

**HIGHLAND PARK PLANNING BOARD  
MINUTES  
APRIL 14, 2016 @ 7:30 P.M.  
Council Chambers, Borough Hall  
221 South Fifth Ave. Highland Park, NJ**

**Call to Order**

The April 14, 2016 regular meeting of the Highland Park Planning Board was called to order in accordance with the rules for the Open Public Meetings Act by Chairperson Kim Hammond at 7:33 pm; Ms. Hammond indicated the location of the fire exits.

**Roll Call:**

Present	Kim Hammond, Alan Kluger, Allen Williams, Paul Lanaris , Phil George arrived at 7:36 p.m., Padraic Millet, Stephany Kim, Judi Shade Monk, Rebecca Hand, Scott Brescher
Absent	Stephen Nolan
<u>Board Professionals</u>	Roger Thomas, Esq. Board Attorney Allen Schectel, Board Planner Bruce Koch, Borough Engineer

Ms. Hammond indicated that there was a volunteer recognition ceremony last night and Alan Kluger was recognized as an outstanding and long standing member of the Planning Board and thanked him for his services. She said that Allen Williams was recognized as Volunteer of the Year and congratulated him.

**Memorialization of resolutions**

**Resolution P2016-01** Recommend Amendment to Highland Park Redevelopment Plan for redevelopment of Block 173, Lots 36 and 37

It was MOVED by Mr. Millet and seconded by Mr. Williams to approve Resolution R2016-01 recommending the amendment to the Highland Park Redevelopment Plan for redevelopment of Block 173, Lots 36 & 37.

ROLL CALL: Ayes – Mr. Kluger, Mr. Williams, Mr. Lanaris, Mr. Millet, Ms. Hand, Ms. Monk, Mr. Brescher, Ms. Hammond  
Nays – None  
Abstain – Ms. Kim

There being eight ayes and one abstention Resolution R2016-01 was approved.

Ms. Hammond said that she and Ms. Monk have attended the Sustainable Highland Park meeting and there is a certain amount of information to be shared and gathered and this will be discussed at the end of the meeting.

Ms. Hammond recused herself from the meeting and Mr. Kluger took over.

**Unfinished or adjourned hearings**

American Properties at Highland Park, LLC  
Cleveland Avenue  
Block 170, Lots 5 & 6

P2015-04  
Preliminary Major Site Plan Approval  
Final Major Site Plan Approval  
Preliminary Minor Subdivision Approval  
Final Minor Subdivision Approval

Mr. Thomas indicated that this was a continuation of a preliminary major site plan, final major site plan, preliminary minor subdivision and final minor subdivision approval and with regards to the application we are on the third hearing date, first in January, second was in February and third hearing is as of today's date.

Ronald L. Shimanowitz, Esq. of Hutt & Shimanowitz, PC for the applicant American Properties at Highland Park LLC indicated that they would like to pick up from where they left off back in February. During that hearing there was a lot of discussion with respect to the environmental testimony by Mr. Hansen and since that time work had been done on the issues and Mr. Hansen had submitted a report dated April 5, 2016. He said that they would like to take a couple of minutes to have Mr. Hansen to be recalled summarize that report for the Board.

Mr. Thomas indicated that the report dated April 5, 2016 should be marked as A9.

Peter Hansen, EcolSciences, 75 Fleetwood Drive, Suite 250, Rockaway, NJ 07866 previously sworn in and remain under oath. The April 5, 2016 report was authored primarily for concerns raised by Mr. Williams in the March 16, 2016 memo that he prepared and also a concern that was raised by Mr. Koch as well. He said that Mr. Williams primary concern as expressed in the memo and some of the discussions centered around some elevated concentrations of TCE in the groundwater at the eastern corner of the site. The responsible party for the American Properties at Highland Park site, Honeywell, conducted an investigation throughout the site over a period of many years including and through their investigations it was determined that the contamination was from an off-site source. The property that was identified as the source of the contamination is Block 170, Lot 9.02 commonly known as the MidAtlantic property. In 2013, the concentration in the groundwater on the American Properties site, which is located immediately down gradient of the MidAtlantic Property, was 88,500 micrograms per liter. The NJDEP's groundwater quality standard is 1 microgram per liter. Subsequent sampling in 2014 showed a decrease in contamination levels to approximately 37,500 micrograms per liter, while the contamination is certainly present and needs to be remediated the obligations for remediation do not fall to American Properties at Highland Park, they are not the responsible party, the contamination originates from off-site. The New Jersey Department of Environmental Protection regulations indicate that remediation is the obligation of the responsible party, to date MidAtlantic has obtained a Licensed Remediation Professional, Mr. Alan Crohn, to oversee the investigation and the remediation. There is full anticipation that MidAtlantic will meet the obligation to remediate and that they will complete that obligation and clean-up the groundwater in that portion of the site. Since the water is provided by the municipal supply there is not a direct contact issue to be concerned with, with the future residents. The only potential pathway that is a potential concern would be that of vapors. As a result, the construction of the American Properties development will include vapor mitigation systems and vapor barriers below all of the buildings that are within 100' of the delineated extent of the contaminate plume. The barriers will be chemically rated for TCE, which are appropriate for use with that type of contaminate. The mitigation systems below the barriers will vent any contaminants in vapor that collect and vent them above the roof line and out away from the building. Prior to any occupancy of the buildings that are going to be constructed on the site, there will be confirmatory vapor sampling conducted from below and from within those buildings to demonstrate that the mitigation systems and the barriers are effective. Once demonstrated to be effective, only at that point in time will occupancy be permitted. There will be future on-going monitoring that will occur to demonstrate that they continue to be protected over time. In addition to the issues raised by Mr. Williams, Mr. Koch raised the potential of changes in the groundwater migration on the property as a result of the development; that has considered that potential on the site and do not believe that it is a concern. Static level of groundwater is at least 7 ½



feet below grade at its shallowest point on the site and the site will be raised as part of the construction and there will be a substantial amount of fill brought into the site to raise the elevation. As a result the utilities will be above the water table level and changes in the groundwater flow direction are not anticipated as a result. To address Mr. Koch's concern specifically they do not think that migration changes to the groundwater will lead to future vapor problems in the other buildings, specifically buildings 1-6 that currently fall outside of the 100' limit that the NJDEP has specified for addressing vapors. He indicated that buildings 1-6 will have passive mitigation systems for radon systems, with a plastic vapor barrier. These types of systems are similar to the systems that are currently being installed in the Pulte project for vapor mitigation, if necessary they can be upgraded in the future, there will be monitoring going on in terms of future vapor monitoring, future groundwater monitoring and if that monitoring suggests that there could be a vapor in buildings 1-6 those buildings will be sampled in the future and if necessary those mitigations systems will be upgraded to accommodate the potential vapors.

Mr. Williams said that he was very comfortable with the memo and information that Mr. Hansen has provided. Ideally he would like the whole thing remediated at once, but NJDEP indicated that you could mitigate everything out or cap it. Asked if any additional information had been obtained since 2012, 2013 and 2014.

Mr. Hansen said that he did not have any additional information other than that from late 2014. He said that he did see in Mr. Williams memo a reference to the difference between full remediation or capping and to clarify, the NJDEP always requires full remediation, the groundwater will require remediation to one part per billion, the difference here is that it will be conducted by someone other than American Properties at Highland Park because they are not the responsible party, the NJDEP requires that the responsible party do the remediation and obviously American Properties has an interest to build their development and wants to protect their residents, they will do the receptor protection even though they are not required to per NJDEP regulations.

Mr. Koch said that there were a couple questions regarding the TCE since the last meeting. Between 2013 when the TCE reading was as high as 88,500 microgram per liter and 2014 when it dropped to the 37,500, does that seem like a significant drop and is wondering if that is normal for the type of chemical or is this unusual.

Mr. Hansen said that he did not have any specifics regarding that issue other than the sampling data that was provided to them by Honeywell. That data included one sampling from 2013 at 88,500, then four (4) samples from 2014 that were all in the 30,000 range. He said that he believes that the 88,500 was an anomaly, sometimes when the concentrations get to elevated levels there can be some substantive swings in the contaminate levels and believes that the 37,000 is little bit more representative.

Mr. Koch asked if there was a possibility of illegal dumping. Mr. Hansen said you could not rule something like that out although the fact that it has been discovered and it has been reported to the NJDEP, the property owner of the MidAtlantic property has notified and they have hired an LSRP, those are all good signs to show that the remediation is on track and is being taken seriously.

Mr. Thomas said that the property is on their radar and the fact that there is a LSRP on site, which means that that individual is responsible to mitigate that and then report it or it, is monitored by the NJDEP. Mr. Hansen said that was correct and added that an LSRP is not responsible for doing the remediation, the responsible party is, they have an obligation to insure that it continues to move forward, notify the responsible party of their obligations and in extreme cases where those obligations

are not being met, they have an obligation to tell the NJDEP that there is an recalcitrant party and in the most extreme cases dismiss themselves from the case. The fact that there is a LSRP who is continuing to be the LSRP is a good sign and if there is a future situation where someone is not doing the right thing, the NJDEP would be notified and takes the appropriate action.

Mr. Thomas said that it is not simply that the fact that MidAtlantic is doing something all by themselves there are entities, the LSRP and the NJDEP that are monitoring what they are doing. Mr. Hansen said that was correct.

Mr. Millet asked who is the agent monitoring the wells for the contaminate level and who would that information be sent to.

Mr. Hansen said that the groundwater sampling would be monitored by Honeywell and their LSRP for their portion of the plume and then MidAtlantic and their LSRP will monitor the groundwater associated with their plume. There is an obligation in the NJDEP regulations that data be provided to all property owners overlying the plume, so that will be provided to American Properties and ultimately to the homeowners association.

Mr. Thomas said as indicated there are two plumes one is the responsibility of Honeywell and they will end up doing the remediation but it is someone off site that is responsible, will they or have they put in monitoring wells and how will they be able to continue to monitor during and after construction.

Mr. Hansen said that Honeywell has installed a number of wells on the property, there are some of the wells that need to be preserved for future monitoring, they are communicating with Honeywell and have also have initiated conversation with the MidAtlantic people and notified them to start the discussion about wells. There are likely going to need to be some wells that are abandoned and reinstalled as a result of the development, you can't have a well in the middle of someone's living room, but they can be moved 25' to the west in order to get to a spot where they can be accommodated in a grass area with landscaping and if necessary can be reinstalled and preserved if they fall outside of a building footprint they are preserved.

Mr. Thomas said based on the Mr. Hansen's understandings there are basically wells that have been drilled by the either MidAtlantic or someone on their behalf on this site or they are anticipated to be drilled.

Mr. Hansen said that all of the wells on the American Properties site have been drilled by Honeywell and that is a very wide spread well network and that well network is what led to the discovery of the off-site contamination. The wells that need to be moved will be moved, wells that need to remain if they can, will remain. Certain wells that contain no contamination will just be abandoned and not reinstalled because they are not necessary.

Mr. Thomas said that Honeywell has installed the wells, discovered the problem and that therefore MidAtlantic will then presume the responsibility of some of the wells for which it caused the contamination. Mr. Hansen said that was correct.

Mr. Kluger asked Mr. Williams if the Environmental Commission generally monitor or get information on the sites of the wells and the data that is coming out of the monitoring.



Mr. Williams said if and when we they see, it typically go to the Borough Clerk, Board of Health and will ensure that they ask the Clerk that they do see it.

Mr. George said that he was satisfied with the Environmental. He said that Honeywell will be doing a lot of site remediation removing the old concrete and so on. Honeywell has agreed to meet with the Police Department to work out a construction traffic plan, is the applicant willing as condition to ensure that the general contractor sits down with the Police Department to work out a construction traffic plan. Mr. Shimanowitz agreed.

Mr. Schectel asked who will actually be responsible to monitoring vapor levels in the buildings after construction and how frequently will that occur.

Mr. Hansen said that the responsibility for the vapor monitoring ultimately falls to the responsible party for the contamination or MidAtlantic. If for whatever reason they do not meet that responsibility it will fall to the homeowners association and American Properties. The frequency will be consist with that in the NJDEP's vapor intrusion guidance document and is somewhat dependent on the type system that is ultimately installed, active system or passive system. It is more frequent early on right after the systems have been installed, several times over the first year and decreases over time but is not set in stone and is subject to the professional judgement of the LSRP.

Mr. Schectel asked if the homeowners association had been made aware of the fact that MidAtlantic is responsible and if MidAtlantic does not test the homeowners association will be responsible themselves and asked if there was any funding put in place to help them do this.

Mr. Hansen said with regards to the homeowners association being notified an important aspect of this is that the homeowners association will have an LSRP associated with the site as result of the cap of the soil on the site and as an LSRP when you are responsible for a site your responsible to ensure that any receptor issue is addressed. He said that it will fall somewhat to the LSRP who is responsible for the cap to also keep track of the vapors system and ensure that MidAtlantic is doing the right thing and if not it will be their obligation to notify the homeowners association.

Mr. Schectel said that the homeowners association essentially will be financially burden with this responsibility.

Mr. Shimanowitz said that is correct if MidAtlantic does not do it, the association would have to provide in their budget some contingency plan. He indicated that at this stage he did not know if there would be funding assistance. He said that there is usually a provision in the Resolution that the town professionals will look at the condominium documents, but could not answer that right now.

Mr. Koch said if American Properties decided not to build this property and decided to sell to another developer does any of that change.

Mr. Hansen said that he did not believe any of that would change in that there is items required remediation on the property that is the responsibility, so regardless an LSRP would stay involved with the project.

Mr. Koch asked if they could change LSRP's. Mr. Hansen said they yes they could. Mr. Koch asked if there are records that the LSRP would receive if there is a change in the chain of custody of the site in terms of LSRP's. Mr. Hansen said absolutely, any LSRP responsible for a site has the obligation to

have a full understanding of the environmental conditions their responsible for and that would involve understanding all of the issues associated with the site.

Mr. Thomas said that certainly all of the obligations are certainly required by regulation but it would also seem that if in fact if American Properties did try to flip the property that these obligations would run with the land and there would have to be some understanding or condition to that effect. Mr. Shimanowitz said that he agreed.

Mr. Kluger said that it would be running with Honeywell and MidAtlantic and the homeowners association. Mr. Thomas said that those would be the details that would need to be worked out to try and ensure that should there be changes in ownership it would seem to have to be deed restriction or notification in regards to that.

Mr. Shimanowitz said that he agreed and that ownership would change hopefully if the application gets approved.

Ms. Monk asked them to talk about the material composition of the vapor barriers that are being proposed.

Mr. Hansen said that the vapor barriers that are being proposed are typically spray on type, asphaltic, compound, there are certain polymers and resin's that are included in them but they are chemically rated for these types of contaminates, they are tested and demonstrated to be protective. There are two main products available, one is Geo Seal produced by land sciences and the other the Cetco family of products more commonly known as liquid boot and they are both tested to withstand these types of contaminates.

Ms. Monk said that with oil based VoCs the liquid boot reaches a saturation level significantly faster and there is a breakthrough of the vapors through the barriers versus the GOC which is a composite barrier.

Mr. Hansen said that there are different types of liquid boot, there is liquid boot with vi20 membrane below it which gives an extra level of protection. There will be a design by a vapor mitigation specialist he will pick the actual specifications. It has not been determined yet and would be specific to TCE, which is a chlorinated solvent. It will be one of those two products because they are the only two products out there that have been tested for these types of contaminates. There are pros and cons to both of them.

Ms. Monk said that it is her understanding that it is very good for water mitigation, if it is an asphalt latex makeup the liquid boot as opposed to being a composite one where there is a polyethylene or another component in it that asphalt latex is susceptible to penetration. She said that if the barrier will be designed by someone specific for TCE. Mr. Hansen indicated that it would be designed by someone specifically for TCE. In general they are pretty equivalent and they are made of very similar compounds and are both rated for TCE. He said that if you go on Cetco's web-site all the testing data for liquid boot is provided and Land Science has all the testing data for geo-seal, he indicated that he has read it himself and they both have great testing data for TCE.

Ms. Monk said that she has seen information that indicates otherwise, academic papers. Mr. Hansen said that he wasn't sure what types of liquid boot Ms. Monk was speaking of. He indicated that there are different kinds and that is why it gets designed by a vapor mitigation specialist.



Mr. Kluger asked Ms. Monk if she was looking to make a recommendation or preference. Ms. Monk said that she was not retained professional, she said that she was curious to know because the way she understood how the vapor barriers work is that depending on the compound they are better able to resist passage of those compounds and some of them if they can saturated they actual help to conduct it better depending on the type of vapor barrier it is. She said that if it is an asphalt base vapor barrier and an oil base or petroleum base or solvent base kind of contaminate can penetrate and then can be conducted by it vs. a polyethylene or plastic or a composite material can resist solvents better than an asphalt type of vapor barrier. It also depends on the time line of remediation goes as well, if it is going to be remediated then it is probably not an issue but if the property doesn't get remediated then it could be an issue as far as the barrier becoming saturated and then the break through happening with the VoC's but it sounds like from what Mr. Hansen is saying that someone who is equip to design it for TCE is going to make those choices and presumably make them well.

Mr. Hansen said that he would like to add relative to this discussion is that the key to this design is the vapor mitigation system that is below the vapor barrier, a well-designed even passive vapor mitigation system does not need a vapor barrier because it vents those vapors to the atmosphere before it ever gets to the vapor barrier. There is a misconception that you need a vapor barrier when what is more important is the vapor mitigation system and again it does not necessarily have to be active, it maybe be active but it may be a very efficient passive system and that is why it gets designed by vapor mitigation specialist who comes up with the most efficient design to vent the vapors to the atmosphere and then you do not have to worry break through or anything like that. It does not matter what product it is, you can never eliminate break through but this is one of the best on the market in term of breakthrough.

Mr. Kluger opened the floor to the public.

Jason Lewandowski, 2 Cleveland Avenue asked in reference to the capping of the land if there was any risk of the contaminates running downhill into the River, cause he knows for fact the Middlesex Water Company water intake is just on the other side of the River and that is actually what feeds Highland Park's water so any of the contaminates that are able to make it into the water would actually make it into the water supply unless the company filters it out which he thinks they do not do.

Mr. Hansen said that the contamination is a the type of contamination that binds to soil and not be a mobile compound when they cap is put in place it will completely encapsulates that in green areas with 1-2 feet of certified clean fill with vegetation on top to counteract any potential erosion that and a combination of impervious surfaces is what called for in cap. He said that he did not believe that was a realistic issue with this site.

Mr. Koch indicated that he did not believe that the water supply was pulled from the Raritan River; he believes it comes from D&R Canal.

Jane Rein, 47 Cleveland Avenue, said her questions concerns are the vapor barriers and the specific vapor barriers to be used, it is known that during construction things happens and it is always like well you're going to delay construction, is there going to be someone on site, how does that process work where if the specific vapor barrier that is being specified by the Engineers, if that is not available who is on site and monitoring that process to make sure that the vapor barrier that is expectable is still going to be used.



Mr. Hansen said that either he or someone from his office will be present at the times that the vapor barriers are installed. In addition the vapor barriers will not be installed by the general contractor, vapor mitigation system installation is a very specialized field and it will be handled by a vapor mitigation installation contractor not by the general contractor. He said that they would be present at the time that it is installed to ensure that it is the materials specified.

Mr. Thomas said that was Mr. Hansen's responsibility as the LSRP on-site. Mr. Hansen said yes, ultimately this case is going to require a site wide regulatory approval from Honeywell's LSRP, Honeywell's LSRP is responsible for certain items, contractually they are going to look to American Properties and his firm to provide certain representations to them and an LSRP he has an obligation to make sure that what is specified in the remediation action work plan is what's installed.

Hadassah Geretz, 49 Cleveland Avenue said that she was looking for clarification from something Mr. Koch had mentioned. She is aware that the water source for the residents is the Delaware and Raritan Canal which is not the Raritan River but is very close and at least once in the time that she has lived in Highland Park the River has flooded so badly that it spilled over into the canal and the residents were told not to drink the water and to boil it, so it does happen although not often but it does happen.

There being no one further Mr. Kluger closed public discussion with respect to this witness.

Mr. Thomas asked Mr. Shimanowitz if there was anything further. Mr. Shimanowitz said they had nothing further.

Mr. Thomas indicated that at this time it would be appropriate to open the meeting to the public for their testimony and public comments.

Jane Rein, 47 Cleveland Avenue, sworn and affirmed said that the whole process of this application has been extremely frustrating for the residents of Cleveland Avenue, it's from the beginning when there was comment made of oh yes we have worked with the residents with this project, and all of us looked at each other and said you have, they met with them once they did a walk site through with Betsy McKenzie perhaps two years ago at least and on January 5 they gave a letter to some of the residents who passed on down the street and they said come meet with us and they said this our plan and this is what we are doing period. The attitude that they showed during that meeting has been consist throughout the entire process of just they are not willing to listen to their concerns what so ever, even this evening as he is talking about the groundwater contamination, there is a poisoned River running underneath the development, this is what it is and yes the DEP it is great to put a piece of plastic underneath the building you're going to be safe. She said that she hopes that the future residents that are about to spend a lot of money on this property know that there is a poisoned River underneath their property, personally if she were going to buy one of the parcels and she found out after the fact she would be more than a little upset. She said that it gets down to this attitude that continues that its legal so therefore we are going to do it and just because something is legal doesn't make it moral or okay and certainly is not making them a good neighbor. She said that they all have the environmental concerns which have been very well discussed this evening, there are traffic concerns, their own traffic person said that the intersection of Cleveland and River Road is close to failing, now we want to add more traffic to that intersection, when it was suggested that they put through the street to Jackson Avenue the responses was no we are not interested in doing it, we don't have to, it wasn't negotiated, we don't want to do it. She said that another concern is traffic during construction, hopefully the meeting they will have with the police will be enforced. She said that she knows there is no truck traffic, and truck traffic is only allowed between 8 am and 5 pm and hopes that



this is enforced. Additionally let's hope they can open up Harrison Avenue during construction and post construction there is really no reason not to open it up to Jackson Avenue other than this attitude that we don't want to do it. She said that her testimony she does not feel that they have anyone's interest other than their own in mind, they are here to make a profit, they are going to do it legally but only by the narrowest legal definition, anything they can do to skirt through they are going to do that has been the attitude since the beginning.

Karen Swaine, 55 Cleveland Avenue, sworn and affirmed, said that she wanted to reiterate some of the things that Jane spoke about but mainly about this whole idea about not having a second entrance and exit through Jackson Avenue is so completely ridiculous to have one entry way on Cleveland which is already so overburden with traffic. She said that they already know about all the traffic studies that American Properties has done, they know about the ones Pulte had done and they had done their own the traffic is insane, twice a day in the morning, when school lets out and again at 5-7 pm. There are going to be two hundred more cars, delivery trucks, police cars, ambulances, fire engines to not have a second exit where it is so totally logical, they can drive out Jackson to River Road and asked why this was being fought, this is what the residents want because they are tired of all the traffic.

Hadassah Zertez, 49 Cleveland Avenue, sworn and affirmed, said that she has lived on Cleveland Avenue since 1989 and the one thing that she really hates about it is that they have over 2,000 cars going down their street because it is a short cut through town. She said that she was not happy with the construction of the Crossings traffic, the construction entrance is only supposed to be behind Cleveland Avenue now on a road called Way Side Road which is a continuation of Jackson, however the American Properties development is going to make it so much worse because right now all the traffic, especially the construction traffic will be going up and down Cleveland Avenue. She said that she was agreeing with all of her neighbors that it is not right to have all of the construction traffic go up and down Cleveland Avenue. She said that if some of the traffic could go up Harrison, and Jackson could go straight through they could go out through Jackson down to River Road that would be great. She said that she does not know how The Crossing's feels about that, but knows that especially with the speed humps whenever heavy traffic like tractor trailers goes up and down the street she has pictures that are getting crocked after like six months because the house shakes and is really afraid that the traffic is going to be insane, and it is already insane and is going to make it that much worse.

Lou Pichinson, 200 Jackson Avenue, sworn and affirmed, said that he would like to ask the applicant what sort of contingency has provided for, he has only heard mention of owner occupied units and there has not been much discussion prior to the formulation of plan with regards to rentals vs. owner occupied, and asked if there was some sort of contingency that has been drawn up based on market conditions, where do we stand with that.

Mr. Shimanowitz said that that the sale vs. rental issue was addressed in the settlement agreement that entered into between the applicant and the Borough and the Planning Board and then it was subject to Fairness Hearing, so there are provisions in the Settlement Agreement that address that.

Mr. Pichinson, said he was sorry Mr. Shimanowitz he wasn't aware that the Planning Board was a part of that. Mr. Thomas said that the Planning Board was a litigate in that litigation.

Mr. Pichinson said that it is clear that we are aware that there is different density for rental vs. owner occupied or a combo and that has been made clear to the Board. Mr. Thomas indicated that yes it was.

Mr. Pichinson asked when it was expected that there would be a shovel in the ground. Mr. Shimanowitz indicated his best estimate would be the fall of this year at the earliest, if things went very well.

Mr. Pichinson said that given their experience with Pulte and other issues, he was curious if American Properties planned on having an on-site construction manager there 24/7. Mr. Shimanowitz said yes but not 24/7.

Mr. Pichinson said that when the community went through this process with the Pulte development, The Crossings, they were made assurances, they asked that assurances be made that indeed there will compliance to the noise ordinance and so forth and even though obviously that has to happen we felt comfortable with asking that of Pulte and they complied. He asked if American Properties would be so generous to go on the record that yes indeed you will comply as best as possible with the noise ordinances. Mr. Shimanowitz agreed.

Mr. Pichinson said that when there is non-compliance who do they talk to on-site, because there will be non-compliance and he is not throwing dirt on the situation, the sub-contractors of the sub-contractors are on such a narrow profit margin that they need to start at 6:30 am, so that they can make their business work. He asked how they could best facilitate that problem or solution to the problem. Mr. Shimanowitz said he answered his own question, start with the project manager on-site and if that was not satisfactory to you, you have recourse through the Borough.

Mr. Pichinson said he does not relish in calling the police every other morning, this is a real problem that they have endured and would like to have this on-site relationship where when stuff happens for example on the Pulte project, the folks from Pulte could not control the sub-contractors in many situations and we are aware of realistic issue, so it's sort of an on-going kaleidoscopic solution and rather than dealing with the code enforcement or the police they would much rather go knock on someone's trailer.

Mr. Thomas said that it was a good point and thinks that it is reasonable to request from the applicant that as part of the process there will be the availability of the person with telephone numbers available through the Borough and therefore they can be distributed, so there is an understanding that if there is a problem that they do not have to go hunt and peck that they can understand that "Mr. Jones" is the guy to call. It is something that is fairly simple and hopefully responsive and if it is not, there are the police but you also end up having the zoning officer, construction official as other avenues of approach. Mr. Shimanowitz said that was reasonable and they would prefer that as well, and they will set that up.

Mr. Pichinson thanked Counsel Thomas for articulating so much then he had a proposed avenue of redress so we could remain in a good neighbor posture. He said that in closing he was really dismayed and horrified indeed to hear that the COAH units are going to be without garages and it was off handedly addressed, the issue was raised and the remark that came from American Properties was that is wasn't normal situation to have COAH units with garages, well Pulte has done that and in our lovely town of Highland Park they take pride in the diversity, lack of garages in COAH units classifies people and strongly requests that they take that into consideration and coming into Highland Park with the same sort of honor and concern for our diverse population.



Amy Lewandowski, 2 Cleveland Avenue, sworn and affirmed, provided copies of her testimony to Mr. Shimanowitz to review. Mr. Shimanowitz did not have an issue with the paraphrasing as long as she kept to the script.

Amy Lewandowski, sworn and affirmed, indicated as residents of one year on Cleveland Avenue, they are concerned about the impact of the proposed development by American Properties at the former industrial site. While they strongly feel the vacant lot could be a more beautiful and purposeful location, the development of over 100 housing units is a poor fit for the traditionally picturesque neighborhood, unyielding to the charming character of the town, and presents serious concerns related to social justice, environmental impacts and transportation infrastructure. When they first considered moving to Highland Park in the fall of 2014, they did their diligence by reviewing the borough's annual budgets and land use plans. As first time home buyers, they wanted to know what they were getting into, and Highland Park continues to be an amazing place that they are pleased to call home. After attending the January 14, 2016 Planning Board meeting, they came away with even more concerns than they expected. Their major concerns are as follows: 1. American properties has not demonstrated how egress and ingress improvements of the property, by extending Jackson/Janeway Avenue or the railroad access way, present an unjustifiable burden upon them. 2. American Properties is willing to build only six units of affordable housing, additionally, these six units are segregated by virtue of those residents being deprived of what all the other units have included, namely the garage and a private, individual space for trash. 3. American Properties has not demonstrated the necessity of 100+ units, and the corresponding parking spaces, and has not provided for the pedestrian and vehicular transportation infrastructure or environmental security appropriate for the new development residents or the existing residents in the neighborhood. Egress and Ingress - Providing only one point for egress and ingress on Cleveland Avenue is both limiting to American Properties' residents and those who travel on Cleveland Avenue. While it's obvious that substantial new traffic will flow on Cleveland Avenue, incorporating another point of access will provide American Properties' residents with an alternate option that provides balance by lessening the traffic on Cleveland Avenue and the heavy usage of the Cleveland roadway. For example, if a car accident happens at the entrance to American Properties, how will residents safely and conveniently enter or leave the development with only one access point? Two options would resolve the limited access: by extending Janeway/Jackson Ave or by making the railroad access an actual road to enter the development. American Properties challenged these options by stating that the grade of the road would be too steep; however, Cleveland Avenue is already a steep roadway. How much steeper would this be, since American Properties also mentioned they would add some fill to the existing property? American Properties also testified that by extending the roads, the property would lose seven parking spaces, which are necessary based on the number of units. They counter that American Properties should consider adding garages to the six affordable units (thus "replacing" six of the seven "lost" spots), or perhaps consider only slightly cutting back on the number of units and the corresponding spaces in the proposed development. Lastly, traveling south on River Road, there is a left turn lane onto Wayside Road/Mia Drive. This lane would provide American Properties' residents with a safe left turn heading toward their development that won't back up traffic on River Road. Cars turning left onto Cleveland today backup on River Road sometimes reaching all the way to Cedar Lane. A second entrance off of Mia Drive is an asset that should be an option for future American Properties residents. Affordable Housing - They have only an amateur understanding of the State's complex affordable housing laws and policies. But it is remarkably obvious that the proposed American Properties development would treat persons eligible for affordable housing different than all other landowners or tenants by: (1) locating them in the area of the property with environmental concerns, and (2) offering them a dumpster with garbage cans instead of a garage, as all other units are proposed to have included. While they are unsure whether garages being provided with the six affordable units would replace six of the seven parking



spaces near Janeway Avenue, they contend that offering identical units, all equal in having a garage, are the right thing to do. Further, after some basic research, they learned that the development proposed by American Properties is the result of a lawsuit by the developer in relation to affordable housing. If this former industrial site is indeed going to be redeveloped into a residential site because the Borough of Highland Park is in need of additional affordable housing units, they find it questionable and confusing that a development of 100+ units will only offer six affordable homes when the lawsuit was for more affordable housing. Other Concerns - American Properties expressed that it believes Cleveland Avenue can handle additional vehicular traffic. During the morning and evening rush hour, it is both difficult to make a left turn onto Cleveland Avenue from River Road, and to make a left turn onto River Road from Cleveland Avenue. They are hopeful that the American Properties traffic study will disclose if its research included rush hour. They also wonder whether the traffic study was conducted in the summer or during the normal school year, which they hypothesize would present a very different picture of the proposed development's traffic impact and the ability of the existing roadways to handle a greater load of vehicles. With such a large development being planned, and the large Pulte development nearby, it is incumbent on the board to consider additional pedestrian improvements at River Road for the current and future residents. Living on the corner of River Road and Cleveland Avenue gives us the unique perspective of crossing the street into Johnson Park every day. They walk their dog in the park and neighborhood, and they walk as part of our commute to their jobs. They regularly see drivers disrespect the crosswalk and it's flashing signs. They are aware that River Road is a county road, but they wonder if the crosswalk can be improved with a larger pedestrian path and reflectors along the way, similar to the pedestrian crosswalk between the New Brunswick train station and Johnson and Johnson headquarters on George Street. Does the Planning Board have the authority to make or suggest improvements to this intersection? With a greater number of walkers in the area due to the new neighborhood residents, offering a trash can on the corner of River Road and Cleveland Avenue or Mia Drive needs to be considered in order to prevent litter. This would be similar to the trash can already on the corner of Harrison Avenue and River Road. As for the sidewalk on Janeway Avenue and the beautiful tree on the proposed development side, American Properties would not need to cut the tree down when it can just adjust the sidewalk path around the tree. This is best evidenced by the Janeway Avenue sidewalk across from American Properties, which has another large, gorgeous tree and sidewalk areas around it. Conclusion - They sincerely thanked everyone for your consideration of their concerns. Decisions today will impact us and our neighbor's every day. They love the idea of improving Highland Park, and reestablishing the historic Livingston Manor neighborhood. They are supportive of redeveloping the old wall paper factory site, but they just hope that any future development is in line with the existing character of our community. They mentioned that they revisited the borough's public documents to confirm they did not misread or misinterpret the Master Plan and potential residential, commercial, and industrial developments. The 2003 Master Plan states "The vision for the Cleveland Avenue corridor should target an eclectic mix of uses, such as professional offices, light industrial uses, research laboratories and business incubators." The Periodic Reexamination Report of the Master Plan and Development Regulations, published in 2010, offered that the borough would prioritize development of the downtown over Cleveland Avenue, stating the following: "The Master Plan had also recommended that the area of Cleveland Avenue be examined for redevelopment. While the Borough Council had approved such a designation for the properties known as Illuminating Experience and Midland Ross, no Redevelopment Plan was executed. The Redevelopment Agency, at this time, prefers to concentrate on the redevelopment of the Downtown rather than move further afield to the Cleveland Avenue area. A Redevelopment Plan for that area has therefore not been contemplated. They appreciate everyone's time and service to the borough.

There being no further comments from the public, Mr. Kluger closed public discussion.



Mr. Thomas asked Mr. Shimanowitz if he wanted an opportunity to sum everything up or would he be waiving that. Mr. Shimanowitz indicated that he would be waiving that.

At 8:49 p.m. Mr. Kluger said they would take a small recess and return around 9 p.m.

Mr. Kluger called the meeting to order at 9:06 p.m.

Mr. Kluger said that Mr. Shimanowitz indicated that the testimony and application are complete. Mr. Shimanowitz indicated that was correct.

Mr. Kluger said that they were at the point of Board deliberation and discussion and turned the microphone over to Mr. Thomas to give a summary and direction and talk about how the Board is going to handle the deliberations.

Mr. Thomas said that this was an application that had been before the Board on three (3) separate occasions, it is a preliminary and final major site plan approval and minor subdivision. The Ordinance that is in effect is pursuant to five (5) years of litigation that resulted in the Ordinance that is currently in front of the Board which is the law of the case as well as the property. If any Board members have any particular comments it has been suggested that maybe the comments can be segmented, traffic, environmental, such as that and have any discussions or comments that the Board members may have, at some point, some action would be incumbent upon the Board to proceed ahead and once the discussion has taken place, he would suggest that if there is going to be a Resolution and if that Resolution was going to be favorable he has taken notes over the last three meetings and would be suggesting a series of conditions.

Mr. Kluger indicated that they would try to break down the application into a few parts, keep the discussions related to each separate part. He indicated that he had broken the application down into five (5) parts: 1. Conformity with the Settlement Agreement and the PURD to the Zoning Ordinance; 2. Architecture and Engineering of the buildings and the overall site plan; 3. Traffic; and 4. COAH; and 5. Environmental.

#### Conformity with the Settlement Agreement and the PURD to Zoning Ordinance.

Mr. Kluger indicated that it appeared to him that the application before the Board is substantially in conformity with the Concept Plan that was in the Settlement Agreement and with the terms of the Settlement Agreement and the Zoning Ordinance. He asked Mr. Thomas and Mr. Shimanowitz to confirm that there were no variances requested but believed that there were some waivers, design waiver for retaining wall.

Mr. Thomas said that it was made reference to a testimony preliminarily that there was waiver, however there is a note in the Settlement Agreement that there would be retaining walls, subject to review by the Engineer but that the Ordinance generally which may otherwise apply was not going to apply in this case, which is contained in the Settlement Agreement. He said technically it is not a waiver it is a part of the Settlement Agreement.

Mr. Kluger indicated that the Settlement Agreement did state that the Planning Board will agree to reasonable waivers that would advance the purpose of the agreement, the ordinance and the concept plan as proposed as part of the Settlement Agreement. He asked if there was also a RSIS waiver for sidewalks on both sides on the road. Mr. Thomas indicated that was correct.

Mr. Kluger said that there was testimony that they were looking for a waiver as road. Mr. Thomas said that there was discussion, raised by the Engineer, Mr. Koch in his report of January 6, 2016 as part of his 147 comments; one had to do with the issue the applicant has presented the fact that the RSIS should not apply because they have designed these as drives instead of roadways, that is the position of the applicant.

Mr. Kluger asked if that was the same sidewalk that they have been talking about, in terms of the issue with the tree. Mr. Thomas said no that is an outside issue; he asked Mr. Koch to correct him if he is wrong but believed that Mr. Koch addressed that issue on no. 15 of his general site improvement memo. Mr. Koch said that yes interior was raised.

Mr. Millet asked for a brief explanation, he said that at the time the agreement was settled he was a member of council, it was felt that this agreement as it stands was the best deal they could make and that going to court had the likely probability of having a decision made that would have had increased density and very little control over even the small things that they have control over now. He said that one of the things that he is reminded of constantly is that the world is quite different outside of Highland Park and the decision makers in this trial do not necessarily share in our values, so as a matter of background that is why we are in this position with this Settlement Agreement.

Mr. Thomas indicated that during the course of the litigation, which he recalls as a five (5) year litigation, there were extensive discussions with regard to the positions on the part of the applicant as well as on the part of the Borough. The Mayor and the Council at that time understood what the concerns were, the whole litigation is defined as a "Builders Remedy Litigation" and that is what the Borough was facing at the time. He noted that there were some comments made by the public tonight that there was not a lot of public involvement and since he was present at most of the court proceedings that were involved he is aware that during the course of this litigation and consequent negotiations there was a fair amount of public involvement during that process. He said that while he can certainly respect the comments that were made tonight he wanted it to be noted that in fact during the litigation process members of the public were present, had substantial input and were very helpful in the process. He said that the original proposal was in excess of 350 units and the application is significantly lower so there was some success with regard to the nature of the litigation and the negotiations that took place.

Mr. Kluger asked if there were any complaints to conformity. No One came forward.

#### Architecture and Engineering of the buildings and the overall site plan

Mr. Kluger asked if there were any comments regarding the Architecture and Engineering of the buildings and the overall site plan.

Mr. George with regard to those as a result of the cooperation of the applicant and in having discussions with Counsel, a lot of the questions that were initially present were resolved sufficiently to say that things seem to be in conformance and are understood much better. The presentation before the Board is also for the public to understand better and his hope is that the most important member of the public who is not present is going to be their fellow residents who are going to be there long after the Council, the Board and the applicant are gone and forgotten and hopes that there is enough of a record for them to understand part of the neighborhood that they are moving into.



Mr. Kluger said that in reference to the architecture and the engineering, the COAH unit's issues. He indicated to Mr. Shimanowitz that the members of the public made comments regarding same being treated differently than the non-affordable units with respect to the availability of a garage, and disposal of trash. He asked again if there was any consideration with considering making the COAH in conformity with the other units. It was their understanding that these types of COAH units were a part of the original concept plan that was agreed to by the Borough and then by the Board although based on public testimony and Board testimony it is obviously become an important issue.

Mr. Shimanowitz indicated that they do appreciate the Board's concern, the public's concern on this issue but unfortunately they are not in a position or too far down the road to really change the plan. How it is being proposed and how it was proposed was in the concept plan and certainly in the settlement agreement although architectural plans are included in the settlement agreement and their proposed conforms to that but be that at it may they are in the planning board process and hear the concern, unfortunately, to satisfy what is being raised it would be a redesign of the entire site. He said that the COAH units are flat units, one floor units and they are stacked three high so to try and get garages to serve those units it is impossible without literally throwing out all of the plans and starting over and are obviously not willing to do that. He said that he understood the Boards concern but at this stage in the game they could not accommodate the request.

Mr. Lanaris asked if there were a compromise to some kind of car port or enclosure that the cars and the garbage facilities could be incorporated in one kind of structure without altering the architecture of the units themselves.

Mr. Shimanowitz indicated that they had explored that themselves and the site is fairly tight, they have utilized most of the area that needed to be utilized and did not think there were opportunities for that either.

Mr. Lanaris asked if the architect did explore adding a car port like feature to this property.

Mr. Shimanowitz said no, but listened to the back and forth this evening, and discussed this in the hallway, so this is not an in depth analysis but the feedback he received from both professionals and his client was that it was not feasible to do.

Mr. Millet asked if there was a requirement by COAH that units have garages. Mr. Shimanowitz indicated no there were no requirements that the COAH units have garages.

Mr. Shimanowitz indicated that after consultation with his client they are not agreeing to do it but was something that they could look at with the Board professionals. He said where there is surface parking particularly in the back of the development toward the railroad there might be some sort of cover or carport that could be installed but that was all he could offer now, look at it with the Board professionals. He said that they were not averse to doing that but it was not a part of their plan so it has not been thought through.

Mr. Thomas said that obviously there is going to have to be a Resolution and would seem to him and not unreasonable that at least there be a consideration with regard to have the applicant look at a reasonable possibility of providing covered parking and it may not work but is language he could incorporate into the Resolution.

Mr. Koch indicated that he would send the developer copies of ones that he had in mind.

Mr. Kluger asked if there were any further question in regards to Architecture and Engineering of the buildings and the overall site plan. No one appeared.

### Traffic

Mr. Kluger said that they heard from the applicant's traffic engineer whose summary conclusion was that as a result of the development the adjacent roadway network there is sufficient capacity to accommodate the additional traffic and based on their capacity analysis other than River Road and Cleveland Avenue locations would remain in the A and B range which is the least amount of impact although at River Road and Cleveland Avenue it would go to levels of D and E but in their experts opinion traffic would still move efficiently and there was sufficient capacity on the neighborhood roadways.

Mr. George thinks that the traffic expert did the best that he could and knows that some people thought he did his traffic on a Sunday morning in August, and whether he did the study or not he did not believe that the flow along River Road or along North 2<sup>nd</sup> was adequately considered. The traffic back up now on River Road between 5-6 pm goes all the way out to Rutgers stadium and the one snarling point is Cleveland Avenue even with the turn light. One of the issues that was not considered was the fact that Cleveland Avenue is less than a 100 yards from a blind 90' turn under a railroad tunnel so when you look at the traffic there you have no site line whatsoever. He said that he has been driving that way since 1972 and seen it when it was empty and has seen it the way it is now. The other impact area that was not very well considered and has doubled in wait time to a D or E level during rush hour is North 2<sup>nd</sup> and Raritan which is the only other escape route from the sites that are being developed. He said that he speaks to the residents and his neighbors who will live there 10 years from now trying to get out of a single driveway as the traffic along Cleveland increases because it is not anywhere near its peak right now. He said such being said the expert is there, there is no rebutting testimony, this was a result of a consent order and the traffic is what the traffic is. He said that he is sure that it will have to be revisited at some time; they will have people from Pulte and American Properties coming to the Borough Council for the next 10 years complaining about the traffic. He said that he believes that the study was inadequate but the consent order is the consent order.

Mr. Thomas indicated that as a matter of fact, not commenting one way or the other, but since the issue was raised, the traffic study was done on Tuesday, April 21, 2015.

Mr. Kluger said that there was one other issue related to truck traffic, he believed there was a sign on the base of Harrison Avenue and River Road that restricts truck traffic on Harrison Avenue and may be a similar sign at 2<sup>nd</sup> as well. He said he did not know specifically the history of that.

Mr. George said that they did make some inquiry into that through the Borough to try and determine if it is marked a Historic area and believes that declaration came from higher levels in Highland Park and doesn't know that they could change that. He said that the reason he asked if there were reasonable conditions to sit down and talk about construction traffic and make a plan was that they have already made that agreement with Honeywell because they are going to start first the site remediation, and they have agreed with Lt. Panichella and himself to sit down and come up with a traffic flow program to avoid some of the head knocking that they ran into with the big truck when Pulte started. He said that if Honeywell is doing it then hopes that American Properties would do the same.

Mr. Kluger said without knowing the complete history of the no trucks on Harrison was not sure that it could be done.



Mr. George said that he was told by the executive branch that they had looked at that and the answer is no.

Ms. Kim asked in regards to the safety of pedestrians on River Road going towards Johnson Park, there is a pedestrian crosswalk there that lights up and was not sure if that is solar panel controlled but sometimes it works and sometimes it doesn't. She said that she knows that River Road is a County roadway.

Mr. Koch indicated that the solar paneled crosswalks were maintained by the Borough Public Works Department.

Mr. Kluger asked if there were any further comments related to traffic. No one appeared.

### Environmental

Mr. Kluger said that most of the last two meetings were environmental discussions and this is a very serious issue and given the current situation in his perspective, he is happy to hear from Mr. Williams of the Environmental Commission that they are comfortable with what the applicant is presenting although preferable would have been to the site totally cleaned before construction but again this is part of the settlement agreement and was what was agreed to. He said under the circumstances commended the work by Mr. Koch and Mr. Williams and the rest of the Board members with regard to the environmental issues and feels that they have done the best that they could in getting the proper accommodations in making this property as safe as possible.

Mr. Williams said that he believed that future residents will be protected.

Mr. Kluger asked Mr. Thomas if there would be lots of conditions of approval related to the environmental issues, scheduling, notice requirements, and scheduling with the Mr. Koch and the Borough and the NJDEP, etc. Mr. Thomas said that was correct.

Mr. Lanaris asked Mr. Shimanowitz after the project was completed was there going to be any disclosure to potential buyers of the remediation done and how would that be disseminated.

Mr. Shimanowitz indicated yes under the PRED Act which is governed by the NJDCA they must disclose conditions at the site. Every buyer who comes into the sales office under the statute is required to be given the public offering statement. He said the public offering statement is pre-approved and registered by the NJDCA that whole package is given to a buyer before they sign a contract.

Mr. Thomas said that the homeowner association documents will also be reviewed by the Planner, the Engineer and the Attorney.

Ms. Monk asked that they speak about signage and remediation that will occur during construction for the soil that is being displaced.

Mr. Thomas indicated that this had been discussed and the discussion was that there was going to soil that was going to be disturbed that can be reused for grading and that there would be signage and that there would be fencing enclosing the site and that the fencing would have information on it clearly indicting to the outside public that is an area that is not to be trespassed into because it is a danger.

Mr. Kluger said that he thought that the concern of the Board was that the signage would just say "restricted area" but not make it clear that it is a danger.

Mr. Thomas indicated that he would be happy to work out that language and he understood the Boards points and concerns.

Mr. Kluger said if there were no other questions from the Board asked Mr. Thomas to summarize the events.

Mr. Thomas said that the conditions that he would suggest the approval would be subject to the following conditions: the submission of an appropriate remediation action work plan; all imported structural import soil will be certified by the LSRP to the Borough Engineer and that the soil will meet all the requirements in accordance with the LSRP and the NJDEP; applicant will provide an emergency access to the railroad for a sanitary easement to the Borough of Highland Park in a matter acceptable to the Board Attorney and Engineer; the Board will incorporate the foundation plantings plan as submitted by Menlo Engineering dated December 30, 2015; the Board will incorporate the architectural plans that consists of 12 sheets dated August 13, 2013; prior to occupancy of the buildings seen through twelve those are the buildings are the ones effected by the plume that the source is from the Northerly property; that there will be certifications for safe occupancy for those buildings issued by the LSRP to the Borough Engineer that approval will incorporate the representations made by the applicant during the course of the hearing and as particularly outlined by their LSRP Mr. Peter Hansen from EcoSciences, Inc., and the two reports currently in the record are February 2, 2016 and April 5, 2016 those all contain the references that have been made during the course of the testimony both in February as well as again this evening and recommended that the recommendations from the Borough Engineer, in which the Board has seen and has been made to the public and reported the 8<sup>th</sup> of January 2016 which will be conditions of the approval except as otherwise modified by the Resolution. The Board will require that the foundation plantings be modified in accordance with the recommendations of the Borough Planner and that there will be in front of all the condenses, evergreen scrubs instead of indigenous plants, at least 4 feet in height, the applicant will incorporate the recommendations of the Borough Planner with regard to the installation of evergreens to mitigate the appearance of retaining walls together with the use of vines to be planted on top of the walls again for further mitigation purposes, there will also be the privacy fence installed between patios, at the rear of the buildings there will be a vinyl fence at least 6 feet in height; that there will a review by the Board Attorney, Borough Engineer and Borough Planner with regard to the homeowners association documents; there will be a requirement for fencing that is already included in the original plan by Mr. Hansen and that language to enclose the soil that will be taken from the site and stored in a location and that the language of those warnings signs will be acceptable to the Borough Engineer to adequately ensure that there is warning with regard to the nature of the soil being stored. He recommended based on that evening that it be subject to a construction traffic plan that will worked out between the Borough and the applicant and that there will also be deed restrictions to ensure that all of the environmental representations and restrictions and requirements when discussed as part of Mr. Hansen's two reports, the testimony and all of the requirements that are made by the LSRP and the NJDEP will be requirements for remediation and monitoring that will run with the land in the event that there is a transfer of property. Further that the applicant has agreed and that there will be a condition indicating that they will be subject to the noise ordinance and that there will also be a requirement that the applicant prior to construction will provide to the Borough to distribute to members of the public the name and telephone number for the construction manager in the event that there are problems on-site, there will also be a condition that will encourage the applicant to work with the Borough consultants to see if there is a possibility of providing garages of some sort or enclosures



for the cars of the COAH units. He said that he wanted to make it clear that included in those conditions are reports of the consultants which are rather lengthy, for purposes of discussions this evening he did not want to go through 145 comments that were made by they are all incorporated to the extent that they have not otherwise been modified. For the purposes of the Board Members, the public and the applicant there are a number of conditions contained within the reports the applicant is fully aware of them and understands that they will be a part of any conditional approval that would be granted, so for all of those conditions he offered that as a possible motion for approval, there are no conditions of denial.

Mr. Kluger said that the requirement of a geotechnical engineer and the Borough Engineer to be working with them on scope of services. Mr. Koch said that they had that discussion and added any of the items that the applicant agreed to via their testimony also be included as just a general statement. Mr. Thomas said that is correct.

Mr. Kluger said the LSRP certification before the CO could be issued, the taking apart the slab. Mr. Thomas indicated that he was going to add that one but there was a discussion at the February meeting about the fact that if the slab removal occurs before the approval, he did not include that because if you're going to take an action it would be tonight and as far as he knows there has been no action about removal. Mr. Shimanowitz indicated that was correct.

Mr. Kluger said that the settlement agreement should be incorporated by reference. Mr. Thomas said that he would be happy to do that.

Mr. Kluger said that there was discussion of related to dust control and what provisions would be made, how the applicant was going to suppress it and Mr. Koch referenced once it gets out without the applicant agreed to power wash the buildings. Mr. Thomas said that he did not put that into his conditions because he through it was incorporated into one of the reports but was happy to make a note to either find it or include it. Mr. Koch indicated that was one of his comments as well.

Mr. Thomas indicated that unless any other Board members or staffs have any additional suggestions.

Mr. Schectel said that the issue with Janeway and the sidewalks his report the Ordinance does not require it.

Mr. Millet said that what statute the absence of the sidewalk on that particular street violates, is it required by law or landuse practices. Mr. Thomas indicated that unless he is missing something he is not aware of any landuse requirement and there was certainly no statutory requirement.

Mr. Kluger said that where they left off with that was the testimony from one of American Properties experts was the issue of the large tree.

Mr. Koch suggested having the Borough's tree expert evaluate the tree to see if it is healthy. Mr. Kluger indicated that if it turns out that the tree is not healthy and may need to come down in the future would the applicant be open to installing sidewalks.

Mr. Shimanowitz said that is the impediment and that they were not adverse to the sidewalk, the problem was we could install the sidewalk but could not guarantee the life of the tree so it is a tradeoff, their position was if the tree is healthy lets save it and the sidewalk is not that important but it's the Boards decision.



Mr. Williams said that the tree was healthy last fall and does not believe that there is enough room to go around the tree.

Mr. Thomas suggested a motion of approval as outlined by the Board Attorney and modified and then the mover can make whatever decision the mover wishes with regard to the sidewalk on Janeway.

Mr. Millet said that it seems that the applicant would be willing to do so if feasible, if it can be done do it.

Mr. Thomas said that the applicant indicated that it is the decision of the Board, so if what is being said is that you would like it as a condition is for the Borough's consultant in conjunction with the applicant to investigate whether or not the tree is a good healthy tree then the possibly the sidewalk will not go in but if it is not healthy that then the sidewalk will be put it. If anyone ends up having a motion you might want to incorporate that language as well.

It was MOVED by Mr. Millet and seconded by Mr. George to accept the proposal with conditions outlined by the Board Attorney based upon its conformity to the settlement and the two conditions that were met that the applicant would investigate the possibility for putting in some sort of car port structure if feasible to be used by the COAH tenants and in conjunction with the Borough determine the viability of the large tree and if it should be taken down then a sidewalk would go along Janeway.

ROLL CALL: Ayes - Mr. Kluger, Mr. Williams, Mr. Lanaris, Ms. Kim, Mr. George, Mr. Millet, Ms. Hand, Ms. Monk, Mr. Brescher

There being nine (9) ayes and no nays, motion passes.

Mr. Kluger thanked the members of the Board, the applicant and the public. He said that they like to thank the members of the public who have been here for these meetings, they do recognize that you raise some significant and important issues we may have not resolved them in ways that you may have wanted or expected and what you heard from a lot of us was a lot of this application was based on years of negotiations and we they were in some ways tied by the settlement agreement and if this application had come before the Board without a settlement agreement some of the results may have been different but they did the best that they could in the best interest of the Borough, its residents and its future residents. He thanked the applicant, the last three meetings everyone got along very well and look forward to being neighbors and to a successful project.

### **Correspondence and Reports.**

Ms. Monk indicated that the Borough was up for renewal of the Sustainable Jersey certification and the Borough is aiming to get the Silver certification, which is the highest certification available. There are five actions items that she is reviewing on behalf of the Planning Board that they will attempt to fulfill or party to fulfilling. The one that she was able to look at in preparation for this evening had to do with Board members and/or staff being trained in green building strategies and techniques. She said that she was interested in taking a general survey of those to whom that may be relevant professionally and that have already perhaps done the work, so that she could just collect the certificates or copies and submit that action item, if not there are free online classes that can be taken that would allow the Borough to get that credential, they are offered as US Green Buildings institute certified education so if anyone is willing to sit through some online training and answer a couple of questions at the end. There needs to be three Board members from any Boards from across the



Borough or two Borough staff members or a combination of. Ms. Monk indicated that she had already completed her online training, there are a variety of subjects, and she forwarded the link yesterday with the information. She said that there is a Green Building institute that is offered by Rutgers that is a recognized education provider for the credit. Mr. Lanaris and Mr. Brescher will do the online training.

Ms. Monk said at the next meeting or once she gets chance to review the other four actions that have been proposed to the Board she will let everyone know what that requires. She said some of them involve passage of Green Building Ordinances and needed to look in the Borough's current structure to see if those are already in existence. There is a model checklist in the action plan and will look into those and bring those documents in to the next meeting for review and possible adoption.

Mr. Kluger asked if there were any updates on the meetings regarding the traffic issues along Raritan.

Mr. George said that the Mayor is spear heading that, she deals with the NJDOT. He has been meeting with some of the businesses in that area with relation to parking and sidewalks, which are within his liaison area. The Mayor and the Police Department had NJDOT come in and they were actually ready to paint the crosswalks at Washington but they stop because they realized that there is a school there, there are putting up the larger different signs so they had to go back to their workshop to do that. The businesses along the stretch down from Lexington towards Brookside have reached an agreement amongst themselves to realign the car parking along the frontage in front of their buildings so that there is more clear sidewalk, the Borough is going to strip because virtually all of the properties were repaved so that there is clear walking area now but it is asphalt. The have agreed to have the Borough strip where the sidewalk would be to delineate it very clearly and they are looking at a couple of other traffic improvements in the area. Outside of that limited area he knows that the Mayor has been working with the NJDOT and they have been in meetings several times, and the workers have been down here as well.


Ms. Hammond asked for an up-date on Rite-Aid. Mr. Thomas indicated that he could not report on that because he was not aware that she wanted him to look at that but he would certainly look into and report.

**Public Comment:**

Mr. Kluger opened the meeting for public discussion and called upon all those wishing to speak to identify themselves. There being no one, Ms. Hammond closed public discussion.

There was a motion to adjourn from Mr. George with a second from Mr. Williams at 10:05 pm the meeting was adjourned.

Respectfully submitted,

  
Jennifer Santiago  
Board Clerk