

TOWNSHIP OF LOPATCONG
PLANNING BOARD MEETING

March 22, 2017

The meeting of the Planning Board of the Township of Lopatcong was called to order by Chairman Johnson at 7:00 pm.

A silent prayer was offered followed by the Oath of Allegiance.

Chairman Johnson stated “adequate notice of this meeting has been provided indicating the time and place of the meeting in accordance with Chapter 231 of the Public Laws of 1975 by advertising a Notice in The Star Gazette and The Express Times and by posting a copy on the bulletin board in the Municipal Building.”

Present – Members Fitzsimmons, Pryor, Schneider, Woolf, Mayor McKay, Vice-Chairman Olschewski, Chairman Johnson, Alternate Fischbach, Alternate Frank. Also present was Planner Ritter, Engineer Sterbenz and Attorney Sposaro.

Chairman Johnson – In the agenda tonight, what we are going to do is change the order around a little bit as we have an application that we need to continue hearing and so what we are going to start with is by approving the minutes, that’s going to be our first item. We are going to go then to the Resolution of Coordinated Health, the Resolution of Sycamore Landing, then we’re going to do the continuation of the application of Ferruggia Self-Storage. Then we will move onto our discussion topic which is the concerns of Planning Board members included with that will also be the conflict of interest memo we have from our attorney and discussions regarding that, then we’ll move onto the Resolution for Carbone followed by the I-78 and then Highlands/ROM if we have time to get to it. So, that’s going to be our order so, first is the minutes from February 22nd, 2017. Is there any comments on those meeting minutes?

Vice-Chairman Olschewski – I looked at the meeting minutes on line and I believe Donna’s unexcused absence is still on the, in the meeting so, it was voted to take that out right?

Secretary Dilts – Yeah, I believe it was changed. I emailed the Lopat Webmaster and asked her to change that.

Vice-Chairman Olschewski – So, I just want to make sure that that has happened. The Board voted to take that out.

Secretary Dilts – Yeah, I don’t know when the last time you looked at it.

Vice-Chairman Olschewski – Okay.

Member Schneider – (Inaudible) on the website isn't correct.

Secretary Dilts- It isn't, it isn't now and (inaudible).

Member Schneider – It is now.

Secretary Dilts – You saw it?

Member Schneider – Uh, yes.

Secretary Dilts –Oh then, well obviously, she didn't change it. I'll have to check.

Member Schneider – Now it's changed, but for don't know how many days it was up incorrectly. So how could it be up when voted to change it and it was up incorrectly?

Secretary Dilts – Because they were sent to her and then they were corrected.

Member Schneider – So, why didn't you get the corrected minutes before

Secretary Dilts – Because I made a mistake.

Member Schneider – Okay.

Secretary Dilts – Okay.

Member Schneider - That caused a lot of people in this Township to think that I did something that was not approved and it led the public to believe that.

Secretary Dilts – Well, it's on You Tube, the whole argument is on You Tube

Member Schneider – Of course it is

Secretary Dilts - and it remains in the minutes.

Member Schneider – Some people don't watch You Tube. Some people read the minutes.

Secretary Dilts – Well, it's in the minutes, it's in the February minutes where you are arguing still.

Member Schneider – Right, but it was also, it was put on the website for I don't know how long incorrectly.

Secretary Dilts – It didn't make a difference.

Member Schneider – It does make a difference. The minute taker is supposed to do what is asked by the board.

Secretary Dilts – Yep and we make mistakes.

Member Schneider – Yeah, how many years have you been doing this?

Secretary Dilts – I make mistakes Donna I'm not perfect,

Member Schneider – Yep

Secretary Dilts - neither are you.

Member Schneider – Yep, but it's funny the very first ones

Member Fischbach – Point of Order.

Secretary Dilts – That is ridiculous.

Chairman Johnson – It is a comment and a concern. Are we sure that it is correct now?

Member Schneider – Yes.

Chairman Johnson - It is correct now?

Secretary Dilts – Yes.

Chairman Johnson - All right is there, I mean, I guess we do need to be careful. Mistakes do happen. I would hate for something to be posted that wasn't accurate and somebody from the public get the wrong impression what happened at the meeting.

Secretary Dilts – I don't think they got the wrong impression.

Chairman Johnson – So, you just need to be careful with that going forward.

Secretary Dilts – Oh, absolutely.

Chairman Johnson – So, this is February 22nd still so any other comments. I read through them I didn't have any comment. So, I'll take a motion then.

Member Pryor – I'll make a motion.

Vice-Chairman Olschewski – I'll second it.

Chairman Johnson – Okay, we got a second.

Secretary Dilts – Who's the second, please.

Vice-Chairman Olschewski – Me.

Secretary Dilts – I'll roll call that:

AYES: Members Fitzsimmons, Chairman Johnson, Vice-Chairman Olschewski, Pryor, Schneider, Woolf, Mayor McKay, Fischbach, Frank.

NAYS: None

Member Pryor – Yeah, I have a brief request, my hearing aides are in the shop tonight so if everybody could speak into the mike I'd appreciate it.

Attorney Sposaro – What a golden opportunity.

Chairman Johnson – That's actually

Members talking over each other.

Chairman Johnson – It is a great point. I was actually talking to Beth earlier. It is sometimes very difficult for her to do the minutes when she's looking at the video tape if there are multiple people talking at the same time and not using the microphone. It is easy not to but we'll try to be a little bit more aware of it and maybe more particular for here for tonight so Joe can hear what we're saying too, but that's an excellent point. So, we have two resolutions to go through next; we have Coordinated Health Resolution. I don't have it in front of me but I looked at this and read it previously. I guess we'll start off with a motion to approve that resolution.

Member Pryor – I'll make that motion.

Chairman Johnson – Second.

Vice-Chairman Olschewski – I'll second it.

Roll Call:

AYES: Members Fitzsimmons, Chairman Johnson, Vice Chairman Olschewski, Pryor, Schneider, Woolf, Mayor McKay.

NAYS: None

Chairman Johnson – We have a Resolution from Sycamore Landing as well. What we did is we have the engineer who brought the plans in. At the last meeting there were some concerns from some Board members who haven't seen the plans and would like to see them. We have them here tonight. If you haven't had a chance to take a look at them, they're right back here. I don't have an issue if we wanted to table this for one month just so everybody has a chance to look at the Resolution for Sycamore but that's obviously up to the Board not myself. Is there anybody who wants to see these plans before we go to the motion?

Mayor McKay- Are these the same plans that were originally submitted?

Chairman Johnson – I don't know I haven't seen them.

Engineer Sterbenz – The connection to the Phillipsburg Mall both from a vehicular perspective and pedestrian perspective is the same as what was on the original plans. They were taken off briefly because of the lack of the ability to negotiate an easement with the owner but they have since worked that out and those particular plan elements were put on the plans again verbatim as to what they were previously.

Mayor McKay – I seem to recall there was some talk of making this roadway have access to two properties. The property that was trying to get a senior citizen approval, you know, for a senior citizen development and to the Sycamore Landing property; is that still what's going on with that?

Engineer Sterbenz – There is a stub that would end right at that particular property that's in the zone known as the ARC Zone, that's supposed to be developed possibly for age-restricted housing.

Mayor McKay – Do the owners still want to do that, do we know?

Engineer Sterbenz – I'm not sure; we haven't seen them in years. They did attempt to get approvals. They were never deemed complete and the application was never processed as a result of that and a lot has happened since then with the Highlands and Wastewater Management

Planning so the whole complexion of the developability of that property has changed.
Something the Board really

Mayor McKay – Do the same people still own it?

Engineer Sterbenz – I don't know.

Mayor McKay – Okay. All right, thank you.

Attorney Sposaro – We discussed this last month and I was of the firm opinion and remain of a firm opinion that we just need to adopt this resolution. If you want to look at the plans for informational purposes, that's fine but the plans are what they are; they haven't changed, this is a public health and safety issue. I think we just need to get on with the business of the Board.

Chairman Johnson – So then, we're looking for a motion then to approve the Sycamore Landing Resolution.

Member Pryor – I'll make that motion.

Chairman Johnson – Second?

Member Fitzsimmons – I'll second it.

Chairman Johnson – Okay, roll call.

AYES: Members Fitzsimmons, Chairman Johnson, Vice-Chairman Olschewski, Pryor, Schneider, Woolf, Mayor McKay.

NAYS: None

Chairman Johnson – The next order of business is the Ferruggia Self-Storage. There's been a few correspondence that came through so, I think what I am going to do is ask our professionals to summarize those and make a recommendation on how to proceed.

Member Pryor – You know, if I can just interject for a second, I did this when Larken first came before this Board for a zoning change. I have a long history with Larken on both sides about more than 15 years ago; I actually did some work for Larken when I was the employee of a firm I eventually bought. Then when I worked for the town, I reviewed their stuff. When there was a lawsuit, I was deposed on behalf of the town by Larken and nine years ago I bought a house from Larken and actually served on the HOA for three years. So, I do that in the interest of full disclosure. Nobody had an objection to my participation when they came in for a zoning change

which is still bouncing around but I disclose that now; if anybody has an objection I'll recuse myself before we even get into the discussion of the Larken's objection.

Attorney Sposaro – I don't think it is a question of whether anybody has an objection. You need to make the decision whether from your vantage point you feel that you are disqualified. If not, let's proceed.

Member Pryor – Well, that's true, and I don't feel it would be a problem, but as I understand it, if it would have reasonable, another reasonable person feels there is a potential for a conflict so, from that standpoint, if anyone objects, I would like to hear their objections?

Attorney Sposaro – I think this is attenuated enough in time and that in my mind, it doesn't create an issue.

Chairman Johnson – I don't have any objections myself if anybody else does, I guess, as Joe's requesting, now's the chance, now is your time to say it. I'm comfortable with Joe participating.

Vice-Chairman Olschewski – I think, I know Joe as a man of integrity and I hope that whatever he says he's not bias in any way so, I don't have an objection.

Chairman Johnson – Then let's continue

Attorney Sposaro – Maybe I can just jump in here. It is going to be a busy night for me. I received on March 20th a letter from Ronald Shimanowitz from the firm of Hutt and Shimanowitz on behalf of Lopatcong Associates and also Lopatcong Corner Associates; two LLC's. They own contiguous property to the, I'll call it the subject property. I don't know if you want to summarize your position Mr. Shimanowitz or you want to rely upon your letter? It is up to you.

Attorney Shimanowitz – I can certainly summarize it. I won't be long.

Attorney Sposaro – Go right ahead.

Attorney Shimanowitz – I can do that. Hopefully, everyone's, you're right. Hopefully, everyone has the letter and has taken a look at it. Our request is that this Board seriously considers whether or not the Board has jurisdiction. We believe the Board does not have jurisdiction. Mr. Peck has also written a letter. He has a different viewpoint. Our position is fairly clear. The HB Zone does refer to Self-Storage Facilities but it does that through the ROM Zone. When you look at the HB Zone, and you look for standards governing self-storage, there are no such standards. They only zoning standards in your Scheduled Area in Lot and Bulk Regulations in

the HB Zone is for Office and Retail. There are no standards for self-storage. So, this Board has no regulatory guidance for this application. That's one thought. The second thought is the permitted use that's listed in the HB Zone, where you actually allow for self-storage it refers to that use through another zone; through the ROM Zone. It doesn't refer to it in a limited way; it refers to the exact section where ROM allows self-storage. When you look at that section of the ROM Zone, it says self-storage is allowed pursuant to a long list of criteria. So, either you are looking at this under the HB Zone where there are no criteria, or you incorporate the ROM and there's very specific criteria. The applicant does not meet those specific criteria and in one case they don't meet the Height requirement that would send them to the Zoning Board on a Height Variance if they exceed by more than 10%. They don't meet many of the other criteria in the ROM Zone for self-storage. So for those reasons, this Board would not have jurisdiction to grant a Use Variance either for Height which only the Zoning Board has jurisdiction over or for a Conditional Use which it appears the ROM Zone is setting up a Conditional Use because there's nothing in the schedule, it just simply says you can do self-storage pursuant to all these requirements or conditions the way I read them. So, the Board either has no standards under the HB, or if you default to the ROM, this Board has no jurisdiction, you are exceeding Height or you are exceeding or violating the condition so it's one or another category of the Use Variances which only the Zoning Board can decide. Mr. Peck's letter makes an argument that self-storage is allowed in the HB Zone. He sort of ignores those specific standards in the ROM Zone and just says HB covers it. With all due respect to Mr. Peck, he is a very fine land use attorney, I wholeheartedly disagree with him. The HB Zone has specific standards for Retail and Office; it just doesn't call out any standards for self-storage and that's completely missing in Mr. Peck's letter. So instead of going on with this hearing, you have to do one of two things; you have to either go to the Zoning Board and seek a Use Variance or in the first instance, go to the Zoning Board and seek an interpretation on whether the way I look at it, it's right or perhaps the way Mr. Peck looks at it, is right, but only the Zoning Board can grant that interpretation under Section 70d. There is a reference in Mr. Peck's letter to having, the applicant having gone to the Zoning Board, and worked this issue through to staff and again, with all due respect to staff, they don't have the authority to make this decision. Only the Zoning Board under Section 70 of the Land Use Law can make that decision. So, however you slice it, this Board does not have jurisdiction and you need to do some work at the Zoning Board. Thank you.

Attorney Sposaro – Mr. Peck you look well rested and tan.

Mr. Peck – Thank you, I was more so a month ago but and thank you, Mr. Shimanowitz, I've known Ron for many years, we've crossed paths time and again, and I have nothing but respect for his abilities but respectfully, Ron, I think you're wrong. The HB Zone and that's codified, the zone regulations is codified in Section 243-74 and it explicitly, in Subsection A4 permits uses permitted in the ROM Zone, it says limited to, 243-75A – 4, 10 and 12 and what 4, 10 and 12 are, it's Business Offices, Executive, Professional and Administrative purposes, you have Self-

Storage Facilities, you have Solar Fields. What the ordinance says, the HB, the HB regulations says that these are all permitted uses. There is no conditional clause or anything like that, that says well, it's these uses are permitted in the HB Zone but only if you adopt the ROM Bulk requirements and in fact, Subsection A-4 goes on to discuss one of the uses where they actually do tailor and give guidance to the Board and this has to do with the aspects of 75A-12 which is Solar Fields. They are only permitted, the ordinance simply says, well, we allow that as a permitted use but they're only permitted in the portion of the zone south of the Norfolk Southern Railroad right-of-way. So, I think if there is an intent by the drafters of this ordinance, to apply the, and concededly in the ROM Zone, if you want to put a Self-Storage Facility in there, there's a number of Bulk requirements that you have to meet, but in the HB Zone, it's just another permitted use and to say that there are no Bulk requirements, is not true. There are Bulk requirements that are applicable to Commercial and Retail type facilities in the HB Zone district; that's what is applicable here. Mr. Shimanowitz, you know, seems to imply that because the ROM Zone has these many enumerated Bulk requirements that they serve to be condition; it turns it into a Conditional Use but again, if the drafters of this ordinance of the ROM Zone regulations intended for Self-Storage Facilities to be a Conditional Use, they would have made them Conditional Uses. Instead in the ROM Zone district, your Conditional Uses are found in other subsections and there is four of them that are listed. They're Advertising Signs; Asphalt Manufacturing Facilities, Concrete Manufacturing Facilities, Resource/Recycling Facilities. I do not see in any of the Conditional Uses, Self-Storage Facilities. So, we can all agree this is not a Conditional Use; both the ROM Zone says as if you are building a self-storage facility in the ROM Zone, these are the Bulk requirements that are applicable. The HB Zone is silent to that; therefore, the Bulk requirements in the HB Zone apply. Thank you.

Attorney Sposaro – Okay.

Mr. Shimanowitz – I just have one quick,

Attorney Sposaro – Go right ahead.

Mr. Shimanowitz – swear it will be quick. I misspoke when I stated my remarks. The HB Zone in the zoning chart only has standards for Retail and Service. I said Retail and Office. Again, there is no standards for self-storage. The other thing that's curious about the applicant's position on all of this is if the applicant is right, then in the Township of Lopatcong, if you build self-storage in the HB Zone, it looks like this but if you build self-storage in the ROM Zone, it looks like this. Is that what the Town Council really intended; seems squirrely to me and particularly, where the ROM Zone has very specific standards for self-storage. Normal interpretation would default to a more specific standard where there was in comparison to a zone, where there is no standard at all.

Attorney Sposaro – Okay. You don't want the last, last word Mr. Peck?

Attorney Peck – I'll rest on my (inaudible).

Attorney Sposaro – Thank you. I've had an opportunity to review this matter at some length. I didn't have the benefit of Mr. Peck's letter that I received today, before I wrote my memo yesterday, but I did have the benefit of looking at the ordinance. I agree that, it is my opinion that this Board has jurisdiction to consider this matter and let me set forth the reasons why. This property is in the Highway Business Zone. The uses permitted in that zone are those set forth in Section 243-74A and this gets a little complicated but we have to jump through these hoops and that includes uses permitted in the ROM Zone limited to and the relevant one here is found in 243-75A -10 in the use is Mini-Warehouse/Self-Storage Facility. There is no reference in the, in the uses permitted in the Highway Business Zone pursuant to the uses and standards set forth in Section 10 of 75 only the use. So then, you have to ask yourself what, what standards apply to the construction of a facility that is proposed by the applicant in the HB Zone. I recognize that there are detailed standards in the ROM Zone or facilities such as this and they're not the same type standards in the ordinance. Instead the ordinance refers to the Schedule of Area, Lot and Bulk Regulations for the Highway Business Zone. It references Farms and then it says, and this is where I disagree with you Mr. Shimanowitz, in specifically, you said it has standards only for Retail and Service. There is another word there, it says Business, Retail and Service and there is a colon after Business separating it from Retail and Service. There are numerous other businesses or business uses that are permitted in the HB Zone. They are not limited to Retail and Service and I outline in detail those in the memo that I submitted to you. Thus, I conclude that, although it's somewhat unusual to have detailed standards for one use, in one zone and different standards in another, that's what the ordinance provides. These standards that are set forth are the standards in the Schedule of Area, Lot and Bulk Regulations. I do not think this is a Conditional Use and because the height issue, because the height limit in this zone district is, I believe it is either 45 or 50 feet, the, it's three stories or 45 feet, I believe that this application, at least as to height, complies with the ordinance, not the stories but that is a C Variance and I believe this Board has jurisdiction. So, with that, I would recommend to the Board that we continue with this application and continue where we left off. Does anybody have any questions or

Member Pryor – Yeah, I do.

Attorney Sposaro – Go right ahead.

Member Pryor – I'll break it up into several parts here. I think it is a permitted use and not a conditional one. As a layman, I tend to read things in their entirety; 243-74 lists the Conditional Uses and storage is not one of them. If you go a little further, 243-76 lists the Conditional Uses in town against storage is not one of them. So, I don't believe it is a Conditional Use. The question is, do you grab the height standard from the ROM District or do you grab the Height standard, the Bulk standard from the Highway Business Zone? They are different zones. Planners come up with different reasons, Highway Business Zones tend to be a collection of smaller businesses, you know, commercial parks are built in different zones. It is not unlike you have residential units have different standards in different zones and so on. Whatever the drafters of this intended, I agree with Mr. Sposaro, it is subject to Bulk standards of the Highway Business. It says Businesses and this is a business so, the way I see it, I'm just reading what's written without a whole lot of interpretation and I would tend to agree with Mr. Sposaro on this one.

Attorney Sposaro – We are one for one tonight and that's good.

Attorney Shimanowitz – May I (inaudible)?

Attorney Sposaro – Yes, go right ahead.

Attorney Shimanowitz – Fully respect Mr. Sposaro's opinion, and we are going to move on. Have the issue out on the record and whatever will flow from that, will flow from that. The only other thing I want to put on the record is, just reserving my client's rights with regard to whether or not this board should be making that interpretation or whether that interpretation should be made by the Zoning Board under 70b but the decision has been made. We'll respect that for now, and we'll go on tonight with the proceedings.

Attorney Sposaro – I'm glad you brought that up and let me address that. You are certainly correct that the Zoning Board has jurisdiction to interpret the zoning ordinance but as a practical matter, the Planning Board needs to make those interpretations all the time as to whether it has jurisdiction what a particular section may mean. I don't think that the Land Use Act was drafted in such a way as to prevent the Planning Board from looking at an ordinance and trying to make sense of what was intended. I don't think that the legislation goes so far as to prevent the Planning Board from looking at what's in front of it and making a common sense interpretation, but thank you.

Chairman Johnson – So, then we are going to move forward hearing the rest of

Attorney Sposaro – I believe (inaudible).

Talking over each other.

Attorney Sposaro – You weren't here at the last meeting.

Attorney Peck – I was not, but I understand that, thank you, again for the record, my name is Mark Peck, Florio, Perrucci, Steinhardt and Fader on behalf of Ferruggia Associates continuing the Lopatcong Self-Storage application. I understand that where we left off last month, our planner had concluded his direct testimony and so it's, open for Board questioning and cross-examination. Other than that, we only plan to put on Mr. Bob Ferruggia who will just kind of give a summation, generally, try to wrap everything up. The other thing I have, two other statements I want to make, the first is my clients did hear the comments last, last month about parking and loading docks and circulations, so, to try to accommodate those concerns, the plan now is to pave, not bank nine spaces but to actually pave so, there would be 18 paved spaces but to only stripe a few of these in excess of the nine spaces, you know, maybe so we have 13 spaces striped out, but then leaving an area unstriped that could be used as a turnaround area so that way we can accommodate both turn arounds and in the unlikely case, we have, you know, two trailers there or something like that as well as parking and again, we think 18 spaces is excessive, I mean we think nine is satisfactory but, you know, again, this additional asphalt will give additional turning radius's and use of that. The other thing is, is again, you know, in so, Mr. Shimanowitz is

here with his client and since the last meeting, through Counsel, my clients did attempt to come to some sort of satisfactory accommodation, hopefully, answer some concerns, and to that end, we did offer to put a mansard roof in the rear of the building, to put architectural treatments on the rear of the building so, if you were looking at the rear, it would, you wouldn't know if you were looking at the front or the rear. There's even going to be, like fake windows that we wouldn't actually have to look at but if you are looking at it from the property line, it would look like windows all around. We offered to let our neighbor pick the color scheme for the rear of the building. We've had concerns and it's also put enhanced evergreen screening in the back. That was, that was refused and, you know, it is what it is, you know, we have been trying very much to not only meet the Board's concerns, but the public's concerns as well. So, without anything further, and oh finally, we do have the rest of our team here. Not planning on having them testify, but if there is any questions from the Board or the public, things of that nature, they are here to answer any questions so, with that, I would like to call Mr. Rex Snyder to resume the position.

Attorney Sposaro – Beth, just so the record is clear, we're going to make Mr. Shimanowitz letter of March 20, Mr. Peck's letter of March 22 and my memo all part of the record. Thank you. What exhibit numbers will they be?

Secretary Dilts- Shimanowitz with be 11, Mr. Peck's letter would be 12 and your's would be 13.

Attorney Sposaro – I think we're up higher than that

Engineer Sterbenz – (Inaudible) 10 was the last exhibit I have in my notes.

Secretary Dilts – That's what I saw.

Engineer Sterbenz – So, Peck would be A-11, Shimanowitz would have a different letter as well as (inaudible)

Attorney Sposaro – No, but it's something that the Board did consider. It wasn't submitted by the applicant but it is part of the record.

Engineer Sterbenz – (Inaudible).

Attorney Peck – 01

Attorney Sposaro – All right, thank you. Go ahead.

Chairman Johnson – And, everybody is still considered sworn in at this point.

Attorney Sposaro – Yes. You are still under oath. Do any of the Board members or our professionals have any questions of this witness?

Member Pryor – I do have one. I believe under oath, you said this was really the minimum square footage necessary to make this financially feasible. Is that correct?

Mr. Snyder – That is testimony from Mr. Ferruggia, that's correct.

Member Pryor – Pardon me.

Mr. Snyder – That is the testimony from Mr. Ferruggia.

Member Pryor – All right.

Attorney Sposaro – If you're, he's the guy.

Chairman Johnson – Again, I have a financial question as well. If, so I'll wait for him to come up then thank you.

Attorney Sposaro – Nothing else, we'll open it to the public for questions of this witness. Mr. Shimanowitz do you want to ask questions of this man?

Attorney Shimanowitz – I have no questions of this witness.

Member Pryor – Well, I'll just, one more (inaudible) is this the minimum height that's economically feasible?

Mr. Snyder – According again, to Mr. Ferruggia

Member Pryor – We'll wait for him.

Mr. Snyder – this format is the appropriate height to make this thing work, yes.

Chairman Johnson – (Inaudible) is the chance for public questions of this witness.

Attorney Sposaro – Aren't you glad you drove all the way out here tonight?

Mr. Snyder – It's always a pleasure.

Attorney Sposaro – I don't see any

Talking over each other

Chairman Johnson – (Inaudible) looks like, looks like there are none.

Attorney Peck – Thank you. Like to call final witness Mr. Bob Ferruggia.

Attorney Sposaro – Mr. Ferruggia you testified previously and you are still under oath.

Mr. Ferruggia – I did.

Attorney Sposaro – Tell us what you have to say.

Mr. Ferruggia – I was always taught to tell the truth so under oath again. Thank you very much again for putting up with us. We've heard all your concerns, all your comments. We've tried to address every one of them. You heard from our engineer; presented his plans. We agreed to pave 18 spots instead of nine, banking nine. We also, the Board would like, we would hash mark some of those, could be construed as a second loading zone if there was two trucks in there at the same time, we also used extra pavement as an additional turning radius. You heard from our traffic consultant who described this use as the best and least impact for this site. You heard from John Angeleri who owned the property for 11 years; no buyers. You've heard from our storage expert, Rich Monteforte, he demonstrated the need for the units, the type of operations that we would run. We agreed in our lease that we would limit the box truck which would be kept on site, as you are facing the building, in the far left parking spot so it doesn't interfere with anything and it would be limited to 10 feet and it would be offered free, eliminating the need for people to rent their own trucks or bring in their own trailers. You heard from our planner Eric, who spoke very eloquently about everything that planning does, not my expertise, he talked about the four story as being totally undetectable. If you have three levels of concrete versus four, looking at it from the outside, you need X-ray vision to tell if there was a fourth story. The architect, very eloquently, put a mansard roof on the front which gives the appearance of a three story building. You heard from me regarding the economics of it and I explained that when you buy a piece of property you have the basic cost of your land, you have the basic cost of your site work, you have the basic cost of the building structure, you have the basic cost of all the experts that we brought in here for the third month in a row, you have the cost of drawing the engineer plans, drawing the architectural plans. All your soft costs in getting a mortgage. Now bear in mind, once you have all those costs, like any developer, myself or Mr. Gardner you want to try to maximize within reason what you can build on that property to make it economically feasible. If it is not feasible, we're not going to do it and be back to Mr. Angeleri owning the property with nothing being built and obviously, not what we would like to build there and I told you from day one whatever we build there, at the end of the day, a year from now, two years from now, you're going to say that was the right decision, you have a man of his word, it's something that we're proud of, there's a need, there's apartments all over, they have things on their balcony. The bicycles, the ski's, they are transferring winter stuff to the storage in the summer and vise-versa change of season. Larken Associates wants to build 200 apartments behind us. This is a natural, additional storage. It should be a tremendous selling point for people buying those apartments. Right next store, you have a brand new beautiful air conditioned storage facility that people could come there and store their stuff there. It's a bonus. We've tried to accommodate them. We've sent them pictures of, you know, mansard roof in the back with windows across the back, extensive landscaping, they were, not apparently not interested so, with that, I don't know what more we can do.

Vice-Chairman Olschewski – I'm interested, if you can make it better looking, I don't really care black and white (inaudible). If it is beneficial for the community to make

Talking over each other

Mr. Ferruggia – the back of it would be Larken. Larken's development

Talking over each other

Vice-Chairman Olschewski – Nobody is going to see the back.

Mr. Ferruggia – No one is going to see the back. So, it is only the front which we'll make beautiful, brick facade, we put the mansard roof; it's going to be all steel and seemed. It will be all natural colors to blend in with the environment. We accommodated everything the Board asked for.

Chairman Johnson – Joe, I have a financial question as well as you do. Would you like to go first?

Member Pryor – Well, I, I just repeat my same two questions, which I'm sure you heard.

Mr. Ferruggia – Three stories absolutely does not work.

Member Pryor – No, it's not the stories so much, I'm saying the height.

Mr. Ferruggia – We can't put a fourth story on unless you go that height. We are six inches below the height

Member Pryor – No, I understand that, but

Mr. Ferruggia – Can't put six foot ceilings in

Member Pryor – well, I'm not talking about, I don't know the architectural, but I know that stuff gets built 10 feet between floors and so on, so

Mr. Ferruggia – Four stories

Member Pryor – but my question is, you know, the height is the height and you, economically

Mr. Ferruggia- We kept under the ordinance on the height.

Member Pryor – Yeah, I understand that, but still you're asking for a lot of variances. It is a lot of mass on a small site. So, my questions remain, is there, economically, you testified that this is the minimum; is that your testimony?

Mr. Ferruggia – It's my testimony and probably it will take quite a few years before it starts to turn money, you know, profits.

Chairman Johnson – It is hard to imagine. It is a small lot and when I drive by there, which I've been driving by there every night; I don't have to take that way, but I want, you know, keep on looking at the site. It is a lot in a small area and again, in the best interest, of course, you want to be good neighbors. I understand that you're going to be neighbors forever. On the last meeting, I

did kind of suggest some financial modifications or some building modifications that I'll take a look at. I did something very, very rough. Now, it's rough, it's only me. I haven't shared it with anybody else. I have copies for everybody. So, what I'm going to do is going to hand this out and then I'm going to ask questions on this and that way you can follow along and maybe you won't have an answer right away but it is something I wanted to show you and I want to make sure every other Board member gets it. It's usually in excel, I apologize, I didn't have time to (inaudible) but you can pass this around. So, I did some research on some self-storage facilities and again, this is very, very rough and I know it does not include all of your soft costs. It doesn't have the land value in there but I took the site plan construction work estimate that you did which was \$159,000. I looked at the building construction costs at \$60.00 dollars a square foot which is conservatively high from the research I found

Attorney Sposaro – Hold on, hold on.

Chairman Johnson – I'm not testifying I'm, I'm

Attorney Sposaro – Let me say what I have to say. This Board has to make a decision based upon the record that is created before this Board. What construction costs are and what your research reveals is not part of this record and should not be considered by this Board and I mean no disrespect to you, but if someone wanted to offer that testimony and alternative routes that was their prerogative, but we are getting on a very, very, slippery slope here to start to consider things that have not been brought before this Board. It be no different than in a case of jurors, often times are told not to read newspapers, they are told not to go and visit a crime scene or an accident scene and they can't help themselves and they go and look and it results in mistrials or retrials all the time because this, the record is what this Board has to make its decision on. Not outside research. You can ask questions about economic feasibility but I don't think you can interject your own research and alternative costs into this.

Chairman Johnson – So, then what I'll do, is word it as a question. Have you looked into reducing the width of your building by 10 feet as I recommended, you know, last meeting just as a, what it will allow you to do is reduce the amount or the percentage of the variances that you were looking for. So, I was just wondering

Mr. Ferruggia – So, if you check the minutes, your question was, can you reduce the size of the building by three to four feet, the width of the building so it would come just under 30,000 square feet hence no need for a second loading zone which we were only over 1200 square feet where you need a second loading zone and all our testimony shows that it was going to have such minimal impact that there were probably never in a million years, be a need for a second loading zone.

Talking over each other.

Chairman Johnson – It was 10 feet that I wanted you to look into.

Mr. Ferruggia – Well, 3 ½ will get it under the 30,000, would get it to 29

Chairman Johnson – Right, and that would take care of one of the variances for the second loading, what do they call it

Mr. Ferruggia – Right, but my proposal was, initially, that if we paved 18 spots and we hashed out four to five of them as a second loading zone

Chairman Johnson – Okay.

Mr. Ferruggia – plus when it wasn't being used as a loading zone, it would create a large turning radius, kind of felt that was, you know, trying to meet the Boards concerns.

Chairman Johnson – Right, and as a follow up to that, I guess my question for you is, is this loading berth and I can't remember, we may have asked this before, is this loading berth accessible if you have a rental truck parked there at all times?

Mr. Ferruggia – Absolutely, because a rental truck would be parked on the far left hand parking spot next, adjacent to the building and that loading berth would be if these were the parking spots next to the building and these were the spots closest to Strykers Road, this would be the box truck here and this would be the second loading zone on this (inaudible) at the opposite end.

Chairman Johnson – So, my question is we know that four stories is required to make this economically feasible you testified to that. Is the square footage required necessary to make this economically feasible or can you reduce the size of the building? I still haven't heard an answer to that.

Mr. Ferruggia – Can I confer with my partners?

Chairman Johnson - Absolutely.

Mr. Ferruggia – Excuse me. Let me ask you a question. Without shaving any of the building off, it's not going to change of the appearance of the building, okay, the only thing that it would do to get down below the 30,000 would be to shave off about 3 ½ feet, the architect said it would get it down in the plan to 29,880. Is that really, okay, because it does affect the bottom line. It makes it economically feasible. Just like I tell people, when I'm building a custom house and I say it's going to cost you a million dollars and they go, can you do it for \$850. The only way I could do it for \$850 is to use my 45 years of experience and try to save every penny. It's not going to be the house that you want or would you rather me use my 45 years of experience and make it the best possible house that every day that you sitting there having dinner and drinking a glass of wine, you're going to say that Ferruggia did a fabulous job. So, what do you prefer to cut a little bit of our profit for a 1000 square feet or let us build the building without skimping, the way we need to do it to make it economically feasible and have this Board be proud of something?

Attorney Sposaro – Why don't we do this? Why don't we, George go ahead?

Planner Ritter – I have one other question since we're discussing scale. Back during the

presentation, there was a question asked of whether or not you could go down. In other words, have your floor as a basement rather than as up under the roof structure, but I think at the time it was indicated that there was karst topography and there was issues about going down into the basement. The question is now, given what you are hearing tonight concerns over the fourth floor. Does that change any of your thinking toward that?

Mr. Ferruggia – No, it doesn't because that, after doing all the boring tests and, you know, with the limestone and everything, it would probably be a major, major issue going down.

Planner Ritter – (Inaudible) just asking.

Chairman Johnson – Thank you, I couldn't remember if that had, you know, that's been resolved. So, we can't get

Talking over each other.

Mr. Ferruggia – In meetings with the planner and engineering prior to coming before the Board to try to address as many concerns as possible and bring a complete and full application before this Board

Attorney Sposaro – I think in fairness to the applicant, are you done with your comments?

Mr. Ferruggia -Yes, yes.

Attorney Sposaro – All right, I think in fairness to the applicant, what we should do, and to everyone here, let's hear from the public and then let's have the Board have some discussion about the application as it's been presented, and based upon that discussion, the applicant then still has the opportunity to consider whether they want to make any changes. Maybe the Board is satisfied with what they see, maybe not, but I think we should just proceed at this point. I think it is a little early to start to see if we are going to be changing the plans.

Chairman Johnson – I agree and again, that's what, just a hypothetical solution, just as hypothetical as a basement is without, it's a talking point. If it was me, I'll be honest with you, if it was me and I was doing something to my house and I had a neighbor who said there's no way you're putting that up there, but if you make it three or four more feet away, go ahead. Then yes, it does make a difference. That might not be the case. I want you to get the facility that you know is going to be financially feasible. We don't want you to lose money, we don't want to lose any of it, if you're going to build it, we want you to be successful but that was, I don't think we need to discuss that anymore, it's just something to think about, but as far as the public comment goes, do we go to the objector first?

Attorney Sposaro – Let's find out if anybody has any questions first up here; anyone else of Mr. Ferruggia. Does anyone? If not,

Member Fitzsimmons – Eric, you, you was explaining before where to unload, would you show us up here exactly and the changes of where the box car, the 10 foot truck would be parked?

Mr. Ferruggia – So, this would all be paved. This entire parking lot. We offered at one time to leave this as grass area and bank it for future parking. This is all paved. Box car would be in the very last spot; right here, it is a 10 foot box truck. Fits into a standard parking spot. This area, we would stripe as parking spots leaving these four or five with hash marks that could be a second loading zone, could be used for turning when just the box truck was in here and you have your one loading area here and then you have your box truck here if your hash marks here for possible second box truck or a turning radius if you had a trailer.

Member Fitzsimmons – So then, striped areas, actual loading area right there?

Mr. Ferruggia – Right here, yes.

Member Fitzsimmons – Okay.

Talking over each other.

Member Fitzsimmons – Originally, they were going to park a truck back there by the dumpster and now

Mr. Ferruggia – No, we're going to park the truck here since we scaled it down to its, right, since we scaled it down to a 10 foot box truck max which we would buy, and park there and give to everyone to use for free, eliminating the need for (inaudible).

Member Fitzsimmons – Thank you.

Mr. Ferruggia – You're welcome.

Chairman Johnson – I'm going to have some questions later on regarding the traffic circulation but I don't think I need to ask it right at this point, I can hold that off till later

Mr. Ferruggia – We have Tom Decker here to

Chairman Johnson – Okay. I'm fine holding off on that question for now.

Attorney Sposaro – So, anybody from the audience have any questions of Mr. Ferruggia?

Attorney Shimanowitz – I have questions. We also have an affirmative objector's case

Attorney Sposaro – Understood.

Attorney Shimanowitz – Pretty simple question. I note on the plan that was submitted, the engineering plan as well as in the testimony, there's reference to the truck that you've just been talking about and how it circulates on the site and in the plan, there's actually a notation where we chose the turning template to refer to a garbage truck. I would just like to have it defined by the applicant, for the record, what type of truck we are talking about. When they say box truck,

what is the size of that truck that's being proposed?

Mr. Ferruggia – Ten foot box truck. It will be in the lease, a 10 foot box truck which fits into a standard parking spot not no larger than a car.

Mr. Shimanowitz – Thank you.

Member Fitzsimmons – So, the box is 10 feet plus the truck so you're talking about 15 feet total?

Mr. Ferruggia – Yes, and a lot of your cars are 17 feet.

Vice-Chairman Olschewski – Juniper

Juniper Leifer – I don't know if my question might be more for the Board so you can just tell me what's appropriate. It's just sort of procedural, you guys have peaked my curiosity. I hear all this conversation about economic feasibility and I'm wondering if the economic feasibility of an application is really the concern of the Planning Board. If the applicant comes in and cannot meet the necessary profit without seeking, I guess, variances, I'm just on from a technical perspective, wondering if that's of your concern.

Mr. Ferruggia – Well, I, I can answer that question, if you don't mind. The project is not economically feasible, it will never be built and the lot will stay the way it was, you got Mr. Angeleri on for the last eleven years sitting there as I explained earlier. So, yes, it has to be economically feasible and I don't think Mr. Gardner would build 30 units on the property behind ours. He's asking for 200 units; he has to get a zone change and whatever variances that are required, and I'm a builder, I want to build as much as I could and if I owned that property, I'd want to build 200 units on there, as well. So, yes, economically feasibility determines whether the Township, it gets things built, you wouldn't have shopping centers, you wouldn't have apartment complexes, you wouldn't have single family homes if the builders, myself and Mr. Gardner didn't make a profit.

Chairman Johnson – I think it became a little bit more relevant when the fourth story was discussed because you had testified that without the fourth story, you can't do it. The fourth story is a variance that you are looking for so the economics does play into the whether or not these variances are granted.

Attorney Peck – Right and if I, I might just add, I think the testimony has made it clear over the past three meetings that without the variances that we're requesting, that lot will have been zoned into economic inutility.

Attorney Sposaro – I don't think that's what the proofs show; that's what you're arguing. I wouldn't go nearly that far. That's not what the proofs, please, Mr. Peck, please. Anyone else have any questions of this witness?

Chairman Johnson – I have one I actually forgot about, I apologize for that (inaudible). The January 25th meeting you mentioned that it would generate 2.5 million in revenues; did I hear

that right or?

Mr. Ferruggia – No. In rateables

Chairman Johnson – In rateables, okay.

Mr. Ferruggia – In a value.

Chairman Johnson – Okay, thank you. I wrote that down wrong. Any more questions for the professionals from the public at this point of the witnesses?

Attorney Sposaro – Any witnesses Mr. Peck?

Attorney Peck – No, that concludes our presentation. Thank you.

Attorney Sposaro – If anyone has any questions of any of the witnesses that have previously been called by the applicant, I think now would be the appropriate time to ask those questions and then we'll let the objector move forward and put on his case.

Chairman Johnson – That sounds fair.

Attorney Sposaro – Okay, does anybody have any questions from the Board or the public since they're here one last opportunity to ask the witnesses that testified on behalf of the applicant? If you have any questions, now is the time. Eric, do you have any questions? You said you have

Chairman Johnson – From the traffic standpoint, I just was kind of curious if you looked into the right hand turn only. I know we talked about this last time, when we were talking about a right hand turn out but going in, it could go in either direction.

Mr. Ferruggia – You had, we requested that we talk with the police chief and the police chief going out on this site, talking with Paul, I had said well, we could resolve this issue by making a right turn in and a right turn out. The police chief came out and said coming from the east, it would be east, I guess, right Paul, coming from the east we also wanted to be able to make a left turn in so cars aren't looking at it, seeing they can't turn in, going down to the intersection that you're all concerned about, Baltimore Street, trying to do a jug handle, maybe not even knowing the area, and creating more of a traffic hazard than making a left turn in. So, the police chief's recommendation was right turn in, right turn out, left turn in, coming from the east and we abided by the police chief's recommendation.

Chairman Johnson – Okay, understood thank you.

Planner Ritter – In my notes, as a parting note from the last hearing, I have a note here that you were going to meet with the fire officials. I wondered if that actually occurred.

Mr. Ferruggia – Tom can answer that?

Attorney Peck – Yeah, if you want to.

Tom Decker – Our office, Tom Decker, Project Engineer, our office reached out to the Fire Official, Kevin Maguire, we played phone tag for a little bit, I spoke to Mr. Maguire last week he had not received a set of plans. I understand that from the Board Secretary that he has since picked up a set of the plans. I tried reaching him again, end of last week, and as late as yesterday, and I have not received any response from him.

Planner Ritter- He does have the plans though now?

Tom Decker – Yes, that's what the Board's Secretary said.

Planner Ritter – All right, I just wondered where we were on that.

Attorney Sposaro – Barring any other questions of any other witnesses, why don't we find out if any objectors want to call witnesses, Mr. Shimanowitz?

Attorney Shimanowitz – We do, thank you. Again, Ron Shimanowitz here on behalf of Lopatcong Corner Associates and also Lopatcong Associates. You'll hear that those two entities are the owners of the adjoining properties which already heard a lot about the retail center and the day care. We do have two witnesses that we plan to present tonight; one is a Mr. David Gardner who is a principle of both of those entities and (inaudible) were known to members of the Board. We also have our licensed architect and planner Mr. Rob Larsen. The only comment I'd like to make before we call Mr. Gardner is it's, I was kind of chuckling to myself, I had to go through law school and pass the bar to make the arguments, but the thunder was stolen by the citizen who came forward and asked about the economics and whether that's relevant to the Use Variance justification and I don't know if it is appropriate now or whether I'll have a chance to sum up our arguments, but the law is quite clear that those economic justifications upon which this case is almost entirely based, but particularly the four story variance justification, is not a legitimate planning justification and that's quite clear in the law and I'd be happy to site the cases if you wish or I can get a memo to Mr. Sposaro on

Attorney Sposaro – You can get me a memo if you wish and you'll certainly have an opportunity, you'll have an opportunity to sum up.

Attorney Shimanowitz – I appreciate that. So, without further ado, let's get rolling. Again, we only have two witnesses and I don't think we will be that long. My first witness is David Gardner, I'll have him come forward and be sworn.

Attorney Sposaro – David would you raise your right hand? Do you swear from the testimony you will give be the truth, the whole truth and nothing but the truth?

Mr. Gardner – I do.

Attorney Sposaro – State your name and spell your name for the record please?

Mr. Gardner – David Gardner – g-a-r-d-n-e-r.

Attorney Sposaro – Go right ahead.

Attorney Shimanowitz – David would you provide the Board with a brief description of your experience in the land development; just generally?

Mr. Gardner – I've been a developer for 35 years in New Jersey and Pennsylvania.

Attorney Shimanowitz – And, what's your connection with Larken Associates, that connects you?

Mr. Gardner -I'm a principle of Larken Associates.

Attorney Shimanowitz – And, what developments has Larken done over the years, not in, actually exclude the ones that are in Lopatcong, just generally, what has Larken developed?

Mr. Gardner – We've built around 2 ½ million feet in New Jersey and Pennsylvania commercial space, some self-storage and 4500 almost 5,000 residential units in both states and over 50 years of company started by my dad; over 50 years.

Attorney Shimanowitz – And, you said you've been in the business for about how long?

Mr. Gardner – Thirty-five years.

Attorney Shimanowitz – Okay, now, let's focus in on the development that Larken has done in the Township of Lopatcong. Would you summarize what Larken built?

Mr. Gardner – We built over 1,000 residential units in Lopatcong. I've been here for 24 years. We built Country Hills which is around 400 single families, Meadowview Estates which was 50, 50 something single families, Warren Heights which is adjacent to this and is one of the concerns. Our company's name is Baltimore Street Associates so in addition to owning two commercial properties, next to us we also own, still own about 150 of the 414 condos at Warren Heights. We built the Delaware Crossing project; the 158 age-restricted units. Mr. Pryor lives in there. Belview Estates which we're still suffering with a few homes, with a few lots left forever making a new record and then these two retail buildings that are adjacent to the property (inaudible).

Mr. Shimanowitz – And just for the record, is the retail buildings, Lopatcong Corner Associates is the owner of Lot 24 which is the retail center, is that correct?

Mr. Gardner – I don't think so, I always get confused. One is the retail building and the other one is the office/medical with the daycare center.

Mr. Shimanowitz – Right 24 is the retail building and you are a principle with Lopatcong Corner (inaudible) okay and you're generally familiar with the management operations at both of those sites, lot 24 and 23?

Mr. Gardner – I am.

Mr. Shimanowitz – And could you speak to your experience with regard to the residential you've developed and what that experience has been and also your experience as to the retail center and the daycare and what I would like you to focus on is your investment in these properties and in the town and I only meant not only by solely financial investment in these properties but what Larken has invested in this, in another way?

Mr. Gardner- I mean to speak very plainly, we take a lot of pride in what we build and the streetscapes that we create, you know, whether it's residential or commercial. I care the way it looks, okay and, you know, what we built on Stryker Road over there with the retail center and the daycare office ties in with Warren Heights and it ties in with the neighborhood. So, I think, what I think what you're asking me is, you know, I um, one of the main objections to this is that what these people are proposing to build is from my humble opinion atrociously ugly and missized for this tiny little piece of property what they're trying to shove onto this property. Okay, it is going to hurt my retail building, it is going to hurt my daycare and the office and the businessman who's running the daycare center; it's going to hurt my ability to sell, to continue to sell the last 150 units at Warren Heights. Okay, and then assuming we get through the process on the 200 apartments, it's going to affect that project also. So, I have a lot at stake over here and in this immediate area what is being, what is it being, to build here by the existing zoning you could build 1200 feet by 1800 feet and this is 33,000 feet okay. The setbacks, it is supposed to be significantly off the property lines. I mean, I've been in front of this Board, Mr. Sterbenz has tortured me over like eight square feet of concrete sidewalks over the years and having to get little variances; this isn't even close so, in terms, am I answering your questions?

Attorney Shimanowitz – You answered the question and I'm actually going to back up a second cause you're very passionate about this and what I want to ask you about, how often does Larken or you personally object to applications and how do feel about your role in objecting to another development?

Mr. Gardner – I've never objected, my dad has never objected; I feel nauseous that I'm here doing this. I feel like I'm routing against my team.

Attorney Shimanowitz – And, in very broad terms, you kind of already said it; it's just going back to the development proposal. What in general is objectionable to you as to the development?

Mr. Gardner – It's too big; it's gigantic. The daycare center has a playground there; this is what they're going to be looking at. I don't know if these guys presented their architectural plans to you guys. This is what he, at the moment; this is what he is going to be building. The daycare center is right here. Our planner will show you; we made a scale drawing to show you it's going to tower over the daycare center and the grade there all goes downhill so when you're looking up from Baltimore Street it is going to look like it's an eight story building. It's going to be gigantic. If, he's using aluminum panel, buffer style construction, he didn't even attempt to make the whole building look nice going around. I'm not saying I would even agree to it because I tried

to. Okay, I thought hard about how can we compromise here. Okay if you knock off the third floor and make the building look like our buildings with shingled roofs; can I live with it? Honestly, no. I'm here to tell you that I'm actually going nuclear. I really think you shouldn't approve this. Okay, it's that bad and it's terrible for the town. How, I mean people live here. That streetscape is going to look atrocious.

Attorney Shimanowitz – David, what's been your experience with trying to rent out the daycare as well as the retail and once you describe that experience, what is your concern over the effect of the development proposal on this project?

Mr. Gardner – The retail building has not been successful for us in Lopatcong. We have had a very hard time keeping that building leased over the years. I'm sure you all who live in the town know that. Okay. The rents that we're getting are not even close to what they were supposed to get and we've bent over backwards. Look, the Subway has been empty for three, four years now. Okay, it has been very challenging so; anything that might rattle the retail center is objectionable to me. The medical building has been okay but the daycare center, we had a daycare center that died over, she left us because, basically because, the taxes were killing her. Okay, because on a net lease basis, the taxes were like \$5 or \$6 a foot and then we fought it and we got it down a little but, basically, she left us because of that. We did a lease with another daycare center who never, ever, ever got open. Okay, it was another very weak situation and we finally got this guy that's in there now and he's doing okay. He was supposed to start to paying rent a couple of, like a month ago and I was closing a loan and just so you know, and I had, the loan got all screwed up because the guy came to us and said I can't, I need more time, more free rent.

Attorney Peck – If I may, I apologize to interrupt Mr. Gardner, but the same objection that Mr. Shimanowitz made, as he began his presentation and I think it applies doubly here when it comes to talking about financial aspects and fiscal constraints and certainly, the impact of this proposal on the ability to rent the shopping center, is completely irrelevant.

Attorney Shimanowitz – I disagree with Mr. Peck wholeheartedly because that is the essence of the negative criteria. The substantial impact on the public good and you'll hear that from our planner and this is the predicate to that testimony. We're already here pursuant to a permitted use. They're asking for a variance; that's the difference, but we can take care of it because I think Mr. Gardner's given a very passionate testimony. I don't think he needs to go any further so we can probably not have to

Mr. Gardner – I just want to add one thing about the daycare center. I was going to bring the tenant here and my leasing guy said don't, let's not go and freak him out because I think he doesn't know what's, what is potentially happening here, okay. He's a business man who's; this is a startup thing he needed. Now, he can't do, was it the, I just mentioned like a month and a half ago and he needs more time of free rent and we agreed to do it and it screwed up my whole loan that was closing on this property and the, I mean for parents that are going to have their kids in this and here's the play area, you're selling the daycare center as a business and they're gonna see, this is what they're gonna see. This is like, where's the (inaudible). The playground is right here and this is that side of the building, it's on top of it. There's going to be a shadow and I think my planner is going to testify something about this criteria with light and air and the zoning, blah,

blah, blah. Hope he can tell you what he was, he pointed out to me over dinner that, you know, this is one of the things is supposed to be counted when you do variances and that kind of thing. So, I'm not going (inaudible) tell you whatever, but it's look, I hate that I'm doing this, okay, but this is so bad of a thing to go, you're trying to shove this gigantic thing into this little lot. We've known all along that, basically, the joke has been, I said yeah, somebody said why don't you try to buy this piece from the owner and, originally, I think we did when we first put the assemblage together, which was the shopping center, the daycare building and Warren Heights; we tried to buy this piece from the owner whoever he his. I wasn't about, my dad did it and um, he couldn't make a deal and, basically, we knew all along that you could build on that property like a (inaudible) so he, but he didn't want to make a deal with us. We would have expanded the shop, connected the whole thing. Okay, so it's a go and fill a four story building that looks like it should be in Union on Rt. 22, in Lopatcong. You know, I was thinking, as I grew up here, in all of our residential advertising we always used the word bucolic okay for Lopatcong, this building, in that spot, is not bucolic. Okay, this is a very rural, suburban area and they're trying to shove something that you would put in Union County on Rt. 22, onto this lot.

Attorney Shimanowitz – David, you testified to where the daycare is and the playground there and how that might affect the quality of life for the children. Isn't there also an open space area in the retail center; like an outdoor eating area?

Mr. Gardner – Yes. There's like a little courtyard

Attorney Shimanowitz – Could you show where that is on the Site Plan real quick, and how that relates to the proposed development?

Mr. Gardner – Well, this is our thing. This thing is here.

Attorney Shimanowitz – You're referring to the colored Site Plan?

Mr. Gardner – Yeah. Here's, this is your exhibit A-3. So this is the “L” of our shopping center and this is the courtyard area that we have benches and the kids skate board and whatever they do out there and people hang out. It's right, they're going to be staring at that from, you know, not too far off. It's really going to be very pretty. I'm saying that sarcastically.

Attorney Shimanowitz – David, you mentioned that Larken or an affiliate of Larken has developed a self-storage facility somewhere, is that correct?

Mr. Gardner – We own and operate a self-storage in Hillsborough. I own and operate, well really two in Hillsborough, New Jersey, I have one sort of small one in Branchburg, New Jersey and currently have, a climate controlled one under construction down in Fairless Hill, PA which is in Bristol Township, Pennsylvania.

Attorney Shimanowitz – As similar in size.

Mr. Gardner – It is going to be 45,000 feet, listen I sympathize with them, I mean, there's a spot where it doesn't work. There's no question that (inaudible). I'm not going to argue with this, even

though I, for my, everything I've always known about development in New Jersey that you're not supposed to be listening to our sorrows (inaudible) economics. Whatever, I understand exactly what he thought about, there's a point where math just doesn't work. You got to have the one body to watch 30,000 feet or they can watch 80,000 feet, you still have to pay that one body. As an example.

Attorney Shimanowitz – As to the self-storage facilities that are up and operating, what has been your experience with the type of trucks that come to those facilities and your ability to control the type of truck?

Mr. Gardner – You can't control it. Testimony was ridiculous. You guys have been talking about his truck that he's going to rent out with his storage space. People show up in the middle of the night with these big trucks that they go to U-Haul and they show they move across the country and they show up in a 25 foot truck and that's the other thing, this parking lot is ridiculous with one entrance to come, they're going to pull in, they're going get stuck. One of my concerns is they're going to end up pulling into our shopping center, they're going to be parking next to blocking our fire lane behind our, the short side of our shopping center and also, you know, listen I'm with these guys on the traffic, these places don't generate a lot of traffic but this parking lot the way it is designed and our planner will talk about it, doesn't work. Okay, you are going to end up having people backing up into, onto Stryker Road and I know last time there was some concern from some neighbors about Stryker Road which, you know, but it doesn't, it definitely doesn't generate a lot of activity. It's definitely a lot less than it would be if there was a 1200 square foot convenience store; I'll give them that but.

Attorney Shimanowitz – David, how many units are there at Warren Heights?

Mr. Gardner – 414 total units.

Attorney Shimanowitz – Is there any provisions for storage areas for the owners and tenants at Warren Heights?

Mr. Gardner – Yeah, we have storage for every single unit there. There in, well there was 62 townhouses; those people have garages, but there is 362 condos; every single one of those people have storage in the basement. We gave them all like and 8 by 10 storage bin. There's no outdoor storage. I don't know what Mr. Ferruggia was talking about. Nobody is storing anything on the outside over there. Maybe in the apartments that were built in the 70's; Brakeley Gardens or whatever that is, maybe they have storage issues, but by us there is no outside space and there is no reason for; we haven't had issues and we have the storage anyway.

Attorney Shimanowitz – I think you made it quite clear in our testimony that you are not in favor of this being built, but if, hypothetically the Board were inclined to grant this, what changes to the plan might make the proposal palpable to you?

Mr. Gardner – After the last hearing, I walked outside and I gave this gentleman my card and I said to call me. Okay, because this was killing me to be doing this. Okay, and he didn't call me. Okay, instead his lawyer sent our lawyer a letter saying what are, you know, what's on your mind

blah, blah, blah. So, we all in my office, suffered looking at this, trying to figure out and we said, well if he knocked the third floor off and he put roof trusses there and gave it a roof blah, blah, blah, I mean I don't care how many square feet he has, so within, having, saying what I'm saying, I honestly, that's not my position any more. My position is that this thing should not be built. It is the wrong use. It is too big. It doesn't belong on this piece of property. Okay, but if you decide to give him approval, he should knock off the third floor and make a shingled roof at the fourth floor and bring it down very low and then, right now he's got no screws to him that he has to build any architecturally anything, because his plans that are on record, I guess, are these. The only ones you talked about a few minutes ago but I'm the only, we're the only ones to have seen this colored sketch that he spent \$7 having an architect sketch on to try and show some stuff around the sides of the building, but God forbid you go and give him an approval tonight. He's got to come back with plans and really try to make this thing look better from the back and the sides if you decide to go down that road. My hope is you deny the entire thing.

Attorney Shimanowitz- Thank you. I have nothing further for Mr. Gardner.

Attorney Sposaro – David tell us how you really feel?

Attorney Shimanowitz – I should have asked that question.

Vice-Chairman Olschewski – Tony, can I ask a question?

Attorney Sposaro – Sure.

Vice-Chairman Olschewski – Looks, is looks a consideration for us?

Attorney Sposaro – Certainly, esthetics is a relevant factor.

Vice-Chairman Olschewski – I know, I know this and what you said air, and light and blah, blah, blah; that is something we are supposed to be concerned about but looks, how it looks that is a consideration for us?

Attorney Sposaro – Certainly.

Vice-Chairman Olschewski – Okay, it's not pretty. I'll give you that.

Member Woolf – Can I ask Mr. Gardner a question?

Chairman Johnson – Yes. Sure.

Member Woolf - Why are you concerned about what the back looks like?

Mr. Gardner – Because of the way it will look from the condominiums that I still need to sell. Okay, because we still have 150 of those units in Warren Heights we've rented only because we have not been able to sell. We got caught in this recession. Okay, I think that this is an eyesore from the back. The daycare center I gave a lot of testimony on, I'm very concerned that this

daycare operator will lose kids. Okay, and not be able to get new kids because it's, he's, he's, you're in the middle of the suburbs and he's going to have something that feels like you are in Union County, New Jersey.

Member Woolf – All right. The reason I brought that question up, somewhere during testimony tonight somebody brought up about you are thinking about purchasing the Piazza property.

Mr. Gardner – Well, we've been working with the town for two years to try to settle your COAH lawsuit thing blah, blah, blah and thank you for bringing that up.

Talking over each other

Member Woolf – And, also, Mr. Gardner, how many acres is the Piazza property?

Mr. Gardner – I don't remember exactly

Member Woolf – Approximately 15?

Mr. Gardner – It's somewhere 10 or I, I don't know.

Talking over each other

Member Woolf – That entire 15 acres is zoned Highway Business and you are complaining about clients wanting to building on a one acre property and you want to take 15 acres away from our Highway Business to turn into residential.

Mr. Gardner – Are you asking a question? I'm not sure what you're asking. Well, I am not understanding the question.

Member Woolf – You want to take 15 acres of our Highway Business for residential

Mr. Gardner – Have it rezoned to help you satisfy your, your fair share housing

Member Woolf – There again, I don't know anything about that

Mr. Gardner – obligation to the

Talking over each other

Member Woolf – (Inaudible)

Mr. Gardner – And produce to you, as the town, a positive tax rateable that at the moment nobody would build another shopping, another retail anything. We can barely keep ours rented so no one is going to build on that thing, okay, but if we build these apartments, you'll have economic activity and you're going to have tax rateables above the cost of the rateables (inaudible).

Member Woolf – And, what these gentlemen here are proposing, we'll have tax rateables, our sewer impact will be almost zero, our traffic impact will almost be zero, our emergency services would be zero and you put 200 home units in, there goes our sewer capacity, there goes our traffic, there goes our emergency services.

Mr. Gardner – All of that has been taken into account and I don't think I'm here to testify about that project, okay

Member Woolf – I don't think your being up front because of why you don't want this built.

Mr. Gardner – You don't think I'm being up front. How much more up front do you want

Member Woolf – I think you're sticking up for your clients that you hopefully, will build on the backside of this

Mr. Gardner – I don't own that property yet, but so, in case you think I'm hiding, no, of course we get that, this would be ugly to be right next to that and this gentleman pointed out that it would be good because it's, you know, apartment dwellers like to have, it's good to have storage so, it's not the worst amenity to have by there and I'm with you, that's a good thing, by the way we are planning on having storage if we ever get to that point with the units on the Piazza property, but having said that

Mr. Shimanowitz – David, would your testimony tonight change in any way if you had no interest whatsoever in the Piazza tract?

Mr. Gardner – No, because I'm very uptight with Warren Heights. I don't want to own those 150 units anymore. I want to get out of here with those units okay, and I think that this is an eyesore and it's going to affect my ability to sell and I'm very concerned about the daycare center mostly, okay, that this guy's going to have a hard time keeping kids there, okay, with this next to him.

Member Woolf – What he said in testimony tonight, they made offers to you that is between you and them that you refused. I have no problem with you and the developer working something out on the backside of the building or all four sides of the building.

Mr. Gardner – We, I attempted to come up with a, I don't remember how we got into this, I'm being honest, I'm trying, I was trying to figure out what could we live with. I gave the gentleman my card at the last hearing. Okay, if it was reversed, the next morning I would have been on the phone with this guy at his office, with a cup of coffee saying let's figure out how to work it out. Instead, I didn't hear anything until we got a letter like three or four days ago.

Member Woolf – I think we, you and them

Talking over each other.

Mr. Gardner – Well, you're asking about it, that's what happened.

Attorney Sposaro – David, if the mass of the building stayed the same; the mass and the height stayed the same, you got vast experience as a developer, what would you do to improve its appearance and lesson it's impact upon the properties that you own or that you rent?

Mr. Gardner – The only thing that I was trying to potentially live with, was knocking off the top floor, and not even the whole top floor, maybe what this gentleman Eric said, Chairman said, if you reduce the fourth floor in size, I don't know what the floor plan sizes are, perhaps you can get a pitched roof and you would lose some square footage around the outside but perhaps you could put a real, not a fake mansard thing like this, which is ugly in my opinion, but a real roof, so it tied in with what we have built there. We have a beautiful shopping center and a beautiful office medical building. They look residential, they fit in with the character of the neighborhood, and my planner is going to testify all about the character of the neighborhood. So, I was trying to say can we live with that. Okay and you know my feeling is no at this point. I really think that that, because the set back is supposed to be 50 feet from the property line, these guys have the building I think it's like 10 feet from our property line, you know, and the woman across the street, her dad lives there, she's a lawyer; she was here at the last meeting. I think she spoke. She wrote a letter that I got a copy of and she brought up an interesting point, she said that height thing is one thing when the setbacks are like 50 feet, okay, but when you change the setback and all of a sudden the building is 10 feet from the property line, and you're still trying to say hey, but we're not over the overall height, well, they go together, you know what I mean, like that's the set back and the height thing work together. You can't say we moved it now we are asking for a variance to the side yard, the rear yard and all yards and then we're still; we're not going over the overall height. I couldn't care less about his fourth floor. How many floors are within the thing as long as it looks good? So I couldn't care less. (Inaudible)

Attorney Sposaro – What would you do to make it look better? If the shape and the size of the structure was to remain the same, what would you do to make it look better?

Mr. Gardner – If the shape and size

Attorney Sposaro – Size of the building

Mr. Gardner – I do not have a way to make it look better with the current thing. That is what I keep coming back to. It's too big. It's not even close to something you can work with.

Vice-Chairman Olschewski – David, can I ask you two questions?

Mr. Gardner – Sure.

Vice-Chairman Olschewski – I just want to confirm that what I heard was true, you guys made at some point an offer to buy the property, cause when I think, somebody may remind me, and I forgot, but it was testified here that the property was tried to be rented and there was activity, but nothing ever happened. Did you guys make an offer?

Mr. Gardner – Years ago, when we developed the shopping center and the office/daycare

Attorney Sposaro – How many, David give us a frame of reference; a decade ago, 15 years ago

Mr. Gardner – More even. We, it wasn't me. My dad had some negotiation with I guess whoever the current owner is. I forgot his name. I don't know if he is here or what not but

Vice-Chairman Olschewski – Current owner is shaking his head.

Mr. Gardner – Okay, so my dad, I think spoke to him and tried to make a deal. He wanted too much money for the amount of square footage that it would generate; otherwise, we would have bought it and had the whole thing.

Vice-Chairman Olschewski – The shopping center you guys have built there, do you have basements in there?

Mr. Gardner – No.

Vice-Chairman Olschewski – Is it possible to have a basement in there?

Mr. Gardner – In our shopping center?

Vice-Chairman Olschewski – If you would have wanted to build a basement

Mr. Gardner – Sure

Vice-Chairman Olschewski – because I will testify that you cannot have a basement

Mr. Gardner – No it's expensive, I understand it (inaudible).

Vice-Chairman Olschewski – It's possible?

Mr. Gardner – Yeah, and there's limestone here. You got to do a lot of testing, there's things you got to do in Lopatcong to build, but, you know what I mean, yeah it's just going to cost more money because you have to have a steel floor, you know, another elevator for you, you know, it's possible, it's just going to cost more money.

Vice-Chairman Olschewski – Okay, thanks.

Chairman Johnson – Has anything been suggested visually on the outside as far as putting in a stone facing or façade?

Attorney Peck – Can I just clarify one thing? Mr. Angeleri owned the property for eleven years that was, he acquired the property long after the shopping center was built, so, any discussion with the Gardner's to

Talking over each other.

Mr. Gardner – but I'm not aware of what happened with that.

Attorney Sposaro – So, thank you for that entire (inaudible).

Chairman Johnson – So, my question was visually, has anything been presented to you to change it into a stone faced façade around the back or the side?

Mr. Gardner – They sent over a small sketch. I'm trying to make (inaudible) three other sides of the building look a little bit more like the (inaudible) because what they drew up, was not acceptable to me. Okay, verbally, my lawyer went back to their lawyer and said knock off the third floor, fourth floor and give us a real shingled residential style looking roof. I see storage places built all over the place with that kind of look. Other boards and developers have the same sort of conversations; they did one in Raritan Borough on 28; it is very pretty, it looks like our buildings.

Chairman Johnson – When you're suggesting to knock off the fourth floor, are you, is that another way of saying lower the height of the building?

Mr. Gardner – No, he can keep the height. There needs to be a

Talking over each other

Chairman Johnson – Okay, we'll hold off on that.

Vice-Chairman Olschewski – How come we haven't seen any more plans of the back, and the front and the sides?

Talking over each other

Mr. Shimanowitz – Isn't it that exhibit that's up there?

Talking over each other

Chairman Johnson – Are you talking about a rendering? (Inaudible).

Vice-Chairman Olschewski – I mean, I have, and Paul maybe you can answer that for me, I just had the pleasure to attend a training session and there was trainer there and, actually, for Coordinated Health he was the engineer, and he presented a set of plans which I was sitting here and actually approving Coordinated, I have not seen these things, they were plans where they had renderings, they have plans how the cars are parking, how cars are getting in and out. They'd have plans of the lighting and I asked him how come I have not seen the plans and he said in Lopatcong are always, are only getting the minimum set, because that is all we really want. That is not all I want. I want to get the most plans I can. How come we never get like more than we could?

Engineer Sterbenz – The applicant is going to submit what’s required on the Checklist. That doesn’t prevent the Board from asking for some more details. So, if the Board wants to see the information on those Boards up there, the ones that I’m pointing at right now, and a colored rendition of that, then you can ask the applicant for that. The applicant will come back with colored rendering of that so you can see what it looks like.

Vice-Chairman Olschewski – Okay, thanks.

Member Pryor – I have a question for Tony and Paul. My understanding at any rate, under the Municipal Land Use Law, if a guy came in with a conforming application, we don’t get involved with architectural standards. We don’t have any. We can insert ourselves when variances are asked for all right. A guy asks for a variance more things come into the picture. This is a non-conforming lot, it is definitely a hardship. I guess we can talk about architecture now, but we shouldn’t be designing buildings for the applicant. If it is an ugly building, I don’t know, where’s the criteria that says we turn down an ugly building. That’s a very subjective topic.

Vice-Chairman Olschewski – Is that not just the question I asked Tony when I said

Member Pryor – Zoning takes care of air and light. All right, but if a guy has a conforming application, he’s not required to, you know, submit architectural plans under the Municipal Land Use Law.

Vice-Chairman Olschewski – My question to Tony was

Member Pryor – And that’s my question. That’s my understanding.

Planner Ritter – Well, even under a conforming application, you have to submit architectural plans as part of your site plan.

Member Pryor – Well, it’s going to prove it meets height and so on, but are you going to pick windows? Are you going to start talking about

Planner Ritter – Well, were not talking about actually picking the architectural plans, I’m just saying that you would get, a set of architectural drawings with elevations showing the materials he intends to use. That you’d get. That’s different.

Member Pryor – We don’t have architectural standards though.

Planner Ritter - Well, we do require the submission of architectural

Member Pryor – What do you measure them against?

Planner Ritter – Well, that’s a question he’s bringing it in for the Board for you to review if you’re looking at it. I’m, that’s essentially, what it is and it’s against your standards. We don’t have

Member Pryor – If he had a conforming application, would we turn it down because we think the buildings ugly?

Attorney Sposaro – No.

Planner Ritter – No. I really don't think we would.

Member Pryor – I'm trying to establish the parameters here. We're getting all over the place with the architect.

Planner Ritter – You had a package to look at

Attorney Sposaro – You cannot regulate when you have a conforming site plan. You can't regulate ugly, but when you do not have a conforming plan, one of the purposes of zoning under Subsection 2i is to promote desirable, visual environment through creative development technique's and good civic design and arrangement.

Member Pryor – So, could you repeat that Tony, just go back, under what conditions?

Attorney Sposaro – To promote a

Member Pryor – No back up. I mean is that the purpose of zoning?

Attorney Sposaro – It's one of the purposes of zoning.

Member Pryor – All right. So, I mean that's how you establish the zoning, but when somebody comes before the board, you have a lot more flexibility if he is asking for variances correct?

Attorney Sposaro – Yes.

Member Pryor – And that's when you get into, some give and take and you're looking at the whole package.

Attorney Sposaro – Correct.

Member Pryor – But we wouldn't normally start critiquing the architecture of a building that's conformed to our zoning?

Attorney Sposaro – You wouldn't necessarily critique it, but I've certainly seen boards with wholly conforming applications still express their view in a spirit of cooperation. An applicant will make changes to the architecture in order to satisfy the board. It is a factor.

Vice-Chairman Olschewski – Yeah, that's the question I initially asked. The first question I asked is does appearance, for us, something of which is to be considered and you said yes. Now you said maybe.

Member Pryor – I’m not saying, I’m asking the question. I

Attorney Sposaro – If it is a wholly conforming site plan. No variances, no design waivers, design visual and esthetics don’t come into play but once variances are needed to the extent they’re relevant to the appearance of the structure, then design does come into play.

Member Pryor – All right, I’m not quarreling with that. When you have a variance, you are open to a lot more discussion.

Attorney Sposaro – Exactly.

Member Pryor – But it’s not our job normally to start critiquing the architecture?

Member Frank – We have the architectural plans. Am I correct because, you did, your architect when they came in, they made a presentation to us how everything was going to look (inaudible). Wasn’t there an architect that was here at one meeting he

Mr. Ferruggia – No.

Member Frank – Okay, I’m just asking about what (inaudible) I wasn’t sure what they were.

Chairman Johnson – I know we’ve seen those before.

Member Frank – Okay.

Attorney Peck – We did present a color rendering at the first meeting but we didn’t I don’t believe, we gave any architectural testimony.

Member Frank – No, not testimony, but there was a picture of

Attorney Peck – We did, which I think we left behind.

Member Frank – It showed (inaudible).

Talking over reach other

Member Frank – Yeah, that’s what was shown. Did you see that?

Member Fitzsimmons –This is the area of discussion.

Mr. Gardner – Correct.

Member Fitzsimmons - This is the two shopping malls.

Mr. Gardner – No, no, no. This is our shopping center here and this is the office/medical and that’s the daycare center.

Talking over each other.

Attorney Sposaro – All right, I'm just trying to listen to a few people at the same time. No it's okay. These renderings are a part of the record. They were submitted with the application. We do not need to separately mark them but if someone wants to point to them, David, you've been pointing to different, so why don't you just say what they are?

Mr. Gardner – These two are from their set.

Attorney Sposaro – And, what are they, just tell us what sheets they are?

Mr. Gardner – They are Sheet A-4 and A-3. Front and Rear Elevation. This exhibit is ours and has not been marked. So should we mark this?

Attorney Shimanowitz – We can mark it now, the architect and planner's going to use it.

Attorney Sposaro – Why don't we wait for the architect/planner?

Mr. Shimanowitz – It might be better for him to explain because he prepared it and then if the Board member doesn't mind holding that question and either David can answer it or the architect/planner can answer it.

Attorney Sposaro – Does anyone else have any other questions of Mr. Gardner?

Member Fitzsimmons – Can you give me a tour of this?

Attorney Sposaro – Why don't you wait and let the planner give the tour of that because he's the one that prepared it.

Chairman Johnson – Is there any other Board questions of this witness?

Attorney Sposaro – Anyone from the public have any questions of Mr. Gardner?

Chairman Johnson – Public questions.

Attorney Sposaro – Thank you David.

Chairman Johnson – All right we're going to take a five minute recess and we'll be back at 8:45.

Recess.

Chairman Johnson – We'll bring the meeting back to order. We had another witness that was going to continue correct?

Mr. Shimanowitz – Thank you Mr. Chairman. My next witness is Mr. Rob Larsen who is our architect and planner.

Attorney Sposaro – Raise your right hand please. Do you swear to tell the truth, the whole truth, nothing but the truth?

Rob Larsen – I do.

Attorney Sposaro – State your name for the record and spell your last name please.

Rob Larsen – Robert Larsen – L-a-r-s-e-n.

Mr. Shimanowitz – Rob, will you give the Board the benefit of your qualifications and we're qualifying you both as a licensed architect and planner expert so make sure your qualifications cover both of those.

Rob Larsen – So, I just mentioned that I am a licensed professional architect as well as a professional planner here in the State of New Jersey. I have been for some time. I have testified in the capacity of both on projects retail and residential, industrial of varying sizes in front of boards as both at the same time and each individually. Before, I presented before in this board before, as a planner and as an architect. I am employed with the firm of Chester, Pliszowski based in Matawan, New Jersey and I have been practicing planning and architecture for the past 18 years.

Mr. Shimanowitz – And, Mr. Larsen is an expert in architecture and planning.

Chairman Johnson – Tony, that sounds fair.

Attorney Sposaro – More than qualified, go right ahead.

Mr. Shimanowitz – Mr. Larsen before you get into the substance of (inaudible) could you just describe to the Board your practice? Do you normally represent developers, objectors, municipalities, what do you do for a living?

Rob Larsen – I normally represent developers. This is actually my whopping third time representing an objecting developer and only on occasion have I represented municipalities.

Mr. Shimanowitz – Thank you and last housekeeping question or the second to the last housekeeping question is did you attend or did you review the video of the prior two meetings which would be the January and February?

Rob Larsen – So, I had the opportunity to watch the You-Tube video of the January hearing and listen to it through. I was at, I was present at the last hearing in February and I have also reviewed all of the application materials that were available to me as well as the zoning ordinance and the master plan.

Mr. Shimanowitz – Before you get rolling with your planning and architectural testimony, it's going to be more efficient if we can go through your exhibits. So, if the Chair doesn't mind, I'd

like to mark them all and we don't have to keep stopping. So, Rob why don't you just

Chairman Johnson – Yeah, that's fine.

Mr. Shimanowitz – go through your exhibits one at a time. I'm a little lost on, are we on 02? I think someone marked my letter as 01. I have to know, I lost track of exhibit marking here.

Attorney Sposaro – Beth, how did you identify them?

Secretary Dilts – The last ones I did as 11, 12 and 13. I didn't separate his out yet because I didn't hear what you were saying.

Engineer Sterbenz – Mr. Shimanowitz letter should be 01 and the other two be A-11 and A-12. That would be Tony's letter.

Mr. Shimanowitz – A-11 and Mr. Sposaro is A-12. So you want us to continue, our next exhibit would be 02. Okay, so Rob now that we got that straightened out, if you could just run through your exhibits starting with 02 and mark them with today's date identifies what they, the date and who prepared them.

Rob Larsen – Okay, so the first exhibit I have here is marked as 02, prepared by my office under my direction dated 3/22/19.

Mr. Shimanowitz – 19 or 17.

Rob Larsen – 17 wow, fast forward two years. It is a collage of photographs as well as an aerial representing eight photographs of buildings in the immediate surround to the project site as well as an aerial in the center showing the area of the subject site and identifying by letter each of the photographs that I have included on the board. Each of the photographs also has on it noted a height and my office did take an opportunity to estimate the height of the various structures in the surrounding area.

Mr. Shimanowitz – Move onto 03.

Rob Larsen – I'm going to mark 03 and date it's today 3/22/17. An image, again prepared by my office titled Strykers Road Height Relationship Diagram dated on it March 22nd, 2017. It depicts a diagrammatic representation of both the proposed structure, the relationship in height and physical location as seen from Strykers Road to the existing retail center, to the existing daycare center and ghosted on in red, the relationship to the existing single family homes directly across Strykers Road. What I'm noting as 04 is a board, again prepared by my office, by our renderers and it depicts two photographic images before and after scenarios. A before and after shot as seen from Strykers Road of the street scene before and the street scene with a composite I was able to place the applicants architecture three-dimensionally into this photograph to create a rough estimation of what it might appear in its mass and look. That's from Strykers Road on the left and as from Baltimore on the right. So again, before and after, before above, after below.

Mr. Shimanowitz – If you could continue Mr. Larsen, I mean your main role tonight is to respond, give your opinion as to the planning justification for the variances that are being requested by the applicant.

Rob Larsen – Yes, and I'm hopeful I can shed some light on the previous conversations that were started with Mr. Gardner in terms of height. The purpose of architecture, whether we are speaking directly to esthetics or to mass and shape and form, that's where I'll wear my architects hat and it directly parallels when I wear my planners hat to the context of this and the appropriateness of this structure because it is seeking variances. So, as I proceed through my notes, I will agree, you know, there, because we're seeking, the applicant is seeking variances here, the applicants planner did note that the site does have an irregular shape that fits the C-1 criteria. I do not disagree that the C-1 criteria are applicable here but to what degree is really what I'm going to talk to you about tonight because I do feel that this is a significantly overdeveloped proposal. I do disagree in a relationship to that size of the building that the economic viability that's driving the size of the structure is at play from the point of a planning justification for giving, granting a variance. The first variances that I'll speak to are the setback variances and I'll note that, again, this is an undersized lot, it's been zoned so. That is an existing hardship and again, that's not one I'm speaking to, but the site which is roughly 55% smaller at .91 acres than the two acres required is proposing a building that has a setback that's being reduced by 80%. Where 50 feet is required, they're proposing ten and where 50 feet is required they're proposing, I believe, 15.6 so 74.4 and or 74.2 and 80% reductions which I believe are excessive variances begin sought. I will note, again, this has been discussed, the setbacks are often related to height when an ordinance is designed, the maximum height in that zone is often related to the setbacks that are designed as part of those Bulk Standards; we have 45 maximum height, we have a 50 foot setback. The scenario of a 45 foot building built to its max height in the zone at the proper setback of 50 feet is very different than a 45 foot height of a building at 10 feet from the property and that is inherent to the design of that zone in my opinion that when you have a certain setback you have a reasonable expectation that the height relationship is proportional. In this zone, if all things were considered, there would be an expectation of a 100 foot building separation right? We'd have 50 feet on one side and 50 feet on the other and understanding that this site is odd shape and it is an undersized site, I do expect that there would be purpose to giving a variance for a setback because of the size and the irregular shape but again, this is a fairly significant reduction; 80%, you know, going from 50 to 10 is a big number and that said, it does relate to the height of the building. They are asking for a Height Variance. I realize

Attorney Sposaro – Excuse me, they're not asking for a Height Variance, they're asking for

Rob Larsen – They're asking for a Stories Variance as it relates to the height so I.

Attorney Sposaro – Go ahead. They're asking for a Stories Variance, not Height Variance but I just wanted to correct you, go ahead.

Rob Larsen – For clarification, I am not trying to make a statement they're asking for a D level variance. They're asking for a C level variance in relationship to stories. The reason I say height is because again, in my opinion, there's a purpose to the reason there are two requirements in the

HB Zone. One, for three stories and one for 45 feet. Your zone calls for, your ordinance calls for height to be calculated as the average grade around the building to the maximum height of the roof. The other structures that are in the area and I'm going to walk us through 02 have heavy sloped roofs. There inherent to the 45 foot height and the three stories is, to me, as an architect, I'm giving the ability to employ roofs that are appropriate. I'm giving the ability to relieve that upper floor. So why, I understand there is no limitation that says you can't have a flat roof. It is certainly not contextual, and I believe the purpose of the third story, the three story restriction in the HB Zone as related to the 45 feet, is appropriate. I'm given that ability as an architect to use that upper area to create an architectural relief in terms of mass and again, this directly relates to the relationship of the structure to the setbacks. So while, I believe, I agree if you slice it up as four floors behind or slice it up as three floors behind, it doesn't matter. It does relate to the architectural character that is available to you whether you are three stories or four and I agree with, I believe a statement that Mr. Gardner said, you don't necessarily have to lose the entire fourth floor, but if you were able to relieve some of the edge, the mass of the wall of the building would set a gutter line lower than 45 feet. Again, as many of the other structures in the area do, relieving the mass and scale of the structure that we, again feel, is a lot too big, I'll note that the mansard roof that's been spoken to whether it's as it's been proposed on the existing documents that have been reviewed or whether it is for around the entire building, it is a roof only in look. It is not covering anything. The building is applied to the exterior facade so the mass and scale of that 44.6 inches is right up to the edge of the building and that mansard is only an overhang. It's applied to the side of the building. There is no relief; it is not covering any interior portion of the structure. I have notes here regarding the buffer. We are, they're not requiring a buffer which is required at 25 feet and I understand the opinion is one, it is not needed but again, as Mr. Gardner mentioned, notwithstanding the esthetic character of the structure, you know this is a large high structure with a plain flat wall directly adjacent to his outdoor users, his compliant outdoor users, it will effect it, it will have an effect on them in terms of not being buffered, you know, at all. I do realize there are trees there but the trees are deciduous; they are not always present and again, this is a structure that I believe is imposing on the two neighboring lots. Context, I'd like to just go over to 02 and see if my stuff (inaudible). The context, I believe that their planner spoke to, that this was an appropriate infill; it was appropriate for the context of this area and I again, nothing but respect for obviously, his years of experience, but in my opinion, this, what's being proposed here is not contextual with all of its surrounds. I have here Property A noted as the medical office, I'm not sure I don't remember the name of it, but it's the peak of its maximum hip roof we estimate to be about 30 feet with a gable that hit character. Property B, a house that's around the turn on Strykers Road just past Baltimore again, with a straight gabled roof with a 22 foot estimated maximum. Property C, this guy's right across the street and he has just a ranch style house that is again, with a running gable roof 15 feet to its maximum peak. Property D another single family house with approximately a 20 foot height to the peak. Again, gables and cross gables. Property E another single family house directly across from the retail with approximately 20 foot to its ridge. Property F another single family house set back and don't mean to say that each of these directly affected by the mass and scale; I'm showing you context that this is what's all around us and that, the affirmative statement was made that this is a proper and contextual addition, infill to this area, I really do disagree and you can see here Property G and HG being the existing retail with its cupola gable and hip roofs, and Property H which is the daycare directly next store.

Attorney Sposaro – Are all the residences on that board, what zone district are they in?

Rob Larsen – You know, I'm not exactly sure what zone district they are in. I cannot answer that.

Attorney Sposaro – Thank you.

Rob Larsen – And Mr. Sposaro I would like to mention that in the context of these positive effects that were offered of this development and the position reasons in terms of the Highlands Center designation I do understand that above your zoning, I have reviewed your master plan and specifically, the Highlands Master Plan Element. This is in fact in the Highlands Center. I have read in great detail that they suggest that we do focus development in this area that is appropriate and contextual in size and scale. If I read it correctly, realizing that the Highlands Center is in fact a huge area, comprising Lopatcong, large portions of Lopatcong, Phillipsburg, Pohatcong and Alpha so we're talking about a very small lot in a very small portion of that center and that said, the language in that speaks to the appropriate context. Again, why is mass and scale, I'm going to offer another exhibit in a moment, I do not think this structure in its current design with its setback and its height directly to the edge, is contextual with its surroundings. Speaking to the C-2 criteria, it was offered that the Purpose G was one of the purposes of the Municipal Land Use Law being furthered by this application. Again, planners have different opinions and I disagree. The, as Mr. Gardner testified to that there may be a need for storage here. A need for storage of this big and this many square feet only justified by economic viability. Again, I do not see that as a justification that this meets Purpose G which is for the appropriate location for a variety of uses according to their environment and needs. I think it's too big for its environment and I think that the need could be met elsewhere considering storage is a regional, is not this relationship to its directly to adjacent structures and again, when justified by size, by its economic viability, I do not think that's relevant. Second, Purpose C was offered as a furtherance of the Municipal Land Use Law. This speaks to providing adequate light, air and open space and this one I have, I disagree greatly. We are taking a 50 foot side yard setback down to 10 feet or 15 feet. We're putting a 45 foot wall without any architectural relief that much closer to the neighbors. This, to me, is reducing adequate light, air and open space. We are not providing circulation around the structure for fire safety which, you know, that's not necessarily implied there but I believe we even heard testimony that they can maybe get some small lawn equipment back there to maintain their basin. So, to me, they are not providing adequate light, air and open space with this development. On balance, the negative effect on the neighbors in my opinion is evident. You've heard from Mr. Gardner not owns the property directly to either side and I deal, having heard there was an objection from the single family across the street, there is an obvious negative effect on the neighboring properties and that the positive effects that were offered are not outweighed and in my opinion, the negative effect of this structure in its current configuration size, scale and placement is greater than the positive effect which again I continue to hear that the economic viability is the strongest need. Your master plan does speak to avoiding inappropriate development in relation to the Highlands. The Highlands does call, well as I read in your master plan element does call for an increase in intensity but as it relates to continuing to preserve the Highlands and unless I heard, and I don't believe that this small site in this particular area is the make or break for the Highlands. You know I do understand that it is in the Highlands Center but I don't think the justifications of continuing to preserve the Highlands in any greater way is a positive effect of this development by putting this oversized structure on

this small lot. There has been some discussion about truck circulation. I'm, my concern with the truck circulation is not so much that I'm a traffic expert but I am concerned that there is going to be safe operation of the expected size vehicles that are going to be in this parking lot. I've heard discussions on of a box truck that's to be brought in and need there can be further clarification but turning radii I saw in the diagram in the engineering plans as applied show a garbage truck and I've not seen the relationship of a box truck maneuvering to the site in this particular configuration and again, I do realize there's going to be a 10 foot box truck provided but I am concerned that larger vehicles are going to get in here, in a very small parking lot on a very small and tight turn and not be able to maneuver safely. So again, not being a traffic expert, I do prepare lots and lots of plans and work with lots and lots of traffic engineers and site engineers and again, I think I would maybe need more clarification to believe that this has safe operation for the large vehicles that are going to be coming into this parking. Ron, unless I forgot something?

Mr. Shimanowitz – No, you're doing a good job. I have nothing further for Mr. Larsen.

Chairman Johnson – Any questions from Planning Board members?

Mr. Shimanowitz – Oh, I'm sorry.

Chairman Johnson – Do we want to go through the other exhibits?

Mr. Larsen – I brought them. I didn't use them. 03, we went out there and actually, physically located the retail building, the proposed self-storage structure and the existing daycare and we approximated the location of the single families across the street and as you can see, the retail center next door was approximately a 28 foot height with ridge. We do have approximately a 40 foot cupola. It is a single architectural element related to this tan color which, the architectural plans say 42.2 and I realize that the variance sought here is 44.6 is still compliant. We drew 42.2 which was from the documents that were applied and again, you can see there is a slight grade change to the 30 foot max height of the existing daycare facility. This red here represents the maximum height of the very small single family house across the street and again, I believe this diagram speaks to the, this is a bit out of scale and a bit out of context with the area and the before and after's here again, this is now A-4; looking at the left here, the before shot without the proposed structure and the after shot.

Mr. Shimanowitz – Is that 04?

Mr. Larsen – 04. The before shot without the structure and the after shot with it, again, it shows this very plain and straight lined speaking to again, I do not believe this shows something contextual with the soft and pitched architectural plan

Member Pryor – Could you do me a favor and walk that in front of the whole Board here so we can all get a good look at that?

Mr. Larsen – Sure, and then, and Mr. Pryor just saw I can, as I start walking, I'll refer to both the one on the right is as seen from Baltimore and it's cropped in, you can see that there's from, from

the rear as it's currently applied it's just a big white box or a big box in white, I'm not sure of the color they would propose but the statement was made earlier that the only person who is going to see this from the back is going to be Mr. Gardner's possible future development, but on my way here, when you come over the rise on Baltimore, it's like I'm looking directly at that so until there's something blocking it or even if it does block it, everybody is going to see directly into the back of this. This is from Strykers and that's from Baltimore.

Member Pryor – Could you walk it across the front here so we could all get a look at this?

Mr. Larsen – I can hand it up here.

Member Pryor – Eric, do you want a closer look?

Chairman Johnson – Thank you.

Engineer Sterbenz – Is this what you would a, is this what you would call a photo simulation what you presented here?

Mr. Larsen – Yes, it is a photo, I guess a simulation where it approximates the size and scale given the obviously, it's given the perspective. We have computer programs that estimate the heights as we know them. We took some exact heights of the gutter lines of the adjacent buildings and we're able to estimate it and I do not mean to portray to the Board that that is the exact way it is going to look, but that is given all of my best calculations and as a rendered representation of a composite that is what we feel that the proposed structure could look like in the context of being seen from Baltimore as well as Strykers.

Attorney Sposaro – Just a quick look at the zoning map, it appears that all of the residential properties in the first photo that you have, correct me if I'm wrong, but I think all of those residences are in the HB Zone. Is that correct?

Mr. Larsen- Again, I never say something I'm not 100% sure of under oath so

Attorney Sposaro – Are they permitted uses in the HB Zone?

Mr. Larsen – No and given that information again, to clarify, the context here is not only the HB Zone is obviously a permitted use, but it was affirmatively stated that this is a proper and contextual infill and I disagree that it is not.

Attorney Sposaro – Anyone here have any questions for Mr. Larsen?

Chairman Johnson – George, what do you think of the rendering? What did you think of the rendering?

Planner Ritter – Well, I think it's, all I'll say is I think it's something, I'm not sure scale wise whether, sometimes when you do these, these get twisted. I don't know I haven't had time to really look at it and see if it all lines up the way it should but, obviously, it's a representation that

the Board should look at in terms of how the building fits in. I'm not sure it's precise as to what you are looking at.

Chairman Johnson – The height might be a little bit more accurate on that rendering that maybe the horizontal locations were shown.

Planner Ritter – Yeah, in terms of how it relates to the road and that sort of thing but, obviously, it's, I think it is a portrayal of what you might see out there.

Chairman Johnson – Was that all your, that was all the displays, correct?

Rob Larsen – Yes, is there any purpose to manning around the other ones or

Member Pryor – If you all want a closer look, sure why not.

Chairman Johnson – I can see it from a distance. Mr. Larsen gives a second to see if we have questions from you. Any further Board questions for this witness, Mr. Larsen? We can open it up to, where do you want to go to the applicant first.

Attorney Sposaro – That's fine. Well, let's find out if anyone has questions of Mr. Larsen.

Attorney Peck – If I may, I have the exhibit. I think we're at A-14

Engineer Sterbenz – It be 13.

Attorney Sposaro – What is this?

Attorney Peck – This is an aerial through google earth that shows the surrounding neighborhood. Mr. Larsen, I'm going to show you an exhibit that's just been marked as A-14, A-13 and I'll represent to you that this is a google earth aerial photograph that depicts the areas around. Now, when you were presenting your exhibits, you used words like you estimated the height of the buildings and you approximated the distances, did you actually have measurements taken of those buildings or were you relying on your professional judgment to determine those?

Mr. Larsen – I used a little bit of both. On the buildings that my client owns, I was able to walk up and measure to the gutter line to start off my estimations to find out that in one case, was about 15 feet to the gutter line and then we used, again, I used my professional knowledge as an architect estimate then from that the scale to the ridge. I did not go out with survey equipment and shoot the ridges so, hope I answered your question.

Attorney Peck – Well, taking a look at A-13 if starting at the bottom, you see Strykers Road, then the ground Baltimore Street coming up, let's start at the very bottom at the shopping center. On google earth has a magnificent feature where if you put your cursor over an area, it shows you the elevation, the height. So, I represent to you that at the southern corner of your client's shopping center, ground level, does that not depict 335 feet?

Mr. Larsen – Yes.

Attorney Peck – And the roof 375 feet. So, there is a 40 foot variance right there, so, 40 foot high at the southern end of that structure. Moving further, you see the next ground point that's plotted at beginning 336 feet where the building kind of makes its “L” - 373 feet at that point so there's a variance of 37 feet. 389 feet at the cupola so, that's a variance of 53 feet and then 336 to 368 that's a 32 foot height from both ends at the, I guess, eastern corner of that building. Are you familiar with the Warren Heights development?

Mr. Larsen – Yes.

Attorney Peck – The heights there, ground level, 341 feet to 384 feet. That's a 43 feet in height of a very substantial, substantially sized group of buildings. The next building, 303, 337 of 381; that's a 44 foot height almost across the street from where this proposed structure is and even the daycare center has a 33 foot height distance and 31 feet with the building. I'm not sure actually, which is the medical, which is the daycare.

Mr. Larsen – This is the medical and this is the daycare.

Attorney Peck – All right then reverse that. The medical is 33, daycare is 31. So looking at these google earth numbers and the heights of the surrounding buildings and not just the residences that won't pre-date any of this other development, isn't 44 feet in height consistent with something that's 40 feet, 44 feet, 32 feet, 37 feet?

Mr. Larsen – Well, I'm going to answer in two parts – no because 1. I would just note that the numbers that were referring to directly on top of the end of the retail which are noted on my photograph as 30 feet, this reference number here is actually 32 feet, so

Vice-Chairman Olschewski – What do we know about the accuracy?

Attorney Peck – As much as we know about the accuracy of the exhibits marked with “O”.

Vice-Chairman Olschewski – So, you're saying because we don't know if these are right, these may also not be right?

Attorney Peck – I'm saying it's taken from google earth and it has as much validity as anything else that's been presented tonight in the absence of survey records or other scientifically calibrated measuring systems.

Mr. Shimanowitz – If I could interrupt Mr. Peck but I do have to put an objection on the record. The difference here is we have a professional who's been sworn, who is under oath, was testifying in front of you. This is a piece of paper from the internet so the challenge is made to my (inaudible) to the accuracy. He is under oath, so I'd just like to point out

Attorney Peck – I didn't challenge him on the accuracy of what is depicted here. I just asked

Attorney's talking over each other shouting.

Attorney Sposaro – (Inaudible) one at a time okay so, one at a time.

Mr. Shimanowitz – I think what you did Mr. Peck, is you challenged the accuracy of what Mr. Larsen testified to as to his exhibits, not as to your exhibit. All I'm saying that he testified under oath.

Attorney Sposaro – I'm sorry, let me just jump in here. The rules of evidence as they would apply in courts, do not apply to these board proceedings. We can admit this, you can give it the weight you think it should be given and taken into consideration; no more, no less.

Vice-Chairman Olschewski – Okay.

Chairman Johnson – Do we have as-builts for the building that are there now, I mean, George

Planner Ritter – Well, I think you're headed the same way I was. In terms of the, getting the roof slopes in the relation of the roof to the, I'm sorry, to the existing parking areas and that sort of things, obviously, these are buildings that were done by Mr. Larken. Could you, or did you have access to the architectural plans for the shopping center that actually set the roof heights?

Rob Larsen – I did not, which is why I went out in the field and did the best I could without climbing up on the roof.

Planner Ritter – Okay, so in essence, you don't, I know you did the best you could but the answer is, you estimated where the peaks were too?

Rob Larsen – I did and in just for a relationship, because again, I don't, I will not speak to the accuracy of google, the difference between what google represents in one particular building to what I estimated in the field is two feet. So, if it's a substantial difference to say that the peak of the roof is 32 or 30, the larger point I hope the Board has been able to bring from my testimony, is that all of the numbers we are speaking to are two ridges at the center of structures both at Warren Heights, the retail, the daycare and the medical/office building and all the houses, not the direct edge of the facade.

Planner Ritter – Okay.

Attorney Sposaro – Mr. Peck, any other questions?

Attorney Peck – Yeah, is a color an immutable thing? In other words, can the color of the building change?

Rob Larsen – Yes.

Attorney Peck – Yeah, I mean you've depicted this white mass probably chosen for the best contrast in your, in your photo. What made you believe that the building would be white?

Attorney Sposaro – Is there anything in the record that tells us what the color will be?

Attorney Peck – We will work with whatever the Board and the professionals want.

Attorney Sposaro – I asked the question do you have

Attorney Peck – I don't believe we put any; I was not here, February

Mr. Ferruggia – I believe my statement was it was going to be earth tones; muted earth tones to blend with the (inaudible).

Rob Larsen – Would it be okay if I got the, again, there was rendering presented earlier

Engineer Sterbenz – For the record, this is A-2.

Talking over each other.

Attorney Peck – But we'll represent, I mean that's, we will do whatever, work with the Board, it's professionals for whatever color the Board thinks is appropriate. We've represented on the record here tonight, that it would be muted earth tones so I think color is kind of a red-herring here but we'll do whatever the Board wishes. Now,

Mr. Ferruggia – And, color doesn't cost money. We want it to look beautiful.

Rob Larsen – So, if I may, again, I meant to not represent the proposed finish. White is a generic bottle filled color I use, where I saw a brick, I made a brick color, where I saw roof, I made a roof shingle color. I meant, I did not mean to portray this absolute finish.

Attorney Sposaro – And, in fairness to Mr. Larsen, the color rendering does show a portion of the building to be white.

Attorney Peck – But it is not set in stone. We represent again, it will be muted earth tones. If the Board has a better suggestion, we would be happy to accommodate it. Isn't it true, I believe you testified that the impact of the building would be fairly significant on neighboring properties? Isn't the standard actually that impact effect has to be substantial?

Rob Larsen – The impact has to be substantial and be out and the positive has to outweigh the negative and it is my testimony that it is not outweighed by the positive aspects of this application.

Attorney Peck – And, did you not also testify that whether it's the building, is three or four stories behind a mansard roof, doesn't matter?

Rob Larsen – That was not my testimony. I said it doesn't matter in terms of what is behind the roof and I quantified that in context with my testimony that but it does mean something to how

that roof is used and how the maximum height is achieved. Again, that just because 45 feet is permitted, it doesn't mean we throw away the idea that well there would be a peaked roof. The example has been set in the entire surrounding that three stories, 45 feet as is Warren Height is designed that three stories is the building, the roof takes you to the 45 feet, that is my testimony and the is deep enough, that a sloped roof can still be achieved and you can get something else behind there great.

Attorney Peck – Then you testified to, I don't know actually do to or your client, there's testimony that basically hinted at trucks coming in, in the middle of the night, are you aware of what the operating hours of this facility would be or what the size of the interior storage units would be?

Rob Larsen – I'm not aware, I did not make that statement so I won't answer it but I will tell you that I did review the architectural plans and they appear to range in size from approximately 10 by 20 down to some very small like 3 by 5's but again, that's only with the available architecture that was given to me. They were bigger on the first floor, smaller on top.

Attorney Peck – Okay, very good. I don't believe I have anything further thank you.

Attorney Sposaro – Does anyone else have any questions for Mr. Larsen? Thank you very much sir.

Chairman Johnson – No public questions. Okay, none.

Attorney Sposaro – Any other witnesses?

Mr. Shimanowitz – No other witnesses.

Attorney Sposaro – Any rebuttal?

Attorney Peck – Can we take two?

Chairman Johnson – Yes.

Attorney Peck – We are going to have one rebuttal witness who hopefully won't be terribly long. I know you have other business here on your plate.

Chairman Johnson – Okay, we'll continue now. I understand you have one.

Attorney Peck - We do and hopefully, we'll be relatively brief. I would like to call our architect, Mr. Douglas Coleman.

Attorney Sposaro – (Inaudible) you are still under oath.

Douglas Coleman – I've never been (inaudible)

Talking over each other.

Attorney Sposaro – Do you swear from the testimony that you will give, will be the truth, the whole truth and nothing but the truth?

Douglas Coleman – I do.

Attorney Sposaro – State your name. Spell your last name please.

Douglas Coleman – Sure Douglas J. Coleman – c-o-l-e-m-a-n. I'm a managing property in Douglas Coleman's architects at 266 King George Road, Warren, New Jersey.

Attorney Peck – So, Mr. Coleman I take it, oh wait, has he been sworn?

Douglas Coleman – Yes.

Attorney Peck – I take it from the title of your business, you're an architect.

Douglas Coleman – Yes.

Attorney Peck – Can you give the Board the benefit of your educational background?

Douglas Coleman – Sure, I was managing partner of Beer and Coleman Architects for 25 years in Warren that was until 2010. I then, I went in and opened my own firm in 2010 and I manage my own architectural firm. I've been accepted as an expert witness over 1,000 times in New Jersey in architecture.

Attorney Peck – I would move Mr. Coleman as an expert in the field of architecture.

Attorney Sposaro – Go ahead.

Attorney Peck – Now, unfortunately, we did not have a lot of copies but we did distribute something that I believe now would be A-14. Mr. Coleman, did you prepare the architectural plans for this project.

Douglas Coleman – Yes, I was not at the last meeting. They didn't feel they needed me to be at the meeting, so I wasn't here.

Attorney Peck – So, after that February meeting, did the applicant go and say if we have to do X, Y, or Z could we, what would it look like?

Douglas Coleman – Yes. The applicant had said that they have had some interaction with Mr. Gardner and he had some concerns about the building. They'd asked us, as well as some of the Board's concerns; they asked us what we could do to the design to make it be more in conformity to satisfy some of those concerns. One of the Board members concerns was whether the building was over the 30,000 square foot area and whether or not the building could be reduced and Mr.

Chairman you were correct, we could reduce the sides of the building in the drawings that I gave you before, the packet you have there, was a packet that we had, we were sending to Mr. Gardner to see whether he could work on these issues prior to tonight's meeting. So that's the reason why the Board didn't have them before the meeting and since he rejected those, that's the reason why you didn't get them. So what happened is, we, in those drawings, we showed how we would reduce the fourth floor. What we also did on those drawings that you'll see on Sheet A-3 of those drawings, we took the mansard roof that appeared on the front elevation and we continued to wrap that around the rear elevation. We also did that partially on Sheet A-4 we did it on the proposed right side elevation we continued the mansard all the way around. The concepts of, we switched the materials from the metal seemed standing roof to a stucco panel there. He kept some of the brick detailing around the base of the unit and then we've added in landscaping across the top. So, the idea was, is that we were trying to figure out a way to take this building, these four stories, create this mansard roof which allowed it to bring this down and, basically, create that gutter line that everybody is referring to and then show you just three stories of the building. So, granted it's not as was testified before. It's certainly not a residential scale piece of property but it's in a commercial zone. We're not trying to match it to a house. We're not trying to bring in materials that are singles and things like that are normally used in residential architecture. We now also decided in the back to aid in the concerns of the objector, we added a series of windows to the back of this building also to get rid of what you saw before, which was that one standing seemed panels to get it to be more of a commercial looking building. So, the client asked us to go back in and add those windows in. If you turn to the last pages, the applicant on the previous submission are those boards you saw before asked the builder, contractor to color in a plan. So, although I'm not overly happy with them either, we decided we would go back and put our own together. So, what we did right here is we did a rendering in the front showing the mansard roof, the details in the brick and we also did

Attorney Sposaro – That's going to be A-15 and sorry to interrupt you.

Douglas Coleman – That's fine and then, we also did a rear elevation to show what the rear would be. These were only in response to the objector's concerns about what this building is going to look like from the front and then as well as from the side continuing with that roof. A what number?

Engineer Sterbenz – A-15

Attorney Peck – Sheet 16 (inaudible)

Attorney Sposaro – I didn't realize they were you don't have to mark them separately. I'm sorry these were all part of the set. I didn't realize those in the set were colored. My apologies.

Douglas Coleman – So again, the only purpose of these drawings where we were trying to before tonight's meeting to meet with Mr. Larken and put together a design that may satisfy his criteria but at the same time go forward and answer some of the questions that the Board had and what could we do to reduce the square footage of the unit. Can we reduce it to get it down to under that 30,000 square feet and thus eliminate the need for the variance for the second loading dock. Mr. Ferruggia's already said that they're planning on paving that area but they would still be

willing to go forward and do the reduction so you'd have a bigger parking lot, you would still have truck turning radius's and (inaudible).

Attorney Sposaro – I may have missed this, is there a difference in the type of vegetative buffer that is proposed?

Douglas Coleman – In that, they also, one of the concerns were that they had a conversation, I believe the conversation did not go from us to the objector they asked if we could put a row of evergreens across the back which the client agreed to. So, the idea was landscaping, we softened it by landscaping and we softened it by bringing that roof line around to create that three story appearance from the rear. We added the windows to the back which again in this case, are not needed for the storage facility. They are just put in to make it look like a more of a commercial building than, obviously, a residential house but the concept of that mansard roof is, basically, to hide that fourth floor.

Attorney Sposaro – Mr. Peck, are you, is your client amending the application to reflect the changes in these plans?

Attorney Peck – It appears they are.

Engineer Sterbenz – Mr. Coleman I just have a question for you. In this

Attorney Peck – If the Board is willing to vote on it tonight, will agree to amend that.

Attorney Sposaro – This is not make a deal. You have got to be kidding me. Are you amending your application to include these plans?

Attorney Peck – Yes.

Attorney Sposaro – because if you're not, I don't know why (inaudible).

Attorney Peck – We are.

Attorney Sposaro – Thank you.

Engineer Sterbenz – In this particular Exhibit A-14 is the height of the building any different than what was originally presented to the Board in A-2?

Douglas Coleman – Right now, I'm sorry, we're still compliant to the 45 feet requirement; that's were that 44 feet 6 inches was.

Engineer Sterbenz – So, it's still the same height?

Douglas Coleman – That's correct.

Engineer Sterbenz – Okay, and as I understand, your Exhibit A-14 is at the total square footage

would be reduced to 29,880 square feet?

Douglas Coleman – That’s correct, bringing us under the 30,000

Engineer Sterbenz – Thank you.

Member Pryor – Does that affect the side setbacks at all?

Douglas Coleman – Yes it does.

Attorney Peck – I don’t believe enough to obviate the need for any of the side yard variances.

Member Pryor – You’re never going to do that but let

Talking over each other.

Member Pryor – I’m sorry 3 ½ feet. On what side, the side facing the strip mall?

Douglas Coleman – Yes.

Talking over each other.

Attorney Sposaro – Can you tell us (inaudible) your engineer tell us how the setbacks were changed?

Tom Decker – I’m referring to A-1 which was the original exhibit that had the parking in the front. So, currently the plans show a 10 foot setback to the properties to the south which would be the strip mall. By trimming the building we pick up 3 ½ feet on that side so this 10 foot setback now becomes 13 ½ which opens that up more for access portion.

Attorney Sposaro – That’s the only setback change?

Douglas Coleman – That’s the only setback change.

Attorney Sposaro – Thank you.

Mr. Ferruggia – I think that’s what was actually a suggestion by Mr. Johnson who’s Chairman.

Chairman Johnson – Well, thank you for looking into it.

Talking over each other.

Attorney Sposaro – Mr. Coleman do you have any additional testimony to offer?

Mr. Coleman – No, just any questions.

Attorney Sposaro – Okay.

Vice- Chairman Olschewski – I’m like totally confused. The whole evening we discussed the building and the size and the looks and whatever and a quarter to ten you come up with a new plan and say we’re all just kidding and it looks like this now.

Douglas Coleman – We’re not kidding. We weren’t kidding. What we were saying is that we bought the exhibits that we sent to the objector to try to get before this meeting, before we, we love to come in this night and say listen we worked it out with the objector. Do you guys have any questions and we would have been done. Because the objector at that particular time did not want, said no to us, then we said listen you guys don’t have these drawings. We never presented these drawings. It wasn’t until after everybody got into the discussions about colors and square footage and whether we can get the building down that couple hundred square feet to get under 30

Vice-Chairman Olschewski – Okay.

Douglas Coleman – and we felt the need in which we would be able to show it to you and to testify to you about it. I was not the person.

Vice-Chairman Olschewski – So, Mr. Gardner has seen these?

Douglas Coleman – He’s seen the drawings. He hasn’t seen the colored renderings. I don’t believe.

Attorney Sposaro – Peter, in fairness to them just to make it clear, if I can for a second, it is not unusual for plans to be revised during the course of the hearing. The applicant has heard the questions of the Board and comments made by the Board, it’s heard what the objector’s had to say and it is reacting to that and modifying the plans, maybe not to your ultimate satisfaction but they’re modifying the plans. It’s not unusual.

Vice-Chairman Olschewski – Okay.

Attorney Sposaro – Mr. Shimanowitz do you have something to say?

Attorney Shimanowitz – Yes, thank you. First of all, we did in our negotiations trying to resolve this, did receive and email from Mr. Peck. It had revised rendering which we are not happy with. It, I can represent to you that it is not the exact same rendering so, the reason I say that is, we’re doing this on the fly. We’re now hearing that the setback is being changed. To Mr. Olschewski’s comment this is no way to run a hearing. If the applicant wants to amend its plan, submit it ten days in advance. The courtesy would be to send it to the objector’s attorney so my professionals can look at it. I certainly take on faith the professional engineers testimony, but just to say we’re picking up 3 ½ feet, I don’t know what that means. I don’t think the Board should consider that at again, quarter to ten. That’s not the way to do it. One thing we were not presented with, I mean other than hey we’ll gussy it up a little bit is we are reducing the square footage and we’re getting more set back. That’s new to us tonight. So, it’s another reason why this shouldn’t be

done on the fly. This needs to be done with submission of plans, revisions showing the setback lines and the Board needs to do this according to Hoile and I do have, actually, a couple questions for Mr. Coleman they'll be quick.

Attorney Sposaro – Why don't you go ahead with your questions and then we can deal with procedural aspects, but your points are well taken.

Attorney Shimanowitz – Thank you. Probably real easy question for you, I'm actually not understanding how did you reduce this overall square footage from 31,600 to 29,888?

Douglas Coleman – What we just explained and what the engineer said was we pulled in the left side of the building 3 ½ feet. By doing that, we went back and reconfigured that floor plan to get the square footage.

Attorney Shimanowitz – Okay, so, you considered a reduction in potentially the width of the building?

Douglas Coleman – That's correct and that's why the 3 ½ feet was added so the increase in the setbacks, wherein your client was objecting to the previous setback. The question is now is 3 ½ feet better.

Attorney Shimanowitz – I understand that. You made that very clear. So you took the time to consider a little reduction of the width of the building correct? That's your testimony?

Douglas Coleman – That's correct.

Attorney Shimanowitz – Did you spend any time considering or at least exploring a some form of reduction to the fourth floor so that you can change the style of roof? Did you study that at all?

Douglas Coleman – Yes, we did. One of, we were told by our attorney that the objector wanted to see a hip roof on this particular design. Problem with the hip roof, is when you put a hip roof on the end of this building, what it does is it, actually, it would be coming into the side elevation, it would be coming into the side elevation like that. So, in order to do that, you would have to realize that our fourth floor is here. So, when you're standing on the fourth floor, you're actually standing right there. So, if I take that hip line and I pull that hip line back like this, I'm pulling in the whole square footage on the whole building in cause I won't have ceiling height. So, when we looked at that, it reduced the square footage too much for the client and that's when the client said what can we do to get it down under the 30,000 square feet because trying to put the hip roof on that was going to take too much of the fourth floor away. We did take a look at it.

Attorney Shimanowitz – So, you sort of answered my question. I'm gonna see if I understand your answer. You did study reducing the square footage on the fourth floor but to do that there's too much of a reduction?

Douglas Coleman – No, we studied putting the hip roof that your client wanted and in an effort to put the hip roof on it reduced too much of the square footage.

Attorney Shimanowitz – Is there a different type of roof that could be put on where you don't lose as much square footage?

Douglas Coleman – In a commercial zone, you can do a flat roof. This building could be a 45 foot tall flat roof

Attorney Shimanowitz – That's not my, my question is, no, no you are not hearing my question so a little slower. As to the fourth floor, if you were trying to consider a reduction in square footage, on the fourth floor, is there a way to do a roof other than a hip, other than a flat and still and still preserve a significant amount for the fourth floor?

Douglas Coleman – Well, again,

Attorney Shimanowitz – Or any amount for the fourth floor.

Douglas Coleman – The problem again, is because what's happening is when you are looking at the floor, that's the roof line, the gutter line is down here. The gutter line is actually, falling into the ceiling of the third floor theoretically. So, what happens whenever we start a roof at this point, to try and create a fixed roof, the building is too wide and too long so the pitch would be way to shallow? So, what happens is, is when you looked at some of the other exhibits on residential houses, you are able to go into an 8 on 12 or a 6 on 12 or a 7 on 12 roof pitch. On these over here, you would be way to small, and if I try to flatten those out, to get that roof to happen, you're not going to get the roof presence that you are looking for and what you're trying to do is your trying to create where somebody, the image of what that roof is and the standing seem roof, will give you that image.

Attorney Shimanowitz – I don't think you still answered my question, but we'll leave it at that and I'll have my, address it in re-rebuttal, redirect and thank you.

Chairman Johnson – Is there any other question then at this point?

Attorney Sposaro – One of the concerns that I have is that in fairness to Mr. Larsen's testimony was based, his planning testimony was based upon the plans that they had available to him. Now, after his testimony is completed, the plans have been revised and also for Mr. Snyder, his testimony was predicated upon the plans that then existed and now the plans have changed. You're both here, would either of you testify any differently as a result of these plan changes? Since you're the one that really got the curve ball Mr. Larsen, I'll ask you first. Why don't you come up?

Mr. Larsen – My testimony in regard to the setback would not be significantly affected because 50 feet down to 13 ½ feet is still, I would still say the affirmative statement that that is substantially reducing the setback and I guess giving the architecture, while the architectural character has improved, my testimony regarding the mass and scale of the roof would not change.

Attorney Sposaro – Thank you. Mr. Snyder.

Mr. Snyder – Since my testimony was in favor of the application, and this has been an improvement in the appearance as well as the setbacks, my testimony would be re-enforced in that direction. I would point out too that there was a lot of discussion of context previously and you're not going to get commercial facilities that are in the context of ranch style homes which exist across the street. You can't do it with the best (inaudible) in the world that won't happen. Furthermore, topographically, you can't really buffer any kind of a building from the daycare center which is to the right of the building, because topographically the whole site sits significantly above that particular piece of property. Finally, I mention this in my testimony earlier; we have commercial facilities adjacent to one another and while I understand some of the concerns that the opponent has raised tonight, the fact is that buffering kinds of issues that are raised typically involve uses which are very different one from another. The commercial strip mall and a storage facility are not that different in character other than to suggest that traffic in and out of our facility is substantially less. The level of activity will be substantially less, and these, the building will be higher. There was never any question about that and we certainly didn't try to sugar coat that. There is, however, no evidence that there are requirements in either the master plan or your code that talk about minimum separation between buildings. There are issues that relate to light, air and open space that I raised during my testimony and in fact, the question becomes what in the context of a center are the appropriate quantities if you will of light, air and open space and how does an infill site comprising of .91 acres which has been sitting to our certain knowledge vacant for 11 years and apparently for some time previous to that. How do you then develop that in some reasonable relationship to basic utility or do you simply say well there's nothing that could be done with this site that will not have some impact on the neighbors and how then do you quantify that impact because it's one thing entirely to say well there's, there's no impact, if you talk about an application that has no waivers, no variances (inaudible) yeah. If I come to you with that kind of an application, I'm entitled to an approval. We don't really need to discuss anything. You are also correct in saying that when you have variances and waivers that you're asking for, you're entitled to ask for other information and you should consider other information to see what the impact would be. Fact remains, that any building that complies with the height, in this zone, is going to have a significant impact but will it have a substantial negative impact and that's the criteria that you need to apply. That hasn't been testified to.

Vice-Chairman Olschewski – I think it did.

Mr. Snyder – (Inaudible) no. Fairly significant was the testimony and with all respect to my colleague, I took down the quote that three or four stories really didn't matter. All right and we tried to make it that way. He's right, it doesn't matter and we tried through our design to make it not matter so that you wouldn't have some obvious indication that this building was somehow much busier and much more involved than was contemplated in your zone plan. We did that deliberately so, I agree, but it really doesn't matter because that's, (inaudible) architect, Mr. Coleman has pointed that out again, so, thank you.

Attorney Sposaro – Does anyone have any questions of either Mr. Larsen or Mr. Snyder with respect to their most recent testimony? Thank you.

Chairman Johnson – At this point, all testimony is completed.

Attorney Shimanowitz – Actually, (inaudible) Mr. Larsen to address Mr. Snyder's

Chairman Johnson – Okay, yes.

Attorney Shimanowitz – A comment was made that you testified as to the testing as the context of the proposal in relationship to ranch style homes. Was that the be all and end all of your testimony?

Mr. Larsen – No, and so I wear both hats right; I am an architect and I am a planner. I know all the criteria required for both. I am not in any way trying to say that this commercial building should be treated like a ranch style house. If the Board can appreciate it, I have designed retail, office building in context with character of a neighborhood. The residential character is not the only one I'm speaking to. I'm speaking to a sloped roof, gabled ended, cupola treated medical office buildings, daycare center, retail center and the houses which they have a contextual character to each other. Again, I have done this myself and I have taken buildings very much like this and I know the answer to the other roofs that can be employed. I have applied roofs to the façade of a building to create an effect. My clients desire is to relieve the façade mass and add architectural character. I also studied these floor plans in my office. A mansard roof doesn't have to only be applied, it could pitch in 10 feet and not, I don't need to slope a hip that goes all the way back at a 6 on 12 and lose the whole floor, if I lost just 10 feet around the edge, I could relieve again, the mass of that façade and in fact, the elevators in the, I mean I did this, the stairs that go up the elevators that go up they become a happy surprise. They got to stick out so, they become cupola treatments; they become architectural character in context like it is happening all around. So, I did not mean to represent that I want us to match a ranch; I think my client's representation is that the character, the mass and scale of this building is not acceptable. They are asking for variances. They are encroaching significantly on the setbacks and I can tell you with, I've done centers like this, I've done buildings just like this and I know the answers are they can if we are able to relieve that upper façade and my testimony which has been rebutted several times about fourth floor doesn't matter it is not my direct testimony. It's in the context of what's in front of it? If you bring the fourth floor right to the edge, it is not acceptable to me because it does make a difference and my testimony was the reason the HB Zone has a three story to a 45 feet is to give me with my architect hat on the ability to use that upper square footage to add this character. It is inherent to Lopatcong. I think if the flat roof was just shown up here, you guys would, obviously, you know, what is this, right so I want to be clear that my testimony is not to say that I'm trying to match the houses, is that there is a design I see it able to be given to us that's a bit less massive, a bit less imposing in the context of seeking variances that are putting this building closer to the neighbors.

Mr. Shimanowitz – Rob, just to clarify your testimony cause the applicant had paraphrased or quoted what you said about the negative criteria, I want you to give, as the negative criteria, as to whether you find substantial detriment to the (inaudible).

Rob Larsen – I do and to the exact words I used at that particular moment and it was, it is the

intent of my testimony that there is a substantial detriment, there is a substantial negative effect in terms of the negative considerations of the variances being sought. There is a substantial detriment to the neighbors for all the reasons I gave and they're not outweighed by the positive criteria offered which again, seemed to me to continue to be offered as economically driven and, you know, economic viability is not a consideration for weighing a variance and in my knowledge of the law.

Attorney Sposaro – Thank you. Any questions of this witness?

Chairman Johnson – Have you looked into the 10 foot offset? You know, reducing the slope a little bit making it about 45 degrees just take off 10; you know 10 feet off it.

Mr. Ferruggia – Reduces too much of the fourth floor.

Chairman Johnson – Still too much?

Mr. Ferruggia – By cutting off 3 ½ feet it substantially reduces the size of the building.

Talking over each other.

Attorney Sposaro – We need it for the record here so if someone going to can answer the question, it needs to be on the tape, we get your response. So, it is either the applicant or the objector have any other testimony to be offered?

Attorney Peck – We don't have any more testimony at this time.

Engineer Sterbenz – I have a question for Mr. Coleman here. I believe you could have a Height Variance and it would not constitute a Use Variance I think up to 10% of the height of the building which would be 49 ½ feet. If you raise the peak up to 49 ½ feet, and you get the slope that I think the objector is looking for and still preserve enough of the fourth floor under that scenario.

Douglas Coleman – Well, the testimony we just heard was whether or not they took that mansard roof or whether they kicked the pitch on that down from what we are showing it. So not as vertical. The problem with it is, if you're coming in 10 feet, if you look at your plan right there and just come in a 10 foot line and go all the way around the fourth floor you're losing a significant amount of the square footage. What my client testified to earlier was that he felt it was unfeasible for him to lose that much square footage. They weren't happy about me moving it in 3 ½ feet to get under the 30,000 square feet. They certainly weren't going to be happy about us moving it in 10 feet on either side so a total of 20 feet and then 10 foot back so that's the concern. It is not a question of whether or not you can get different roofs on here. Any architect with a pencil can put different roofs on here. The question is whether or not would the end result get you what the client's looking for and what they were trying to do is preserve the fourth floor. So if the criteria changes to reduce the fourth floor, yeah there's roofs that you can put on here that will do that. The problem is it's so significant that it makes the fourth floor go away and the client's testimony was that it would.

Engineer Sterbenz – My intent is not to have them, just wondering if you raise the center of the roof up a little higher you would need a Bulk Variance for that.

Douglas Coleman – You go four more feet.

Engineer Sterbenz – Is that something that could work. (Inaudible) address Mr. Gardner's concern but also would address Mr. Ferruggia concern.

Douglas Coleman – You could but the reality of it is you have to remember you are doing this over a very long building. So although four feet sounds like a lot, four feet is a lot if you are talking about the width of this room. Take this three times this and go up four feet, it's not as noticeable. So the question is, is you don't get the bang for the dollar as much as you're looking for but there's certainly alternatives you can do. There's no doubt about it.

Vice-Chairman Olschewski – Eric, I can go on for another hour or two but it's past 10 and maybe

Attorney Sposaro – We need to hear from the public and then we'll

Vice-Chairman Olschewski – Yes.

Chairman Johnson – That is the end of the testimony correct?

Talking over each other.

Attorney Sposaro – I think we should open it to the public and see if there's anybody

Vice-Chairman Olschewski – Before we do so, just very quickly, I spoke to Donna and we didn't know since Mr. Larken showed up here just also want to disclose I purchased a home from Mr. Larken a few years back, Mr. Gardner. I have never met him in person so just want to make that known but I feel that I'm objective now.

Member Schneider – I too purchased a home from Mr. Gardner. I live on Meadowview Drive and it was, my house if 15 years old.

Attorney Sposaro – Anyone from the public want to be heard on this?

Chairman Johnson – This is public comment right Tony?

Attorney Sposaro – Right.

Chairman Johnson – This is not questions for, the is actual public comment on this application. Right, comments correct.

John Betz – My name's John Betz and you've been dealing with the same situation now four meetings. You haven't gotten kind of an inch practically; that's all I wanted to say. That's the

only comment

Member Pryor – John I missed what you said. You have to talk into the thing tonight.

John Betz – We've had four meetings and we've covered the same thing virtually for four meetings and gotten more and more specific minutia going back and forth. It's three hours a meeting; that's 12

Member Pryor – Well we really don't control the testimony.

John Betz – I understand that testimony is getting to be a bit like, I don't know want to describe it.

Talking over each other

Chairman Johnson – Any other comments from the, okay come on up. That's what we're wrapping up here. Do you have a comment?

Mr. Marinelli – I have an (inaudible) yes. My name is Enzo Marinelli. My wife and I live directly across the road from the proposal. Okay we've been here in Lopatcong since 1957. The zoning rules and regulations are set for those who aspire to establish businesses, make physical changes to their properties and so on in our Township. All applicants are expected to follow the rules and not expect change to suit their needs. There has been and will always be a definite need to control what is to be constructed and or revised in our Township. At this juncture, this Board has been asked to make a number of drastic changes to accommodate the applicant. All the variances listed do not come close to meeting the requirements for the project. The major case in point is what I call a huge minus. This lot is only 9 tenths of an acre where a minimum of two acres is necessary for the project. Okay. This is 54.5% less than what is required. Obviously, this proposed facility is not a good fit for the available acreage. The lot is shaped like a twisted triangle. What certainly dictates what if anything can be built on it and it being on a sharp curve does not help the situation. All of you I'm sure know we've had a lot of accidents on the corner to which I responded to all of them to date. One of the accidents you folks don't know about is that on a cold December night at two o'clock in the morning a male driver came across my property, hit my house, broke my wall to the right of the bay window, careened from that into the garage, cracked the garage door and pushed my old Desoto up against the front wall of my garage. That's an experience trust me. The reason why and the applicant testified that he had four, five or six bites to the property; they're obviously small bites because no one took the big bite. Okay and I asked myself why not. Why hasn't someone come forth, all right, to buy the property? Was it the shape of the lot, was it the fact that it wasn't two acres or more, was it the price of the lot? I'm sure you folks know the asking price of that lot is considerable. All right. Being on a sharp curve as we have been for all these years, there have been a number of accidents to which I responded to all of them along with members of my family while my wife dials 911. The parking spaces that's already been alluded to which I think is satisfactory. The lighting of the building my wife said to me, make sure you ask whether that lighting will have any kind of effect on our rooms in front of the house. We have the ranch, brick ranch directly across from the lot. With the facility so close to the road, will any of the lights shine directly into my house? This we

don't know yet. Garbage, I'm forever cleaning things up off my property. It seems that more and more there are many people who don't like to clean up after themselves. They'd rather throw their garbage out the window and we've had not only on our lawns but also in my garage; bottles. Security, any prudent owner would not want the other things to happen by people using the facility. Are we safe or can we expect problems from the in and out traffic. A major factor I think folks is the setback from the road. There is no other building in the area that is that close to the road. You are located on a sharp curve misjudged by many and so we've had some nasty accidents. The three telephone poles have been hit, the big tree, the first one on that corner has been hit. All right and the wires have come down. How will this facility affect the high volume of traffic that we now are experiencing between Rt. 57 and Powderhorn Drive? Serious lack of acreage prevents the applicant from building left and right so he has to go up. Right do the proposal, do we really need to develop what I would call the high-rise and where city skyline in Lopatcong Township. Do we need a high rise? Most of the principal buildings around this property are one story high or none higher than a story and a half and hopefully this Board will see that it remains this way. If traffic, I don't know if anyone knows it better than I do because I see it every day with a high volume of what I call legal traffic, we also have a high volume of illegal traffic. Trailer trucks, eighteen wheelers some with high bodies, flat beds, construction trucks and sometimes an occasional passenger bus. Okay. All of these vehicles are well over 4 ton all right. Unknown to you folks, high body trailer trucks have ripped all the electrical wires off my house four times. Do you want a harrowing experience, figure that one out; four times ripped right out of the house? The wires are on the road, in my tree, on the lawn right, it's was the first time I made a mistake of running out onto the grass. The policeman said to me Enzo you shouldn't have done that. Stay on the macadam, stay away from the wires. Okay. So after the first time, I never did that again. Why did he use the section of Strykers Road? A short cut to 519. I stood on the corner with a police officer who was on school duty all right talking about old times. Now comes a trailer, I said there comes an illegal. He says I know. I say are you going to stop him? He said no. I said why not? Why (inaudible) He said because he's using it via his GPS as a short cut to 519 and on the trailer went without anything said or done. Will this facility bring more illegal traffic to our road? Moving vans have high bodies. Some box trucks have also have high bodies. All right and there's no guarantee that only a certain size box truck will use the facility. No one can guarantee that. I don't care who it is. I'm not opposed to having some kind of a business located there but misunderstand me, provided it meets the necessary requirements for the available space. Okay. No one, not even my kids, no one can successfully fit into a VW bug that is what is being tried here. My daughter said I have a better on for your dad; she says you put a tutu on an elephant it doesn't make the elephant a ballerina. Okay. This application and or proposal for a self-storage facility fails to meet our Township codes on many levels. It is for this reason given that I respectfully ask you to deny this applicants request. Lopatcong Township has been our home for over sixty years; that's older than some of you people are. Okay, I know that. I'm asking you for your professional understanding and compassion in this matter. This thought came from a well-respected retired member of our town council. A man with whom I'm friends with and he said to me Enzo, I'm going to leave you with one thought. He said this structure is nowhere similar in character to any existing structures in Lopatcong. Okay. In other words, what that man was saying to me, this building is going to stick out like a sore thumb period. In conclusion, I'd like to leave you with one question. How many of you would like to rise each morning, go outside and face the four story structure such as this in front of your own house and have its entrance and exit on a dangerous corner near your driveway.

Now remember that this building is going to be close to the road. Just a few feet from the road. Not set back like the strip malls. Would you like to see that building when you get up every morning, in front of your house, in a driveway, in front of your driveway? Think about it. I want to thank you for listening for the opportunity to speak to you. A sincere thank you for all of you for what you do for our Township. I don't know that you hear that too often but I know what you do. I've been here enough times and I do thank you for what you do for Lopatcong. Kindly preserve the esthetics of our Township with a country setting. Thank you folks.

Chairman Johnson – Thank you for your comment.

Attorney Sposaro – Is there anyone else from the public that wants to be heard? The hour is late. It's far beyond the point where we can begin to start to sort this out and you made the decision for over three hours. We supposed to stop at ten. There is a lot to digest. I would encourage the applicant and Mr. Gardner to continue to communicate to see if you can reach some compromise that everyone can live with. I don't think it is appropriate for me to say anything else and you may want to think outside of the box. If, maybe the footprint of the building gets larger to increase the volume but the height comes down. I'm just throwing out some ideas. There is another idea that Paul threw out that maybe the height increases but it changes the roof line to preserve some usable space and still improve the appearance. There's lots of ways this can be addressed.

Chairman Johnson – They do have to look at the new architectural plans that were just handed out as well to absorb that. That's, you know, that's different than what they saw before. So I think what we're suggesting here is that this is going to be discussed at the next meeting.

Attorney Sposaro – Well the hearing is completed at this point unless the applicant comes back to us and says we want to further revise our plans. If they choose not to do that and that is their absolute right then the Board will deliberate and make a decision based upon the plans that have been revised and submitted.

Chairman Johnson – I'm okay with that.

Attorney Sposaro – Anybody have their questions?

Member Pryor – Not on the hearing. I do have additional business.

Attorney Sposaro – Let's deal with the hearing.

Chairman Johnson – Okay after the hearing first.

Attorney Sposaro – Does anybody on the Board want to give, perhaps we now it's late, but perhaps you may want to consider giving the applicant some general direction of where they might want to consider going with this.

Member Pryor – I would be willing to offer my opinion if that's appropriate. I do understand the hardship. I understand the shape of the lot. I understand a lot of benefits lower traffic, low

sewerage demand. I am concerned with the mass of the building on that lot. The variances are generous. I think some creative architecture could help mitigate the massing effect. That's my opinion. The first impression I got when I saw it look like a giant mausoleum and I don't say that facetiously. I think Lopat has a character. You are asking for a lot of variances. It's a chance to be creative.

Attorney Sposaro – Anyone else? Maybe I'll make this easier, is there anyone else here that agrees with Mr. Pryor's observations and comments.

Member Fischbach – I do. I think if they can look back and look at some creative architecture they may still try to maintain their square footage to some degree maybe give them back the 3 ½ feet for the four stories but do something differently with the roof. Something of that sort you know seems like that is a big hang-up. Seems like that's a big hang-up with the esthetics of the architecture. So if (inaudible) be a possibility it would if they could do something.

Member Pyro – Obviously I am not an architect and I don't want to suggest anything but you know the shape of the lot; they need to use that a little more efficiently. Do we have to stick a big box on it? Can we do something else?

Vice-Chairman Olschewski – The only thing I have to say to that is, is if Larken comes to an agreement esthetically with the applicant here, is, we still have to

Attorney Sposaro -It's still your decision.

Vice-Chairman Olschewski – we still have to consider all the other things so if these guys agree on like the shape and the size and the roof, that doesn't mean that we have to necessarily have to say okay , great, you know, and it's done. Right?

Member Pryor – That's correct it's in no way do I consider this Larken's decision. It is our decision, so but I still am concerned about the mass of the structure as presented.

Attorney Sposaro – Well (inaudible) we've heard what everyone's had to say

Mr. Ferruggia – I have to make one last statement it, two seconds.

Chairman Johnson – Yes go ahead.

Mr. Ferruggia – If we were to build apartments on that, the mass impact on the traffic, on the sewer, on the school system with children and ask for the same type zoning, if they're asking for directly behind ours, in a business zone for 200 units, it would have much more of a traffic impact and much more of a sewer and much more of a school impact and a minimal impact on the building that we're proposing.

Attorney Sposaro – Thank you.

Chairman Johnson – Obviously, Tony what's you're, we're not getting through all the agenda.

WE have a lot left that we were anticipating getting to. We're out of is there any of this that we can move to in two weeks. I think Joe had some concerns

Talking over each other.

Attorney Sposaro – This meeting is being carried to April 26th, 2017. There will be not further notice that you will receive so please put that note on a calendar. Is there public comment on any items not on the agenda? So what we have left are some matters that are going to take a fair amount. Each and every one of these standing their own is going to take a fair amount of time.

Mayor McKay – Motion to adjourn.

Member Pryor – Mr. Chair I call for an Order of the Day. Which is parliamentary procedure which I'm allowed and it pertains to the agenda. I think we have to address Mr. Carbone's contract.

Vice-Chairman Olschewski – I make a motion to table that.

Member Pryor – No you can't. The only way you can overcome me on this is by a 2/3rds majority and if you want to vote that direction you can.

Vice-Chairman Olschewski – I do.

Attorney Sposaro – Well let me just jump in here okay because there's something, there's more involved here than just this Board deciding whether they want to in effect appropriate more money for Mr. Carbone's services. He has represented this Board for how many years on this litigation three, four

Secretary Dilts – Since 2011.

Attorney Sposaro – The oral argument for the appellate Division is scheduled for the end of this month. He is representing this Board at this point until, as the attorney of record, the court would have to relieve him of that obligation now and I don't think the court is going to do that. I will also tell you I think that you'd look like the village idiots if you decided that you were for some reason, not going to authorize Mr. Carbone to continue. I certainly cannot and would not pick up the ball and run with this. You are a party of that lawsuit, you have an obligation to the community to follow through with the decision and to defend the action of the Board and I don't, I'm not even convinced that the Board has to take action. I believe he's been hired, that's he's represented you and I think that representation should continue. Politically you may feel otherwise, you may have other opinions about whether this Board should have approved that facility but we are well beyond that in trying to sandbag the funding the payment of our attorney to in this litigation to properly represent us.

Chairman Johnson – If you're, if you're suggestion that no action has to be taken and he can continue in the same manner in the past, I agree. Yes, that I agree and that

Attorney Sposaro – That is my opinion. That is my opinion.

Chairman Johnson – I don't have any problem with that.

Vice-Chairman Olschewski – I have a couple questions and the questions that have been raised first of all we, it is my understanding Mr. Carbone was hired in 2013 on a resolution which was

Chairman Johnson – 2012

Vice-Chairman Olschewski – it is my understanding that resolutions are valid for one year. I would like to see the resolutions where the gentleman is being renewed for 2013, 14, 15 and 16. We also ask for a contract to see for Mr. Carbone as far as I understand there is no contract to be found at this point in time.

Secretary Dilts – No that's not correct.

Vice-Chairman Olschewski – Okay.

Attorney Sposaro – I don't suggest as in contract found. I haven't seen the resolutions but the fact of the matter is, this Board, maybe not these individual members, but this Board approved and authorized Mr. Carbone to represent this Board. You are a week or two before this case being argued in the appellate division which will likely be (inaudible). I don't you have the right to pull the plug at this point.

Chairman Johnson – But can, again we take no action, he continue in the same manner, we don't have to extend the contract by a year for \$5,000.00, he can still continue in the same manner and represent us in less than 10 days or two, I don't know the date, but I know it's soon.

Attorney Sposaro – After the appeal has concluded, if at that point you want to revisit it, I don't have a problem with that. I don't know what's going to happen. The appeal on the decision of the court may end it, if the case gets remanded than you may want to hire different under remand but at this point in time, at this stage of the proceedings, I do not think you have the authority to pull the plug.

Member Pryor – I would like to add to that if I could, I think pulling the plug on anyone who has contributed to the go fund me or the fund that funded the plaintiffs and then uses their official position to defund the Township is in deep trouble.

Attorney Sposaro – Well I don't know what deep trouble means, but I think

Member Pryor – I think that's a blatant conflict.

Attorney Sposaro – The issue here is whether the Board is going to agree with me or not that Mr. Carbone has not only the right but the obligation to continue to represent you. This Board at least through the finalization of this (inaudible).

Mayor McKay – Can I ask you a few questions?

Talking over each other.

Chairman Johnson – Sorry Tom I over talked.

Mayor McKay – Yeah, I think Peter mentioned that there is no evidence that he had been properly hired. Now we asked for that, I think and nobody has it. There were ordinances; there was no ordinance that there were resolutions for all of those years. Now there not in the minutes, I looked on the computer and then I did

Secretary Dilts – I have copies of the 2011 minutes and 2012 minutes.

Mayor McKay – In 2012 he was for one year. That's the life of a resolution. So he hasn't been properly, you know, hired by this body for years.

Member Pryor – No I disagree.

Mayor McKay – That's my question.

Talking over each other.

Mayor McKay – That's my question; does that matter?

Attorney Sposaro – At this point, it doesn't matter. This Board whether it “legally hired him or not” has allowed him to represent, allowed him to represent you for the last six years. To now raise this issue, a week or two before oral argument

Mayor McKay – Well you know, this only came to our attention

Vice-Chairman Olschewski – That's right.

Mayor McKay – a week or two before oral arguments.

Vice-Chairman Olschewski – (Inaudible) correct to say he raised the issue because the issue

Talking over each other.

Member Pryor – You know what, the conflict of interests here run deep. You're not going to address it now but certainly with respect to Mr. Carbone you have accepted his services, it's ridiculous to say this just came to your attention. Most lawyers they have an engagement letter and it runs for the length of the litigation. You don't have an ordinance. Regardless, you've used him for six years. We are coming down to oral arguments. I think it is totally idiotic to consider not staying with him at this point.

Mayor McKay – Well (inaudible) in court with him when they determine that he's not (inaudible)

Talking over each other.

Chairman Johnson – So we stay with him. He finishes up the oral arguments and we can discuss this topic after that concludes.

Member Pryor – Yes, guarantee we will be looking at conflicts at that time.

Attorney Sposaro – And maybe you never have to look at it.

Vice-Chairman Olschewski – No. If we don't have to do anything, right now is that what you said Tony?

Attorney Sposaro – In my professional opinion

Vice-Chairman Olschewski – Okay then we will not do anything, however, I will, I would like to investigate the issue expiring resolutions and not being addressed to rehire people and to just being paid without a contract. I would like to have that investigated.

Attorney Sposaro – I don't feel like you need to investigate it but here's what I will do. Beth you'll have a month to dig out the resolutions adopted in the past years and hopefully you can find the contract that Mr. Carbone originally agreed to. If you can do that and produce those and send them out to the Board members in advance of next meeting, I think that would be helpful.

Chairman Johnson – I think that's fine. So no action has to be taken (inaudible).

Talking over each other

Attorney Sposaro – In my opinion no.

Chairman Johnson – Then, I do have a question for you Tony. We have a meeting scheduled for two weeks but there's things on this agenda that we didn't get to. Being that I think it's going to be a topic of discussion, I'd like to have you at that meeting in two weeks. I think Joe wants you there too.

Member Pryor – Was there a reason he wasn't at the last one?

Attorney Sposaro – Yeah, the reason is that I had no forewarning at the meeting in February when the special meeting was scheduled that any legal issues were going to be raised. I have no idea and it was based upon that, that I opined to the Board I didn't think my presence was necessary. George was going to make a presentation. I didn't think any legal issues would be raised and being mindful of the limited budget that was passed. Well, as things turn out, that wasn't the case. Some very thorny legal issues were raised, learn from that and if you're going to meet, I need to be here. Plain and simple.

Chairman Johnson – So we'll have, we'll plan on you being here then.

Attorney Sposaro – If you meet, I'm going to be here.

Talking over each other.

Member Pryor – Again, I raise the objection to discussing any part of the ROM District until the conflict issues are settled. I also think it makes no sense at all to attack the master plan by way of starting with the zoning ordinances and I got an email from Eric said he intended to do it piece meal; makes no sense to me so I'll just go on record there.

Attorney Sposaro – I appreciate that. I believe the hour is late; we can address all those issues at the next meeting. I do agree however, that front and center, the first thing that has to be addressed is the conflict of interest issue.

Chairman Jonson – And we can talk about that first at the next meeting and George please, you know, elaborate, I believe that the Board was kind of going in the way of doing this piece by piece because of how monumental the different parts of (inaudible).

Planner Ritter – Well yeah, (inaudible)

Talking over each other.

Planner Ritter – the intent there was not to piece meal our efforts on the development regulations but the center which is part of our requirement of the Highlands. The idea of doing it piece meal was to simply break it down for discussion purposes into discreet bites that we can talk them so that we can have common ground on this issue. We make this (inaudible). We address them one at a time rather than me just spouting out ten versions of what we'd like to do and then you don't know where to start.

Member Pryor – Well, I still don't understand while were, why we're starting with ordinances and not the master plan. Isn't it true that there has to be this linkage and when our zoning ordinance in the ROM went to court, the court looked at those linkages, back to the master plan for consistency and gave weight to that?

Planner Ritter – This is a master plan revision. This is not an ordinance. What we are discussing about is issues that will be incorporated into the master plan as recommendations. From that, ordinances

Member Pryor – All right. Fair enough.

Planner Ritter – will be produced. It's not

Talking over each other.

Member Pryor – I don't want to get into ordinances. All right.

Attorney Sposaro – (Inaudible) hearing aids. You don't have them in tonight.

Chairman Johnson – Are we okay with holding off I-78 until a full month then? We don't need to do that at the next special meeting right? And, Paul

Engineer Sterbenz – Just on that issue we obtained a 30 day extension for you so the Township and/or the Planning Board has till April 15th to submit comments into the Department of Transportation so we have some more time.

Chairman Johnson – So real quick so everybody's clear, Anthony is coming to the meeting in two weeks as well as George and Paul. Is Paul's presence needed?

Engineer Sterbenz – It's not I think.

Chairman Johnson – That's a Thursday right? Okay.

Attorney Sposaro – (Inaudible) yes I'll be here.

Chairman Johnson – Does Paul need to be here?

Engineer Sterbenz – I don't think so. You're talking about planning issues and legal issues. I don't think so. If it's the Board's request to have me here, I will be here. I am free that night.

Chairman Johnson – Does anybody need to see Paul here?

Member Pryor – I think if you want to save a few bucks, Paul can take the night off.

Chairman Johnson – Then if there is no objections then Paul did I hear a motion

Attorney Sposaro – Yeah you did.

Chairman Johnson – Where'd he go?

Member Schneider – I'll make a motion.

Member Frank - Second

Chairman Johnson – Do we have it already? Then all in favor. Thank you everybody, sorry we went late.

Respectfully submitted,

Margaret B. Dilts
Secretary

