

HILLSBOROUGH TOWNSHIP
PLANNING BOARD PUBLIC MEETING
MINUTES OF
June 11, 2009

Chairman Burchette called the Planning Board meeting of June 11, 2009 to order at 7:30 p.m. announcing that this meeting had been duly advertised according to the Sunshine Law (Chapter 231, Open Public Meetings Act). The meeting took place at the Municipal Building in the courtroom.

PLEDGE OF ALLEGIANCE

ROLL CALL

Mayor Frank DelCore – Present	Sam Conard – Absent
Michael Merdinger – Present	Steven Sireci – Present
Gloria McCauley – Present	Marian Fenwick-Freeman – Present
Steven Cohen – Present	Douglas Tomson - Absent
Chairman Greg Burchette – Present	Tod Mershon – Arrived 7:47 p.m.
Arthur Stafford-Taylor – Present	

Also present were Robert Ringelheim, Township Planner; Eric Bernstein, Esq., Board Attorney; William H.R. White, III, P.E., P.P., C.M.E., (Maser Consulting, P.A.) Board Engineer; and Lucille Grozinski, C.C.R.

ACCEPTANCE OF MINUTES

• **January 08, 2009 Reorganization Meeting**

A motion to approve was made by Mr. Merdinger, seconded by Ms. Fenwick-Freeman.

Roll Call: Ms. Fenwick-Freeman – yes; Dr. Sireci – yes; Mr. Stafford-Taylor – yes; Ms. McCauley – yes; Mr. Cohen – yes; Mr. Merdinger – yes; Mayor DelCore – yes; Chairman Burchette – yes. Motion carries.

• **January 08, 2009 Regular Meeting**

Dr. Sireci pointed out a misspelling on page 6 for correction.

A motion to approve the minutes as amended was made by Dr. Sireci, seconded by Mr. Merdinger.

Roll Call: Ms. Fenwick-Freeman – yes; Dr. Sireci – yes; Mr. Stafford-Taylor – yes; Ms. McCauley – yes; Mr. Cohen – yes; Mr. Merdinger – yes; Mayor DelCore – yes; Chairman Burchette – yes. Motion carries.

PUBLIC HEARING – SUBDIVISIONS/SITE PLANS

Kenneth B. Worden – File #07-PB-15-MJ

Block 13.01, Lot 8 – South Branch Road & Peter's Terrace – Preliminary major subdivision with bulk variances.

Chairman Burchette announced the application for Kenneth B. Worden has been adjourned to July 16, 2009 without further notice.

Board Attorney, Eric Bernstein, Esq. asked Chairman Burchette to allow the attorney for the applicant to address the Board regarding requirements and pending issues for the applicant.

William B. Savo, Esq. reviewed for the Board that the comments from Board Engineer, Bill White, have been received. Since drainage issues are being reviewed, the applicant agreed to adjourn the hearing until July 16, 2009. Should the application be approved on July 16th, the request to the Board is to memorialize the resolution at the business meeting at the end of the month.

Mr. Bernstein, Esq. reiterated the request and stated that if the Board is not agreeable, he would like to be able to inform Mr. Savo, Esq. and the applicant at this time, rather than wait until July 16th.

Mr. Merdinger voiced his disapproval.

Mayor DelCore asked if there were any deadlines that might be driving the request to have the resolution memorialized.

Mr. Savo, Esq. said the matter has taken a long time and that the applicant is running out of time.

Mr. Cohen suggested that the Board wait until July 16th to decide on the matter since there is no way of knowing at this time what will be presented during the hearing.

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Chairman Burchette agreed to have the matter decided on July 16th.

Mr. Bernstein, Esq. said the purpose of asking Mr. Savo, Esq. to address the Board was not to decide on the matter now but rather to make the Board aware of the potential request.

Mr. Merdinger again expressed his disapproval.

Country Classics of Belle Mead – File #08-PB-13-MJV

Block 203, Lot 18 – 281 Willow Road – Preliminary Major Subdivision with bulk variances.

Robert Ringelheim, Township Planner obtained the eligibility to vote certification from Mayor DelCore and Ms. McCauley.

William B. Savo, Esq. attorney for the applicant gave the following overview of the application:

- The previous hearing was held on November 06, 2008 at which time questions had been raised by the Board and adjacent property owners regarding traffic and drainage. Revisions to the drainage plan and additional traffic studies will be discussed.
- The application has been revised with no variances or waivers requested. Approvals have been received from the County of Somerset, subject to the payment of fees; MUA; Soil Conservation District; and a LOI from DEP. Review has been provided from the Environmental Commission and the Fire Marshal. The Board Engineer, Bill White has noted that the proposed will not have a negative impact on adjacent properties with regard to stormwater run-off, and that the level of service for each of the intersections studied is acceptable.
- The housing for COAH has been eliminated at the request of the Township. Fees will be provided according to the Township Ordinance.

Robert B. Heibell, PE & LS engineer for the applicant and still under Oath from the previous hearing was brought back up to testify.

As a side note, Mr. Heibell informed the Board that his client, Herbert Smilowitz was now present in the courtroom. Out of courtesy, this applicant would step down for the fifteen minutes or so needed, should the Board prefer to hear the presentation requesting rezoning, prior to continuing with this application.

The Board indicated the application should continue.

Mr. Heibell introduced the following exhibits:

- **A-1** Exhibit from previous hearing
- **A-2** Exhibit Plan dated 06-11-09
- A-2 was prepared today to show a portion of the landscape plan and portion of the preliminary plat. All information contained is within the set of plans formerly submitted to the Board.
- A-1 shows a 2-acre lot with a house fronting on Willow Road, proposed to be a COAH dwelling. A-2 shows 22 single-family dwellings and no COAH dwelling. In accordance with the current regulations of the Township, the applicant would pay 1 ½ % of the equalized assessed value of all 22 dwellings. Half to be paid at the time of securing a building permit; the remaining half at the time of C-O.
- A-2 shows the detention basin lot increased to over one acre. Previously, the lot size of .8 acres required a variance. The size of the lot was met with criticism from the Public. The increase eliminates the need for a variance and bringing all of the lots within the bulk variance standards of the Ordinance.
- To accomplish this, the cul-de-sac street has been slightly reconfigured. Instead of a left-hand turn cul-de-sac, there is now a center cul-de-sac.
- A waiver was requested previously for the farm lot which would have been made a flag lot off of the COAH lot. Since the 2-acre COAH lot off of Willow Road has been eliminated, the waiver is no longer necessary.
- The Traffic Consultant will be addressing the second set of traffic counts that were done on November 20, 2008.

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- The Board had requested the professionals to meet with the Public prior to this hearing. Mr. Heibell said that he, Todd VanCleaf, and Jay Troutman held a meeting with the residents at the intersection of Ivy Lane and the proposed road in order to address any questions or concerns. The meeting was held this past Monday and lasted about forty minutes.
- The Board had asked that new soil logs be done since the previously soil logs done by EcolSciences, Inc. were not done during the rainy season. All 22 lots were retested during the month of March which is the month suggested by the Board. Melick-Tully and Associates did all of the re-testing. All of the proposed dwellings have proposed basements with an elevation at least two feet higher than either the seasonal high water table or evidence of the seasonal high water table.
- Other minor issues were incorporated within the revised plans and submitted to all of the reviewing agencies. The only agency not heard from is the Somerset County Planning Board. Their initial report did approve the plan subject to the Township's review of the storm drainage facility and other items to be done at the time the final subdivision plat is filed. Should the preliminary application be approved by the Board, the applicant will need to take care of those matters at the time of the final application.
- An unconditional approval has been obtained from the Somerset-Union Soil Conservation District for both the previous and revised plans.
- The revised plans were also submitted back to the D&R Canal Commission as well. A conservation easement, Municipal approval, and series of other Administrative items will need to be provided. One item to note is that the Canal Commission changed their regulations on June 1, 2009, although they did not issue a letter to that effect until June 03, 2009. The regulation for which jurisdiction was determined changed from a total impervious coverage area of 1-acre to ¼ acre. Therefore, most if not all future site plan and subdivision applications before this Board or any other will be subject to review and approval of the D&R Canal Commission. In addition to this change, the Canal Commission now requires a fee. Since this particular application did not receive approval prior to June 01, 2009, a fee of \$10,000 is now payable.
- Revised plans were sent to the Township Planner and Board Engineer. Mr. Ringelheim reviewed the plans, agrees that the application is now void of any waivers or variances. Bill White's report sites a series of smaller items. All items, with one exception, will be complied with. The only exception is that the stormwater detention basin which has been designed in conformance with the new DEP regulations. Beyond approval from the Board and various agencies, the NJDEP will need to approve the plans being that the outlet to the basin is within the 100 year flood-plain. The basin was designed using the new standard; a portion will be a wet pool and a portion will have wetland plants within the basin. The plan currently states that the land is to be offered to the Township, the recommendation of Bill White, which has been agreed to by the applicant, is to form a Homeowners Association which will maintain both detention basins, rather than have the maintenance of both fall to the Township.
- Mr. Heibell sited the detention basin at the Faith Lutheran Church as a detention basin for comparison, although not necessarily designed in the same way. Because the drainage sits above the ground, the water takes longer to seep into the ground and is not eliminated in a typical 24-hour period. Similarly, the water within the proposed detention basin will sit for a time and ultimately go through the ground, in accordance with DEP regulations.
- The applicant has agreed to the suggestions offered by Bill White regarding the sidewalks. A fee of \$20.00 per foot will be provided in lieu of a sidewalk along Willow Road. The sidewalk on both sides coming into Ivy Lane will be extended.
- Also included in Bill White's report are a series of smaller items which the applicant has agreed to.
- The one item presented in Bill White's report that the applicant is not in agreeable to is the requirement of having a phase I audit to prove that there are no contaminants in the soil. A typical example of contaminated soil as a result of farming might be an apple orchard where arsenic levels might be present in the soil. The owner of the property, Mr. Warmke, whose family has farmed the property, has been asked to speak before the Board regarding this issue.

Mr. Savo, Esq. added that this issue was not raised by the Environmental Commission but being that it was raised by Mr. White, the owner who farms the property has been asked to testify in an effort to make the Board more comfortable knowing this property was not farmed as an apple orchard.

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John Warmke was sworn in and question by William B. Savo, Esq. responding as follows:

- The farm has been in the family for four generations.
- The farm is currently being farmed for corn, soybeans, wheat, rye, and hay. It has never been an orchard with pesticides used.

Robert B. Heibell, PE & LS resumed his testimony as follows:

- Mr. Heibell said that he, Mr. Warmke, and Mr. Van Cleef appeared before the Environmental Commission on October 20, 2008. He stated the only items are that the wetlands be marked. This matter has also been brought up by Mr. Ringelheim. The applicant has agreed to post the appropriate signage. The LOI report from 2008 is still valid.
- The report from the Fire Marshal dated October 30, 2008 points out the need for fire hydrants and fire hydrant markers which will be complied with.
- Mr. Heibell said Mr. Ringelheim has informed him that the property owner to the southwest, Mrs. Durling, has issued a letter to the applicant after the last hearing. Her land is under farmland preservation and would like the applicant to put Giant Green evergreens at center along the common property line between the farm and her preserved farmland. The applicant does not see the need to comply.

Mr. Stafford-Taylor asked that Mrs. Durling's property be pointed out on the plan.

Mr. Ringelheim highlighted Lot 17 which goes down Township Line Road and comes out all along Willow Road.

Mr. Stafford-Taylor asked if any improvements are proposed along the adjacent property line of Mrs. Durling.

Mr. Heibell responded that there is only one lot at the base of the cul-de-sac.

The Board asked what is currently there now.

Mr. Heibell said there is a hedgerow along the entire Warmke farm.

Mr. Stafford-Taylor asked if it were possible to take down the hedgerow in the area requested and replace it with the trees requested.

Mr. Heibell said that should the applicant agree to comply with such a request on land against preserved farmland, similar requests might come forward from other residents. The applicant would rather not start to go down this pathway.

Questions/comments were taken from the Board's professional:

Bill White reviewed his request regarding basin #2. A double "E" inlet was requested to be placed just down stream of the spillway which goes into the residential property; following the natural drainage pattern of the property. Drainage is being intercepted with the roads and grading, putting it through basin 1 toward the entrance. In case this basin does fill up and the spillway does activate, with water going over the spillway, water would be caught in the double "E" inlet and then routed around to the storm drain so that the water would not go through the residential property.

Mr. Heibell agreed to comply with this condition upon approval.

Chairman Burchette asked Mr. Heibell to review what had just been discussed with Mr. White since the microphone used by Mr. White was not loud enough to be heard by the back of the courtroom.

Mr. Heibell summarized that all stormwater detention basins have an emergency spillway should the outlet structure clog. Mr. White has requested that a double "E" inlet be added on the down side of the outlet structure with storm drainage system back into the storm sewer system as a preventive measure for the residential properties. The land in that area now drains to the property owners on Township Line Road.

Mr. Ringelheim addressed the COAH fee which is now 1 1/2 % of the equalized assessed value. Due to ongoing litigation involving COAH, the Township has been using the policy of requesting whatever the regulated COAH fee is at the time the first building permit is pulled.

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Mr. Heibell clarified that only the fee may change, not the issue of providing a COAH unit.

Mr. Ringelheim agreed.

Mr. Ringelheim asked if the detention basins will be landscaped to limit the amount of maintenance and provide for a more sustainable and low impact development.

Mr. Heibell agreed to provide the landscaping subject to Mr. Ringelheim's approval, providing water tolerant landscaping such as that used at Faith Lutheran Church.

Questions/Comments from the Board

None

Open to Public

Gary Ward – 8 Ivy Lane

- Gary Ward noted that it has been six months since the last hearing date. Concerns raised at that hearing regarding drainage and traffic have been addressed at this meeting. The residents also requested a meeting with the developer/owner. Since that time, the concerns have grown.
- The goal of the residents is to make sure that the best development plan for the land is implemented. At this time, the residents do not believe the plan presented to be that plan.
- The builder met with the residents three days prior to this meeting. The residents do not feel adequate notice was given. An ongoing dialog is expected.
- A water test was requested. The residents do not believe the testing that was done is adequate and do not believe it was done to address peak issues for the residents surrounding the farm.
- The traffic study verbally mentioned at the meeting done on November 20, 2008, was not in the file. The only traffic study in the file was the one mentioned at the last hearing and done in March.
- He asked where will the power be coming from and how will it affect the sewer and the residents of the area.
- Ivy Lane is a bypass off of Willow Road for most of the Montgomery residents who do not want to drive down to the end of Township Line Road and then turn onto Willow Road. Drivers go from Ivy, to Michelle, to Kilmer every day at peak hours. This occurs weekdays and weekends, with fifteen cars going by every half-an-hour. This is too much for a residential street that is supposed to have a 25 M.P.H. speed limit.
- The estimated total of the neighborhood sited in the impact study is listed as 89, of which 52 are of driving age. The question raised at the meeting on Monday was how many cars were expected in a neighborhood with 22 houses. The number given was 20. However, the residents calculate approximately 52 cars coming and going throughout the day, figuring two per home for the working adults and an additional car for those children of driving age. Ivy Lane is a private street which does not need another 52 cars going in and out.
- The traffic study addresses flow where the residents believe the emphasis should be on safety.
- The issue of power outages on Ivy Lane has been brought to the attention of PSE&G and the NJ Board of Public Utilities. The lines underground are over 25 years old. Since 2008, there have been five power outages, totaling some 100 hours without power. PSE&G responds by digging up and splicing the line to restore power.
- The EcolSciences study notes that all utilizes will be connected to the existing lines along Ivy Lane and Willow Road. Mr. Ward said that to be able to connect an entire development into the power grid, Ivy Lane will need to be on a loop. The residents are requesting that the applicant see to it that PSE&G put Ivy Lane on a loop. To achieve this, PSE&G will need an easement to cross Ivy Lane to Township Line Road where the transformer is. Being put on a loop, would allow a technician to be able to pull the affected cable at the transformer; then putting it into the second feed and enabling power to be restored.
- There are also drainage problems in the neighborhood. When the power goes out, the sump-pumps do not work. The residents all have generators because the power is not reliable.

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Charles Lobrutto – 6 Ivy Lane (Lot 7)

- Charles Lobrutto showed photos of the incline from his property to the property behind, proposed lot 18.21 for the purpose of addressing drainage issues. With the water found in the pit shown being at 7 ft. , using the figure from the study, the basement of the new proposed home will bring the grading up another two feet. Mr. Lobrutto said he calculates an approximate 14 to 16 feet height difference in order to alleviate a water problem in the new home.

Deposition Exhibit W-1 – photo of open field

Deposition Exhibit W-2 – photo of back yard with trees

- Mr. Lobrutto stated that he has an exterior drainage system, some 20 ft. from the tree line. He said he also has an interior drainage system with two sump-pumps that pump constantly since one was not enough. He said he has extensions on his gutters and makes sure the property is graded away from the house, wherever possible. Still his efforts do not seem to be enough.

Mr. Heibell responded saying extra measures have been taken at the Board's request with regard to drainage. Each of the perimeter lots and the flow coming off of the farm field were analyzed. There were a total of eight perimeter lots where the water drains off of the farm field toward those lots. The rest of the farm drains toward the stream in the middle. Analysis was done using the existing conditions for both the five-year and twenty-five-year storm for those eight lots and the conditions should the subdivision be built. Grading will be done such that the dwelling, driveway, and roof drains go out toward the road. They will not be flowing toward the back of the property.

Mr. White has reviewed both the existing drainage and proposed drainage for each of the proposed lots. The amount of capacity for the five-year and twenty-five-year storm has been reduced.

The back half of the lots will still drain toward the adjacent neighborhood. The backyard would be converted from a farm field with quite a bit of sheath-flow to a grass area. These conditions were taken into account in the drainage calculation that were reviewed by Mr. White.

Mr. Heibell noted for the record that the dwelling, driveway and impervious surface will drain toward the road into the stormwater system and not back onto the neighboring resident's property.

Mr. Heibell stated that the proposed development will not make the drainage situation for the neighboring property owners any worse but under no circumstances will it make it better. He mentioned a comment made by one of the residents at the meeting held earlier in the week asking if the applicant can "go the extra mile" to come up with all of the backyard areas to drain into a separate backyard storm drainage system. Mr. Heibell said he did a review to see if it was physically possible and determined that it could be done.

A swale and storm sewer system would need to be placed parallel to the lot line and then brought into the basin or storm sewer system of the new development. This improvement is not currently shown on the plan and may not be a requirement.

Mr. Stafford-Taylor noted again for the record that this improvement is not a requirement at this time.

- Mr. Lobrutto continued his questions for Mr. Heibell regarding the differences in elevations between the existing development and the proposed development.

Mr. Stafford-Taylor clarified the height difference for Mr. Lobrutto using the topographic survey provided by the applicant. Mr. Lobrutto's property, lot 7, sits at 114; the property behind peaks at 118, roughly a 4 ft. incline.

- Mr. Lobrutto said it looked much higher. Adding the 4 ft. calculated and the additional 3 ft. to 4 ft. needed to elevate the new homes will create additional run-off.
- Mr. Lobrutto noted the existing drainage area toward lot 7 at .46 with a proposed figure of .55, a 20% increase. Some lots show an increase upwards of 68%.

Mr. Heibell clarified these figures are for acreage; the existing running toward lot 7 is .46 with the proposed running toward lot 7 as .55.

- The residents understand the right for the applicant/developer to do what is right for the new home owners but in doing so should not impact the existing home owners. These figures show an impact, not status quo. He said he the additional flow from the new homes is a concern.

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Mr. Heibell told Mr. Lobrutto that he had only reviewed two of the six columns listed in the report. The next two columns address the existing ground conditions as a farm vs. as a lawn. Less water runs off the lawn than runs off the farm, as reviewed by Mr. White. Even though the area goes up slightly, the five-year storm flow gets reduced from 1.56 to 1.15; the twenty-year storm flow goes from 2.16 to 1.60. The compensation for the increase in the area is that the property is changed from a farm field to a lawn.

- Mr. Lobrutto asked if he could review the report done by one of his neighbors who could not attend the meeting. The report details that January, February and March have been the second driest period in New Jersey since this report has been produced.

Mr. Heibell informed the Board that the report offered by the homeowner is being presented to show that March which was the time the Board requested that the testing be done was drier than January which is actually the time that he had suggested the additional testing be done. The "rainy season" in New Jersey is January 1st through April 30th. The testing requested by the Board was done during the rainy season in the same two-week window. The testing done and provided by the applicant shows either evidence of the seasonal ground high water table or evidence of where it was (mottling).

- Mr. Lobrutto asked for clarification on the test pits that are done. The report shows the property behind lot 7 to be at 7 ft. where water was found while the property just 150 ft. to the left at 11 ft. shows no water found.

Mr. Heibell reviewed that Melick-Tully did the testing. It is not uncommon for the results to vary throughout, which is the purpose for doing the soil test.

- Mr. Lobrutto asked if consideration could be given to the placement of the homes so that the new homes do not back up directly to the existing homes. He said that increased elevation of 8 ft. to 9 ft. would not provide him any privacy, even with a 6 ft. fence. He asked if there was any way to move the new homes so that they are not sitting directly behind each other.
- Mr. Lobrutto again reiterated his request for consideration to the drainage problem on Ivy Lane, Michelle Land and Township Line Road. He said that the residents battle with the drainage issues day to day. He said he is "begging" the Board to look closely at these issues before any approval is considered.

Mr. Savo, Esq. commented that he had not seen the report presented by the residents before. He noted that there are two monitoring areas, one in Redington Township, and the other in Middlesex County. In the report, both measured the ground water levels measured and the water table observation for the month of January to be above normal.

- **Thuy Anh Le - 4 Ivy Lane** (Ms. Le was sworn in by the Court Report.)

Chairman Burchette asked if Ms. Le is an expert. After some discussion, Chairman Burchette asked to continue to hear from the Public.

Peter Cipparulo of 9 Ivy Lane asked if the traffic expert would be testifying.

Mr. Savo, Esq. responded that he is available and will testify if there is time.

- Ms. Le asked if she could submit a table in which she used the data from the plans, dividing up the individual properties. The table shows the acreage of water moving toward the existing homes.

A copy was given to Mr. Bernstein, Esq. and Mr. Savo, Esq.

Mr. Bernstein, Esq. asked how the document was created, who created it, and what the basis of the document is.

- Ms. Le said she created it based on the maps, took the information provided for the acreage moving toward the acreage of homes for pre-development and post development and the percent change.

Mr. Heibell stated that the chart presented looks to be taken directly from the his drainage report but only shows the first two columns and fails to show the five-year storm and twenty-five year storm figures. He reviewed the first numbers in the first two columns. Mr. Heibell said that the percentage change for the first entry is at 68% because the property is only 1/4 of an acre.

Mr. Bernstein, Esq. noted that Mr. Savo, Esq. did not have an objection to the document. Ms. Le provided the document to the Board.

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- Ms. Le said the intension of making the table is to show that some of the neighbors such as Mr. Lobrutto who cannot tolerate even a small increase in flow. Mr. Lobrutto has spent thousands of dollars in trying to manage the drainage problems. Most of the neighbors are familiar with the neighborhood and know which homes flood first.

Mr. Heibell said this chart only tell part of the story. The first four numbers in the chart are accurate but the remaining lot flow into the detention basin. Mr. Heibell said he analyzed the eight lots where there was sheath-flow. The proposed drainage actually lessens the flow for the portion of the property that flow into the detention basin and storm sewer.

- Ms. Le said lot 10 just flooded in April. She expressed that the residents of the existing neighborhood are trying to understand all of the reports and not be angry about the new development.
- Ms. Le said the Environmental Impact Report mentions the endangered species of the bobolinks. She asked how the Town addresses this issue.

Mr. Heibell said although this study is by EcolSciences, he is aware through his dealings with NJDOT that they have spotted the birds flying along the DOT corridor. None were spotted at the time of the report but since in the general area, they were sited as being an endangered species within this corridor.

Ms. Fenwick-Freeman offered that since this property has been continually farmed, she imagines that there are no nesting bobolinks on the farm.

Mr. Heibell mentioned that the DOT right-of-way plans, some of the property has been acquired for the purpose of creating forested areas for the bobolinks, although not on this property, but in the general area.

Ms. Fenwick-Freeman said she could see nesting occur on the neighboring preserved Durling property because it is generally undisturbed.

- Ms. Le said that her experience as an environmental steward suggested that a tree line be planted between the two developments. Trees that are more absorbent may help alleviate the water.
- Ms. Le suggested that the traffic flow be brought toward Route 206 where natural traffic flow would go.

Chairman Burchette commented that he thought that concept was shown on original plan.

Mr. Heibell said the original concept plan presented to the Board showed a subdivision of thirty lots with the road going out to Willow Road. Since that time, the Warmke family has decided they want to preserve the farm. The sale of the property excludes a 22-acres parcel which will be farmed and maintain by the family.

- **Tony Nicoli – 16 Ivy Lane** (Mr. Nicoli was sworn in by the Court Reporter.)
- Mr. Nicoli stated he has lived at his Ivy Lane residence since 1985. He presented printed photographs to the attorneys for approval of distribution.

Mr. Savo, Esq. requested that information about the photos be provided.

- Mr. Nicoli said he had taken the photos from his property, lot 15B. The photos are looking toward Block 203, Lot 18.24. The photos were distributed without objection.
- Mr. Nicoli said the dated photos were taken close in proximity to moderate rain storms in order to show the typical flooding that occurs in the corner of the farm and for that stretch of lots including lots 19, 20, 21, 22 and so forth.
- The photos taken on March 25, 2008 were taken on the morning when the perk tests were done in the back corner which had been a dry day. The water in the photos shows the water that came out of the ground from the testing. It was not standing water.
- Mr. Nicoli said he had dropped off an OPRA request at the Mayor's Office requesting information on any perk test, soil test or environmental test that had been done on this property over the past twenty years. He reviewed his dissatisfaction with the handling of his request since it apparently had not been routed to the appropriate department which could have provided him the information. Mr. Nicoli emphasized the

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importance to the residents of being able to review the findings of an independent perk test study done on the property.

Mayor DelCore said he had no knowledge of Mr. Nicoli's request but asked him to resubmit a request to his office. Mr. Nicoli was assured by Mayor DelCore that any information available would be provided.

- Mr. Nicoli said he already faxed his request yesterday and is waiting for a response.
- Mr. Nicoli stated the traffic issue and water issues for all those on Ivy Lane, Township Line Road and Michelle Lane are of great concern. All have been affected by water run-off. He posed the question of what happens if all of the projections are wrong. The residents of the surrounding neighborhoods are the ones who will suffer for any mistakes made, including that with traffic. He impressed upon the Board the serious nature of the concerns of the residents.
- Mr. Nicoli said he hopes double lines of trees will be included in the landscape plan to buffer the project from the existing surrounding community.

Ms. Fenwick-Freeman asked why only one meeting had been held which was only three days ago. She said when she had urged Bob (Heibell) at the last meeting to reach out to the residents; she had hoped that there would have been more opportunity for dialogue between the residents and the applicant than one meeting lasting less than an hour.

Mr. Heibell commented that he does not take credit for scheduling or not scheduling the meeting. He said he was asked to attend the meeting when Country Classics scheduled it.

Ms. Fenwick-Freeman asked why the concerns that are being expressed had not been addressed prior to this hearing.

Mr. Heibell said that he and the representatives of the application stayed at the meeting with the residents until about 7:45 p.m. They stayed for as long as there were questions. He noted that after about forty-five minutes, the questions started to be repetitive with no questions of a different nature forthcoming.

Mr. Heibell noted for the record that the information for this application has been submitted as a matter of public record to Mr. Ringelheim's office. No OPRA request is needed to review it. Apparently other members of the Public have already seen the information.

Mr. Savo, Esq. addressed the Board saying that when an application such as this comes before the Board, the issues that are always of concern for the Public are drainage and traffic. He acknowledged that the residents of the existing community have been suffering for some time from an existing problem, as show in the pictures. While he recognized their skepticism, he stated that the Boards know that your Ordinance requires that we (applicant) not add to the drainage problem. An abundant amount of studies have been provided to show that we won't. The stormwater systems are regulated by DEP regulations, County regulations, and Township regulations. All reports have been reviewed by an independent engineer who works for the Town, whose job is to protect the Public. He has stated that this application will not negatively impact the adjacent property owners with regard to stormwater. This application has also been reviewed by DEP because of the stormwater detention systems.

- **Frank Behnke – 448 Township Line Road**, Block 203, Lot 16H (Mr. Behnke was sworn in.)
- Mr. Behnke said he was the resident who requested the review for a swale and drainage system for the backyard. He thanked Mr. Heibell for his review.
- Mr. Behnke stated that the topo maps are wrong and as a result, believes the calculations and drainage run-off to be incorrect. He brought topo maps from 22 years ago when his house was being built.

Chairman Burchette asked Mr. Behnke to give a copy of the topo map from his property to the Board Engineer to review.

The Board took a ten minute break (9:00 p.m. – 9:10 p.m.)

Chairman Burchette called Mr. Heibell up to review for the courtroom the result of the discussions during the break.

Mr. Heibell said after discussion, the applicant has agreed to provide a rear yard swale and piping along the back of the new development lots that parallel Ivy Lane, subject to the approval of the Board Engineer. The sheath-flow coming off of the lawn areas will be captured and taken into the stormwater system. Secondly, the applicant has agreed to provide a landscaping plan subject to the approval of the Township Engineer and Planner, paralleling the

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property lines along the lots in the back of Ivy Land and also along Mrs. Durling's property for proposed lot 18 .09 at the southeast corner.

- Mr. Behnke resumed his comments/questions for the professionals. He said that the additional improvements just mentioned do not affect him since he lives on Township Line Road.

The Board members reviewed the copy of the 22 year-old top as provided by Mr. Behnke.

- Mr. Behnke offered that the drawing submitted was taken from the proposed drawing of the raised-bed septic system for his property done by Ed Clerico, PE, for Applied Waste Water Systems. He pointed out that the raised-bed septic system goes through three changes of elevations which are not represented in the current topo maps.
- In addition, after constructing his house, Mr. Behnke said he that due to the soil conditions, he had to raise his house 3 ft. over the preliminary sketch. He reviewed pictures taken earlier in the day of his property and surrounding area, to further point out the different elevations on and around his property. He said that none of this is evident in the current topo maps.

Mr. Heibell took the opportunity to address Mr. Behnke's comments. Mr. Heibell said the topo maps are correct. The evaluations done do not extend beyond 200 ft. of the proposed development's property line. The map is not inaccurate; Mr. Behnke's topo presented is simply beyond the edge of the topo map for the applicant's property.

The backyard area from his property drains into the farm; the farm does not drain onto his property. The water goes from his property down the stream on the applicant's property. The water goes downhill which is the reason why there is a stream. Mr. Heibell said he might have a drainage problem within the area of his house to Township Line Road, but that is beyond the applicant's topo. He reiterated that the water from the back of his property drains to the farm, not conversely.

- Mr. Behnke continued to state that he believes the surveyor's plans are not accurate since his house is 5 ft. higher than depicted on the topo.

Mr. Heibell said he does not agree. Mr. Heibell reviewed topographic survey which was flown in April, 2004.

- Mr. Behnke state that he no longer has a pool but it was in place at the time of the survey.

Mr. Heibell stated that the area where the pre-existing pool was located at the northwest property corner is 4 ft. higher than the northwest corner of his property. The land slopes to the northwest.

- Mr. Behnke continued to disagree with Mr. Heibell. He said he would like to see a swale with a French drain along the properties along Township Line Road to improve his current drainage situation.

Mr. Heibell said his property is on the other side of the ridgeline; water does not flow uphill. The first two or three lots along Township Line Road flow to the east. The lot past the ridgeline is Mr. Behnke lot.

Mr. Merdinger raised some questions regarding the perched water table and the raising of the houses to be able to accommodate the seasonal high ground water table.

Mr. Heibell said he had hoped to have the author of the Melick-Tully report at this hearing but that he was not able to attend. For the record, the table used was the seasonal high ground water table.

Chairman Burchette called the traffic expert up for his presentation.

Mr. Savo, Esq. questioned Jay S. Troutman, Jr., PE of McDonough & Rea Associates, Inc., still under oath who gave the following testimony:

Mr. Troutman stated that the original traffic counts were done on the afternoon of Monday March 24, 2008 and the morning of March 25, 2008. Hillsborough schools were open both days. At the last hearing, the Board requested that additional traffic counts be done. Dates were reviewed with the traffic department of Maser Consulting, resulting in additional counts done the afternoon of Wednesday November 19, 2008 and the morning of Thursday, November 20, 2008. The counts were very similar to the original counts with the same traffic patterns modeled.

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The intersections studied were the two main outlets to be used: Ivy Lane at Township Line Road and Willow Road at Kilmer Road. The report was reviewed by Bill White. Mr. White issued a memorandum which noted the study was done using acceptable traffic engineering practices and that the levels of service were acceptable.

A safety evaluation was also done in terms of sight distance and reported accidents at these locations. There are currently no safety issues being experienced at these sites or observed at the time of the studies. There will be no additional safety issues for the residents.

Chairman Burchette gave the floor to the Public for additional questions/comments for the witnesses.

- **Peter Cipparulo – 9 Ivy Lane**

- Mr. Cipparulo asked Mr. Troutman if the Police Department had been contact with regard to the amount of tickets that had been issued with respect to the increased Police presence since the last meeting in November.

Mr. Troutman said enforcement issues were not requested, only reports of accidents.

- Mr. Cipparulo said he is greatly concerned with the safety issue for the children of Ivy Lane and Michelle Lane. Ivy Lane has two bus stops. He said he believes the increased traffic resulting from an additional 22 homes, with Ivy Lane as the means of ingress and egress, presents a scary scenario.
- Mr. Cipparulo said the residents would like to reserve the opportunity to recant their own experts with respect to the health and safety issues of traffic and drainage. He believes the residents need to have a review done by their own independent experts.
- Mr. Cipparulo requested to have a review by the Fire Marshal to see if having only one ingress/egress for the additional amount of homes is safe.

Chairman Burchette said that the Fire Marshal has already reviewed the application and has provided his report.

- **Matt Romanoski – 3 Ivy Lane**

- Mr. Romanoski said he would try to sum up everything for the neighborhood. He said the residents are in no way against the project. They are looking to have the project not negatively impact the existing neighboring residents. The residents do not any changes to their quality of life and want to insure the safety of the children.
- The Planning Board is obligated to work with everyone in order to work out the best plan for all parties.
- Mr. Romanoski said the residents would like to work with the builder but do not believe Country Classics has negotiated with the residents in good faith. The builder was supposed to meet with the neighbors to work out the differences, not just to meet.
- He said he believes that since the soil study was taken during the driest quarter on record, the study should be thrown out. He stated that a survey should never be done during a peak, either negatively or positively.
- Mr. Romanoski said the traffic study can show one thing but the residents know what a “racetrack” it is in the morning. The Police Dummy is a regular resident there. The Police know there is an issue.
- He said the residents consider the meeting recently held on Monday night to be a slap in the face. The applicant was asked to meet with the residents to go over our concerns. There was nothing that could have been said at Monday’s meeting that could have been fixed prior to tonight.
- Mr. Romanoski presented a the Board with a petition from the surrounding neighborhood urging the Planning Board to take another look at all of the considerations of the existing residents affected.
- Mr. Romanoski said while the residents appreciate the concessions made tonight, at no point has the developer come to the residents to ask what they could do to address the concerns of the residents.
- Mr. Romanoski looked to present a revised plan as per the residents.

Chairman Burchette said that this presentation should be made to the applicant and not necessarily to the Board.

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Mayor DelCore offered that he thought it was important to hear the solutions recommended by the residents, even if in summary form at another time.

Chairman Burchette said he thought Mr. Romanoski should have offered his opinion earlier.

Mr. Bernstein, Esq. reviewed that generally in objector's status, the applicant makes their presentation before the Board and the objectors come up afterward to make their presentation. If the neighbors are proposing "objector status" by bringing their own experts in, the time to bring their plans before the Board is after the applicant has put their proposal on the table. If the Board wishes to see the plan and not review it, it can but since it is being presented in this fashion without benefit of review from any of the professionals, may be premature.

Chairman Burchette instructed the residents and Country Classics to meet prior to the next meeting.

Mr. Bernstein, Esq. said that should the residents wish to have objector status in order to provide experts testimony and their rendering of an acceptable plan, two copies should be provided; one for Mr. White and Mr. Ringelheim, the other to Mr. Savo, Esq.

Mayor DelCore said that rather present it in plan form, he would like to hear what the two points are.

Mr. Savo, Esq. clarified that additional traffic counts were done, not a new traffic study. Those counts were provided to the Township Engineer and he believed the Township Planner ten days prior to the notice that was given ten days prior to this hearing.

Mr. Savo, Esq. said that by law, the applicant is obligated to not increase water to the adjacent property which has been accomplished. The Board asked the application to go a step further and provide additional drainage so that no sheath-flow goes to the adjacent property which has been agreed to. Although we are making the situation better, we are hearing that this is not enough. At some point, the Public needs to be willing to have some belief from the system, which includes the opinions of the Board's own engineer.

- Mr. Romanoski commented that the residents would like to work with the applicant but in saying that the "minimum as required by law" does not work for them. He said the two main concerns are the safety of our children with only one lane coming in and out, and the water issue. Some of the water concerns have been addressed but only those who live on Ivy Lane since they are the only ones who have had an opportunity to speak. There are residents who live on Michelle Lane who have water issues. The residents would like to see some kind of a perimeter French drainage system for the water and would like to see the entrance for the proposed development to be on Willow Road.

Ms. McCauley asked why the residents think a French drain will be the answer to the drainage problems.

- Mr. Romanoski said the residents are not sure if it will. That is why they are asking for time to present an expert.

Mayor DelCore asked that since there is this much concern about the drainage, why professionals or expert had not been engaged from the previous hearing.

- Mr. Romanoski said that the residents kept waiting since they had been told the applicant was going to work with them to hear their concerns. The residents hoped the applicant would have addressed their concerns in new versions of the plans at this meeting.

Mr. Bernstein, Esq. pointed out that this hearing will need to be continued. The proposed date is September 10, 2009. Should the residents have plans they want reviewed, they should provide them to the Applicant and Township professionals as soon as possible. If the residents are going to retain outside consultants, they are required to provide the Board and the applicant with those reports no less than ten days prior to the September 10th hearing. In doing so, everyone will be well aware of which professional need to be present.

Chairman Burchette encouraged the residents to speak with Mr. Heibell who is very amenable.

- Mr. Cipparulo asked for Country Classics to determine the next meeting date with the residents.

Mr. Bernstein, Esq. suggested that the residents come up with the date since there are more schedules to be considered.

- Mr. Cipparulo said the residents would look to meet on a date in June.

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Chairman Burchette instructed for the parties to come up with a date prior to leaving tonight.

- Mr. Nicoli asked the members of the Board if they would personally visit the peaceful, quiet setting of Ivy Lane to see where the proposed entrance/exit for this project is located.

The Board voted to carry the application to September 10, 2009, without further notice.

PLANNING BOARD BUSINESS

Block 200B, Lot 32 – Request for zone change – presentation (Herbert Smilowitz)

Herbert Smilowitz was sworn in and gave the following testimony:

- Some forty years ago, he and his business partner Irving Kerzner purchased three parcels of industrial land totaling @75-80 acres each. The zoning had changed from Industrial to Residential over the years. Two of the three parcels have already been sold.
- Nothing has been done with the remaining lot except that the State has taken away 18 acres using the powers of eminent domain for the highway.
- Zoning had changed from residential to a commercial use which allowed offices. A plan was devised, the application for preliminary approval was heard and approved by the Board.
- Mr. Smilowitz said those plans did not go through because the office space could not be readily rented. He said having the property changed to Industrial Zoning would give the property a much better chance, especially now, with the understanding that the highway will be coming through within the next few years. The lot has sewer and water available.

Robert B. Heibell, PE & LS, pointed out that this property is directly east of the Route 206 Bypass on Homestead Road. Mr. Heibell said he presented an office building proposal to the Board about two years ago for the property in the Corporate Development Zone. Property just shy of this property has recently been rezoned to the Light Industrial Zone in an effort to be able to market to non-office industrial users. The sanitary sewer goes through the middle of the property and the water line is also there. Public utilities are also able to be accessed.

Eric Bernstein, Esq. offered one correction to Mr. Heibell's statement. He said the DEP is proposing to take away the sewer designation. The Town has gone on record to let the DEP know we are not in support of this action.

Robert Ringelheim said that a letter was sent to DEP but their response was that the letter was not sufficient. The State has ordered all of the Counties to update their sewer service area plans, which Somerset County is complying. Each Town has assigned a sub-committee to review the plans with the County.

Mr. Ringelheim said that Mr. Smilowitz has informed us that there is a sewer trunk line that runs across the northern piece of this property and goes out to Hillsborough Road eventually. DEP has indicated they would like to remove this area from the sewer service area. The DEP's aerial interpretation of this area has led them to believe this area is home to the wood turtle and is potentially habitat for some endangered birds. The Town informed DEP that there was evidence of a sewer trunk line which would serve this property. There was an agreement for one residential dwelling. The DEP said any such agreement does not meet their criteria to put the property back into the sewer service area. A LOI or endangered habitat study would need to be done in order to satisfy their criteria or development approval would have to be granted before their plan was adopted.

Mr. Merdinger added that DEP used an aerial map from many years ago to make such a determination. Similarly, there are multiple parcels of land throughout the Town incorrectly evaluated as undeveloped as a result.

Mr. Ringelheim said the Town has been arguing over the past year with DEP in an effort to get the affected parcels correctly identified. DEP refuses to recognize our arguments, even though they have been told this property is in the Planning Area II of the State plan which encourages development.

Mr. Ringelheim said he has been informed that the DEP is now looking at deter development of vacant land that may be environmentally constrained in some way. This seems to fly in the face of the State plan and good planning. He has reached out to the Office of Smart Growth but no one seems to be able to counter the opinion of the DEP.

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Mr. Heibell said the owners acknowledge the intention of the DEP. If DEP takes the property out of the sewer service area, the owners will fight DEP on that matter at a different level. The request for a change in zoning is a separate matter.

Mr. Ringelheim asked for further clarification as to why the applicant is requesting to be rezoned from the CDZ Zone.

- Mr. Smilowitz said although any builder would prefer to build offices that can be leased. However, this market along with the location, have prohibited this type of development. Mr. Smilowitz said the type of clients he is looking to attract for industrial warehouses would not bring a lot of noise. Mr. Smilowitz referenced similar industrial warehouses developed by Irving Kerzner which are not objectionable to the site and produce income for the Town.

Mr. Ringelheim pointed out that the lot on Homestead Road will have no access to the Bypass.

Mr. Heibell said they recognize all of the facts stated.

A straw poll was taken of the Board to see how many members were in favor of recommending that an ordinance be drafted to change this property from the CDZ to LI Zone.

Mr. Bernstein, Esq. noted the purpose of the straw poll was done merely to give some guidance to Mr. Ringelheim as to preparing documentation to be reviewed by the Board and Township Committee. It is not to be mistaken as a commitment by the Town.

ACCEPTANCE OF MINUTES (continued)

- **May 07, 2009**

Dr. Sireci pointed out an error made on page 5. The motion will be changed from Mr. Cohen to Mr. Conard.

A motion to approve the minutes as amended was made by Dr. Sireci, seconded by Ms. McCauley.

Roll Call: Ms. Fenwick-Freeman – yes; Dr. Sireci – yes; Mr. Stafford-Taylor – yes; Ms. McCauley – yes; Mr. Cohen – yes; Mr. Merdinger – yes; Mayor DelCore – yes; Chairman Burchette – yes. Motion carries.

ACCEPTANCE OF RESOLUTIONS

Mr. Bernstein, Esq. said the two resolutions before the Board had been sent to the applicants' counsel some time ago. In the absence of hearing anything from the attorneys, the resolutions were added to the agenda as is.

- **Pleasant View Estates/Beazer Homes – File #08-PB-19-MJF** - Block 180A, Lots 3 & 4 – Pleasant View Road and Mountain View Road.

A motion to approve was made by Mr. Merdinger, seconded by Mr. Stafford-Taylor.

Roll Call: Mr. Merdinger - yes; Mr. Cohen - yes; Mr. Stafford-Taylor – yes; Chairman Burchette – yes. Motion carries.

- **Dickerson, LLC – File # 09-PB-01-SR** – Block 58.03, Lot 2 – 5A Dickerson Road.

A motion to approve was made by Ms. Fenwick-Freeman, seconded by Dr. Sireci.

Roll Call: Ms. Fenwick-Freeman – yes; Dr. Sireci – yes; Mr. Stafford-Taylor - yes; Ms. McCauley – yes; Mr. Cohen - yes; Chairman Burchette. Motion carries.

SPECIAL COMMITTEE REPORTS

None

BUSINESS FROM THE FLOOR

None

CONSIDERATION OF ORDINANCES

- Ordinance 2009-19 Revised Vertical Axis Wind Turbine Regulations
- Ordinance 2009-23 Conditional Uses
- Ordinance 2009-24 Multiple Buildings and Uses on a Lot/Mixed Use Buildings

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- Ordinance 2009-25 Revise the Definition of Automobile Service Facility and Revise the Principal Permitted Uses in the I-1, I-2, I-3, GI and LI District

Mr. Ringelheim briefly reviewed the ordinances before the Board, all of which had been reviewed in detail at the at the previous Planning Board meeting.

- **Ordinance 2009-19** – A phrase was taken out which limited vertical axis wind turbines from being put in residential districts. The ordinance was reintroduced to the Township Committee and now back before the Board.

A motion to recommend Ordinance 2009-19 to the Township Committee for further action was made by Mr. Stafford-Taylor, seconded by Dr. Sireci.

Roll Call: Ms. Fenwick-Freeman – yes; Dr. Sireci – yes; Mr. Stafford-Taylor – yes; Ms. McCauley – yes; Mr. Cohen – yes; Mr. Mershon – yes; Mr. Merdinger – yes; Mayor DelCore - yes; Chairman Burchette - yes. Motion carries.

- **Ordinance 2009-23** – No changes have been made. This ordinance has been introduced by the Township Committee at a public meeting and has been referred back to the Planning Board for a recommendation to adopt.

A motion to recommend Ordinance 2009-19 to the Township Committee for adoption was made by Dr. Sireci, seconded by Ms. Fenwick-Freeman.

Roll Call: Ms. Fenwick-Freeman – yes; Dr. Sireci – yes; Mr. Stafford-Taylor – yes; Ms. McCauley – yes; Mr. Cohen – yes; Mr. Mershon – yes; Mr. Merdinger – yes; Mayor DelCore - yes; Chairman Burchette - yes. Motion carries.

- **Ordinance 2009-24** – No changes have been made. This ordinance has been introduced by the Township Committee at a public meeting and has been referred back to the Planning Board for a recommendation to adopt.

A motion to recommend Ordinance 2009-24 to the Township Committee for adoption was made by Mr. Stafford-Taylor, seconded by Dr. Sireci.

Roll Call: Ms. Fenwick-Freeman – yes; Dr. Sireci – yes; Mr. Stafford-Taylor – yes; Ms. McCauley – yes; Mr. Cohen – yes; Mr. Mershon – yes; Mr. Merdinger – yes; Mayor DelCore - yes; Chairman Burchette - yes. Motion carries.

- **Ordinance 2009-25** – No changes have been made. This ordinance has been introduced by the Township Committee at a public meeting and has been referred back to the Planning Board for a recommendation to adopt.

A motion to recommend Ordinance 2009-25 to the Township Committee for adoption was made by Dr. Sireci, seconded by Ms. Fenwick-Freeman.

Roll Call: Ms. Fenwick-Freeman – yes; Dr. Sireci – yes; Mr. Stafford-Taylor – yes; Ms. McCauley – yes; Mr. Cohen – yes; Mr. Mershon – yes; Mr. Merdinger – yes; Mayor DelCore - yes; Chairman Burchette - yes. Motion carries.

CORRESPONDENCE

None

A motion to cancel the business meeting of June 25, 2009 and regular meeting of July 09, 2009 was made by Dr. Sireci, seconded by Mr. Merdinger. All in favor –Aye.

ADJOURNMENT

The meeting adjourned at 10:20 p.m.

Submitted by,
Debra Padgett
Planning Board Clerk