

**TOWNSHIP OF FRANKLIN  
PLANNING BOARD  
COUNTY OF SOMERSET, NEW JERSEY**

**REGULAR MEETING  
July 19, 2023**

The regular meeting of the Township of Franklin Planning Board was held at the Board of Education Building located at 2301 State Highway 27, Building 1, Somerset, NJ, and was called to order by Chairman Orsini, at 7:45 p.m. The Sunshine Law was read, the Pledge of Allegiance said, and the roll was taken as follows:

**PRESENT:** Councilman Anbarasan, Theodore Chase, Erika Inocencio, Sami Shaban, Jennifer Rangnow, Charles Brown, Robert Thomas, Maher Rafiq, and Chairman Orsini

**ABSENT:** Mustapha Mansaray and Rebecca Hilbert

**ALSO PRESENT:** Mr. Eric Bernstein, Special Board Attorney, Mark Healey, Planning Director, Darren Mazzei, Township Engineer, and Christine Woodbury, Planning & Zoning Secretary

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**MINUTES:**

- **Regular Minutes – 5/17/2023**

Mr. Thomas made a motion to approve the Minutes, as submitted. Ms. Rafiq seconded the motion, and the roll was called as follows:

**FOR:** Councilman Anbarasan, Dr. Chase, Ms. Inocencio, Ms. Rangnow, Mr. Thomas, Ms. Rafiq, and Chairman Orsini

**AGAINST:** None

- **Regular Minutes – 6/7/2023**

Mr. Thomas made a motion to approve the Minutes, as submitted. Ms. Rangnow seconded the motion, and the roll was called as follows:

**FOR:** Dr. Chase, Ms. Rangnow, Vice Chair Brown, and Mr. Thomas

**AGAINST:** None

**RESOLUTIONS:**

- **Summerfields @ Franklin, LLC / PLN-23-00003**

Ms. Rangnow made a motion to approve the Resolution, as submitted. Mr. Thomas seconded the motion, and the roll was called as follows:

FOR: Ms. Inocencio, Ms. Rangnow, Vice Chair Brown, Mr. Thomas, and Chairman Orsini

AGAINST: None

- **IDIL Davidson, LLC / PLN-23-00004**

Ms. Rangnow made a motion to approve the Resolution, as submitted. Vice Chair Brown seconded the motion, and the roll was called as follows:

FOR: Ms. Inocencio, Ms. Rangnow, Vice Chair Brown, Mr. Thomas, and Chairman Orsini

AGAINST: None

Chairman Orsini indicated that Mr. Lieberman would be presenting his witnesses and give Mr. Lanfrit a chance to cross examine them and then open to the public for cross examination of those witnesses. He went on to state that Mr. Lanfrit also had a Planner to give testimony.

**PUBLIC COMMENTS:**

Chairman Orsini then made a motion to open the meeting to the public for General Planning discussion, not related to B9 Schoolhouse, LLC. The motion was seconded, and all were in favor. Chairman Orsini explained to the public how the meeting would be run that evening, and also added that they would first have a Public Comment section to include any discussion regarding any matter that was not the subject of a hearing that evening. Additionally, the Chairman explained that the public would have an opportunity to ask questions of the witnesses that will give testimony at the hearing that evening.

Seeing no one coming forward, the Chairman made a motion to close the meeting to the public for general comments. The motion was seconded, and all were in favor.

**HEARINGS:**

- **EWA SOMERSET 400 OWNER, LLC / PLN-22-00013**

Preliminary & Final Major Site Plan w/”C” Variances in which the Applicant wanted to demolish the existing building and construct two (2) warehouses totaling 370,776 sq. ft. at 400 & 600 Atrium Drive, Somerset; Block 468.01, Lots 21.06 & 21.14, in the Business & Industry (B-I) Zone - **CARRIED TO JULY 26, 2023 – with no further notification required.**

**DL - 07/31/2023**

- **THE JAIN CENTER OF NEW JERSEY / PLN-23-00011**

Applicant sought Site Plan and Sign Variance approval for construction of an entrance “archway” structure across the entrance/exit drive which connected to Cedar Grove Lane at 111 Cedar Grove Lane, Somerset; Block 468.07, Lot 45, in an R-40 Zone - **CARRIED TO JULY 26, 2023 – with no further notification required.**

**DL - 08/24/2023**

- **BALDWAS REALTY, LLC / PLN-22-00009**

Preliminary & Final Major Site Plan, Preliminary & Final Major Subdivision w/”C” Variances in which the Applicant sought approval to construct a 62,500 sq. ft. warehouse at 545 & 549 Weston Canal Road, Somerset: Block 516.01, Lots 4.03 & 5, in the Business & Industry (B-I) Zone - **CARRIED TO JULY 26, 2023 – with no further notification required.**

**DL - 07/31/2023**

- **B9 SCHOOLHOUSE OWNER, LLC / PLN-22-00011**

Mr. Peter U. Lanfrit., Attorney, appearing before the Board on behalf of the Applicant, B9 Schoolhouse Owner, LLC, in order to obtain Preliminary & Final Major Site Plan w/"C" Variances in which the Applicant wanted to construct two (2) warehouses totaling 244,975 sq. ft. at 96, 98 and 104 Schoolhouse Road & 15 Mettlers Road, Somerset; Block 514, Lots 1-3 and 60, in the Business & Industry (B-I) and Rural (RR-3) Zones – **CARRIED FROM JULY 5, 2023 – with no further notification required.**

Mr. Lieberman, Esq., Attorney, representing the Objectors, The Citizens Warehouse Action Group, came forward and was sworn in. Mr. Lieberman indicated that he had three (3) witnesses to put on the record that evening, and they were: Ms. Mary Paist-Goldman, Environmental Scientist, Mr. Gene Bove, Acoustic Expert, and Mr. Carlos Rodrigues, Planner.

Ms. Mary Paist-Goldman, Environmental Scientist, employed with Rippled Waters Engineering, 420 Woolf Road, Milford, NJ , came forward and was sworn in. The Board accepted her qualifications. Ms. Paist-Goldman then discussed what she reviewed and the report she prepared. She discussed reviewing all of the Engineering plans, including the Grading and Utility Plans, including the Drainage and Storm Water Report, all of the drainage area calculations, the soils and geotechnical information, the Environmental permit applications, the Delaware & Raritan Canal Commission applications, and all of the NJDEP permit application materials. She indicated that there was an update to her report, dated July 10, 2023 that was submitted to the Board.

Ms. Paist-Goldman then gave her conclusions and what the factual basis was for those. She indicated that she had four (4) main areas of concern when reviewing the Application and stated that she wanted to start with the soil information, particularly the Hillis-Carnes geotechnical investigation, that stated that there was no perched water or apparent water table observed in any of the excavations or soil borings that were conducted. Because of those observations, they were supposed to determine the groundwater table during certain times of the year. She then spoke of the standards in the Stormwater BMP Manual that required that the soil testing for seasonal high-water table be detected between January and April of each year. She noted that the Hills-Carnes testing, based on the logs that were provided, was done in July of 2021 and August of 2021. Because of the timing of the testing, Ms. Paist-Goldman indicated that it was unclear to her how the determination regarding the groundwater table was made by them. She then went on to discuss the wetlands borings that were submitted with the NJDEP application noted some redoximorphic features, a fancy word for indications of groundwater at shallower depths. In that report, completed by DuBois Associates, Ms. Paist-Goldman stated that there was mottling, a fancy word for gray, and a chemical reaction that happens with the soil and the metal content when it is starved of oxygen and create streaks that were gray in color. She then added that the report indicated that those were found at a depth less than ten (10) inches from the surface, with one (1) - to three (3) – inch pockets of groundwater observed in their logs. She then told the Board and public that she was then looking for the reason for the disparity

between the two (2) technical engineers' reports and the wetland scientist's report. Her conclusions, as stated by Ms. Paist-Goldman was that the testing that was done by the Geotechnical Engineer was not done between January and April, but instead in July and August. Ms. Paist-Goldman then clarified that BMP in the Stormwater BMP Manual stood for best management practices and that the NJ Stormwater Best Management Practices Manual was the standard that engineers were supposed to follow. She then added that there were certain instances that allowed for deviations, but there would need to be some sort of permission to do so. Ms. Paist-Goldman indicated that the report was conducted and submitted in the Hillis-Carnes investigational report because the testing was done at the wrong time of year. She went on to further state that if the NJDEP deems that there was a significant departure from normal conditions, they could authorize testing in an alternate time of year, but that there was no evidence that the NJDEP gave any permission of that kind in this situation and the results should not be accepted.

Ms. Paist-Goldman then drew the Board's attention to the next concerning item in the change in stormwater patterns at the site. Because the site was bound by the Scenic Corridor District along Mettlers Road, there was a Scenic Corridor District Overlay that outlined specific requirements for stormwater management. She indicated that one (1) of those requirements was "Stormwater management shall be designed to make minimal changes to natural drainage patterns and systems." Ms. Paist-Goldman then noted that with the project, the stormwater runoff flowed across the property toward Mettlers Road just spreading out across the vegetation and that there were really no defining channels, no defining streams. She added that there was the pond at the south end, but that there were really no other drainage features, per se. With the new application, she indicated that the Applicant was proposing to install a series of stormwater Best Management Practices to collect the water. And then all of that water is piped to a large, constructed wetland basin. And that single point of discharge then is directly towards Mettlers Road. So specifically, she indicated that she was concerned there with regards to the fact that they're installing such a large stormwater management basin in the Scenic Corridor. She added that that basin resulted in an increase in stormwater value of 1.1 million gallons under proposed conditions from the existing condition discharge. Ms. Paist-Goldman then stated that it was a Class IV dam which is subject to specific standards under the New Jersey Safe Dam Act and the New Jersey Dam Safety Standards. She added that Class IV dams were required to handle rainfall from larger rain events 50 percent greater than a typical stormwater basin which is 12.43 inches in a 24-hour period. Ms. Paist-Goldman then stated that a much, much more substantial amount of water was going in that basin and being able to be handled by that basin. She then added that with that additional capacity comes an additional volume of water should there be a dam failure. She then indicated that she had worked on a lot of dams in the state of New Jersey, and through the whole Mid-Atlantic area. She testified that low hazard dams like this one were more prone to failure due to lack of maintenance and a feeling that they're safe because they're smaller. She testified that the structure itself only impounds the water to about five(5) to seven (7) feet above normal ground surface so people think it's not this massive dam like we're used to seeing with reservoirs and things of that nature, and it gives you this sort of false sense

of security that if it fails it wouldn't release a large amount of water. In this instance, this dam can hold back an additional one million gallons of water beyond the 1.1 million gallons of increased water that we are already talking about. I have worked on dams of similar size that have involved drownings. I've worked on dams that have had failures from heavy rain events. Again, sometimes due to lack of maintenance, sometimes due to poor construction, many different reasons, but it's something to be concerned about because this is a larger structure.

Mr. Lieberman then asked about the change in stormwater flow and how it would implicate the Scenic Corridor Ordinance.

Ms. Paist-Goldman stated that the stormwater currently flows all across the land and that there were no pipes, no swales and no streams and just sheet flows across the vegetation. She added that under the proposed conditions, everything was going into pipes, into stormwater facilities and then into this very, very large stormwater facility that met the conditions of the dam which has all the kinds of extra implications and standards that must be complied with. She added that by changing the stormwater flow, it specifically implicated the Scenic Corridor ordinance because the ordinance stated that the stormwater management system should be designed to make minimal changes to natural drainage patterns and systems. Ms. Paist-Goldman indicated that she did not consider the changes proposed to be minimal because they were concentrating a large volume of water into a very large structural system which relied entirely on maintenance and upkeep to function appropriately.

Mr. Lieberman then told Ms. Paist-Goldman that she also articulated with regard to the dam structure itself and indicated there might be problems. He asked her why the Board should care about that and what fix or cure did she suggest addressing the concern?

Ms. Paist-Goldman told the Board that she felt that it was important for them to care about it because there's a couple of things that were missing from their application. Specifically, she stated that there's a stability analysis that's required for dams because of the height of the retaining walls proposed which are 11.3 feet high in portions of this basin. She added that any wall over four (4) feet in height required a structural stability analysis to show that it's going to be able to resist overturning and other different failure points for wall systems. She then testified that she did not believe that the structural stability analysis was submitted and that she had not seen it.

Besides the fact that there isn't a stability analysis, Mr. Lieberman then asked Ms. Paist-Goldman what else did she want the Board to know concerning this dam.

Ms. Paist-Goldman testified that she had significant concerns regarding the sheer volume increase of water should the dam fail, or should the system not function as designed, considering what's downstream which was Mettlers Road and Canal Walk. To address the situation appropriately, she indicated that a more detailed engineering study was required and potentially reconfiguring the development layout and the

stormwater facilities to avoid having such a large facility I think would be what was required as per the ordinance.

Specifically, in addition to just the retaining wall structural stability analysis not being there, Ms. Paist-Goldman stated that she did have concerns regarding the Operation and Maintenance Manual because the retaining walls were not mentioned in the Maintenance Manual that was submitted. In her discussion, she noted that she knew that the Township Engineer requested safety ledges and ladders be added just due to the sheer size of the walls; however, she stated that they were missing the information on the structural integrity as well as missing details on the landscaping that's proposed on the downstream side of that embankment. Ms. Paist-Goldman then told the Board that the New Jersey Dam Safety Standards prohibited trees and shrubs with roots and stems being planted on dams because they have the potential to cause structural failure. She pointed out that there's a significant portion of the trees that everyone had been shown in exhibits here and what was submitted that were proposed on the dam embankment which would require special permission from Dam Safety to do that.

Mr. Lieberman then asked if it was a good idea to put trees on top of the dam.

Ms. Paist-Goldman indicated No and in fact, she routinely did inspections on dams where trees had started to grow in them. She added that It's always part of the maintenance that a dam owner had to do to take them out and they had to be removed a certain way. She then added that permits had to be filed with the State to do the removal and that trees were absolutely not permitted on a dam embankment.

Mr. Lieberman then asked if she'd seen any evidence that NJDEP had authorized it here.

Mr. Paist-Goldman then answered in the negative.

Ms. Paist-Goldman then told the Board that the New Jersey Inland Flood Protection Rules went into effect on Monday, two days ago. She did note that she recognized that the project was not necessarily subject to those rules at the municipal level. She added that they don't have DRCC approval yet, so it's a little unclear whether they'll be required to comply with that for DRCC. She then stated that as professionals in the industry, we've known about these rules coming out for over a year and that she had I proactively been working with her clients to make sure that they build their stormwater facilities to handle the increased runoff that we're already experiencing from these heavy rains. She then testified that, in this case, the applicant did not include the new rainfall data.

Mr. Lieberman clarified with Ms. Paist-Goldman that the new rule required that you use more recent precipitation data than had been used in the past, and she answered in the affirmative. He then asked her how old the precipitation data was that had been used before this new rule.

Ms. Paist-Goldman indicated that she thought the precipitation data was from the '80s and '90s. She added that some engineers had gotten more up on things and started to use more current rainfall data, but even that was pretty old. She stated that, statistically, we haven't kept up well in the engineering industry and at the State regulatory level with what's actually happening with the precipitation changes, so this rule was considered an emergency. Ms. Paist-Goldman then told the Board that it took a while to get adopted, but it's been known for a long time in the industry about the changes to precipitation and the need to increase the size of some stormwater facilities.

Mr. Lieberman then asked Ms. Paist-Goldman how old the data was that the applicant in this case relied on when it came to precipitation, and she stated she did not know. He followed up by stating that as far as she knew it was the newest data that was required under the new regulation. Ms. Paist-Goldman answered in the negative.

Ms. Rangnow brought up Ms. Paist-Goldman's discussion about the soils and the water table testing needing to be done from January through April as opposed to July and August. She asked why the January to April time frame was a more ideal testing situation.

Ms. Paist-Goldman indicated that the January through April time frame was a more ideal testing situation because that was when New Jersey tended to have snow melt and higher rain events (historically, the rainy season) that brings out the flowers and recharges vegetation going into the spring and summer months.

Chairman Orsini indicated that it was always his understanding that when development happens, there had to be a net reduction well beyond what was running off the site naturally. He asked Ms. Paist-Goldman whether the Applicant complied with that net reduction. She stated that the way the stormwater quantity standards were written up until this new rule change came about was that you could use the peak flow rate reduction. She added that there was basically a graph called a hydrograph and engineers look at the existing hydrographs and those discharges and cubic feet per second and then were required to reduce that by a certain percentage, which they do. However, she went on to say that it still resulted in a net increase in volume which was why she indicated that she had concerns regarding flooding increases.

Chairman Orsini then asked for clarification, stating his understanding was that it's not that they don't reduce the runoff, but that the discharge rather than going in sheet flow was all directed to one place at one time and onto Mettlers Road. Ms. Paist-Goldman agreed with that statement.

Mr. Shaban then asked what the implications would be of testing at the wrong time of year and if there was an exception to the rule, why would that be okay. Ms. Paist-Goldman indicated that summertime testing tends to be dryer in general, so you don't generally see evidence of a high-water table. She reiterated her earlier testimony by stating that the seasonal recharge that occurs from the winter frost and the melt in combination with the heavier rain that stays in the ground longer and creates more



saturated soil. She added that testing during the summer, the mottles or gray-like streaks become lighter and harder to see and the soil breaks apart more easily and doesn't necessarily have the same characteristics it would have if it were tested in the springtime. She added that it becomes important because by missing that, it has a potential to change the invert elevations, the bottom elevations of the stormwater features. She went on to state that if there was actually a shallower water table, which is what she believed based on the wetlands scientists' report that was provided, they were seeing water, as shallow as ten inches. Ms. Paist-Goldman then testified that that seemed consistent based on the flooding that occurred across the street in the Canal Walk community where they have sump pumps and significant basement flooding. Furthermore, she indicated that the seasonal high-water table would sit much shallower and closer to the surface and would, again, change how they have to build the stormwater features.

Mr. Shaban asked what the implication would be if the water table was shallower and closer to the surface, and Ms. Paist-Goldman said that they would end up with groundwater in their basements because they would have less capacity to take the stormwater runoff from the proposed development and would overflow even though it was not designed to overflow.

Mr. Shaban then asked for an explanation of Ms. Paist-Goldman's previous testimony that stormwater systems like the one being proposed were more prone to failures. He asked for more detail of what she meant by "more prone" to failures, i.e., slightly more, a lot more. Ms. Paist-Goldman stated that it would be more significant because once you switch up to the classification of a dam with all those extra standards, it's considered a Class IV dam. She then explained that there were four (4) tiers of dams in New Jersey. She added that a Class I dam was the really high reservoirs that people all know were dams and have a lot of crazy standards for safety and that Class IV is the lowest and was considered a permit-by-rule, so it did not go through a NJDEP permit application for the dam. She further explained that because of that, it tended to have less scrutiny on the application materials that were submitted that included less scrutiny on the maintenance, less inspection requirements for that size and structure and why maintenance was always a hard thing for stormwater facilities. Furthermore, Ms. Paist-Goldman indicated that when you add in a dam like the one proposed, it was additionally difficult to keep it maintained and functioning as it was supposed to.

Mr. Shaban asked what the implications would be if it didn't work as it was intended and fails. Ms. Paist-Goldman then testified that it would send water straight across Mettlers Road in towards Canal Walk. She added that, basically, you would lose that dam embankment potentially and all that soil and those retaining walls would direct itself across the street. Mr. Shaban stated that because all of the water was being collected in that one area as opposed to being dispersed, there's a significant chance of the water going across the street, with the impact being higher if it were to break. Ms. Paist-Goldman agreed with Mr. Shaban's assessment.

Mr. Shaban then asked if Ms. Paist-Goldman could opine as to the other options for design in this case, where it wouldn't have these single points of failure. Ms. Paist-Goldman answered by stating that she would be looking at the building layouts, the parking lot layouts and the other stormwater features to see if some of the sizes of those could be modified so they would be a bit more moderately sized as well as not a bunch of small things, but one large one. She said that she would try to spread it out a bit more and possibly install things in and around the buildings.

Mr. Shaban then asked about the problem with the trees planted on the dam in the design. Ms. Paist-Goldman stated that the root systems for certain trees – with several being proposed in the subject Application to include willows and swamp oaks – that like wetter soils and have shallower root systems that tend to send feeder roots out closer to the surface. She went on to state that those feeding roots have the potential to go right through the retaining wall because they were looking for a source of water which was why they didn't want trees to be planted on dams. She stated that it was called a "piping failure" where water can run along the root system and start out like a tiny little pencil point thickness that grows over time and can actually be the source of failure.

Mr. Shaban then asked if it would be something that a maintenance plan would cover if it was maintained well or is it just best practices to not plant trees there. Ms. Paist-Goldman indicated that the planting of trees on the dam was prohibited under the Dam Safety Rules. She indicated that you could only do that if you get something in writing from the NJDEP saying that they would allow it, but that she had never seen that done in the 25 years she's been working in the industry.

Mr. Shaban then opened a discussion regarding the new standards for precipitation data. He then asked what the difference was between the new data and the old data and if it was significantly different or just marginally different. Ms. Paist-Goldman indicated that the new rainfall data for Somerset County involved a 48% increase in predicted rainfall for the hundred-year storm. Mr. Shaban felt that that was significant and asked if that was not accounted for in the Application. Ms. Paist-Goldman stated that it was not.

Mr. Thomas asked for clarification regarding the relationship between management and the Scenic Corridor. Ms. Paist-Goldman stated that there were a lot of stormwater requirements in the Scenic Corridor ordinance and that the one she felt that they were really missing was minimizing the changes to the natural drainage patterns and systems. She continued by stating that because everything at the site sheet flows through vegetation, isn't concentrated and they were switching to a much more concentrated piped large stormwater detention basin system, they're putting massive volumes of water into a singular point where currently all that water would spread out, go through vegetation, some would be absorbed into the soil, and they were missing that with the proposed design.

Mr. Thomas then asked what the affect that situation would have on the Scenic Corridor, and Ms. Paist-Goldman stated that there was a lot of grading and fill in the

Scenic Corridor and a lot of volume of stormwater being stored in the Scenic Corridor, specifically that wasn't there currently. Mr. Thomas told her that he was thinking in terms of appearance. Ms. Paist-Goldman answered that it was like six (6) ft. of berms proposed around the stormwater basin in order to build out the full structural aspect that they were proposing for that dam. She continued by stating that that alone was a significant volume of soil and amount to keep water in the large basin that wasn't there currently. Mr. Thomas asked if it was the manmade additions to it that she was objecting to, and Ms. Paist-Goldman answered in the affirmative.

Mr. Thomas then asked what her opinion would be then of the manmade objections to the Scenic Corridor on the other side of Mettlers Road, the one that had a sidewalk, a curb and all the imported landscaping which over the years had become very nice and not be a Scenic Corridor. Ms. Paist-Goldman stated that it felt different because it was specifically there to hold the stormwater and was going back again to the drainage pattern shift. She reiterated that it was not so much to her about the vegetation being nice and mature in the other areas, but more about what the purpose of that fill was which was to hold the stormwater in that area and not change to the drainage pattern. Mr. Thomas then asked what the difference was other than 20 years of excellent growth on that side of the road. He then stated that a number of people had asked him recently how that ever was designated a Scenic Corridor, not because it wasn't nice and doesn't mean it shouldn't be protected, but again, it had curbing, a sidewalk and it was all manmade and its function was similar to what Ms. Paist-Goldman described, a detention basin holding back and managing the stormwater management system. Mr. Thomas said that he appreciated her comments and heard all of the technical information that was very important, however he didn't know that he agreed with her assessment of the Scenic Corridor.

Mr. Lieberman then asked Ms. Paist-Goldman to read for the record the exact language that she believed was in violation of the proposal as it related to the Scenic Corridor. She then replied that the exact language was "Stormwater management should be designed to make minimal changes to natural drainage patterns and systems" which came directly from the Scenic Corridor Ordinance. She added that she didn't believe that the proposal for stormwater constituted minimal changes as specifically required in the Scenic Corridor Ordinance. Mr. Lieberman then stated that that was her point and argument.

Mr. Thomas stated that he understood everything Ms. Paist-Goldman was saying but thought that she was missing or confusing the point. He went on to repeat that the stormwater management and the buffering on the other side of the street violated the Scenic Corridor Ordinance and that he was concerned about the drainage and the technical aspects. He added that at some point neither side of the street was going to comply with the Scenic Corridor Ordinance and that the Board's job, if this was an approved project, was to make them as nice as they can possibly be, not as an aesthetic thing that he was concerned about and not the technical things that Ms. Paist-Goldman was speaking about. He then said that there was nothing on the Canal Walk side of Mettlers Road that fit in with the Scenic Corridor ordinance.

Mr. Lieberman indicated that he believed that the project might have predated the Scenic Corridor Ordinance.

Chairman Orsini was going to ask about Mr. Lieberman's point, but regardless of the answer it didn't matter whether Ms. Paist-Goldman believe it should be a Scenic Corridor or not, it is as it is currently constructed. He added that he didn't believe that two (2) wrongs don't make a right and doesn't mean that the Township should allow it to be violated twice because it violated it once.

Mr. Lieberman indicated that he didn't encourage a disagreement by Board members, and the Chairman indicated that it was just an observation and that they didn't disagree. Mr. Lieberman still believed that the approval for Canal Walk was before the Scenic Corridor Ordinance, and that he would look into the matter and get back to the Board on that. The Chairman stated that that information would be helpful because it might make a difference as to when the Scenic Corridor was developed and it might be the rationale that the other side was already developed, and they would include it in the Scenic Corridor just because they were including the other side of the street in the Scenic Corridor.

Mr. Healey then asked Ms. Paist-Goldman if it were her opinion that since the site was obviously going to be a warehouse with a large building, large areas of pavement, that they were capturing the water, piping it, and putting it into a system of basins, that's obviously changing the drainage pattern. Also, he asked her if she was saying that there's wording in there that's saying you're supposed try and maintain the existing drainage pattern as much as you can, but there are other portions of the Scenic Corridor Ordinance that talk about specific design standards for stormwater detention facilities. He added that it talks about detention basins and walls and things like that, so the Scenic Corridor ordinance did contemplate the fact that there this is going to be a development that is going to have to pipe and capture the water because, obviously there were detailed rules about what applicants need to do. Mr. Healey noted that any development was going to change the drainage pattern and that there were standards that talk about those very systems. He then asked Ms. Paist-Goldman to speak to that and to what degree did she think that the design was inconsistent with those design standards. Ms. Paist-Goldman answered Mr. Healey's questioning by stating first, related to the basin requirements, that there were detailed pieces in there about the way vegetation was supposed to be laid out inside the basin footprint even down to the size of the vegetation that's supposed to be installed. She then added that the Applicant did not have all of those pieces in there, so they didn't attempt to fully address the vegetation standards for basins. In addition, she told the Board that in the Scenic Corridor District Overlay Ordinance they encourage the use of vegetative swales in an effort to minimize drainage pattern changes and that there's no vegetative swales proposed at this site. So, Ms. Paist-Goldman stated that she would be looking at ways to reduce the amount of piping and increase the number of swales as well as fully complying with the vegetation standards from the Scenic Corridor Overlay Ordinance.

Mr. Healey then asked for clarification from Ms. Paist-Goldman and if she was referring to three (3) large basins as a dam. She indicated that the Applicant had actually classified it as a dam, and based on her review, she agreed with them that it was a Class IV Dam.

Mr. Healey then indicated that he knew that he's looked at hundreds of site plans over the years that had landscaping in and around basins. He then asked Ms. Paist-Goldman if she could explain why she felt that the proposed Application placing the landscaping in and around the basin is inconsistent with the rules? Ms. Paist-Goldman then stated that placing vegetation within the basin was generally okay, but that it's outside on the berm itself where vegetation was prohibited under the Dam Safety Standards because you'd be putting in vegetation on the downslope of that embankment, and that was what created those feeder roots that tend to cause the piping failure through the slope. So., she indicated that vegetating the basin in the footprint was totally acceptable and done all the time for Class IV structures, but vegetating outside on the embankment was not allowed under any standards that she had seen. She added that it's specifically prohibited in the Dam Safety Standards.

Mr. Shaban asked if she had any visuals of what she was speaking about so he could understand what they were talking about here; one (1) tree, two (2) trees or a larger number of trees. Ms. Paist-Goldman stated that it was a bunch of trees. Mr. Shaban asked if she could quantify that for him, asking how much in violation that was. Ms. Paist-Goldman then stated that they could pull up one of the Applicant's landscaping exhibits. Mr. Lieberman interjected by asking if it would help to see what the Applicant handed out at the last hearing. Ms. Paist-Goldman stated that it wasn't a marked exhibit, but it was part of the Applicant's drawings that they submitted and marked it as Objector – 1 (O-1) and was called the Planting Plan and was prepared by Brian Haynes of Link Logistics. Mr. Lieberman then stated that it was marked as A-4 in a previous hearing. Mr. Shaban indicated that the essence of what he was trying to get to was that there's funneling that's going onto a single point and what he was hearing was that there was a standard to not have trees there because that would perhaps compromise that single point. So, if that's compromised, Mr. Shaban indicated that then that's a really bad outcome because then you would have 1.1 million or more gallons of water that could then stream directly onto the road and perhaps into the neighboring houses. He then asked, in her expert opinion looking at this, is what I'm saying an accurate reflection of a summary of what you're saying. He then asked if Ms. Paist-Goldman could just elaborate on the increased risk of having those trees or those structures there. Ms. Paist-Goldman stated that looking at the colorized exhibit that she marked up there when she was doing her review, she was going to estimate conservatively that there's maybe 50 to 75 trees in the embankment. She did say that some trees were located directly over the discharge pipe from that basin and that was absolutely never allowed specifically because it had potential to compromise even the pipe itself. She added that the trees on the embankment, again, also all have the same potential to cause failure because it's all in the earth behind the retaining wall where those trees were being placed.

Mr. Shaban then indicated that it was an example of where the Landscape Architect and the Engineer needed to talk to each other to work that out, and Ms. Paist-Goldman agreed. Mr. Shaban then asked if the 50-75 trees located in the embankment could compromise the dam, and Ms. Paist-Goldman answered in the affirmative.

Mr. Mazzei, Board Engineer (CME), noted that there were three (3) basins around the project and the one on Mettlers Road had been classified as a dam. He then asked if the other two (2) would also be classified that way as well. Ms. Paist-Goldman then answered in the negative. Mr. Mazzei then asked for clarification that Ms. Paist-Goldman recommended to remove the 50-75 trees from the embankment, and she answered in the affirmative.

Mr. Mazzei then stated that in terms of determining the seasonal high-water table, Ms. Paist-Goldman had mentioned that an approval was needed outside of January and April, but that was not his understanding. He added that there were other methods of determining that. He went on to state that he had the DMP here, Section 1D, and there were two (2) different determinations. He added that one (1) was if it's within January and April then you measure directly from 25 soil pits, but if it's not, then you follow the guidance in the DMP that stated, "During other times of the year, the depth of the seasonal high water table may be obtained from the NRCS web Soil Survey provided that the soil series presented at the site was identified based upon comparisons of soil profile morphology." He then indicated that he didn't believe that that required an outside agency approval and just wanted clarification on that. Ms. Paist-Goldman stated that this particular site base claims that the soils don't match the mapped NRCS web Soil Survey, so using that for a seasonal high-water table when they claim that the soil profiles were inconsistent with that doesn't comply so it would need to be tested between January and April.

Mr. Shaban then asked if Mr. Mazzei agreed with Ms. Paist-Goldman's assessment. Mr. Mazzei indicated that what he would say is that they've seen a lot of other applications come before this Board that have been tested outside of the January to April range. He added that he personally hasn't designed this project so he didn't want to speak on whether the Design Engineer needed to do it, and would leave that to their professionals, but he did believe that they've complied with the testing requirement.

Mr. Lieberman then indicated that the point that Ms. Paist-Goldman was making wasn't the time of year, per se, but the fact that they had rejected the soil classifications and that they've attempted to reclassify. He added that what Ms. Paist-Goldman was saying was that in light of that, you couldn't rely on that alternative method. Mr. Mazzei stated that he agreed that it does reclassify, but he would have to get back to that as he didn't want to misspeak on the record.

Mr. Gene Bove, Noise Control Expert/Project Manager employed with GZA Geo Environmental, Fairfield, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Bove explained what documents he reviewed and what he did in order to prepare for the meeting that evening. He then gave his opinions and the

factual basis for those opinions. Mr. Bove then entered into the record his report, dated June 22, 2023, that he wrote and will be discussing that evening. Mr. Bove indicated that he reviewed the Applicant's Environmental Impact Report. He did state that there was not much to review in terms of noise, and he believed that it was discussed on page 10 of their Environmental Impact Report. Mr. Bove added that they did a very brief summary of the noise and offered a summary of that very brief section. He indicated that it stated that "It is not anticipated that this facility will exceed the daytime or nighttime usage allowances for noise." Mr. Bove testified that the statement was simply made without any backup and did not fulfill the requirements of the Environmental Assessment Ordinance for Franklin Township. He went on to state that the ordinance required adverse environmental impacts to be looked at, including noise, and ask for project alternatives to be looked and mitigation measures or more alert measure to be looked at for noise or other items that weren't noise that he would not be discussing. Mr. Bove then discussed that, in New Jersey, there was a noise code, N.J.A.C. 7.29-1.2 for commercially generated noise. He noted that the noise code was at residential property lines, so even if you were generating a sound that exceeds the noise code on your own site if you had a commercial company, as long as it did not exceed the noise code at the residential property line, wherever that might be located, then the company would be in compliance. So, Mr. Bove continued to state that the level of limitation for daytime hours in New Jersey (7:00 a.m. to 10:00 p.m.), the limit was 65 decibels and nighttime hours (10:00 p.m. to 7:00 a.m.) the limit was 50 decibels. He added that there were also requirements for octave band levels which were just different frequencies of noise, and the center octave bands were kind of like human hearing. Mr. Bove then also mentioned that there were regulations for impulsive noises, which were sounds that last less than one second. He noted that the limit for these in the daytime hours was 80 decibels and no more than four (4) times in an hour. An example he gave was that if there was some sort of banging on your site that's one (1) second in duration, but it happened 30 times in an hour, then that would trigger that continuous noise level of 65 that he previously discussed. Mr. Bove then stated that the Franklin Township's Administrative Legislation, Chapter 167, also contained noise regulations, and they just generally mirror the New Jersey noise code requirements.

The site plan that was provided by the Applicant has two (2) proposed warehouse buildings. He noted that between the two (2) buildings there were approximately 60 loading spaces, 95 parking spaces, and two (2) drive-in ramps. As expected with the scale of a warehouse facility, Mr. Bove indicated that the following different types of sounds could be expected: Truck acceleration, truck deceleration, air braking, braking chirps, hitching, unhitching, backup alarms, unloading/loading trucks, passenger vehicle horns, passenger vehicle door slams, commercial vehicle door slams, HVAC noises. Mr. Lieberman then asked where Mr. Bove came up with the list he had just read, and Mr. Bove indicated that it was based upon his experience of what you might expect of a truck at a warehouse facility. Mr. Bove indicated that he did have a couple of examples of these where they collected noise data on a previous project. He indicated that they used a noise meter with a truck simulating movement for them in a parking lot. He added that the noise data collected with a noise meter was collected from approximately 10-15 ft. away. Some of the data they collected was sound levels that a tractor trailer

idling on a driver's side was 72 decibels, idling from the front of the truck was 75 decibels, idling on the passenger side was at 77 decibels, slow drive by in a parking lot was 80 decibels, air brakes were at 88 decibels, air brakes in conjunction with hitching which is a common occurrence at a warehouse, 90 decibels, hitching and air brakes was 94 decibels, and just hitching was 90 decibels. Mr. Bove told the Board that he had a whole list of these, but wanted to remind the Board that those sound levels were next to the truck and not at the property line, but it also was just one (1) truck.

Mr. Bove stated that as part of the Environmental Assessment Ordinance, it required that noise be studied. He added that no substantive backup data was given in that report regarding noise, so his suggestion was that some sort of acoustic model be created to determine if there was an impact. He then added that if there was an impact, the Applicant could then determine the mitigation. Mr. Bove stated that there were two (2) generally accepted models, software that he used, with one called SoundPLAN and one (1) called Capna A and some other smaller and lesser used ones out there. He explained that the programs built a 3D model of the site to include the buildings, the pavement surfaces and the grass surfaces, the trees, the nearby road, and the topography. Mr. Bove then stated that one would plug in your HVAC system that created the noise and use the manufacturer specifications from that to say how loud it is. From there, Mr. Bove stated that you then go look at how many trucks per hour that you would have on site, what type of activities they're going to do, what their typical movements on the route on the site would be, and this information would generate a contour map of noise. He stated that it would look just like a groundwater contour map, except that it was in decibels and from that you could determine what the sound level was based on the proposed actions at certain places. Mr. Bove stated that you could look at the property line, you could go look at somebody else's house across the street, and you could look at different elevations. He added that you could ask them to do the map that shows it at five (5) feet, at ten (10) feet, at twenty (20) feet so that you could get an idea of what someone's bedroom window might hear.

Mr. Lieberman then asked if Franklin Township required any modeling as part of its environmental assessment and Mr. Bove indicated that the word "modeling" was not used. Mr. Lieberman then asked why the Board should impose or ask the Applicant to do something that literally wasn't mentioned. Mr. Bove then stated that he just ran off some numbers that one truck could make, and people were clearly concerned that noise was an issue. He added that the ordinance for Environmental Assessment asked for this to be looked at, with backup information, and it really was not. Mr. Bove then gave his recommendation that a model be done because there's no true other way. He said that there was some shorthand math that could be done, but with a warehouse facility, there's a lot of moving parts and the best way to do that is through an acoustic model.

Mr. Lieberman stated that the Environmental Impact Ordinance here in Franklin Township specifically required that the author of that study indicate how they got to the results and asked Mr. Bove if that were correct, and he answered in the affirmative.



In terms of the noise work that was done here, Mr. Lieberman then asked Mr. Bove if there was any indication at all by the Applicant as to how they reached the conclusions, what they relied on, what database they relied on, and what studies, etc.

Mr. Bove answered in the negative because he testified that there was no noise work done as it was just a few paragraphs describing how they're not going to exceed the limits. He then stated that he would like to bring up an example and stated that he worked on a project in Robbinsville with Mr. Lieberman that involved a very similarly sized facility where they did a noise model that they've had some issues with. He went on to explain that they determined that they were going to exceed the noise levels at a couple residential property lines and because of that, they were able to develop mitigation which he believed was in the form of a berm with an acoustic wooden fence on top on a very small area of the property. Mr. Bove went on to explain that they re-ran the model with that mitigation, and it was determined that they were not going to have any impacts which was the point of a model - you determine if there's going to be impacts without mitigation and then you use it to help you develop your mitigation plan which could be a fence, a wall, a berm. Mr. Bove told the Board that there's a lot of different possible things there.

Mr. Lieberman indicated that Mr. Bove was finished with his testimony so we're ready for cross-examination from the Board.

Chairman Orsini went first and said that just to make sure that we understand what you're really asking us to consider is not that necessarily the Applicant would exceed noise thresholds at the property line and certainly not that even if they did that it couldn't be mitigated. What you're saying is there's no data to support their assertion in the Environmental Impact Statement that they don't have. Mr. Bove indicated that the Chairman was correct.

Mr. Lieberman told the Board that the Applicant was saying two (2) things; that there wasn't any, and based on real-life experience, there's a possibility it could happen. That's the testimony that you got.

Chairman Orsini then asked if Mr. Bove's recommendation was that the Board would ask them to do this modeling, and Mr. Lieberman interjected that, alternatively, they could come up with some other basis that satisfied the ordinance requirement to support their statements.

Chairman Orsini then summarized their central assertion that the claim in the Environmental Impact Statement that there was no detriment was not supported. Mr. Lieberman agreed with the Chairman's statement here.

Vice Chair Brown asked for confirmation from Mr. Bove that the decibels that were listed in his testimony were from the truck and parking lot, and Mr. Bove answered in the affirmative. The Vice Chair then asked Mr. Bove if he had taken a look at the proposed design of this site, and again Mr. Bove answered in the affirmative.

Vice Chair Brown then asked Mr. Bove if he thought that the noise would be louder or less given the currently proposed design. Mr. Bove replied that the numbers that he provided were just on a truck in a parking lot, and it had nothing to do with the design. He went on to state that, yes, this parking lot was internal to the buildings, but without seeing a model and doing some detailed analysis, he could not give an answer. Vice Chair Brown then asked Mr. Bove what his experience would tell him given that he's measured noise from trucks internal to a parking lot with buildings and did it usually exceed or reduce given that. Mr. Bove stated that there were too many variables to say and that you need a model or something to prove to provide him with numbers and that he couldn't just guess. Vice Chair Brown then asked if Mr. Bove thought that buildings would serve as a buffer to the noise at all, and Mr. Bove stated that they absolutely would. Vice Chair Brown then asked Mr. Bove if he thought it was possible that it could reduce the noise, but the parking lots or passenger vehicles I believe, if I'm not mistaken, were not interior to the site. He added that there was also HVAC on the roof, so those were also possible sources that were not buffered by buildings. The Vice then asked if he was concerned that it could exceed what you've got, and Mr. Bove answered in the affirmative.

Mr. Shaban then asked how it worked with noise in terms of not one (1) truck but two (2), three (3), four (4) trucks - did they amplify off of each other or was it just whatever the maximum was it will be the maximum noise. Mr. Bove replied that adding noise was a lot of rhythmic equation. He continued by stating that if you add 65 to 65 the noise was going to slightly increase, but if you add 45 to 70 it's not going to increase. He went on to state that without doing the math, it's difficult to explain, but the more trucks the more noise. Mr. Shaban then stated it's not just the more trucks but just the more things producing noise that will all work together to actually go even higher than even what one's maximum would be; right? Mr. Bove answered in the affirmative and also stated that there's another thing these models consider and that was reflectivity because sound travels and bounces off of things. He went on to explain that certain truck placements and building placements affect all of that and was part of the analysis. Mr. Shaban stated that he knew that Mr. Bove said 15 feet, but wanted to know if there was any data or models that do a further distance like 100 feet, for instance, and what that same truck would be emanating in terms of noise. Mr. Bove explained that that was just where he collected data and that they just used that because that was an easy way to build their acoustic model with these numbers so that they were able to say that this vehicle is going to move in one(1) location, two (2) locations, three (3) locations on the site. He went on to further state that then you plug in those numbers from ten, 12, 15 feet into the model and then it's going to calculate the distance and you're not going to go take another measurement at 100 feet from the truck because the model's going to account for that when you plug that in. Mr. Shaban then asked if they had any estimation of how that sound sort of dissipates through space? Mr. Bove indicated that for vehicular movements the standard is a three (3) decibel reduction for double the distance - it's also another complicated equation. Mr. Bove went on to explain that if the measurement was 80 decibels and was taken at 10 ft. away, at 20 ft. it would be 77 decibels and at 40 ft. it would then be 74 decibels. He stated that you would double it and then take three off and you would keep doubling it. Mr. Shaban posed another

question to Mr. Bove by asking if at 80 ft. or 100 ft., the decibels would be around 70 and from what he understood from the testimony, at the border it would be around 50 decibels at nighttime. Mr. Bove indicated that nighttime regulations in New Jersey were 50 for continuous noise. Mr. Shaban continued the discussion with calculations and stated that it was helping him to understand the probability of what the likelihood of needing a study would be.

Vice Chair Brown then asked if Mr. Bove could define a truck for us. Mr. Bove stated that he was talking about tractor trailers and that the numbers he gave were tractor trailers and that those were just examples. The Vice Chair then clarified that this was only for on-site noise, and Mr. Bove stated that he was just talking about 15 feet away from the truck. Vice Chair Brown then clarified further by asking if that was on site and not en-route to the site, and Mr. Bove indicated that it was on site. He further clarified by stating that the only time he mentioned movement was 80 decibels for a pass by slowly in a parking lot and none of this accounted for the movements on a road. He then stated that New Jersey didn't really regulate truck movements on the road, which was something people should be concerned about, but there's no regulation for it. Vice Chair Brown then asked why he didn't represent that and asked if there was a model for that as well. Mr. Bove stated that there were models for that, and the Vice Chair asked why that wasn't in his recommendations. Mr. Bove answered by stating that there's just no regulation to require it. In furthering the inquiry, Vice Chair Brown stated that it was not in the Township regulations either but asked for clarification regarding whether Mr. Bove recommended that, and he answered in the affirmative. Vice Chair Brown then indicated that a study could be done for noise on the road where it could be greater, and Mr. Bove indicated that it was a concern and could absolutely be looked at. They then furthered discussion by speaking about mitigations to noise on the roadway from tractor trailers.

Mr. Shaban then opened a discussion regarding the sounds would be of rooftop air conditioning units and if they had an approximation of the decibel levels of those. Mr. Bove stated that they vary wildly, but that the testimony given earlier indicated that they would meet local requirements. He added that he would like to see manufacturer specifications talking about the decibel levels of the units and could then do the math to see what it would be at the property line. Mr. Shabin indicated that it was going to be a speculative building and didn't know what would be going in there. Mr. Bove indicated that they could build a model and they were going to have to base the model off of something. He added that the Board could ask that it would be a requirement that certain types of air conditioning units would have to be used or something comparable that followed the model. Mr. Shaban then spoke about different methods of mitigating the noise from the air conditioning units, and Mr. Bove suggested there were a few ways of mitigating the noise and suggested that there were fences that could be put around them. He suggested a product called Acoustifence where you may have your HVAC set up in the corner of a building and put a chain link fence around it. He described it as maybe about a half inch or a little less thick and made of malleable plastic that has acoustic ratings.

Chairman Orsini suggested taking a break since there were no more Board questions and it was almost 8:43 p.m. They decided upon a 10-minute break and came back at 8:55 p.m.

Chairman Orsini opened the meeting back up to hear from Mr. Lieberman's third witness. Then he suggested that Mr. Lanfrit could cross examine the three (3) witnesses and then they could open it up to the public and see where we stand at the end of the night.

Carlos Rodrigues, Planner and owner of Design Solutions, LLC, 201 Moore Street, Princeton, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Rodrigues then reviewed the material points of his report, dated June 15, 2023, and gave his justification and support for them. Mr. Rodrigues noted that the Applicant did make some changes to their plans between the date when this report was issued and now, so there were some points that were made in the report that were no longer valid. Mr. Rodrigues then wanted to open a discussion regarding the size of the buildings. He stated that Building A was 793 feet by 193 feet, the equivalent of two (2) city blocks; and a single building three (3) or four (4) stories high and the equivalent of three (3) football fields – a very big building. He then noted that Building B was smaller, 425 feet by 160 feet, so it's the equivalent of one (1) city block and one (1)-and-a-half football fields. He described them as vast buildings with vast prints that were going to require a tremendous amount of grading and that the site would not be recognizable after the site plan had been implemented. Mr. Rodrigues then wanted to spend a little time talking about the purpose of this district, the Business and Industry (B-I) district and its purpose -- the stated purpose that's enumerated in section 112-8 is, "To provide sufficient space in appropriate locations for a mixture of office, laboratory, hotel, data processing and communications, light industrial, manufacturing, and other such compatible uses which provide opportunities for job creation. The standards for the district are intended to require maximum attention to proper site design, including the location of structures and parking areas, proper ingress and egress, architectural design, stormwater management, landscaping, and the need to ensure visual harmony and avoidance of nuisances upon adjacent residential areas." He noted, as an aside, that warehousing was not an enumerated use in the intent section of this district. He also noted the emphasis placed on maximum attention to site design and the need to avoid nuisances upon adjacent residential areas. Mr. Rodrigues explained his theory that what's being proposed did not fit with the stated intent of this district, which he indicated was based on an analysis of the standards. He told the Board and the public that the minimum lot size in this district was only two (2) acres which was not really enough for a modern warehouse. He then noted that the minimum lot frontage was 150 feet, minimum front yard setback was 50 ft., etc. In his opinion, these are standards for a district that was meant to produce smaller scale, smaller footprint buildings, not the monsters that we are contemplating here. He added that these minimums were set so that you could have modest scale buildings that would accommodate those various uses that were permitted. Mr. Rodrigues then explained that the flaw in this zoning, sadly, is that it didn't impose an upper limit on what might be built in the zone, only the lower limit. To explain, he indicated that there's no maximum lot size, only a minimum

lot size and there were much larger parcels, but I believe that the B-I zoning and the Master Plan amendments leading up to it anticipated that the larger parcels would be subdivided into smaller lots to facilitate a range of economic development activities of a relatively modest scale. Mr. Rodrigues went on to further state that he didn't think the B-I zoning anticipated that larger parcels would be developed as a whole without subdivision, therefore, setting the stage for buildings with much larger footprints than intended and for activities far more intense than intended. In other words, he testified that his contention was that the B-I zoning did not anticipate the current crop of warehouses of which B9 was a part.

Mr. Rodrigues then drew the Board's attention to something that we have spent remarkably little time dealing with and what might be called operational considerations, namely what exactly is going to be stored in these warehouses and how they will operate. He indicated that that's important because not all warehouse uses were created equal, and he thought this Board and the public need to have sufficient information on how the use will operate in order to be able to properly evaluate its anticipated impacts on the neighbors and the community at large and to devise appropriate mitigation measures as needed. Mr. Rodrigues then spoke about the fact that we don't know literally anything about these warehouses, i.e., how many employees were expected to work there, how many shifts, the schedule, the maximum number of people that will be on the site at any point in time, because the tenant or tenants have not been identified. He added that we also don't know anything about the types of products that might be stored there, keeping in mind that there's a close proximity to adjacent residential uses. He then enumerated some of the items that might be housed there, such as explosives, flammable, or caustic products stored in the buildings as well as chemical compounds, medical waste, etc. Mr. Rodrigues pointed out that the B-I zoning placed no limits on the types of goods and products that may be stored in a warehouse and that no other section of the Franklin Township Land Development ordinance that he could find placed limits either. His opinion was that without a clear understanding of these parameters, neither the Planning Board nor the public could properly evaluate the future impacts or possible future impacts of the proposed facility, and therefore, could not properly evaluate the consequences of the proposed Application. He reminded everyone that the Applicant's architect did testify, according to his notes at the January 4th hearing, that the buildings would be built as a Schedule 1 storage facility under the Uniform Construction Code, New Jersey Edition. He went on to discuss Schedule 1 storage facilities and that they were considered moderate hazard storage facilities and they were licensed to store flammable products such as aerosol products, Level 1 and 3, bamboos and rattan, books and paper in rolls or pack, furniture, glues, lumber, upholstery, and mattresses. Mr. Rodrigues then discussed the close proximity of the proposed project to residential neighbors in large numbers, the possible presence of unknown amounts of flammable materials was of high interest not just to the neighbors but to the town's fire departments. He opined that this is what he would consider a potential public health threat posed by facility-generated noise as was testified to earlier that night and deteriorating air quality from vehicle emissions. He reminded everyone that public health and safety was the number one purpose of zoning, so anything we do to undermine that undermined the purpose of zoning.

Mr. Rodrigues then drew the Board's attention to the Scenic Corridor. He then discussed his report, and his description therein was adopted, how it originated right here at this Board, when it was adopted, etc. He then indicated that he discussed the status of the various projects on the other side of the street, some of which were not subject to the Scenic Corridor ordinance, and some of the others that predated the ordinance. Because of this, he stated that he didn't think that looking at the other side of the street as a precedence applied because the ordinance was not in place when those developments were built.

He did state that he felt that the Applicant had eliminated some significant red flags in terms of the initial proposal related to the cutting down of trees in massive quantities, but they were still cutting them down, but proposing to replace them as noted in the last version of the plan, although they may have to take a few off the top of the berm. Mr. Rodrigues indicated that there were other aspects of the Scenic Corridor that were not being respected. He went on to state that there was a 30-foot-wide driveway, he believed that was still in the latest version of the plans where the standard was 12 ft. wide. He opened a discussion that maybe the standard was written for single-family homes, but then what about all the other uses that were permitted in the district that would seemingly require wider driveways. He stated that you can get in and out of this site and make it work with a loop that's only 12 feet wide by redesigning the site or they could do a one-way system. Mr. Rodrigues opined that he believed that that standard was there because every driveway opening is a breach in the Scenic Corridor and the Scenic Corridor provisions were designed to limit those breaches to the maximum extent possible. He then added that that would be a variance, Board, that the Applicant had not requested and had not provided testimony to justify it. Mr. Rodrigues suggested that there was possibly one (1) alternative which he indicated that he pointed out in his report, which was that this Planning Board could require the Applicant to not access the site from Schoolhouse Road but instead access the site from Jensen Drive to the east which was an adjacent industrial property. He explained that doing so would take all the truck traffic off of Schoolhouse Road and Mettlers Road and probably require reaching an accommodation with the adjacent property owner, but it would provide vehicular access through an existing industrial site without any additional traffic on these two (2) roads, therefore, holding the residential neighborhoods harmless. He then drew the Board's attention to a separate consideration regarding pedestrian and bicycle safety on both Schoolhouse Road and Mettlers Road. Mr. Rodrigues explained that in addition to the local residents that walk on these two (2) roads for recreational purposes, his understanding was that they're also used by students at the local school. With a substantial increase in the presence of heavy vehicles, the safety of pedestrians and bicyclists along Mettler Roads and Schoolhouse Road would be placed at increased risk. He then discussed the Township's 2021 Circulation Plan Element that indicated an LTS of 4 for these two (2) roads. He then explained that LTS stood for level of traffic stress, a widely used metric. Mr. Lieberman asked what the LTS of 4 was compared to, and he indicated that it was the highest level of traffic stress, meaning that cyclists using this road were at the highest level of stress according to this metric already. He added that that would obviously only get worse if this project was built with access from these two roads unless appropriate pedestrian and bicycle facilities

capable of safeguarding the safety of pedestrians and bicycles were put in place or all of this increased truck traffic is re-routed. Further in his report, Mr. Rodrigues stated that he provided reasons that he believed authorized the Board to deny, without prejudice, this Application under the Planning Board's powers of Site Plan review. He added that he had listed, at length, language from the ordinance. For example, from Section 112-183, where the very first purpose listed was preservation of existing natural resources on the site. He noted that's not really possible when you're building a building that's 793 feet long. He then spoke about Purpose C related to adequate screening, landscaping, and location of structures. Then he spoke about Purpose E, which was the efficient, safe, and aesthetic land development as well as Purpose F, which is the harmonious use of land and Purpose G, which is compliance with appropriate design standards to ensure adequate light and air, proper building arrangement, and minimal adverse impact on surrounding property. Mr. Rodrigues indicated that in his reading of the proposal, he didn't see how it could possibly meet any one of these listed objectives. He went on to state that Section 112-188 in the Land Development Ordinance dealt with principles and standards for Site Plan and Subdivision review, and it stated, "Based upon its review and the degree to which it can make positive findings, the Board may approve, conditionally approve, request modifications, or deny approval of the Site Plan and/or subdivision based on evaluation of the site plan details with respect to", and then it lists a series of items to which this was referred. He then enumerated and describe those items as Number one (1) or Subsection B, "The environmental impact of the development relating to the preservation of existing natural resources on the site and the impact on the natural resources of the surrounding properties and neighborhood", neither of which the proposal accomplished. He added that Purpose D or Subsection D talked about, "The relationship of the development to adjacent uses in terms of harmonious use and design, setbacks, maintenance of property values, and negative impacts." Mr. Rodrigues noted that nowhere in this language was it suggested that these parameters apply only when variances or other deviations were at stake and there was no mention of variances or other deviations. He told the Board that these were the principles that the Township's Land Development Ordinance was instructing the Planning Board to use to measure whether a given site plan application should be allowed to proceed whether or not it required variances. This is the mandate that the Township's Land Development Ordinance placed on the Planning Board. He testified that people frequently assume that applicants were entitled to maximize the development yield of a site - a false assumption. Mr. Rodrigues noted that the zoning standards such as maximum lot coverage, maximum floor area ratio, etc., establish a ceiling which can't be breached without requesting relief, but they didn't establish a floor which must be obtained in all circumstances, and that was where all these various standards come in to play. As he previously mentioned, Mr. Rodrigues indicated that the zoning parameters for this zone reflect the minimum lot size of two (2) acres, and the subject property was 20 acres. He then stated that the maximum building coverage in the B-I Zone was 50 percent. He went on to further explain that if you applied 50 percent to the 20 acres, you would end up with 435,000 sq. ft., so there's a mismatch here.

Mr. Lieberman then asked Mr. Rodrigues if you could look at the 10 remaining pages and summarize the most important points just in the interest of time.

To summarize, Mr. Rodrigues stated that they do need a variance which they haven't provided any testimony in support of, they don't meet the stated intent of the zone, and they're violating all sorts of design standards that this Planning Board was supposed to use in evaluating a site plan. So going back Section 112-88 of the code which described the principles and standards for site plan and subdivision review, Mr. Rodrigues stated that it instructed the Planning Board to, "Review the site plan and/or subdivision for compliance with all applicable ordinances and the Master Plan for harmony with surrounding uses and the overall plan for development of the Township for promotion of health, safety, order, efficiency, and economy, and for maintenance of property values and the general welfare. Based upon its review and the degree to which it can make positive findings, the Board may approve, conditionally approve, request modifications, or deny approval of the site plan based on evaluation of the site plan's details." Mr. Rodrigues then indicated that what he was suggesting to you is that this site plan is so poor that it doesn't really pass the muster and it shouldn't be given a free pass. It should be re-worked completely. He then stated that there were many, many provisions in your ordinance that authorize the Board to require changes or deny the application – he stated that he wasn't going to read all of them, although he did say that he did screen quite a bit and you can refer to the report. He listed, for example, Section 112-188E required the provision of the safe and efficient vehicular and pedestrian circulation system. Mr. Rodrigues stated that there were no sidewalks on the site except in front of the two (2) car parking areas and there's no proposed sidewalk along the site's frontage unless it showed up in the latest iteration. Additionally, he indicated that there were no sidewalks leading from the buildings to either two (2) of the roads or any internal sidewalk system. It's hard to understand how the proposed site plan even remotely satisfied the standards in this section. Mr. Rodrigues testified that they'd already heard about the noise issue, which in his opinion has the potential to pose a very serious public health hazard.

Chairman Orsini asked Mr. Rodrigues for clarification as to the rationale for why he thought the Application required a variance because as it was presented no variances were requested especially after the site plan was modified before it ever got a hearing. We're ultimately not hearing one, so the Chairman just wanted to clarify for the Board what variance Mr. Rodrigues thought was required. Mr. Rodrigues stated that they have two (2) driveways – one was 30 feet wide and the other one was 24 ft. wide. He went on to explain that the Scenic Corridor allowed for 12 feet wide and that's the standard. Chairman Orsini stated that he didn't think that Schoolhouse Road was a Scenic Corridor, though, it's Mettlers Road that has the Scenic Corridor designation, and they don't have any driveways on Mettlers Road. Mr. Rodrigues stated that his understanding was that the entire site was governed by the Scenic Corridor provisions. The Chairman indicated that if they did ask for a third driveway, as we had discussed, that would create a variance, but that would be a request because we've asked for a separate car driveway.



Mr. Healey, Township Planning Director, and Zoning Officer affirmed that the 12-foot driveway width does apply to Schoolhouse Road, that the regulations do apply to the site as a whole; however, he respectfully disagreed with the opinion that it's a variance. He explained that the Scenic Corridor Ordinance differentiated between zoning regulations and design standards. Furthermore, he added that Section 112-201F cited a number of regulations and talked about use, setback, building height, signage, fences and walls, and the standards under those categories which were standard zoning regulations and talks about how the requirements of the Scenic Corridor Ordinance change the otherwise applicable zoning requirements or not. Mr. Healey then gave an example, i.e., as it related to the setbacks, we've talked a lot about the fact that the Scenic Corridor Ordinance doubles the required setback and also imposes standards about not allowing not just building in a setback, but also any type of structure, parking lots, etc. Violation of that would be a variance because it's under that section that talks about zoning regulations. He went on to discuss Section 112-201G was entitled Design Standard and there was a whole series of things under that, paragraph after paragraph, that talk about site layout and stormwater design and the landscaping. Additionally, he spoke about that section and stated that within that it talked about site access and circulation, and the 12-foot design standard was in there. Mr. Healey noted that the intent of that was to try to minimize the amount of pavement that people see at the street, so it is an intent. Mr. Healey then said that it was his opinion that it was a design waiver they need from that, but it's not a variance.

Mr. Rodrigues stated that he didn't know whether it's a variance or a design waiver, but it still required some kind of justification because it is a deviation and a rather drastic one. He added that he had not heard any justification and neither has the Board. He asked what their justification was. He added that they can redesign the site to satisfy that standard.

Mr. Healey responded stating that when he heard the comment, frankly, he thought - to what end - because if you're going to have traffic going in one way, traffic going out, you're still going to have 24 feet of pavement. So, if you have one (1) driveway with 24 feet, we're talking about the employee entrance that's 24 feet, wouldn't it make more sense to have one (1) 24-foot-wide driveway for the employee entrance than two (2) 12-foot driveways? Mr. Rodriguez indicated that that's a possible compromise because you can't have the 12-foot driveway provide both in and out at the same time. He thought it possible to have the 12-foot loop or you could have a 24-foot loop. Ultimately, it ends up being the same in terms of an interruption to the Scenic Corridor frontage, but what you don't need is 54 feet of breach which is what you currently have proposed, 30 plus 24.

Chairman Orsini then gave some background to the zoning in the subject area that may be useful for everybody in the room. He went on to explain the story of the zoning history in the area, as follows. Originally, before this was a B-I Zone it was all zoned M-1 and M-2-and this is what warehouses and the like were all designed to do. He said that that area was all designed to accommodate those because of its proximity to 287, with two (2) separate exits on 287. He went on to state that as time went by and land

use patterns changed and we had an active adult population that needed a great demand for housing at the turn of the century, 55 and over active adult communities became very popular. What wasn't popular was with the rise of E-commerce, was strip malls and the like, hotels and things over in that specific area. Those of you who have been in this Township for as long as me may remember a development called Atrium South, which was supposed to be where currently off of New Brunswick Road where Somerset Run currently is and was supposed to be millions of square feet of office space which was re-zoned to active adult. Fast forward to 2008 and we have a sub-prime mortgage crash. Active adult communities, or so we were told or led to believe, were harder to sell. People weren't moving and people were staying with their kids more. Let's just say that the developers convinced the governor at the time and the state politicians at the time that they were having a tough time. So anything that was approved was then allowed to be sold as market rate and that's where Summerfields came in. There's a number of people in this room, at least one, who was on the Board with me at the time who fought that tooth and nail because of the impact it would have on our schools. We lost because it was taken out of our hands, out of the jurisdiction by the state. So, the real intent of all of that land was to be light industrial because of its proximity. Now we have these active adult communities, and we also have, again, a sea change in the way we do business which is, again, E-commerce since the pandemic. And so just to clarify, that's how land use patterns developed in this area. So that was the original intent and that's why you see things like the Amazon warehouse on Weston, House Foods, etc., that were all intended for large scale manufacturing. It was sod farms and open fields prior to that. Great to have been kept that way, but we know that doesn't always happen, but the land use intent and pattern and the creation of the B-I zone was an amalgam of the M-1 and the M-2, with enhanced design standards, that Mark covered pretty well. So just a background on that.

Dr. Chase then gave some additional background information related to the zoning in the subject area to add on to the Chairman's discussion, as follows: Presently the B-I Zone was created by the merger of an M-1 Zone which actually had a five (5)-acre minimum lot size and M-2 Zones that had two (2)-acre minimums and the Corporate Business (C-B) Zone which was intended for hotels and office buildings. So, the point of which is that the subject lot was zoned for industrial uses that would go back to 1998, really the same time that the general development plan for Canal Walk was approved and long before anything in the nature of Summerfields was before us. He added that the Canal Walk plan actually had a commercial aspect at the corner of Mettlers Road and Schoolhouse Road. In other words, across from the zone which was being created at that time as an M-1 Zone. And actually, the creation of the M-1 Zone was largely driven by the Second Ward council person at that time whose name was Joan Boucher, a very talkative person. Those of us on the Planning Board really did not want to expand the M-1 Zone to that far west, but she was quite insistent and convinced the Council. In hindsight, it would have been nice to have a bit of residential zones, say RR-3, including the two (2) existing houses there which were on the site under question now as a justification for some sort of buffer, but you're always going to have problems when you have a border between a residential zone and an industrial zone. I don't know what you would suggest, Mr. Rodrigues, to have in between them as a sufficient

buffer. So, that's how we came to have the zoning situation that we now have. The presence of houses directly across the street from the site was a fairly recent development.

Mr. Thomas then brought up Jensen Drive that was mentioned in Mr. Rodrigues' testimony, He asked if Mr. Rodrigues had seen it, done any research on that, or had any information on it. Mr. Rodrigues stated that he did not.

Mr. Thomas testified that for a year he was yelling at different people about Jensen Drive, and in a perfect world this would probably be a solution. He then discussed how it might provide a solution to the problem at the subject site. He went on to state that the problem is it takes a great deal of public and private cooperation, and neither the public nor the private seem to be willing to cooperate. He stated that Jensen Drive ends -- doesn't go to this property, it ends at the front of a building in front of I think it's Turtle and Hughes. There's a pathway down the side that would go to that property. You could go around in front of that building and go down the driveway between the other -- between that building and another warehouse that had driveways that were wide enough to land an airplane on. They go directly to this property. Having that driveway extended from Jensen to the subject property would make this application an infinitely better application as far as I'm concerned. I'm not sure, but I've been told that X, Y, and Z won't talk about it, there's a detention basin here, there's a detention basin there, there are some physical issues involved. I think if everybody sat together in one room and talked about it the physical part of it could all be worked out and all of the traffic for these facilities would go in Heller Drive and Jensen Drive directly to the properties and out again directly to Randolph Road. But I still have toyed in my mind throwing out the condition of asking people to sit down and see if this can work out. I've been told it was investigated and it can't. But you suggested a street to be used. You had no background on it and that bothers me. Basically, I'm wondering if you knew what you were talking about. Secondly, what's your background in real estate?

Mr. Rodrigues answered by telling Mr. Thomas that his background was in City planning.

Mr. Thomas responded back to him by saying that he made some very good points along the way in his testimony about a lot of things, but that he also mentioned the effect of this project on real estate values. He asked Mr. Rodrigues as to what basis did he put down because he didn't have any expertise.

Mr. Rodrigues indicated that he was not an appraiser, but that he was pretty sure.

Mr. Thomas questioned Mr. Rodrigues' authority on the subject and asked where his objective part of the answer was.

Mr. Rodrigues then answered by saying that if you think back to the origins of zoning, the very origins of zoning, why did we come up with a system that differentiates between land uses? He indicated that there were two reasons, and one was the public

health consideration. You have noxious land use that would be located next to a residential area, but the other consideration which was most important in the New York City case was the question of real estate value. People built mansions and then they had slaughter houses next to them and their real estate values tanked. That's a historic fact and it was a very, very well documented set of circumstances. So, in this case, it's not a slaughter house, it's two ginormous warehouses.

Chairman Orsini indicated that he was a scientist by profession, that the thing that causes me the most angst is lack of data. The Chairman indicated that there was no data to discuss and he said the same thing about the Environmental Impact Statement where one of the Applicant's witnesses made an economic statement but didn't have any expertise or economic background and they had it struck from the EI. The Chairman didn't want to speculate on real estate because they had no data.

Mr. Thomas stated that the last comment to Mr. Rodrigues was that him bringing it up made him hope that there could be some discussion and possibilities about Jensen Drive because that throws a whole entirely different perspective on this whole project.

Vice Chair Brown indicated that he had a comment and actually saw Mr. Rodrigues' testimony differently. He was very interested in the issues that have not been considered to date that he brought up and he also thought that Jensen Drive was a key to this development in a way that would be respectful of the entirety of the neighborhood, particularly as it related to the residential component. He also mentioned that Mr. Rodrigues spoke to his heart when he mentioned Level 4 for bicycle and pedestrian safety on that roadway and how interaction with increased traffic, particularly trucks, could be very harmful to those depending on those modes for recreational or utilitarian purposes. So, he said that he agreed with a lot that was shared here and thought that they should hear sufficient reasons why we should consider this site plan beyond what we've heard thus far.

Mr. Lanfrit then had the opportunity to cross-examine Mr. Rodrigues' testimony and wanted to go over some of the points that he made -- some of the points that he raised that evening. The first is that he talked about the intent of the ordinance and the intent of the zone. Mr. Lanfrit indicated that he wanted to clarify and verify that a warehouse is a permitted use on this property? Mr. Rodrigues indicated that it no longer was a permitted use but had been at the time the application was made. He clarified by saying that it was not an enumerated use. Mr. Lanfrit then asked him that the fact that the ordinance may have changed subsequent to this Application had no bearing on the Board's review and decision. He also added that the Board has to review this Application based on the ordinance that was in effect at the time the application was submitted and deemed complete; correct? Mr. Rodrigues then answered by stating that that is the law in the state of New Jersey. Mr. Lanfrit then asked if the two (2) pages in Mr. Rodrigues' report concerning the subsequent actions of this Board, or the Council, have no bearing at all on this Application? Mr. Rodrigues answered that it was background information. Mr. Lanfrit also asked Mr. Rodrigues if it had no bearing on their review; and Mr. Rodrigues indicated that the Board cannot read it. Mr. Lanfrit

further questioned Mr. Rodrigues by mentioning that he talked about the Scenic Corridor and his statement that Canal Walk was exempt from the Scenic Corridor. Mr. Rodrigues answered in the affirmative. Mr. Lanfrit then asked, why? Mr. Rodrigues stated that the projects on the other side of the road predated the adoption of the ordinance, with one predating the adoption of the ordinance and the other one was exempt. Mr. Rodrigues indicated that there was something in my report to that effect. I'm having trouble finding it. Mr. Rodrigues then read from his report the following,

The ordinance was adopted in -- I'm reading from page 14, Third paragraph. "The ordinance containing the Scenic Corridor provisions was adopted in June of 2003 in response to an earlier recommendation from the Planning Board. The Scenic Corridor provisions apply to 16 roads or segments of roads including Mettlers Road. The neighboring Bayard Road townhouse development was under construction at the time and preceded the Scenic Corridor designation and was, therefore, grandfathered and not affected. The Bryant Court single-family development dates back to 2018 but is exempt from the application in the Scenic Corridor provisions under Section 112-201E.1 which exempted detached one(1)- or two(2)-dwelling unit buildings." Mr. Lanfrit then questioned Mr. Rodrigues about an application in 2018 for the development of 63 homes and Bryant Court as part of the Canal Walk development? Mr. Rodrigues answered that he did not know, Mr. Lanfrit questioned why he didn't know and didn't he think it was relevant to the Application. Mr. Rodrigues answered, "not really" and asked why it was relevant.

Mr. Lanfrit discussed with Mr. Rodrigues regarding Bryant Court being located within a thousand feet of Mettlers Road, making it be subject to the Scenic Corridor. Mr. Rodrigues stated that Mr. Lanfrit was asking him to testify about something he did not know anything about and so the answer was "no comment".

Mr. Lanfrit then asked him if the homes that are on Bryant Court were within the Scenic Corridor and Mr. Rodrigues answered that he believed so. Mr. Lanfrit then questioned him about whether all of those homes have a dwelling with a two-car garage? A. Again, Mr. Rodrigues answered, how would I know? My guess is that the answer was yes, but I didn't do an inventory of the number of garage doors in that development. Mr. Lanfrit then asked him if he knew the width of the driveways leading to those garages and do they exceed 12 feet? Mr. Rodrigues again answered, "I have no idea" and answered "no comment" when Mr. Lanfrit questioned him again. Mr. Lanfrit stated that in Mr. Rodrigues' report on page four, he indicated that the property in question was in planning area four; is that correct? Mr. Rodrigues answered in the affirmative. Mr. Lanfrit questioned whether he was 100 percent certain, and Mr. Rodrigues indicated that he had looked it up, but didn't have the map with him.

Mr. Lanfrit then opened up questioning with Mr. Rodrigues related to whether Planning Area 4 was basically in a rural area. Mr. Rodrigues indicated that it was the agricultural planned area. Mr. Lanfrit asked whether the subject site (Applicant site) was serviced by water and sewer, and Mr. Rodrigues indicated that it was currently not, but probably would be for development, but that he did not inquire.

Mr. Lanfrit then asked about whether Canal Walk was serviced by water and sewer, and Mr. Rodrigues indicated that he was guessing that it was but can't say for sure because he didn't inquire about it. Mr. Lanfrit asked if they did have water and sewer whether they would be considered to still be in Planning Area 4 or Planning Area 2. Mr. Rodrigues answered by stating that, generally speaking, sewer was not available when properties were mapped as Planning Area 4. Mr. Lanfrit then asked if his report was in error, and Mr. Rodrigues stated that it was not in error and it's just not certain and the mapping process was a partnership between the State Planning Commission and the local Planning Board. And so there may be intentions that the local Planning Board is trying to carry out some policy that's then reflected in the State Plan Policy Map. He then added that he didn't know the details and the intricacies of the mapping of that property so he couldn't answer that question. Mr. Lanfrit indicated that Mr. Rodrigues clearly stated in his report that it was in Planning Area 4, and Mr. Rodrigues indicated that he looked it up on the State Plan Policy Map.

Mr. Lanfrit then questioned Mr. Rodrigues and stated that, "I assume since you referenced the Scenic Corridor in your report, and you testified to the purpose and intent of it and referenced the 16 roads that are the subject of the Scenic Corridor you're familiar with the ordinance". Mr. Rodrigues answered that he was not intimately familiar with the ordinance, but enough to opine on the relevant aspect of it. Mr. Lanfrit read from the ordinance, I assume since you referenced the Scenic Corridor in your report and you testified to the purpose and intent of it and referenced the 16 roads that are the subject of the Scenic Corridor, you're familiar with the ordinance, "To protect the Township's aesthetic resources where they exist along certain designated scenic roadways as identified in the Master Plan." That's the purpose of the ordinance; correct? Mr. Rodrigues' reply was, "You just read it. I have to assume you read it correctly."

Mr. Bernstein interrupted and stated that he doesn't normally interrupt counsel's cross-examination, but for the purposes of the record what he read was only one (1) portion of the purpose of the Scenic Corridor Ordinance:

Mr. Lanfrit then asked Mr. Rodrigues specific questions related to the Scenic Corridor, that is: "If you're standing on Mettlers Road and looking east and west and looking towards Canal Walk and looking towards the subject property, can you indicate what aesthetic resources were being protected in that area?" Mr. Rodrigues indicated that he was not sure if he could answer that question and then asked, "Are you calling into question the whole basis for the Scenic Corridor Overlay zone? You're saying that this section of the road should never have been designated?" Mr. Rodrigues indicated that he did not know. He said, "I didn't write the ordinance. – I didn't apply it." Mr. Lanfrit called into question that Mr. Rodrigues applied the ordinance in his review, and Mr. Rodrigues answered in the affirmative. Mr. Lanfrit indicated that it was to protect aesthetics. He asked Mr. Rodrigues if he was standing on Mettlers Road, what would he see and if he was looking at Canal Walk, what would he see. Mr. Rodrigues answered that it was to protect the scenic features of the land. What features on Canal Walk would be protected by this ordinance? Mr. Rodrigues answered, again, Canal

Walk is an exception, isn't it? Didn't we already establish that? Mr. Lanfrit told Mr. Rodrigues that those were his statements, but that he didn't know if it was established. Mr. Rodrigues again stated that that was his contention. They had a discussion regarding the 63-lot subdivision being exempt from the Scenic Corridor Ordinance, with Mr. Rodrigues testifying that Bryant Court preceded the Scenic Corridor, or at least one of them preceded it and the other was exempt because it's a single-family subdivision which was a stated exemption.

Mr. Bernstein then interrupted: Mr. Lanfrit's cross-examination because he said he'd like to ask about the parties related to this line of questioning regarding Bryant Court. Correct me if I'm wrong, Bryant Court is part of Canal Walk, is it not? Mr. Lanfrit answered in the affirmative, and Mr. Bernstein added that it's the site of what was supposed to be originally a two-story commercial development, is it not? Mr. Lanfrit answered in the affirmative. Mr. Bernstein then went on to ask Mr. Lanfrit, "So the differentiation for purpose of the Board consideration is the implementation of revised plans for the site in question where the original site at least to the testimony of the planner" -- I assume your planner may disagree -- is that this was exempted from the Scenic Corridor because it predated the Scenic Corridor Ordinance. Would you say that was correct to that point? Mr. Lanfrit disagreed, so Mr. Bernstein indicated that he would leave that to Mr. Phillips when his turn came up.

Chairman Orsini indicated that, earlier, they already established that Mr. Lieberman promised that he was going to look into the dating and all of that. However, the Chairman explained in detail that the fact of the matter was that when the overlay of the SCV Zone, Senior Citizen Village, was done, it was purposely designed with a commercial feature in mind. It was clear that that commercial feature was going to comply with the Scenic Corridor ordinance because it was a Scenic Corridor, but it was designed for allowing the residents in that development to shop locally. When that same developer created a commercial use on Randolph and Schoolhouse, the developer asked instead to put that into residential which we agreed to because we didn't need strip malls or commercial -- strip mall's probably 14 not the right word because they were well designed with features and design standards that Mark played a very big role in, I should add. That being said, Chairman Orsini pointed out, I think as your report, Mr. Rodriguez, said, Bryant Court single-family dwelling dates back to 2018 but is exempt from the application of the Scenic Corridor provisions under section 112-201D(1) which exempts detached water to dwelling unit buildings. I don't have the memory, but that's just why that was done, but it's irrelevant. That's just a fact. And it's stated in your own report that that was exempt. The Chairman indicated that it was in Mr. Rodrigues' report right on page eight (8). In speaking to Mr. Lanfrit, the Chairman said, " So I'm just trying to say that I think the point you're trying to make is that the Canal Walk development was not a particularly compliant, correct, with the Scenic Corridor ordinance? That being said, that's Canal Walk. What I would like to hear is what the testimony is on your property and why you feel that way because that's the Application. I totally get your point when it comes to Bryant Court and Canal Walk, but that's not the property under consideration here.

Mr. Lanfrit stated that he thought if you were looking at the Scenic Corridor, you have to look at both sides. He then explained that his impression of a corridor was a passage way between two sides, and you have to look at both sides. The Chairman reiterated that, again, he was basically agreeing with him, but that he was also stating that the other fact of the matter was that now the Application concerned the other side, so he would like to hear more about the Applicant's rationale for that. Mr. Lanfrit stated that you've heard ample testimony on our compliance with that, but he was going to ask Mr. Rodrigues some questions concerning that.

Mr. Lanfrit told Mr. Rodrigues the proposed application proposes no development within a hundred-foot setback on Mettlers Road; and asked if that was correct? Mr. Rodrigues answered in the affirmative that that was his understanding. Mr. Lanfrit then stated that Mr. Rodrigues also made the statement that you don't want to overdevelop the site, and then you cited the zone requirements for coverages; correct? Mr. Rodrigues stated that he didn't recall making that particular statement.

Mr. Lanfrit asked him again by saying, "You didn't indicate that there was a 50 percent building coverage requirement for warehouses?" Mr. Rodrigues indicated that was in the zone because it's not just warehouses, but it's for everything. Mr. Lanfrit added that it's also a 60 percent impervious coverage requirement in that zone maximum? Mr. Rodrigues answered in the affirmative. Mr. Lanfrit told Mr. Rodrigues that he had indicated the site was overdeveloped but did he know what percentage of coverage the Applicant was proposing on this site? Mr. Rodrigues stated that he didn't know that off the top of his head, no. and when Mr. Lanfrit asked him if he heard the testimony of the Site Engineer, Mr. Rodrigues indicated that he could barely understand what the Engineer was saying, [inaudible] and mumbling through his testimony, frankly, but I'm sure it's a number that's written on the plan somewhere which we can look up.

Mr. Lanfrit indicated that the number was well over 50 percent. Mr. Rodrigues told him that he failed to understand the point that I was making - that that coverage was directly correlated to the two (2)-acre sites which was the minimum lot size. Mr. Lanfrit indicated that the coverage didn't correlate to a five(5)-acre site or a ten (10)-acre site or a 20-acre site. Mr. Rodrigues indicated that it did, but it's aligned. It was picked that way with a two-acre site in mind. And in an ideal world you'd have a sliding scale so that as you went from the two(2)-acre to the 20-acre you would have something different. Mr. Lanfrit then stated that that would work in an ideal world, but that we're not in an ideal world, we're living under Franklin Township zoning ordinance, are we not?

Mr. Rodrigues answered him by stating that Mr. Thomas had already pointed out we're not living in an ideal world so you're just agreeing with him.

Mr. Lanfrit then indicated that his client had the right to read the ordinance and develop the site in accordance with the ordinance. Mr. Rodrigues agreed with that statement, however, he told Mr. Lanfrit that his client should read the entire ordinance including the extensive design standards and develop the property in accordance with those design standards. It seems like they didn't go past the zoning and bulk standards and never bothered with the rest. Mr. Rodrigues then testified that he had pointed out some



situations where he felt that those standards had not been complied with. Mr. Lanfrit told Mr. Rodrigues that he indicated that they didn't provide for sidewalks; correct, and Mr. Rodrigues answered in the affirmative. Then Mr. Lanfrit asked Mr. Rodrigues if he reviewed the revised plan and heard the testimony at the last hearing where they indicated that sidewalks were provided along Schoolhouse Road and that sidewalks were provided to the building? Mr. Rodrigues testified that he was at the last meeting, but every time we come here the plan is different. You know, it's hard to keep track. Mr. Rodrigues testified that they had made multiple changes to the plan over the course of the last six (6) months. According to Mr. Lanfrit, there were two iterations of the plan -- there was an original submission and a revised plan after the first hearing, were there not? Mr. Rodrigues stated that there was an original submission for sure, and Mr. Lanfrit stated that it was deemed complete and in compliance with the Township Zoning Ordinance; correct? Mr. Rodrigues answered in the negative, stating that it was deemed complete, but it was not deemed in compliance with the Scenic Corridor provisions. That's why you revised the plan three(3) times already by my count.

Chairman Orsini interrupted by stated that it was 10:00 p.m. and that they were clearly: not going to get to the cross examination of the other witnesses, but let's just say for the sake of argument you would, and then I know you have your planner. So now we have to talk about continuation because I think we're at a good point to take a break and continue at the next available date. The Chairman asked Ms. Woodbury, Planning Secretary, to let everyone know when we could continue this, and he indicated that, of course, it would be here at the Board of Education building. Ms. Woodbury stated that the next available meeting that the hearing can be continued to was September 6th at 7:30 p.m. here at Route 27 at 7:30 p.m. There's no need for further notification.

Chairman Orsini indicated that under Eric's guidance, he would ask for a motion to continue on September 6th, 7:30 p.m. here on Route 27. Mr. Shaban seconded the motion, and all were in favor.

Mr. Bernstein, Special Counsel to the Planning Board, addressed Mr. Lanfrit, stating that it was his understanding that you intended to call Paul Phillips, and Mr. Lanfrit replied that he intended to call him as a rebuttal witness. Mr. Bernstein then asked if Mr. Lanfrit intended to provide a report in rebuttal. Mr. Lanfrit stated that he couldn't provide a report because we haven't finished cross examining these witnesses so we will not be providing a report. Mr. Bernstein then stated that he would advise the Board that it may want to make its own determination at the September 6th meeting regarding the same.

Mr. Lanfrit then stated that he would grant an extension of time through the end of September if you needed it. I don't have that information with me, but just to protect. Chairman Orsini stated that they would play it by ear and see how September shapes up. We'll accept that.

The meeting was **CARRIED TO SEPTEMBER 6, 2023 at 7:30 p.m. here at the Board of Education School Building, 2301 State Route 27, Building 1, Somerset, NJ, – with no further notification required.**

**DL - 7/31/2023**

**COMMITTEE REPORTS:**

There were no Committee Reports discussed.

**WORK SESSION / NEW BUSINESS:**

There was no Work Session or New Business discussed.

**EXECUTIVE SESSION:**

The Board did not enter into Executive Session.

**ADJOURNMENT:**

Chairman Orsini made a motion to adjourn the meeting at 10:07 p.m., and the motion was seconded. All were in favor.

Respectfully submitted,

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Kathleen Murphy, Recording Secretary  
September 16, 2023