

**MINUTES OF REGULAR PLANNING BOARD MEETING
HELD ON THURSDAY, SEPTEMBER 20, 2018**

Chairman Blewett called to order the regular meeting of the Board and announced the meeting was duly advertised in compliance with the Open Public Meetings Act by noticed dated September 13, 2018 sent to the Daily Record, Suburban Trends and posted on the bulletin board and website at Borough hall. All stood for the Pledge of Allegiance.

PRESENT: BLEWETT, KAUFMAN, MARINO, MORREALE, RUNFELDT, TAORMINA, TERRERO AND BRIGHTMAN (ALT. #2)

ALSO PRESENT: BOORADY, ENGINEER AND NEISS, COUNSEL

ABSENT: KOLDYK, WILD AND REHFUSS (ALT. #1)

Chairman Blewett stated the first item on the agenda is the approval of the August 16th, 2018 minutes.

Ms. Ward mentioned the members that can vote are Blewett, Kaufman, Marino, Morreale, Runfeldt, Terrero and Brightman.

Chairman Blewett asked any corrections, comments or questions. Motion to approve?

Mr. Terrero moved to approve.

Ms. Brightman seconds.

Roll call:

Yes: Terrero, Brightman (Alt. #2), Blewett, Kaufman, Marino, Morreale and Runfeldt

No: None

Abstain: None

Ms. Ward mentioned they're approved.

Chairman Blewett stated the next item on the agenda is the memo from the Governing Body dated June 19, 2018 to conduct a preliminary investigation to examine whether certain properties should be in a condemnation area in need of redevelopment pursuant to N.J.S.A. 40A:12A-1 et seq.

We have been asked to carry the Vita property and hopefully they will be coming in next month for a meeting with the Planning Board.

Mayor is there an update on the Shop-Rite property?

Mayor Runfeldt stated no.

Chairman Blewett mentioned okay. So what is your pleasure, do you want to carry both of them until the next meeting?

Mr. Terrero stated yes.

Chairman Blewett stated okay very good.

The next item on the agenda is Amended Major Site Plan Application #365 by J.H. D.S., LLC, on property known as Block 3, Lot 45 on the municipal tax map also known as 107 Beaver Brook Road. This is a consideration of a resolution.

Ms. Ward mentioned it is being carried until the October 18th meeting the resolution. Arthur spoke with Mr. Barbarula so we are going to have the resolution on the October 18th meeting.

Chairman Blewett stated that sounds good.

So the question is is there another item on the agenda?

Mr. Neiss stated yes. There was insufficient time for there to be a public notice under the Open Public Meetings Act, nonetheless what is going to be presented tonight relates to the Meridia downtown project. There have been many many discussions and a lot of correspondence back and forth with regard to whether or not this application that was submitted on/or about August 1st, 2018 may be deemed complete or not. Tom has rendered a review and in his review he has determined that the application as submitted was incomplete and did that in his letter.

The applicant has requested the opportunity to come before the Board and discuss the completeness aspect of this because the applicant wants to move forward with this development. I think by reviewing the items that the Board considers to be important and necessary for a completeness determination which is handled by this Board not by Tom but by the Board, I think it would be good and a great opportunity to air these things out before the Board.

So the applicant is here tonight and Mr. Liloia who is the in-house counsel for Meridia, we are expecting Steve Eisdorfer I guess but he is not yet here, but we are ready to proceed and I think what we ought to do is have a discussion about the aspect of completeness of the application before the Board to hear and understand where we are. At the end of this it will be up to the Board to make a determination as to whether or not the application should be deemed complete.

A couple of things about this. This is not going to be sworn testimony and it is not technically a public hearing, and I understand that in Lincoln Park the procedure is that an applicant comes for a completeness hearing without the necessity of a public hearing. More to the point though this is an opportunity in my view to discuss the aspects that are important to the town and important to the applicant. So with that I would invite the applicant up to address the Board and I think the way to go is to take Tom's letter and go through it and discuss it and hear what the applicant's position is with regard to the items you've raised.

Chairman Blewett stated normally we would take an action around completeness and are we able to do that without any public notice?

Mr. Neiss mentioned oh yes. The public will have a complete opportunity once the application is deemed complete it will appear on the agenda. The public will have a complete, as with any other site plan application the public will be given an opportunity to come in and hear and discuss this is, but this is just for completeness.

Chairman Blewett stated okay. Please introduce yourself for the Board?

Mr. Liloia stated certainly. Dennis P. Liloia (L-i-l-o-i-a), general counsel of Capodagli Property Company.

Chairman Blewett thanked him. Obviously you received Tom's memo dated September 17th, 2018.

Mr. Liloia stated yes I do have it.

Chairman Blewett asked Tom to walk us through those items that you feel are incomplete.

Mr. Neiss stated before you do that Tom, can I just request have you had a chance to just compare because Tom lists on the first and second pages of his September 17th letter actually 24 items that comprise what he views as being the submission, both by the applicant and as well as by departments. Have you had a chance to just confirm Mr. Lilioa that you agree that there is a one to one correspondence with that?

Mr. Liloia stated yes.

Mr. Boorady asked did I miss anything.

Mr. Liloia stated that is everything.

Mr. Neiss mentioned okay just so that everyone is on the same page.

Mr. Boorady stated my report from September 17th the first page and a half outlines the list of items we received by the applicant and also additional items that were received from other agencies and special consultants to the Borough. There are 4 checklists that were submitted for this type of application and the application form.

Starting at the bottom of page 2 there are 2 items on the application form that need to be taken care of and these are really not items that waivers can be granted for they have to be prepared. So the application form needs to checkoff the completeness waiver which is why you are here tonight and you need to checkoff that you are applying for flood damage prevention and also you need to indicate the variance from the flood damage prevention ordinance. That is item 1 on page 1 of the application form.

Page 10 are the fees. Since the project has changed substantially from the initial submission almost a year ago, the fees have changed so a new calculation needs to be prepared. There are fee calculation tables and then you need to enter that information on page 10 of the application form.

Mr. Liloia stated right and that will be done. I was not aware that the fees changed in this letter we got apparently late before this meeting, but yes I will take care of that.

Mr. Boorady mentioned okay. Moving on to page 3 the checklist for general information, Item #1 we just discussed, you have to have a complete application form. Number 2, Joan I don't know whether you received proof that taxes have been paid on all three properties.

Ms. Ward stated they are not current they need to be updated again.

Mr. Boorady mentioned that's pretty straightforward there is no waiver on that, you are going to have to go to the Tax Collector and get that taken care of.

Mr. Liloia stated that's an easy fix. I did confirm that two out of the three lots are current and the one lot is not and that will be paid, if not today they will do it tomorrow or Monday and that will be taken care of as well.

Ms. Ward mentioned just have Kristen update the tax searches. I know the one lot had taxes overdue. I went back in the tax program and saw that it was still overdue.

Mr. Boorady stated moving onto Item 4.

Mr. Neiss mentioned sorry to interrupt again, I'm not entirely clear about page 1 on your page 2 of 4 Tom, indicate the variances from the flood development ordinance. I didn't quite hear what the applicant is going to do in that regard.

Mr. Boorady stated well that is coming up later.

Mr. Neiss mentioned okay.

Mr. Boorady stated page 1 of the application form is really just a checklist for all the approvals that are being sought and they didn't put a checkmark near that.

Mr. Neiss mentioned but substantively we will deal with that later on.

Mr. Boorady stated in later checklist.

Mr. Neiss mentioned I just want to make sure that we are all on the same page.

Mr. Boorady stated we are going to hit that soon. Item #4 again, we mentioned already the fee calculation tables.

Item 5 c. I don't believe we have the ownership disclosure statement for either the applicant or Wexford Inn Associates. The other properties are individually owned.

Mr. Liloia stated the Wexford Inn I thought we had it but I will get that from Wexford's attorney. Ours I have dated from January but I don't know why it didn't find its way into the package but I do have that.

Mr. Boorady mentioned maybe because it was the prior submittal. If it is in there Joan, could you look for it?

Ms. Ward stated sure I'll check the prongs.

Mr. Boorady mentioned but we still need the Wexford Inn.

Mr. Liloia stated that's right.

Mr. Boorady mentioned then Item #9 again there is no waiver for that you're just going to coordinate with the Board's secretary when you are deemed complete all the copies of everything. So there are no waivers from the general information and no waivers from the application form those items will be completed correct?

Mr. Liloia stated that is correct.

Mr. Boorady mentioned the checklist for preliminary major site plan Item #2 from that checklist, the Board doesn't have any affidavits from utility companies indicating that they will serve the property; water, sewer, electric, cable and gas. Typically you would see letters from utility companies that they will serve the property that there is capacity.

Mr. Liloia stated we are working on that and we have made requests to them and they haven't responded yet. Of course the lack of response is not uncommon but yeah we are working on that.

Mr. Boorady stated okay. So you are not asking for a waiver then correct?

Mr. Liloia mentioned we are not asking for a waiver. I've done many applications where these are all conditional items and they get addressed, but we've made the requests and we've submitted them. The utilities haven't responded but we do have gas and electric and they said they would be emailing it over and we didn't get that today.

Mr. Boorady stated okay. I don't know when you anticipate being on for any public meeting because there are several other items that you have to address anyway, but I'm guessing you anticipate having those letters before you notice for a public meeting, otherwise you would need a waiver of some sort.

Mr. Liloia stated all right I will look into that. My experience is that you move forward with the application and that's a condition of approval.

Mr. Boorady stated okay. It is up to the Board, we can handle these one by one or we can read through them and have a discussion after.

Mr. Neiss mentioned assuming the applicant moves forward towards a public meeting which I think is what the intention is if there is a completeness determination here tonight. I think it would be incumbent upon the applicant to notify the Board when it began its attempts to get the affidavits of intent from the utility companies.

Mr. Boorady stated I saw one letter and it was addressed to the Water Department at least from David Beasley requesting service. I think the response was a lot more information needed to be provided prior to the water and sewer engineer's concern for service to be given.

Mr. Liloia stated I believe those letters all went out at the same time for all the utilities.

Mr. Boorady stated okay.

Mr. Liloia stated I'm not sure that David received the request for the additional items but we will follow up with that.

Mr. Boorady stated okay. I'm going to leave that as open. I'm not so sure the Board wants to grant a waiver and I'm sure the applicant and the Board would like to know if there is capacity.

Chairman Blewett mentioned but at the end of the day the project doesn't go anywhere if they don't have capacity right?

Mr. Boorady stated right.

Chairman Blewett mentioned by the time they get to us for with their major plan and the public hearing, if they don't have it they might as well not show up.

Mr. Boorady stated okay.

Chairman Blewett mentioned it is up to the Board.

Mr. Boorady stated you probably wouldn't want them to notice then until they confirm it.

Mayor Runfeldt mentioned chances are they are not going to come without having it and we don't have to worry about them coming if they don't have it because they won't come if they don't have it.

Chairman Blewett stated if it is not approved as a waiver, then it is a requirement to be deemed complete.

Mr. Boorady stated right.

Chairman Blewett stated so unless you are asking for a waiver you are going to have to provide that in order to be deemed complete.

Mr. Boorady mentioned okay they are going to provide so no waiver.

Chairman Blewett stated well I didn't hear a request for it.

Mr. Boorady stated okay. Item #3 usually there is a list on the engineer's plan confirming all the other approvals that are needed and I just want to make sure the engineer has that on the plan. Again I don't think you need a waiver for that just make sure your engineer puts all the different approvals that you need on the plan. There should be a note section okay.

Mr. Liloia mentioned okay.

Mr. Boorady stated Item #4, the Borough has a flood development ordinance and based upon the information that was given to me from the applicant's engineer, the applicant will not be able to comply with the flood development ordinance. So what the Board is considering is not only a checklist waiver but you are almost granting a full waiver for not complying at all.

Chairman Blewett mentioned that is another item that would need to be discussed during the public hearing right? I couldn't sit here and waive compliance from a town ordinance right? I mean that seems a little silly.

Mr. Boorady stated yeah I know that. Essentially the checklist asks for a showing of compliance with the Borough's ordinance and they are not going to be able to comply. They have provided everything that you need to consider it so you probably could say Item #4 is complete, but it is not complete in that it will not meet your ordinances at all. It is a complete variance from your ordinance.

Chairman Blewett asked is there a variance requested for that.

Mr. Boorady stated well the application form wasn't clear and that's where we started off that the cover page of the application didn't even mention flood plain development, let alone ask for the variance so they need one a variance.

Mr. Liloia mentioned right and that was discussed between us at various meetings so it is known

that that's being requested.

Mr. Boorady stated okay. So Item #4 is complete for completeness sake I suppose but eventually you will be granting some sort of relief from that.

Chairman Blewett mentioned that's assuming the project gets approved.

Mr. Boorady stated right. It can't get approved without that relief though.

Chairman Blewett mentioned right.

Mr. Boorady stated I just wanted to point that out.

Chairman Blewett stated it will come as a variance like any other application that is seeking a variance.

Mr. Boorady stated right.

Chairman Blewett mentioned okay.

Mr. Neiss asked do you anticipate that the applicant is going to submit an amended application with this request or with any request for variance. How should that be handled?

Mr. Boorady stated I believe the engineer has already provided a report listing some of the items that are outstanding or some of the items they won't be able to comply with, so whether that is sufficient or not you know we are going to have to determine that at a public hearing. They have certain reasons why they don't want to comply with your flood ordinance.

Mr. Kaufman asked they don't want to or they are not able to.

Mr. Boorady stated they are not able to.

Chairman Blewett mentioned I'm not sure we need to discuss that because there actually is going to be testimony during the public hearing this is just a conversation.

Mr. Boorady stated right. Again moving onto #5, there are no DEP permits as of yet. They have applied for individual permits I don't know what the status is? Maybe the applicant has a status as to what those approvals may look like?

Mr. Liloia mentioned based on our conversations with the DEP we are confident that the DEP is going to grant the permits.

Chairman Blewett stated okay. So are you requesting a completeness waiver for that right?

Mr. Liloia mentioned yes. That had bounced around in emails that the DEP was fully on board when we had our pre-apt meeting with them.

Chairman Blewett stated okay. Again that is something they will have to demonstrate, you'll have to demonstrate during the public hearing.

Mr. Boorady mentioned so traditionally the Board has granted completeness waivers from having the actual permit in hand knowing that the applicant is confident that they can get the waivers, so that is going to be a waiver.

Chairman Blewett mentioned yeah.

Mr. Boorady stated if the Board wants to grant it.

Mr. Neiss mentioned just let the record reflect that Mr. Eisdorfer has arrived.

Unidentified person stated conditional approval.

Mr. Boorady stated yes it is not a full waiver they are still going to comply with it, it's only a checklist waiver so they can continue with the Lincoln Park portion of the public hearing and then once they get their DEP permit it will take them forward to the next step.

Chairman Blewett mentioned we are up to 7.

Mr. Boorady stated the Morris County Soil Conversation District I don't know if you guys have filed for that I didn't see anything.

Mr. Liloia mentioned Mr. Beasley isn't here to speak to it but my understanding is that the Board engineer has requested a draft of that application and I believe he had submitted that to you if I'm not mistaken? He has not heard back.

Mr. Boorady stated it wouldn't be submitted to me it would be submitted to Morris County Soil Conservation District and then he would just copy Joan that it was submitted.

Mr. Liloia stated right, but my understanding was that you had wanted to see it prior. Again he is not here to comment on it.

Mr. Boorady stated I wouldn't traditionally do that, I mean it is not my purview it is a county agency. It is normally part of the site plan the soil erosion plan so I get it anyway. But are you saying that it was done or it will be done, or are you asking for a waiver?

Mr. Liloia stated it certainly will be done because I know for a fact that it was done in draft form. There were other comments waiting to be received, but again Dave is not here to speak to it so it was definitely done in draft and it is ready to go.

Mr. Boorady stated it is part of the site plan though so I don't know what it means to be done in draft. It should be part of this because this is for preliminary and final major site plan so it needs to be done and be put in the plan which I think it is, it just needs to be submitted to Morris County that's all. So I'm saying you're going to do that there is no waiver right?

Mr. Liloia mentioned we are going to do it there is no waiver requested for that.

Mr. Boorady stated Item #8X proposed vehicular and pedestrian ingress and egress shall be provided from the subject property to all off-site parking facilities, including points in between. Show ADA sidewalks, lighting, striping, signage, signals, etc. so there is no parking plan as part of these site plans and there is no public sidewalks or any kind of pathway showing how I get from this development to wherever those parking spaces are going to be.

Mr. Eisdorfer stated so the issue here is this is a subject of a Settlement Agreement negotiated with the Borough in the context of the Declaratory Judgment Action and under the terms of that Settlement Agreement provision parking is in the first instance the Borough's responsibility. The Borough is to negotiate an agreement with the New Jersey Transit so this is not actually within our control this is all going to be negotiated by the Borough with New Jersey Transit. We understand they are working on that but that is their responsibility not ours and ultimately they will come back to us with what they have negotiated and we will provide it to you, but in the meantime that shouldn't be grounds for the fact that the Borough hasn't yet finished that so that should not be the grounds for holding up this application.

Chairman Blewett stated yeah but have you provided any design on how these people are going to get to and from your building?

Mr. Liloia mentioned I am assuming Mr. Boorady wants more details which has been prepared with a connection concept plan to and from the New Jersey Transit lot.

Chairman Blewett asked will that be included on any of the site plans.

Mr. Liloia stated yes.

Chairman Blewett mentioned okay, so you are not asking for a waiver?

Mr. Eisdorfer stated we are asking for a completeness waiver. It will be provided as part of the site plan.

Chairman Blewett stated okay.

Mr. Neiss stated I confess I'm little confused at this point. I recognize what you said Mr. Eisdorfer about the Settlement Agreement requiring that the Borough arrange for the parking at the TNJ lot. My understanding is that this still is in a state of flux. Assuming the applicant comes before the Board at the earliest opportunity and just for the sake of argument the site plan can be granted in one meeting, we still have the issue of how that is going to be addressed in terms of the site plan itself. What can be proposed and what do you think ought to be proposed if we get ourselves into that situation?

Mr. Eisdorfer stated well obviously I think there evolves two different things. One is access to and from the New Jersey Transit lot and we are prepared to provide you with material on that issue, other than that I think it should be granted subject to the town reaching an agreement with TNJ. Should that fail to happen obviously we would have to come back and say we are going to have to come up with an alternative plan for parking, but my suggestion is ultimately if we are ahead of the Borough in this process that ought to be the correct resolution.

Chairman Blewett stated I think what I heard though is you do agree that if it goes in the direction you're thinking it is going you would provide on your site plan a means for people to get to and from this in some way?

Mr. Eisdorfer stated that's correct.

Chairman Blewett thanked him.

Mr. Liloia stated my position is that none of these items that are listed are really a basis to deny the application as being complete because everything that we are discussing can be addressed after the site plan is approved as conditional requirements.

Mr. Neiss stated and we'll get there.

Mayor Runfeldt stated I think it is also important when that plan is made that our engineer has the opportunity to look at it.

Mr. Liloia stated absolutely.

Mr. Eisdorfer stated absolutely.

Mr. Boorady stated even more important than me is this Board. I mean does the Board want to grant a conditional approval and leave sidewalks and pathways between the buildings to the parking facilities up to me, or is that something the Board wants to look at?

Chairman Blewett stated no.

Mayor Runfeldt stated no we are not doing conditional approval right now we are just doing completeness.

Chairman Blewett stated we are just doing completeness. They still have to come back and demonstrate what they are going to do.

Mr. Boorady stated okay.

Chairman Blewett stated I'm assuming we are all going to get to look at it.

Mr. Boorady stated all right so the suspense is kind of killing me a little bit here, what are you going to submit? Are you going to submit sidewalk plans between the NJ Transit lot and this building?

Mayor Runfeldt stated well I think they need to know where the parking is first in order to do that.

Asking them to do that without knowing where the parking is I think that is what they are saying they need to know where the parking is. We are saying we need to know what the plan is but we need to know where the parking is first in order for them to get there. I think everyone is okay with saying when you get the parking we need to see the plan.

Mr. Taormina stated right. Ultimately when they figure out wherever this parking is going to be, they will come up with a plan for sidewalks to get to and from correct?

Mayor Runfeldt stated yeah.

Mr. Eisdorfer stated ultimately this is all going to come before this Board if not in the first bite we will have to come back to you later on and say oh now the Borough has worked it out and here is what we are going to have to do.

Mr. Neiss stated Steve I understand that but I have two questions related to the Settlement Agreement. The copy of the Settlement Agreement I have is dated May 2, 2017 have there been any amendments?

Mr. Eisdorfer stated the yes. The version I have which was provided to me by Mr. Buzak's office is I believe it is August 3rd, 2018.

Mr. Neiss stated you mean as a signature date.

Mr. Eisdorfer stated it has a signature date on it.

Mr. Neiss stated I don't have that. I wrote to Mr. Buzak's office today to request copies of it. Be that as it may, I'm sure I'll get a copy of it at some point and time.

Mr. Eisdorfer stated right.

Mr. Neiss stated the second question relates to the fact that you know the Borough is obligated under this agreement to treat the application with all due haste so to speak, by the way it is defined fast track is actually the terminology in the regulation. I think what I'm expressing is that there is some concern and I think the Board is somewhat concerned to that we will fast track you but there are so many open ends it is going to be problematic. I don't see a way to avoid it I'm just highlighting it at this point.

Mr. Eisdorfer stated the opens ends that actually have to do with substance of the application it is our intention to address them all before or after the first hearing. So, for example, providing a sample of the exterior that will be an exhibit at the hearing. Missing details on the plan just outside of 20, missing details on the plans 8KK we don't actually know what plan details are missing so we don't have the report that is referenced there. Once we get that report and it says oh yes there are more details we need we will amend the plan so it has all of those details. We are going to get there. What we don't want is for this to be a completeness issue and prevent us to getting to hearings.

At the hearings the Board is entitled to take whatever time is necessary to fully vet the application and to ask all the questions and request all of the documentation that is appropriate. That's the Board's right and we don't intent in any way to impede that right and our goal is to work with the Board and make the Board feel comfortable and comply with all the substantive requirements. We just want to get there.

Mr. Neiss stated and I understand that and I don't think anyone here wants to impede the application. As long as the applicant understands that the Board is going to take whatever time it needs to vet the application completely, I think that would go a long way to reassuring the people who sit up here.

Mr. Liloia stated certainly we wouldn't have it any other way.

Mr. Eisdorfer stated we are not trying to prevent the Board from fully performing its functions.

Mr. Neiss stated that fine. Anything else Tom?

Mr. Boorady stated I'm confused are we giving a waiver for 8X or 9. It sounds like he said they would provide the information either before or after the application, so if it is information the Board wants to hear then there is no waiver. I don't know if New Jersey Transit is going to take a month to decide how many spaces they are giving the Borough or two years.

Mr. Eisdorfer stated on this we are asking for a waiver because at this point we don't know the answer to this question. We can't provide it and we think that because this is the Borough's responsibility the Board should permit us to go to a hearing and if it turns out that this Board is ahead of the Borough to grant the approvals subject to the Borough and TNJ working this out, then we will have to come back to you. You know the goal is not to prevent you from looking at it and reviewing it but it is a timing issue.

Mr. Boorady stated here is the thing, if there is a --

Mr. Doyle asked can I be heard. Doug Doyle on behalf of the Redevelopment Agency. I actually had the meeting with NJ Transit.

Mr. Boorady stated I think it is up to the applicant as to whether they want you to be heard right?

Board members yeah.

Mr. Boorady stated it is their show.

Mr. Eisdorfer stated we welcome Mr. Doyle to speak.

Mr. Doyle stated it is actually not their show, you got that wrong again Tom it is our show. No, no, not that Tom.

Mr. Neiss stated you know what let's not make speeches here Mr. Doyle what is it you want to say here?

Mr. Doyle stated I'm a lawyer just like you Mr. Neiss so the Board has to understand this is a settlement with the municipality. They have now threatened to go back to court. They threatened to go and try to put more units all over the town. We settled not once but twice. The developer has agreed to lower the site at the train station in exchange, we said that's terrific and they said and we'll take you off of the responsibility to find parking but please go to NJ Transit and try to work with them. Mr. Mayers and I have been working with NJ Transit for close to 18 months. NJ Transit has a number of rules that we have to follow. We are in the process of providing them additional information. They have committed to us that they will give us the spaces that are necessary a 115. It is imperative that the Planning Board move forward and hears this application and respectfully conditions on all those things Mr. Neiss that you recommend that they condition on to protect the Borough and protect the Planning Board.

But I believe we absolutely have to move forward because we have a Settlement Agreement. In that Settlement Agreement it says that we are duty bound to cooperate with the developer, cooperating with the developer means providing reasonable waivers.

Chairman Blewett stated and I believe Mr. Doyle that I think we are here to do that but at the same time we expected this application a year ago and now we are sitting here --

Mr. Doyle asked how could you expect it a year ago Mr. Chairman.

Chairman Blewett stated there was a --

Mr. Doyle stated there have been negotiations going on to reduce the size of the building.

Chairman Blewett asked when was the first application submitted let me ask you guys.

Mr. Boorady stated in November.

Mr. Liloia stated it was November.

Mr. Boorady stated 2017.

Chairman Blewett stated last year 2017 okay.

Mr. Doyle stated can I --

Chairman Blewett stated let me finish my statement please. So we are sitting here now saying ut oh you guys have to rush through this because you know what we are not ready and you are not ready with things that generally people come in here prepared for. I'm not getting a lot of confidence here that you are actually ready to build something to come in here because you are saying we got to provide and we've got to come back that is my concern. Now I understand where we are right and believe me I comply with the law like everyone else intends to right, but at the same time you have to give someone a level of comfort and confidence that it is going to happen, and to be perfectly honest I didn't appreciate the outrage okay and the way you approached the Board that is just a wrong.

Mr. Doyle stated you are just misinformed Mr. Chairman.

Chairman Blewett stated I'm not misinformed.

Mr. Doyle stated you are. That application you are talking about a year ago is a totally unrelated application.

Chairman Blewett stated it was from this applicant.

Mr. Doyle stated the mayor specifically asked that the whole application be changed, it goes from 5 stories down to 3 stories.

Chairman Blewett stated okay.

Mr. Doyle stated so the application is totally different.

Mayor Runfeldt stated right so it is not the same application we have been negotiating.

Mr. Neiss stated but you are the same applicant.

Mr. Liloia stated right.

Mr. Doyle stated we were forced to, Mr. Neiss I appreciate it but we've been negotiating --

Mr. Neiss stated I understand that but to come in here, forgive me Mr. Doyle, to come in here not having been part of this proceeding from its inception, to walk in and make a speech and grandstand like you are doing --

Mr. Doyle stated I'm not grandstanding I represent the town.

Mr. Neiss stated let me finish.

Mr. Doyle stated I represent the town Mr. Neiss.

Mr. Neiss stated let me finish.

Mr. Doyle stated go ahead Mr. Neiss.

Mr. Neiss stated we are trying to understand from the applicant where the applicant is in the context of this application.

Mr. Doyle stated and you are being misinformed.

Mr. Neiss stated let me finish.

Chairman Blewett asked by who.

Mr. Doyle stated by the engineer.

Mr. Neiss asked what are you talking about.

Mr. Doyle stated he says I don't know whether NJ Transit is going to give the approval for a year or two.

Mr. Neiss stated we don't know.

Chairman Blewett stated we don't know.

Mr. Doyle stated I do.

Mr. Neiss asked what do you know.

Mr. Doyle stated what do you mean what I know? I was on a telephone conference with them this week.

Mr. Neiss asked all right so when are we getting the lease. When is the lease coming?

Mr. Doyle stated they could turn around in 60 days.

Mr. Neiss asked when is the Borough getting the lease that's what I would like to know. Do you have the answer to that question?

Mr. Doyle stated so my answer is they committed to us that if we get the information by October 1 we will get a lease from them within 60 days yes.

Mr. Neiss asked what information do they need.

Mr. Doyle stated they want some additional information with respect to on-street parking within a mile from the site.

Mr. Neiss stated okay and you are providing them with that.

Mr. Doyle stated yes, yes Mr. Neiss. They also wanted some additional information as to what Uber spaces would be provided, where a bicycle path would be provided, how people are going to get to and from the area? So over the last week we have been compiling that additional information which they have just asked us for in the last three weeks as we are moving forward with this process. This is a difficult process but I can tell you that NJ Transit has committed to providing these parking spaces. We are going to get these parking spaces.

But putting that aside we have an affirmative duty to work with this applicant. I would urge you to condition any approval that you may ultimately give this application on providing the requisite parking spaces that are required that are to be provided by NJ Transit. That is the most recent and informed and accurate information I can give you, not that it could take a year or two that is not just accurate. Mr. Chairman, respectfully I wouldn't have any level of comfort if my engineer told me that but it is just not accurate.

Chairman Blewett stated but what I'm talking about is actually what is on here and what is not provided you know for the preliminary and final major site plan.

Mr. Doyle stated I've reviewed what's not been provided, apparently a checkmark wasn't provided on the application.

Mr. Boorady stated we've already heard this do you want to hear it again?

Chairman Blewett stated we've already talked to the applicant about this.

Mr. Doyle stated understand my point is when somebody says a checkmark isn't indicated there, when it goes back and Keli Gallo who was your COAH lawyer with Mr. Buzak has cautioned us, Mr. Mayers was on the phone with us, and has cautioned us and said this is not cooperation.

I'm not suggesting the Board has done anything at this point but I think it is important that I communicate with you what your COAH attorney told me this week and she was going to reach out to you Mr. Neiss.

Mr. Neiss stated she told me I spoke with her. I understand I know exactly what her point of view is I know I have that, but what we are trying to do here Mr. Doyle is just get an understanding as to whether or not the application ought to be deemed complete, we are just feeling that out. No one is taking positions, no one is coming in here saying whether a site plan is going to be approved or not we are just exploring.

Mr. Doyle stated I appreciate that and I want to make sure when you are here you have the accurate information. For example, I can tell you that I was at DEP and I was with the people who are in charge of making the permit and they have committed to us that they will give us the permit within 90 days once it is properly filed.

Mr. Neiss stated well you see that raises a question. What does properly filed mean?

Mr. Doyle stated it was properly filed over 30 days ago.

Mr. Neiss asked so you are expecting the permit within 60 days.

Mr. Doyle stated 60 within 60 to 90 days.

Mr. Neiss asked was that conveyed in the course of this application.

Mr. Doyle stated 4 times to Mr. Boorady.

Mr. Neiss asked was it conveyed in this application. Did it say that in the submission because that is what the Board is relying on here?

Mr. Doyle stated I understand, but you said why did I come in and why did I get outraged because your engineer is not communicating the correct information to you. Your engineer has staked out a position as to --

Mr. Boorady stated then I might as well go home then.

Mr. Doyle stated he is not communicating the correct information.

Mr. Boorady asked why don't you talk to me. Why don't you talk to me?

Mr. Doyle stated because I direct my comments to the chair.

Mr. Boorady stated it is not about a checkmark. First of all --

Mr. Doyle stated I direct my comments to the chair.

Mr. Boorady stated can I speak and defend myself now because you spent 20 minutes yelling at all of us.

Mr. Doyle stated I didn't yell at anybody. I didn't yell at anybody.

Mr. Boorady stated let's play the tape back and you can listen to yourself.

Mr. Doyle stated I corrected your comments Mr. Boorady.

Mr. Neiss stated let's not engage in this kind of thing Doug, the man is sitting right here you know he hears you. It is not like this is you know something in the backroom this is not what this is, he hears you and he is doing the job. He is trying to do a job. If you have some concerns and you have some issue that's fine, but allow him the opportunity to address it or not, whatever you want to do here Tom it is up to you. But I think what we ought to keep our focus on is moving forward with the applicant to determine whether or not the application that has been submitted that is currently on file is complete or not.

Mr. Doyle stated I don't disagree, but the overall arching principle here is it is not an applicant coming in to build in your town this is part of a settlement, whereby unlike other applications you might hold them to requirements, the letter of the law. I think that I would urge the Board to work with them since they are going to be providing our constitutional mandated low and moderate family income units. Thank you.

Mr. Neiss stated I understand and I'm just going to close this out just by reading a couple of excerpts from the Settlement Agreement which says, upon the receipt by the Planning Board of **complete** applications from the developer for preliminary and site plan approval substantially consistent, etc., etc. Then it says that the Borough shall take action to encourage the Planning Board to conduct at least two meetings per month that is what Mr. Eisdorfer and I were talking about before you came in the fast tracking of this application.

Mr. Doyle stated understood.

Mr. Neiss stated everyone is aware of it so let's just finish and see where we get to with regard to the completeness.

Mr. Doyle stated thank you for hearing me on behalf of the municipality.

Mr. Neiss stated you're very welcome.

Mr. Eisdorfer stated so I would like to return to the completeness issues.

Mr. Neiss stated okay.

Mr. Eisdorfer stated so I think Mr. Doyle has provided useful information on where the Borough is with New Jersey Transit that I think enables us to give the Board assurance that before this application is done we will be able to come back to the Board and say okay here is where the parking is going to go and here is how access to the parking is going to be provided. We can't do it now but there will come a time in the near future when we will be able to do that, and it seems that the Board should be able to go to proceed to hear the rest of the application pending receipt of that information.

Mr. Neiss stated so in affect this discussion here tonight is supplementing that which has been submitted with new information.

Mr. Eisdorfer stated that is correct.

Mr. Neiss stated and that is the purpose of this entire exercise.

Mr. Eisdorfer stated that is correct. We are going to work with you, we want to give you confidence that you are going to have everything you need to review the application during the course of the application and to get to that process in a fair and expeditious way.

Mr. Neiss stated just to close that out, I will just tell you that in my experience with this Board it can only act on the information that it receives from the applicant.

Mr. Eisdorfer stated absolutely.

Mr. Neiss stated that said let's proceed.

Mr. Boorady stated so we are on 8X and they are asking for a waiver. So just to let the Board know what that means, this application is for preliminary and final major site plan, the word **final** means **final**. You usually have a set of plans before you that are almost construction ready or is construction ready this just isn't **preliminary** okay. So their request for final site plan means that you normally see things like sidewalks between a building and a parking lot. So it sounds to me if they are going to proceed and you are going to grant them a waiver, they need before you an amended preliminary and major site plan approval should off-tract improvement be required to get from point A to point B; and that is another whole set of application fees, a whole another set of delays, a whole another set of hearings and I'm okay with that but as long as everybody understands what that means. I'm fine with recommending the waiver but they will be back

again.

Mr. Neiss stated well I think what you are saying Mr. Eisdorfer is that you know we will get it, and by the time you get before the Board with your application and assuming it is deemed complete, you'll have it based on what Mr. Doyle has said here tonight as well. All these things are in process so perhaps by the time we get to a hearing on the question they may have some further information.

Mr. Eisdorfer stated thank you.

Mr. Boorady stated (inaudible) again these are signs that the architect put on for placeholders, an applicant can always come back and actually show the exact signs that they are putting on. It is a waiver because there are no details.

Mr. Eisdorfer stated the first floor of the building is for retail use, a restaurant and we can't specify the signs until we have the tenants. We don't have the tenants now so at this point we have put in placeholders to show where we anticipate the signs are going to be and when there are tenants, we will come back and say oh here are the details of the signs but this is a site plan application that is all we can do at this point.

Chairman Blewett asked is it your intention to comply with the Borough's ordinance square footage for signs.

Mr. Eisdorfer stated absolutely.

Chairman Blewett thank him.

Mr. Boorady stated Item 8FF again it really ties in with Item 8X the location, description and dimensions, setbacks of all proposed parking areas and driveways and nothing has been provided for off-site facilities. So again we don't know where those parking spaces are so I guess the Board is going to have to contemplate a waiver yet again.

Mr. Eisdorfer stated we would request a waiver on that on the same grounds.

Chairman Blewett stated conditioned upon the Borough providing you the parking.

Mr. Eisdorfer stated that is correct.

Mr. Blewett stated Item 8KK there are several construction details and most of them are dealt with by the engineer. There is a trash enclosure but there is no detail for on the side of the building may be that is architectural? I don't know if the architect or engineer is going to take care of that?

Mr. Eisdorfer stated so this makes reference to a report which we haven't seen by Anderson and Denzler.

Mr. Boorady stated I believe those reports are going to be sent out by Joan, the traffic consultant's report too. They just came in and Joan we'll send them out.

Mr. Eisdorfer stated so when we get those we'll take a look at that and we'll address all of the issues raised in that. We can't address them until we see them but we will. We hear the concern and we understand the Board has reached out on this and when we get that we will respond to it.

Mr. Boorady stated okay. Item 20 is samples of exterior finishes. The Borough's code for this zone has really detailed specifics on what type of façade that they can have, what type of roof materials and the architect does show those on his plans. He knows what type of materials he is proposing to use and it looks like it is in compliance with the Borough's Redevelopment Ordinance, whether the Board wants actually to see samples of brick, window or shingles it is up to you.

Mr. Neiss stated normally that would be handled at the hearing anyway.

Mr. Eisdorfer stated if the Board says it would like to see actual physical samples, we would be happy to introduce them as exhibits at the hearing.

Chairman Blewett stated the hearing is fine with me. Anybody else?

Mr. Kaufman stated I'll see them at the hearing.

Chairman Blewett stated okay.

Mr. Boorady stated now the checklist for final major site plan are very similar to preliminary site plan and I didn't regurgitate them here, and the same for flood development they are the same items. With that being said it looks like there are waivers from Item #5 which is the fact that they do not have DEP permits yet; Item 8X which is regarding the parking, sidewalks and such; Item 811 which are the specific details on the sign, they do show the placeholders; and Item 8FF which is the waiver for again parking areas and driveways.

Chairman Blewett stated I also had #2.

Mayor Runfeldt stated 2, 3 and 4 the waivers just for completeness purposes.

Chairman Blewett stated right.

Mr. Eisdorfer stated yes sure. Let me just note on all of these issues which involve --

Mr. Boorady asked #3 you are going to do right.

Mayor Runfeldt stated actually you said 2 you would do, 3 you would do and 7 you would do.

Chairman Blewett stated if you say that that's due before they are deemed complete.

Mr. Boorady asked when else would it be done. Once they are deemed completed I'm charged with doing a report so I either have it before me or I don't.

Mayor Runfeldt stated 7 is before.

Mr. Eisdorfer stated let me just note under the Municipal Land Use Law all of the provisions that deal with approvals from third parties and my notes are Items 2, 3 and 7 these are all illegal under state law that the checklist can require information but it can't require evidence of actual approvals, so beyond the reasons we've discussed we think that we would ask for waivers of those on those grounds.

Mr. Neiss stated if the Board will indulge me for a moment I would just like to read a portion of the Cox Book which everyone knows is the bible, or something of a bible on zoning and planning. This comes from Section 14-3.1 at page 296. "Completeness does not relate to the quality or sufficiency of the submission, but only to the fact of the submission in accordance with the checklist, therefore the more sophisticated the checklist the more detailed will be the information which must be submitted."

Mr. Eisdorfer stated that's true, but on the other hand the checklist can't say you need approvals from any third party.

Mr. Neiss stated that I agree.

Mr. Eisdorfer stated so to the extent that these items seek to deem it incomplete because of lack of those approvals we think that the Board is obligated to waive those.

Mr. Boorady stated can I just say that we are not asking for the approvals we are just asking for him to submit to Morris County Soil just like we asked them to submit to Morris County Planning Board and they did. We are not asking for the actual approval.

Mr. Eisdorfer stated the application has been prepared, we thought we had submitted it to the municipal engineer for his review, but if he says that is not something --

Mr. Neiss stated before you came Mr. Eisdorfer I think Mr. Liloia said that he had seen a draft that is as far as it went.

Mr. Eisdorfer stated it will go.

Mr. Liloia stated Mr. Neiss just to be clear, my understanding is that it was submitted to Mr. Boorady because he wanted to see it before we submitted it to the county. I'm not making the argument here I'm just telling you that's my understanding.

Mr. Eisdorfer stated but if that is not true then we will proceed directly to the county.

Mr. Neiss stated, in other words, you can't say one way or the other whether there is a final submitted application.

Mr. Liloia stated what I'm telling you is the final --

Mr. Eisdorfer stated it will be submitted it has not been submitted.

Mr. Terrero stated that's all matters.

Mr. Eisdorfer stated it has not been submitted.

Mr. Neiss stated final or draft is not really relevant, the question is was it submitted?

Mr. Eisdorfer stated it has not been submitted but it could be submitted tomorrow.

Mr. Neiss stated that's it.

Mr. Boorady stated one item they may not have is the utilities. The Board has to decide whether they want actual letters from the utilities saying they will serve the site or whether you are giving them checklist waivers for that.

Mr. Eisdorfer stated we would request a waiver on that that will be provided. I have to confess in my experience that this always comes after rather than before.

Chairman Blewett stated that's why I asked about #2.

Mr. Eisdorfer stated okay.

Mr. Taormina asked why wouldn't utilities provide service. Give me an example?

Mr. Boorady stated the gas mains might not be sufficient to serve one side plus the restaurant. I'm not saying that they are they probably are. There is probably enough electric. There might need to be some transformers sighted on the site or across the street, or hanging from a pole. You know the Borough might not have enough --

Mr. Taormina stated capacity.

Mr. Boorady stated they probably have enough gallons but whether they can pump it 3 stories high the water we don't know. There has to be an analysis done and that was part of the water consultant's report to the Board, and that is something I believe Mr. Beasley has but I'm not sure Joan.

Ms. Ward mentioned the report is in the file I'll send it.

Mr. Boorady stated okay but that is something the applicant will have to address.

Mr. Eisdorfer stated sure.

Chairman Blewett stated now let's kind of bring this down to a small nut here. Can you just succinctly tell the Board what you are asking for?

Mr. Eisdorfer stated I think on all these issues we are asking for waivers. The waivers are on different grounds, some of the waivers we are going to comply promptly and some are things that we think are going to become moot such as the flood hazard issues. Some of them are outside of our control.

Mr. Neiss stated so using the list on Tom's letter that extends on page 2, the middle of the page, the checklist for preliminary major site plan which of the items are you requesting waivers for?

Mr. Eisdorfer stated well I think we are requesting waivers for all of them. Just some of them what we are saying we are going to comply imminently and some of them these are all completeness waivers. We are asking you at this point to deem the application complete with these waivers and permit us to proceed to a hearing.

Mr. Neiss stated allow me to say that what Mr. Doyle was saying earlier is based on my understanding true, that is the Borough has entered into a Settlement Agreement in order to resolve a declaratory judgment litigation and in that Settlement Agreement as I indicated in a memo to you, the Borough has pledged its cooperation with this developer for purposes of satisfying its affordable housing obligations and other things.

Based on what you hear tonight and have heard tonight, it rests with you no matter what as to whether you deem it prudent and appropriate frankly to grant the waivers for the purposes of allowing this application to move forward. You would not be wrong if you thought that there were a number of issues that either are outstanding or haven't adequately been addressed, but the overarching concern I think of the Borough is to comply with the Settlement Agreement. In view of that I'm not making a recommendation one way or the other that is not my place, but I just would ask that the Board to consider the fact that there is a time constraint here.

Mr. Kaufman stated I have a question about Item 4 specifically and the noncompliance with our flood development ordinance and what that potentially does to the area and to our CRS rating?

Mr. Eisdorfer stated so what we understand from NJDEP and I have an email from NJDEP which I can provide you with which basically says, NJDEP says that FEMA has done a new set of maps and under the new set of maps which DEP is in the process of adopting as its official maps, the development on this site will be outside the flood hazard area, and therefore we will not require any permit other than a flood hazard area verification to verify the new line. As a result, this will have no -- it will be in compliance with your ordinance because it will be outside of the flood hazard area and will have no impact on your status vis-à-vis the flood insurance regulations.

Mr. Neiss stated if I may, I think the email that you are referring to is the one you sent me earlier today.

Mr. Eisdorfer stated that is correct.

Mr. Neiss stated it is dated March 21, 2018 and it is from Denis Contois at the New Jersey DEP and addressed to Mr. Doyle. I'm just going to read it quote. "I did check with our flood plain study section and they are confident the flood elevation on the preliminary FEMA map (176 feet NAVD) will be the elevation adopted when the FEMA map becomes effective. This elevation may be used as part of your hardship exception request." So that is the email that you are referring to correct?

Mr. Eisdorfer stated that is correct.

Mr. Neiss stated it is somewhat equivocal from my point of view, you do want to try to give it some --

Mr. Eisdorfer stated so we went in for a hardship request and of course the hardship request what DEP said to us is when we actually amend our standard you will be outside the flood hazard area. If you want to proceed now, technically now you are in the flood hazard area. If you want to proceed now, you would have to make a hardship request; but in support of your hardship request you can point out that at some point in the near future you will be outside of the flood hazard area and your hardship request is sort of a kind of a transitional request, so that was the process and this was the outcome. So that is why we say in some sense this will

become a moot issue and it will become moot for the purposes of DEP, but also for the purpose of the ordinance and obviously those are different but they are intimately related, ultimately the same standards are going to go.

Chairman Blewett asked did they give you any idea when the new FEMA maps are going to be approved.

Mr. Doyle stated I was at a meeting and they would love to have them approved yesterday but as they described it to us it could be anywhere between 2 to 5 years depending on when they get to them. But we did confirm that there doesn't seem to be any challenge with respect to how they have been drawn that is not the issue. Apparently as a result of the floods that have taken place recently, it has taken away a lot of their time and a lot of their people power so that is why they've committed to me, Mr. Mayers and the applicant in the meeting that we are going to get this permit, and in large part because of that email that will shed some further light on this because of the fact that when they are adopted, when they get around to it, they are going to take us out of the flood plain and that we wouldn't have needed a permit but that is the reason why they are going to get this hardship waiver.

Mayor Runfeldt stated there is one correction I'd like to make to what Mr. Doyle said. There are some issues with how the new maps are drawn but they usually go the opposite way. There are areas now in a flood plain that people are fighting that shouldn't be in a flood plain. There is very little opposition to --

Mr. Doyle stated, I'm sorry Mr. Mayor that's exactly correct. I should have been --

Mayor Runfeldt stated there is very little opposition to an area that will be moved out of a flood plain and somebody saying no that needs to stay there. There is plenty of opposition to the way the maps were drawn regarding areas that have now been put in floodways and flood plains.

Mr. Doyle stated if adopted as proposed, those points don't relate to this property. So if adopted as proposed those fights don't related to this property, so if adopted as proposed not with saying that people are making the arguments the mayor has said, it will not affect this application; in other words, it will go as was described.

Mr. Taormina stated nobody is begging to stay in a flood zone.

Mayor Runfeldt stated that is correct.

Mr. Eisdorfer stated although perhaps they should be. I don't know if that answers your question but I've done my best.

Mr. Kaufman stated so it will not affect our CRS rating even though it --

Mayor Runfeldt stated the one thing there; although I know the applicant likes to say it will happen, it will happen when we see it happen.

Mr. Kaufman asked so in the meantime do we suffer on our rating and insurance premiums and all of that for the rest of the town.

Mayor Runfeldt stated I'm assuming we are not because we are not moving ahead just willy-nilly you know absolving of this and we are still going to require the DEP waiver. I would assume having the DEP waiver minimizes our risk somewhat, not totally since FEMA and DEP are two separate horses. I would think it would minimize it and then eventually it will be coming out of the flood plain so that would eliminate it when and if that happens. It is a tricky time in between and how much it would affect, I mean quite frankly we've done such a good job in large part through Mr. Boorady's efforts, we do have a very good rating with CRS and a nice surplus of points but at the same point I don't think we should be giving them away just by that.

I know Mr. Doyle and Mr. Neiss both mentioned this and this is a little bit of a different animal since it is part of the Settlement Agreement and this is not just an applicant coming in off the street and saying I want to do this here.

Chairman Blewett asked are you guys done.

Mr. Eisdorfer stated yes thank you.

Chairman Blewett stated okay. So what is the Board's pleasure? I will say that before Mr. Doyle's commentary I was comfortable with the applicant's position that once they understand what the parking arrangements are from the town that they will accommodate on said plan the ability for the occupants to get there okay. Does anyone else have any other concerns about granting these waivers and allowing them to move forward with the understanding that these all have to be resolved anyway?

Mr. Eisdorfer stated absolutely.

Chairman Blewett asked any other comments.

Mayor Runfeldt stated so the only thing we are granting now is just going ahead and we are not absolving anybody of any requirements of doing these?

Chairman Blewett asked don't they have to make that defense during the public hearing.

Mayor Runfeldt stated if they are not substantially done by the time the final approval time comes along then we are going to be right back in the same position.

Mr. Eisdorfer stated sure absolutely.

Mr. Marino stated I just have one question. So is the town ready to possibly reduce our CRS rating that we have right now?

Mayor Runfeldt stated no.

Mr. Kaufman stated by granting Item #4.

Mayor Runfeldt stated once again I think it is very minimal, believe me no one has worked harder in getting that CRS rating than administration has. Last administration felt it was too hard to stay in it and they took us out of it, so it took us four times the amount of work to get back in and we now have a better rating than we had before and we are probably nearing an even better rating than we had last year or two years ago.

Mr. Kaufman stated which we are potentially putting in jeopardy by granting this.

Mayor Runfeldt stated I think we have quite a surplus. I mean we --

Mr. Kaufman asked but not enough to go to the next level as you were saying or surplus for our current level.

Mayor Runfeldt stated not enough to knock us down. But once again nothing goes forward without the DEP waiver or permit from them, and once they get that permit that should minimize the CRS implications.

Chairman Blewett stated okay. By granting this --

Mayor Runfeldt stated that is also what the public hearing is about and we can talk about these things and that is when we get a chance to listen to their expert say how it won't affect it, and we get to bring in our expert and say this is how it will affect it and that is when we make our decision.

Mr. Kaufman stated my understanding is with the Settlement Agreement our hands are basically bound say sure do whatever you want.

Chairman Blewett stated you can vote no. This doesn't absolve them from complying with the intent of the regulation so they have to demonstrate to the Board either a hardship and we have to believe it, or compliance with the requirements and that's the way these applications go.

Mr. Eisdorfer stated absolutely.

Mayor Runfeldt stated if I'm not mistaken, all we are doing today is saying let's go ahead to the next step. We are not saying you have approvals for anything, we are just saying okay let's open it up to the public and bring the experts in and let's hear what is going to happen and how you plan on doing it you know.

Mr. Morreale stated and we are also saying that we don't need proof that everyone of these things has been complied with is that what we are saying?

Mayor Runfeldt stated not complied with just --

Mr. Morreale stated put in for applications and waiting on those application to be approved.

Mayor Runfeldt stated right once again though it doesn't absolve them from having to do it. We are just saying we are going to operate under the assumption that you are going to do what you say you are going to do before you need them because when it comes time when you need them and you don't have them, we are going to be right back here.

Mr. Morreale stated there is a question that keeps coming back to my mind why are we in all this now when this could have been done up to this point? Why are we at this point right now with all of these open items?

Mr. Liloia stated that is common in these applications that these third party permits are not granted prior to a hearing.

Mayor Runfeldt stated and going back to what Mr. Neiss read before, Lincoln Park has some of the most specific checklists I think.

Mr. Neiss stated sophisticated.

Mr. Eisdorfer stated this maybe the longest checklist I've ever read.

Chairman Blewett asked does anybody else have any comments for the applicant or questions because I'd like to kind of rap this up. I think we do need to poll the Board and take a vote on this, so is there a motion to accept their proposal for these waivers and --

Mr. Taormina moved to accept.

Ms. Brightman seconds.

Roll call:

Yes: Taormina, Brightman (Alt. #2), Blewett, Kaufman, Marino, *Runfeldt and Terrero

No: Morreale

Abstain: None

*Mayor Runfeldt stated with the warning that I hope when it comes time for the next part of this that we are not sitting here doing the same thing over and over again.

Chairman Blewett thanked them.

Mr. Neiss stated I would like to make the following recommendations to the applicant that when it returns with having noticed for a meeting, etc. that the applicant provide this Board with very clear understandings of what it is seeking and doing, what it has and doesn't have, and what it can do and can't do and I think that would go a long way to clearing up a lot of issues even before you walk in the door. So with that I just point out that there is concern on the part of the Board and rightly, I think you all understand that but I think you should work harder at getting what you need before this Board in a completed fashion.

Mr. Eisdorfer stated thank you, we hear and understand. Thank you Mr. Chairman.

Mr. Doyle stated what I'm going to recommend is that we have a pre-meeting at the expense of the applicant with Mr. Boorady to have all those discussion before so the ducks are in a row before they get here before you.

Mr. Boorady stated pardon me, I will be part of that meeting as long as Doug Doyle is not at that meeting.

Mr. Neiss stated he's been at meetings as have I with the applicant over the last year.

Mr. Boorady stated probably six of them.

Mr. Neiss stated but a lot of this stuff that was not this stuff necessarily that the applicant was seeking waivers on tonight, but a lot of things were covered and a lot of things it proves to me haven't been addressed even though they were covered. So I'm just expressing my own frustration with the fact that we've tried, we've had those meetings and it doesn't seem to clarify which is why I said what I said at the very end. If you are going to come before the Board, make sure that what you present is clear and sharp so that the Board understands what's you've got, what you don't got, and where you are going and where you are not going.

Mr. Doyle stated I agree Mr. Neiss, I want to make sure everything has the most up-to-date information.

Mr. Boorady stated call me next time would you? You were involved and I'm dead serious, I am only having meetings with engineers and architects not meetings with attorneys unless the attorney is present that is sitting right across from you, the Board's attorney. I am not having meetings with anybody else unless Arthur is there at this point. If you want me, I'll be available.

Mr. Doyle stated you can bill the escrow Arthur.

Mr. Boorady stated I'll be available but counsel will have to be there.

Mr. Neiss stated we want to get this done Doug that's really what this is about.

Mr. Doyle stated I understand and I want to make sure the Board has the most up-to-date information.

Mr. Neiss stated the Board trusts its professionals and I don't want to cause -- you get my drift.

Mr. Doyle stated everybody have a good night, thank you. Thank you Mr. Mayor.

Chairman Blewett stated okay.

Mr. Boorady stated I'm really upset.

Chairman Blewett stated next item on the agenda is we are at the ordinances.

Ms. Ward mentioned Sal has some information for you.

Mr. Marino stated I pulled about 7 ordinances from different towns and we are going to email them once we establish the committee and we will meet at the next meeting.

Ms. Ward mentioned right. They are ready to go but we need an ordinance committee.

Mr. Kaufman asked didn't we keep the DRO committee for that.

Ms. Ward mentioned we kept the DRO committee which was the ad hoc codification but Sal is not on that one so we really should have an ordinance committee. Sal found some other conflicts or problem with some other ordinances that need to be rectified.

Chairman Blewett asked any volunteers.

Mr. Kaufman stated I'll be on it.

Chairman Blewett stated put me down.

Mr. Morreale stated I'll do it.

Ms. Ward mentioned Sal will be the chair.

Mr. Kaufman asked but you are still on it.

Ms. Ward stated Dion so we have a committee.

Chairman Blewett asked is there anything on entertainment.

Ms. Ward stated no.

Chairman Blewett stated other than what we just had.

(Laughter)

Chairman Blewett stated don't get me started. Any other business we want to talk about? Anything happening?

Ms. Ward mentioned for the October meeting we will have the resolution for the steel company.

Mr. Neiss stated correct.

Mayor Runfeldt stated I would just like to say one thing before we close. Just in defense of Mr. Boorady, a lot of what Mr. Doyle was talking about tonight Tom was not included in some of these things so I don't want anyone to think that Tom has been giving you wrong information. Tom has been giving you the information that he is aware of and quite frankly watching out for the best interest of the town probably more than anybody.

Chairman Blewett stated I don't know Mr. Doyle from Adam and anybody that comes up with an attitude like that has no respect.

Mr. Taormina stated you can see the obvious personality conflict.

Mr. Neiss stated let me just say, I think and I'd like to think that I was speaking for the Board when I said to them at the end that that the Board trusts its professionals.

Chairman Blewett stated yes that it does.

Ms. Ward mentioned the next meeting will be on October 18th. Is the application complete or not and they may be on for the 18?

Mr. Morreale stated I just have one thing, I just feel that this strong arm of these guys is just a little out there and I feel ill equipped at this point. You come into a meeting and we get some emails during the month and we are expected to understand everything they are saying to us, I'd like to be prepared a lot more than what I am currently. How does that work? I just feel that there is such a strong arm ness about their approach.

Mr. Kaufman stated they seem to be bullying their way in.

Chairman Blewett stated they obviously don't accept -- except for the new guy that came in --

Mr. Neiss stated Eisdorfer.

Chairman Blewett stated he's the only guy that knows what he is talking about. Anyway if it wasn't for him it would have been a longer meeting.

Mr. Morreale stated again I know Arthur you prepare us as well as you can and give us the

information we have, but I just feel like when I come in here, especially dealing with the things that we are going to be dealing with I want to understand it more.

Mr. Neiss stated Tom let me ask you this, do you anticipate preparing yet another report, an analysis of the site plan itself that you have been given. What's your --

Mr. Boorady stated I have to if they are deemed complete. This was only a completeness report but there will be a technical report.

Mr. Neiss stated that's correct.

Mr. Boorady stated so if they are deemed complete which they aren't because they didn't pay the taxes yet, they don't have an updated owners list, we don't have all the copies for the Board, so Joan at this point is going to determine completeness when they provide her with all the copies of everything and then we do our technical report so that could be October, it could be December, it could be January it could be November.

Ms. Ward mentioned and the fee too. I know the taxes aren't paid on the one property and we don't normally hear an application unless the taxes are current that's our policy.

Mr. Neiss stated as far as I'm concerned after tonight they are on notice.

Mayor Runfeldt stated that's what my comment was.

Mr. Neiss stated so if they don't do what they are supposed to do after being on notice about it, they can't come to us and blame us for it.

Mr. Taormina stated exactly but if we didn't deem this complete tonight, then they have a case to go to court that you're stalling. All we said is you are complete now do the rest of your --

Mayor Runfeldt stated do what you are supposed to do.

Mr. Neiss stated correct.

Mr. Taormina stated all we said is yeah you are complete now do the rest of --

Mayor Runfeldt stated now do what you are supposed to do.

Mr. Taormina stated you can't go any further until you do this stuff any way.

Mr. Neiss stated that's right.

Mr. Taormina stated I think to tell them that you are not complete tonight and then we would look like we are holding up the project, let them hold up the project.

Mr. Neiss stated that's right. Based upon the way they have provided information and submission to date, they can't help but trip over their own two feet.

Ms. Ward stated it has been a very piecemeal application coming in, I've never seen an application come in like this.

Mayor Runfeldt stated of this magnitude I would imagine.

Ms. Ward stated I mean was involved with the Society Hill I and II, Hilltop Farm, Hunting Meadow, Skyline Village, all those big projects and the applications have never come in the way this one has been coming in. I've never seen anything like this, they've had four different attorneys.

Mr. Kaufman stated at least by me they don't seem to be the best neighbors. I mean we went through the winter without the sidewalks being shoveled, the grass was knee high, they don't really seem to be playing nicely with the town as far as I'm concerned. We will see what the next step brings.

Mr. Neiss stated we don't want to pre-judge the application.

Chairman Blewett stated no you can only look at their track record.

Ms. Brightman stated they probably needed to say they were scheduled for a public hearing maybe for some kind of funding requirement, maybe some grant they applied for so we probably should have asked that question why all of a sudden it was deemed so important to have that approval.

Mr. Neiss stated well they submitted their application what on August 1 they did it.

Ms. Brightman stated I'm talking about some kind of grant opportunities.

Mr. Neiss stated no I understand.

Mrs. Brightman stated to get the extra point saying that you are scheduled.

Mr. Neiss stated I have an unrelated question about the mayor and council. Did the mayor and council approve the indemnification ordinance or is that on second reading?

Mayor Runfeldt stated that was only the first reading, it was introduced and we will be adopting it at next month's meeting and then 30 days after that.

Ms. Brightman stated thank you.

Mr. Neiss stated terrific.

Chairman Blewett stated I hope it is before they come back.

Ms. Ward asked the ordinance committee do you want to meet at 6:30 prior to your meeting at 7.

Chairman Blewett stated you are really pushing me here Joan.

Ms. Ward stated well I'm asking you because I have to prepare the agenda.

Chairman Blewett stated that's fine.

Ms. Ward asked is that okay with everyone on the committee.

Mr. Kaufman stated 6:30 on October 18th.

Ms. Ward stated yes it will be on the agenda.

Chairman Blewett stated let me see if I planned my vacation for that week.

Ms. Ward stated sorry.

Chairman Blewett asked for a motion to adjourn.

Mr. Terrero moved to adjourn.

Mr. Kaufman seconds.

Meeting adjourned 8:30 P.M.

Respectfully submitted:

Joan Ward, Secretary

Charles Blewett, Jr., Chairman