removed from the details as these mixes are no longer used by NJDOT. Bicycle safe frame and grate number shall be 2618. A drainage manhole detail must be added. *Fact.* Details for Handicap Ramps must conform to the NJDOT Standard Details. *Fact.* All details must be revised to conform to applicable NJDOT, County or Township standards (as necessary). If this project is approved by the Board, a more detailed review of construction details will be performed during compliance review. *Fact.* Outside agency approvals for this project may include, but are not limited to the following: Ocean County Planning Board; Ocean County Soil Conservation District; New Jersey American Water Company (water); and all other required outside agency approvals. A revised submission should be provided addressing the above-referenced comments, including a point-by-point summary letter of revisions.

Mr. Salvatore Alfieri Esq. appeared on behalf of the applicant and Mr. Gasiorowski said he is representing Mr. & Mrs. Payne who were the objectors on the previous hearings. He said he wanted to deal with a procedural issue first and said his position with regard to this application is that the notice is deficient because: 1) this is a remand and there is nothing in the notice which apprises the public of this fact-this is a remand from Judge Grasso from an opinion dated March 5, 2009 in which he stated fairness to parties is that it be remanded to the board with an opportunity granted to the applicant to amend the application consistent with the court's findings. He said there is nothing in this notice that which apprises the public of the fact that this is a second appearance in front of this board (there was no vote on the first visit and the second was denied-but this is a remand of the second one) with specific direction given to the applicant from the court. One of the findings was with regard to the cul de sac and that the board did not act arbitrarily when it demanded that the applicant provide a cul de sac. There is nothing in this notice that states the fact that the applicant was directed to come back with plans in compliance with the RSIS standards and yet the diameter of the cul de sac is deficient.

Mr. Jackson said in reference to some of the noticing issues Mr. Gasiorowski raised and said this was an extraordinary situation where Judge Grasso affirmed the board's ruling on 2 basis'- the buffering issue and the cul de sac issue vs. the hammerhead turnaround. Judge Grasso took a lot of time analyzing the issue on the denial based on the parking and said the RSIS did not provide a standard for parking for 8 bedrooms, and what is an applicant to do when there is nothing in the law and Judge Grasso said the court is constrained to follow the RSIS and Mr. Jackson got the sense the court believed in what the board is doing is reasonable with the parking but they was obligated to follow the law and there is no law that could require additional parking and that is Mr. Jackson's interpretation. Because so much of the decision was wrapped up in the parking the court said they are going to remand this to the board and the applicant was willing to redesign the hammerhead, have a cul de sac, reduce the number of units, reconfigure the buffer and the court thought the applicant should have the opportunity to do that (rather than the court denying it). With regard to the notice issue, Mr. Jackson said he did

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not know any requirement that on a remand, the applicant be held to specific thing what the application is for-this notice states the applicant has told the public that he is seeking preliminary and final site plan approval to construct 17 townhouses in the RM zone, seek variance relief for rear yard setback and other variances. This notice states what the applicant wants to do and he recommends that the board find that the notice is sufficient and go forward at this stage. Mr. Neiman said the board will go along with Mr. Jackson's recommendation.

Mr. Schmuckler said he was not here when it was initially denied and asked his status and Mr. Neiman said this should be treated as a new application-yes, there is history behind this application but said to treat it as a new one. Mr. Gasiorowski if the board is treating this as a new application with no reference to the earlier decision or the courts ruling and Mr. Neiman said no- Mr. Jackson said the board should take into account the court's ruling and he will charge the board at the end of the relevancy and importance of that but he thinks it would be appropriate to start a record and the board should make its' determination upon the record that is beginning of the opening comments today. There are many issues and problems with this application from the boards' engineer (if the cul de sac meets RSIS standards, if the buffer is adequate etc.) and all that needs to be put on the record. He does not think it is appropriate to base it on the previous application. Mr. Alfieri said that is his position as well; they are going to start from scratch except they are constrained to follow Judge Grasso's rulings where it is appropriate with this application.

Mr. Gasiorowski wanted the Judge's decision to be entered into the record and Mr. Jackson said it is already part of the board's file but he would be happy to mark that as an exhibit and said for the record, they have been talking about Judge Grasso's letter memorandum of March 5, 2009.

Mr. Vogt gave an overview of his review letter. He said the cul de sac radius is 30 ft. and the RSIS standard is 40 ft. and they are requesting a waiver and Mr. Vogt said in his opinion that is something that should be acted on by the RSIS advisory board- that is not something he believes the board has the prevue to act upon because it is not in the RSIS standards and is not close to RSIS standards. Mr. Neiman said since it does not meet RSIS standards, why should the board even listen to this application tonight before they can make sure it does meet RSIS, why should they waste their night if they know they follow RSIS standards. Mr. Vogt said that is a decision of the board. They can make the applicant go to the RSIS and get a waiver or they can hear the application. Mr. Neiman said they do grant certain waivers as a board, but this is a waiver they have never granted and Mr. Vogt said it requires the state to give a waiver.

Mr. Schmuckler said if there is perpendicular parking, something about that doesn't meet RSIS and Mr. Vogt said he calls that out on the earlier review and it can meet RSIS if they have the proper back up from the 90° spaces and that has been addressed. Mr. Schmuckler said if it meets RSIS the town can own the street and they can plow it and Mr. Vogt said it is his understanding that it is allowed.

Mr. Jackson asked Mr. Vogt if the cul de sac was a design issue that the Planning Board can determine and asked if that was strictly a DCA determination and Mr. Vogt said his understanding of the RSIS is that it was formulated to have statewide design standards which are going to be used for all residential developments- there is a specific RSIS code that says for this type of cul de sac stem you have a 40 ft. radius. RSIS was not pushed by the towns but by the builders to come up with uniform standards. If this was close to 40 ft. (38,39 ft) and there was a physical obstruction or something as to why it couldn't be done, he thinks the board may have latitude and the state would give what they call a deminimus waiver-this is not deminimus,

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it is a 33% reduction in radius. Mr. Jackson said the applicant has to put his case on, he has to make the request for the variances and if the design hasn't be met the applicant has to give the reason for that and Mr. Neiman said he is saying why aren't they trying to meet the RSIS standards, the judge was clear and said they should try to redo it. Mr. Alfieri said when the board hears the testimony they will see that they believe they comply with the RSIS standards and they will get a letter from the DCA stating that.

Mr. Vogt continued and said another issue is the residential buffer- the code requires 30 ft. and that can be waived by the board to 15 ft. if they are satisfied with the adequacy of the buffer and the applicant is seeking 10 ft.

Mr. Jackson announced that Mr. Akerman has arrived and said if the matter were to be voted on tonight he would not be able to vote but there is only about 20 min. of tape if it does not get finished tonight for him to listen to.

Mr. Alfieri said he has 2 witnesses tonight, Mr. Brian Flannery who is testifying as a planner and also Mr. Ray Carpenter who is the engineer for the applicant.

Mr. Flannery said the project is for 17 unit townhouse development with associated parking, stormwater facilities and tot lot. He said the application in on the property that was previously denied by the board and the plans were revised to reduce the unit sizes and add a cul de sac and increase the buffer. Mr. Neiman asked by how much was the unit size reduced and Mr. Carpenter said overall depth of the units, front to back, was reduced by 4 ft. Mr. Jackson asked what the reduction in square footage was and Mr. Carpenter said they were reduced by 200 sf. Mr. Flannery continued and said they added a cul de sac and they added a buffer. The project requires no variances but they do need a design waiver for the buffer. It was their opinion at the previous meeting that a buffer was not required but the judge made his ruling and he will not argue with the judge. The ordinance indicates that a 30 ft. buffer is required which can be reduced to 15 ft. by the board if it is a dense buffer and they have provided a dense buffer of 10 ft. in lieu of the 15 ft. due to the nature of the property. The property is in the RM zone and the RM zone permits townhouses and they meet all the requirements of that zone and they are requesting a waiver for the width of the buffer. The units shown show a jog in them (2 ft. jog) and it is a situation that is presented to the board on numerous occasions and the intent is that you don't have a barracks type look with a straight front all the way along and it is his testimony that with the architecture with the jogs that are built into the units does comply with the ordinance.

Looking at the review comments and the cul de sac, the RSIS indicates for multifamily 2 different classifications; either a multifamily access cul de sac or multifamily court. A multifamily court requires no turnaround but that is limited to 300 ft. in length and once you exceed the 300 ft. in length (which they do in this application) it is classified as a multifamily access cul de sac and in table 4.3 of the RSIS there is a footnote "m" which says cartway widths of multi family cul de sac stems should conform to the applicable residential access street type. Cul de sacs should provide for cartway turning radius of 40 ft. or other suitable means for vehicles to turn around such as hammerheads. Mr. Flannery said what the RSIS is saying is that they have to have suitable means for a turnaround. In Lakewood, the progression of things was that hammerheads were approved and at the time of this application the board said hammerheads don't serve the people adequately because cars have to back up and with all the children that is a problem. Mr. Gasiorowski objected to his testimony in bringing up another application that was approved on Finchley Blvd. where a cul de sac was put in where a hammerhead was previously proposed and the applicant said they wanted to have the cars be

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able to turn around so they put in a cul de sac for the cars and a hammerhead that allows for the public works vehicles. Unfortunately Mr. Franklin is not here this evening because the cul de sac that is proposed for this plan is the same that is on the Finchley and it was done with the same intent. Mr. Flannery said being that this application has a hammerhead which provides for adequate means of turnaround it complies explicitly with note "m" in table 4.3

Mr. Neiman asked him if they were to follow the 40 ft. radius what would they loose on this application and Mr. Flannery had an exhibit marked A1 which is sheet 3 of 10 of the preliminary and final site plan prepared by R.C. Associates. Mr. Flannery said the cul de sac could be widened and 4 parking spaces would be eliminated. Mr. Jackson said put another way, if you started with a blank canvas and you drew in the 40 ft. cul de sac first and still provided the appropriate number of parking spaces, could they do that if they loose units and Mr. Flannery said there is certainly enough room on a piece of property if they loose units, but he point of the matter is that the state law that governs in the RSIS and the judge indicated that the board is entitled to ask for a cul de sac but in the RSIS there is a clarification that is provided by the DCA, issued October 25, 2007 which was marked as A2 that states the Site Improvement Advisory Board was asked whether a municipality may limit design options in RSIS and said the answer is no. It is up to the applicant's and their professionals when they submit the application to comply with the RSIS and Mr. Neiman said that is if they meet the 40 ft. and Mr. Flannery said it does not say if they meet the 40 ft. it says if they comply with the RSIS and they would accept as a condition of approval by the board that they get clarification from the DCA and he is confident that the answer they will get back is yes. Mr. Jackson asked him if the board can look at this and say the downside to requiring a full sized cul de sac is not really the worst thing in the world to the applicant, maybe they loose 3 units at the head of the development and in return for that they can turn vehicles around, maybe the board realizes a lot of developments have a lot of school aged children, a lot of activity etc. and there are a lot of bedrooms here so it may want to give cars enough room to turn around. Shouldn't the board have the ability to make that decision when they look at the site to determine if the site is appropriate and Mr. Flannery said can the board limit design options and the design options are complying with the RSIS and if the board were to say they want 50 ft. and Mr. Vogt said that is exactly what the judge did. Mr. Flannery said the judge said the board can ask for a cul de sac he did not say it has to be a cul de sac that complies with RSIS standards and Mr. Neiman said a cul de sac is 40 ft. and Mr. Vogt said he respectfully disagreed with Mr. Flannery.

Mr. Alfieri said they are not asking for a waiver from the DCA they are asking for an approval and condition that approval on the DCA saying they comply. Mr. Jackson said he understands where Mr. Vogt is coming from and he also wonders whether the board has the authority to insist on the more rigorous standards based on its' understanding of what goes on in a neighborhood like this. Mr. Flannery said the RSIS Standards state that these are the maximum that the board can require (NJAC5:21-1.5b)-except as specifically provided these rules shall control all matters concerning the construction, etc. and any site improvements constructed by the developer in connection with the residential development. Except as otherwise required by these rules....the rules are to be interpreted as the minimum required to ensure public health and safety and the maximum that may be required in connection with residential development. Mr. Flannery said the end of it clearly says and the maximum that may be required in connection with residential development. He said they are not here to tell the board that they do not want to do a cul de sac; they want to do a cul de sac consistent with what was done on Finchley Boulevard; one that provides availability for cars to turn around- it doesn't provide the availability for snow plows or garbage trucks to turn around but they do provide other suitable means for the vehicles to turn around such as hammerheads. Mr. Carpenter did show this layout to Mr. Franklin and it provides those purposes. The judge clearly said they need to

provide a cul de sac and they have provided a cul de sac that provides what the board asks for- they said they don't want the cars backing up where there are kids around and this cul de sac allows cars to turn, it just doesn't allow a garbage truck to turn.

Mr. Alfieri asked Mr. Flannery to explain the parking and Mr. Flannery said 75 parking spaces is provided for the 17 townhouses which is 4.4 spaces per unit and it is his testimony that complies with the RSIS standards and is consistent with the judges' order.

Mr. Schmuckler said they put 3 spots right after the tot lot in the middle of the street and a car driving straight has the roadway getting skinnier as they go and asked if there was a way of doing that so someone driving at night doesn't hit a car thinking he has enough room instead of it getting thinner and Mr. Flannery said the cartway that is available to the cars is the 24 ft. that is required and it was widened in the area of the parking spaces in front of it just to give more backing out room and it is this unique piece of property that has that indentation from the adjoining lot (lot 17) which makes the property narrow and that is what causes the problems they have in designing this application. They are under the density permitted by the ordinance and they would like to give the board everything they would like to have but when there is conflicting parameters and something unique to the property that causes a problem, we like try to design something that meet all the standards for health and safety but still allow appropriate population density and development of the property.

Mr. Flannery said they can provide handicap ramps at the corners. The trash enclosures are located at the end of the multi access roadway and Mr. Carpenter has met with Mr. Franklin and they would agree to comply with any requirements from Public Works with respect to that but said the garbage truck has the capability to pick up the trash, make a "k" turn and leave the site. The direction of traffic is right in and right out of the site and in accordance with a meeting that was held with the county engineer.

Mr. Neiman asked Mr. Flannery to explain the trash again and the picking up of a dumpster. Mr. Carpenter said the individual units have garbage cans per the request of Mr. Franklin's request. Mr. Neiman asked where they were going to be since there are parking lots on both sides and Mr. Carpenter said they will roll the containers out to the street and Mr. Neiman said then no one can take out their cars when it is trash pick up and Mr. Carpenter said Mr. Franklin said there is a specific time that the cans have to be back off the street once the pick up is made and Mr. Jackson said Mr. Neiman's point is if you put your garbage can out in front of your unit, there is a parking space there so where does it physically go and Mr. Carpenter said this plan was reviewed by Mr. Franklin and Mr. Jackson said they are asking him where the garbage cans go and Mr. Carpenter said the garbage cans would go out to the street and said there are open areas between units 7 & 6 (he showed them on the plans) and Mr. Schmuckler said the automated garbage trucks need the cans lined up and 40 garbage cans would have to line up flat unless you do central dumpster somewhere and Mr. Carpenter said when the original plans had dumpsters and Mr. Franklin commented that the people from the front would have to bring their garbage all the way to the end of the street; then they were going to put a trash enclosure by Massachusetts Avenue and everybody said the did not want one at the entrance; then the answer was to provide trash enclosures for each individual unit. Mr. Neiman asked how the garbage is going to be picked up-there are cars parked there and you can't put the garbage pail blocking the car from moving in and out of its' spot and Mr. Carpenter said he would go talk to Mr. Franklin and they will iron out the garbage; either they will have trash enclosures at the individual units or enclosures at the end and entrance of the development. Mr. Jackson said this is no small thing-every building is wall to wall the whole length of the site and there are parking spaces along every inch of the street, 2 garbage cans side by side would take up the

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entire width of one of those parking spaces so 40 garbage cans out on the same day is no small thing and Mr. Carpenter said he will sit down with Mr. Franklin and they will go over this. Mr. Alfieri said he understands that is an issue and they will address it.

Mr. Flannery continued and said they had a meeting with the county on where Alpine meets Massachusetts and realize they need their approval. They agree the road name has to be approved and they also need to prove the taxes have been paid and the lot and blocks have been approved by the tax assessor. Mr. Flannery said there is a tot lot provided on the northerly side of Alpine Court. Mr. Flannery also said they will address the comments in the plan review section of the review letter. They do not believe there is any landscaping that can be preserved and obviously they will have to come back and address the trash issue so they will look in future detail to see if there are any trees that can be preserved at the same time. The buffer that is required by ordinance is 30 ft. which can be reduced to 15 ft. if it is densely planted and they are providing a densely planted buffer of 10 ft. because in order to provide units with a reasonable depth with the width of the property they are asking for a waiver for that 5 ft. and said part of what you look at in a buffer is what you are buffering to on an adjoining property and the property to the west Mr. Vogt said they should look at buffering there but there is new development there and townhouses are existing so no buffer is needed. Mr. Flannery said when they look to the Payne property-it is a 5 acres property in the RM- there is a landscaping business there now and the house is 240 ft. from the property so it is his professional opinion that a waiver would be appropriate. They would agree to comply with the lighting comments and the utility and signage comments and also address the environmental and construction details.

Mr. Jackson said in the bottom of Judge Grasso's opinion it says if the applicant returns to the board its application should address the thoroughfare design, buffer requirements as well as the parking requirements and said he did not know if they talked about the parking requirements and the thoroughfare design and Mr. Alfieri said they just discussed the buffer, they described the parking (4.4 parking spaces per unit -75 total) which also allows for 1.8 parking spaces for the basement. Mr. Schmuckler asked if these houses will be sold or co op or fee simple because then they do not have to have handicap spaces-only if it is rental units. Mr. Schmuckler asked who will own these streets and Mr. Flannery said that will be another issue that they go over with Mr. Franklin when they come back for the next meeting. The applicant would like to have the township maintain them and the homeowners would like that too but Mr. Schmuckler said he will not do it if there are drains in the backyards.

Mr. Jackson said he knows the board is ok with the 4.4 parking spaces per unit but they did not get into the number of bedrooms and asked how many stories were they and Mr. Flannery said they were 2 story units with a loft and a basement. Mr. Neiman asked if the loft was livable space and Mr. Flannery said yes. Mr. Flannery said there are no bedrooms in the loft and basement as proposed by the applicant-obviously future homeowners may. Mr. Jackson said 4.4 spaces seem like a lot for a townhouse unit until you realize there that they are 3-4 floors and outside entrances to the basement and he asked what the number of bedrooms per unit was and Mr. Flannery said the number shown on the plans is 5 and there are rooms that could conceivably be changed to bedrooms but the developer is building them without bedrooms there.

Mr. Neiman said they heard the application and thinks when they come back they should address the cul de sac, garbage issues, ownership of the streets, etc. and now that they have a month to come back they can get the letter from DCA to show that this meets RSIS within the next month it would be helpful. He said the judge was very clear in saying that he wants to see

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a cul de sac etc. that would definitely help them. Mr. Jackson said the judge said he was satisfied that the board acted reasonably in requiring a cul de sac.

Mr. Gasiorowski said he had a question for Mr. Flannery and said he must approach the RSIS board with a premise that does the board have the power to require 40 ft. if they in fact find it necessary or can RSIS overrule the finding of the board. He thinks under the RSIS standards they may be able to get a waiver but in instances where he sees it, when there is a width of a street and the board may say while 30 ft. is required, we think 28 ft. would be appropriate, then the person goes to RSIS to get a waiver. The issue here is, does this board believe that a 40 ft. radius cul de sac is necessary and if the board makes that decision, he does not think he can go to RSIS for a waiver. Mr. Neiman said he does not think he is seeking a waiver, he thinks he is saying that RSIS is going to look at this and somehow say that this is 40 ft. and Mr. Alfieri said no- that it complies. Mr. Neiman said then how can it comply with RSIS if it is not 40 ft. and Mr. Flannery said he reads in RSIS- in table 4.3 establishes what is required and for this type of development, multifamily, they can either have a multifamily access cul de sac or a multifamily court- they are not a multifamily court because it is more than 300 ft. They need a multifamily access cul de sac and the RSIS has a footnote "m" it says cartway widths of multifamily cul de sac stems should conform to the applicable residential access street type and shall provide for a turning radius of 40 ft. or other suitable means for vehicles to turn around in.

Mr. Jackson said what it sounds like is either or and what he what Judge Grasso says was that the board chose the either or and they chose the cul de sac. Mr. Flannery said Judge Grasso said the board was not arbitrary or capricious in requiring a cul de sac he did not say it had to be a 40 ft. cul de sac so he is saying they are RSIS compliant because they are providing other suitable means and providing a cul de sac where cars can turn around.

Mr. Neiman said you look at this as a father and you tell me if you feel this is dangerous having a cul de sac going into parking- he would tell him to remove parking spots and have a full circle. Mr. Flannery said he disagreed and say when they put in that bigger cul de sac, that encourages people to park in all kinds of configurations that when cars come in they won't be able to turn. With a 30 ft. cul de sac people know they are not going to park because they will be blocking people off so he says it accomplishes the goal. He heard Mr. Gasiorowski's comment and when he writes to DCA he will ask them A) is it RSIS compliant and B) does the board have the right to request something else.

Mr. Vogt asked Mr. Flannery to copy him on the request and Mr. Flannery said yes and Mr. Vogt asked him to put in the language the question of is it RSIS compliant as a cul de sac bulb and Mr. Flannery said he did not think that was the question that is appropriate and Mr. Vogt said he thinks it is looking at the decision. Mr. Flannery said he is not telling the board that he is giving an RSIS compliant bulb, he is telling them that he is giving them an RSIS compliant multifamily cul de sac-so there are 2 questions. If DCA says they cannot require 40 that this is a design option similar to their other guidance, then the board knows where they are.

Mr. Gasiorowski said he thinks that letter should be drafted by the boards' professionals not by the applicant's professional. If the board is seeking guidance then the guidance they are seeking should come from a letter either from Mr. Jackson or Mr. Vogt and Mr. Jackson said he is having trouble with the concept that RSIS can supersede what the board thinks is an appropriate design and Mr. Vogt said he thinks it can because part of the RSIS purpose is for towns to have a uniform minimum standards for residential development. Mr. Jackson said the problem he has is the board is basing its' decision on a published standard therefore its' decision is not arbitrary and capricious; if RSIS states 40 ft. why is that a superior reviewing authority than the board in determining what would be an appropriate turnaround. They are not

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a super planning board appeal board as far as he understands. Mr. Vogt said his opinion is looking at Judge Grasso's opinion and he is looking as RSIS- subsection "m" clearly states that you can do a radius of 40 ft. cul de sac or other suitable means such as hammerheads and the board basically said in the first application they wanted cul de sacs. The judge agreed with the board that they had the right to ask for a cul de sac as he reads his decision. If the board has a right to require a cul de sac bulb there are RSIS standards which tell you what a cul de sac bulb is designed to (subsection "m") which in this case is 40 ft. The other suitable means, as Mr. Vogt reads it, as an engineer and not an attorney, appears to be talking about alternates to the bulb such as hammerheads. Mr. Flannery said the judge also says you cannot exceed RSIS standards and said the easiest way to do this is have the letter written. The applicant is trying to get this done quickly and the applicant's professionals will get it done quicker, they can provide a copy to the both the board's attorney and the engineer to make sure they are asking the right question.

Mr. Banas said he really thinks it is the board's question and they should ask the question. Mr. Neiman asked them to sit down and work out language for this letter and Mr. Flannery said the applicant is fine with working with Mr. Vogt.

Mr. Gasiorowski said the assumption would be is the board would require a 40 ft. radius and Mr. Neiman said the board is requires to follow RSIS. Mr. Jackson said it is the board's duty to come up with a design that addresses the board's concerns as far as what the turnaround should be, where the parking spaces should be, where the building is in relation to the parking spaces, where the garbage cans are going to be and use applicable standards. In this case it was determined that cul de sac was appropriate so why appeal to RSIS- design it based on the way they think it is safe.

Mr. Neiman said he lives on a cul de sac street and his kids play there, so #1- is it safe to have a radius less than 40 ft. where there isn't sufficient turn around for a vehicle and you have parking spots backing up right into the cul de sac-is that safe?

Mr. Gasiorowski said if this board feels that a 40 ft. radius cul de sac is safe, it has a jurisdiction to find that- then if the applicant wants to take an argument to RSIS or the court, let him do that. He doesn't think RSIS has the power to sit as a member of this board and say it should be 30 ft. and not 40 ft. Mr. Neiman said RSIS developed their standards on what is safe, and would the board rather see a 40 ft. one – yes; but that is why they have standards and why they have variances. This could be a waiver that they could grant if the board feels it is safe. Mr. Gasiorowski suggested the board make a decision whether they want a 40 ft. radius or a 30 ft. cul de sac- if they want a 40 ft. cul de sac they have the power to vote on that and he can go to whoever he wants to go to try to remedy it. Mr. Neiman said he thinks the developer and the engineer got a sense as to what the board wants.

Mr. Percal asked Mr. Vogt whether a school bus turn around in a 40 ft. radius cul de sac and Mr. Vogt has hopefully somebody looked at that from RSIS when they developed that standard. In this plan he doesn't know if it has been looked at but there is a bus stop in front so buses will not be going in this street. Mr. Schmuckler said the problem is when you have special education buses, they can't drop the child off 500 ft. away and asked if a small bus can turn around with a 30 ft. radius and Mr. Vogt said he believes it could, but he does not have a turning movement listed.

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Mr. Neiman said he thinks the engineer and the developer heard where the board is going. He thinks the dumpsters needs to be addressed and he thinks they have homework before the next meeting.

Mr. Gasiorowski had some questions on the issues of buffering etc. He said he wanted to get an understanding on the head-on parking and the garbage. Looking at A1, the southside of the proposes outline and a series of squares which are parking spaces and he asked if some of those spaces for garbage pick up and not parking and Mr. Flannery said with respect to the garbage can pick up they need to revisit that issue and they do not have the answers that Mr. Gasiorowski or the board want to see. Mr. Gasiorowski said the earlier plans show areas for refuse, if they were to go back to that plan, that would require the elimination of some parking spaces and Mr. Flannery said they do not want to go back to the earlier plans. Mr. Gasiorowski asked Mr. Flannery if he was familiar with the Judges opinion and Mr. Flannery said yes. Mr. Gasiorowski said the judge dealt with buffering on pages 22-29 and he talks about the buffer itself and also refers to the issue of the number of trees on the Payne property that would be destroyed as a result of this proposal. In the old plan that was submitted, there was reference to there being significant cuts immediately adjacent to the Payne property, meaning that if the Payne property were at the elevation of 10 that would then go onto the applicant's property and the cuts would severely lessen the elevation as it is on the Majestic Property. He asked if there was any change from the old plan to the new plan in the elevations that were proposed from each and Mr. Flannery said there was substantial change- the retaining wall is moved 10 ft. away from the property line. Mr. Gasiorowski said he is not talking about the retaining wall, he is talking about the cuts themselves and Mr. Flannery said the entire plan was changed as well. Mr. Gasiorowski asked how much area will be disturbed and Mr. Flannery said the surface will be disturbed in its' entirety and the underlying soils less disturbed and Mr. Gasiorowski asked what depth and Mr. Flannery said he does not have those answers. Mr. Gasiorowski said where you refer to the ordinance itself, the buffering, subparagraph B- it says multifamily or townhouse adjacent to an existing single family residential development, or an area zoned for single family shall provide a buffer area of at least 30 ft. in width as measured from the property line toward the proposed use. He said Judge Grasso's decision found that this board had the power to have a 30 ft. buffer and Mr. Flannery said Judge Grasso said this board can require a buffer, he did not say how big the buffer should be. Mr. Gasiorowski said he said that the ordinance in Lakewood, as drawn, applied to this property and Mr. Flannery said yes. Mr. Gasiorowski said the ordinance says that the board can require or the applicant shall provide a buffer of at least 30 ft. and the board may reduce the required buffer to 15 ft. if the developer provides a dense landscaping screen and Mr. Flannery agreed. Mr. Gasiorowski said the board would have the discretion to not denigrate the Payne property, it would have the power to reduce that buffer to 15 ft. and Mr. Flannery said yes and Mr. Gasiorowski said they are not proposing to reduce it to 15 ft. they are proposing to reduce it to 10 ft. and Mr. Flannery said that is why they are asking for a waiver. Mr. Gasiorowski asked if there was anything in the notice they sent out that reflected they are asking for a waiver and Mr. Flannery said no. Mr. Gasiorowski asked him to tell him about the plantings that will go into that 10 ft. area and Mr. Flannery said Mr. Carpenter can give that information. Mr. Gasiorowski said if one were standing in the westerly edge of the Payne property, looking toward the houses to be constructed, what would be the highest elevation of the house being constructed and Mr. Flannery asked him to show him on the plans and Mr. Jackson marked into evidence exhibit A3 which Mr. Gasiorowski was pointing to and asked what the elevation was and Mr. Flannery said it would be approximate elevation 145 and Mr. Gasiorowski said in that 10 ft. area where they are going to have the buffer, what is the revised elevation in that 10 ft. area and Mr. Flannery said the top of wall is shown at 146 and the bottom of the wall is 142. Mr. Gasiorowski said with regard to the bottom of that wall, would there also have to be an excavation to lay the footings

and foundation and Mr. Flannery said yes and they would have to go down another foot, so Mr. Gasiorowski said perhaps a 4-5 ft. drop in elevation to the Payne property and the 10 ft. buffer. Mr. Gasiorowski asked what the height would be of the building located on #7 and Mr. Flannery said it is a standard townhouse less than 35 ft. high and Mr. Gasiorowski asked what he thinks the elevation would be and Mr. Flannery said it would be about 165. Mr. Gasiorowski said on the top floor, in addition to there being the open loft area, there is also provision for a full bathroom and Mr. Flannery said yes and in the earlier application the applicant agreed to place a deed restriction on the property stating the basement could not be utilized as a living area and asked if he is still prepared to do that and Mr. Flannery said that is not an engineering question and Mr. Gasiorowski said he is a planner and Mr. Neiman said he recalled that. Mr. Jackson said he thinks that was tied in to the parking restriction and Mr. Neiman said he thought there would be no outside entrances to basement and Mr. Flannery said it doesn't matter what the first application is because they are here with this application and where things have gone with basements at both boards it used to be trying to limit access to the basements and they feel at this point access to the basements provides a benefit to the future owner and they prefer to leave the basement accesses as is- and that is the reason they are at 4.4 parking spaces.

Mr. Akerman said he remembers that is the issue they had with parking. Mr. Jackson said the court said there is no credible evidence to support the determination that this townhouse would be reconfigured into as many as 8 bedrooms and if the board speculates in this fashion it undermines the level of predictability provided by the RSIS and they have to rely on enforcement and the police powers of the town. Mr. Gasiorowski said if they look at 17 buildings, the potential of 34 units- 34 units would potentially generate 68 trash receptacles and if they are put out into those parking spaces you will be losing 34 parking spaces regularly. Mr. Neiman said they have to come up with a trash plan and said they have to look at this plan closely and come back with a trash plan, cul de sac plan and they might realize that it is probably smart to eliminate some basements and some parking so there is room for the cul de sac- they sense the direction of the board and we will continue.

Mr. Gasiorowski said he has no further questions and he will not call his planner this evening because the board is not voting on this tonight.

Mr. Alfieri said he needed a date for this to be carried without further notice. Mr. Neiman asked Mr. Kielt to look at the November tech meeting and Mr. Schmuckler asked if it will be a public meeting at the tech meeting and Mr. Kielt said it will be a mixed meeting. Mr. Kielt said the October 27th public meeting is not that heavy now and Mr. Gasiorowski said he has a problem with that date and Mr. Kielt said the November tech meeting is not in November because of holidays and Election Day etc. the November tech meeting is October 20. Mr. Alfieri said as long as it is in October they have no problem with that, they do not want to go past that. Mr. Kielt said they can put it on the October 20th meeting.

Mr. Banas asked if it would be wise to advertise this meeting and Mr. Neiman did not want the applicant to go through the expense. Mr. Neiman wanted to get the tape to Mr. Franklin so he can hear their concerns with regards to the refuse and Mr. Schmuckler asked Mr. Vogt to bring in a list of small bus, large bus, and what radius they need and Mr. Alfieri said they will do that. They talked about the letter and Mr. Jackson said Mr. Vogt should send the letter and work with the applicant's engineer and Mr. Gasiorowski should be immediately copied on it so if he wants to respond to the DCA he can.

Mr. Kielt said he feels they should go to the October 27th meeting which is a public hearing because that is not as crowded as the October 20th meeting which is a tech meeting. Mr.

Neiman said to put it for the 20th for now and if he can't make the 20th he will definitely make the 27th. It was decided and announced for continuance at the meeting of October 20, 2009.

Mr. Neiman said Mr. Akerman came in at the beginning of the application and Mr. Jackson said he has to listen to the tape up to the point he came in, he was here for all the testimony. Mr. Neiman said he missed the notice thing and Mr. Jackson ruled the notice did not have anything to do with the application so he really did not miss anything and Mr. Jackson said he should listen to Mr. Vogt's comments though.

6. CORRESPONDENCE

Letter dated 08/25/09 from Abraham Penzer, regarding former Jamesway building

Mr. Penzer said Mr. Vogt showed him something in the ordinance that makes his job easier and said UDO 18-601 fits perfectly. Chemed is servicing many patients and their peak time is 2-4 and Mr. Vogt was there today at the peak time and the lot was half empty. They have 30,000 patients that are serviced and they have a heavy pediatric department and 2 major players in the children's hospital business want to put their offices there to service and be ancillary to Chemed but the problem is there is a major time constraint in doing so. This application is unique and will probably never be repeated because it is for medical offices and he had exhibits which were the site plan, the architectural and an aerial of Jamesway. They have proposed to make a 2 story 13,000 sf addition that they will meet the parking requirements of 1 space per 300. Mr. Penzer said this addition will not cause any variances, no change of parking, no change in circulation, and all they are doing is adding a leg out on one side of the building. They ask for a waiver from site plan but they would ask that they be under the jurisdiction of Mr. Vogt to make sure that any drainage or other issue is met. Mr. Neiman asked if there was an issue with lot coverage and Mr. Vogt said not that he is aware of. Mr. Neiman said they are looking for a site plan waiver and Mr. Penzer said that is correct. Mr. Penzer said he believes they meet it for the unique topographical conditions and the urgent circumstances of the time constraints of these hospitals that want to come in quickly and they will lose this opportunity.

Mr. Neiman asked Mr. Vogt if he had an opportunity to review this for drainage and Mr. Vogt said he looked at the request, he looked at the mapping, he has been out at the site and looked at the code and it is really a very minor design issue. They are putting the addition out into the parking area, and can make the argument that water quality will improve because there will be less paving and more roof. There is minor grade changes and it will be a simple application to deal with engineering wise. Mr. Neiman asked if car circulation will be affected in any way and Mr. Vogt said according to the concept they have, and they will be requesting an engineer drawing to make sure that this meets all the standards but looking at the concept it looks relatively simple. Section 601 gives the board latitude to consider exceptions.

Mr. Schmuckler asked what was going to be in this new area and Mr. Penzer said medical offices ancillary to the other parts of the building.

Mr. Banas said the last time they dealt with the Jamesway property was to approve it as a 24 hour library for the college. Mr. Neiman said it is a medical building now and Mr. Penzer said Mr. Mack said it is a permitted use and he allowed them to go from one permitted use to another because the ordinance allows that. Mr. Banas said he did not know this was going on. Mr.

Neiman explained what the building is and said that the Children's hospital in Philly wants to open a satellite office here but there is no space for it.

Motion was made by Mr. Herzl, seconded by Mr. Percal, for a Site Plan waiver

ROLL CALL: Mr. Herzl; yes, Mr. Neiman; yes, Mrs. Koutsouris; yes, Mr. Banas; abstain, Mr. Schmuckler; yes, Mr. Percal; yes

7. PUBLIC PORTION

Mr. Hobday said every time they get into a discussion like this about cul de sacs and relent that means a school bus can't get down there and turn around and they go for the mini buses. Mr. Neiman said the BOE does not send any large buses into a cul de sac-all the kids are picked up at the corner. Mr. Hobday asked on Massachusetts Avenue and Mr. Neiman said yes, that is why he built 2 bus shelters there, and the only time they have mini school buses is for special Ed. Mr. Hobday said they have heard complaints about these small cul de sacs where the snow plows don't have enough room to roam and said Mr. Franklin was deluged with complaints about that. He said they at least have to be persistent because RSIS has a minimum of 40 ft. and Mr. Neiman said he got the feel what the boards wants and Mr. Hobday said he does, but it would have just made more sense for the board to say give us 40 ft. and that would have taken all the ambiguous dialogue out and another thing is the buffering. If there is 30 ft. required and the board can go to 15 ft. but the board has to have special consideration for the homeowner who is going to have that view because they are long term residents and they can't keep chasing people out of Lakewood. Mr. Neiman said he hears him.

Seeing no one else, Mr. Neiman closed this portion to the public.

8. APPROVAL OF MINUTES

- Minutes from August 18, 2009 Planning Board Meeting

Motion was made by Mr. Herzl, seconded by --- Mr. Banas said he did not see them and Mr. Schmuckler said she emailed them separately and Mr. Banas said whoa so Mr. Neiman said let's not vote on it them now and Mr. Kiert said Chris was on vacation so she tried to do them as fast as she can and she did a very good job to get them to everybody and Mr. Neiman said yes she did.

9. APPROVAL OF BILLS

Motion was made by Mr. Herzl, seconded by Mrs. Koutsouris, to approve

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ROLL CALL: Mr. Herzl; yes, Mr. Neiman; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Banas; yes, Mr. Schmuckler; yes, Mr. Percal; yes

10. ADJOURNMENT

The meeting was hereby adjourned. All were in favor.

**submitted
Johnson
Board Recording Secretary**

Respectfully

**Chris
Planning**