

MINUTES

PLANNING BOARD

OCTOBER 11, 2011

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Mr. Connor, called the meeting to order at 8:05 P.M. He then read the following statement:
Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2011.

PLEDGE OF ALLEGIANCE

ROLL CALL

On a call of the roll, the following were present:

Excused:

Christopher Connor, Chairman

Kevin Dempsey, Member

Mead Briggs, Vice-Chairman

Mayor Nanette Harrington, Mayor

Barry Hoffman, Bd. Attorney

E. Thomas Behr, Member

Kevin O'Brien, Twp. Planner

Donald Butterworth, Member

Thomas Lemanowicz, Bd. Engineer

Guy Piserchia, Member

Dawn Wolfe, Planning & Zoning Administrator

Brendan Rae, Member

Michael Smargiassi, Member

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EXECUTIVE SESSION - It was determined that there was no need to hold an executive session.

PUBLIC QUESTION OR COMMENT PERIOD

The meeting was opened to the public for questions or comments. There being none, the meeting was closed to the public.

APPROVAL OF MINUTES

The June 28, 2011 executive session minutes were approved on motion by Mayor Harrington and seconded by Mr. Briggs. Dr. Behr, Mr. Piserchia, Dr. Rae and Mr. Smargiassi abstained as they were not present at that meeting.

The June 28, 2011 regular session minutes were approved on motion by Mr. Butterworth and seconded by Mayor Harrington. Dr. Behr, Mr. Piserchia, Dr. Rae and Mr. Smargiassi abstained as they were not present at that meeting.

The July 12, 2011 regular session minutes were approved on motion by Mr. Butterworth and seconded by Mr. Piserchia. Dr. Behr, Mayor Harrington, and Dr. Rae abstained as they were not present at that meeting.

The August 9, 2011 regular session minutes were approved on motion by Mayor Harrington and seconded by Mr. Butterworth. Dr. Behr, Mr. Briggs, and Mr. Smargiassi abstained as they were not present at that meeting.

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INDOOR SOCCER, LLC (COPPER SPRINGS)

#10-15P

200 & 230 New Vernon Road

Request for Rezoning

Block 14602, Lots 4.01 & 8

Present: William Harrison, attorney for the applicant
Peter Steck, licensed professional planner
Steven Pfloker, Esq., principal of the applicant
J. Michael Petry, licensed professional engineer

Mr. William Harrison, attorney for the applicant, said that he and his witnesses were present to make a presentation to get the Board's reaction to a rezoning of the subject property to create a new commercial/recreational zoning district. He said that they submitted a draft of a zoning ordinance with some modifications based on comments from the Board's professionals on the original draft they had sent. They also provided an Existing Conditions Plan, as well as a Conceptual Site Plan. He said that the property has been the subject of numerous variances from the Board of Adjustment dating back to 1959 and that it is very difficult for the property owner and the Township to go back through those Resolutions and determine what is permitted and what is not permitted on the property. As a result, he said that the current owner is now the owner of both lots and thinks it would be best for his knowing what he can do with the property, as well as the Township knowing what can be done on the property, that the property be rezoned to reflect both its current usage as well as the intended uses.

He had 3 witnesses present which include a representative of Indoor Soccer, LLC, their site engineer, and a planner to go through the proposal and why they feel the rezoning is appropriate.

Mr. Connor emphasized that this is not a public hearing. It is a request to the Board to review the material to be presented and the Planning Board may give its reaction. He asked Mr. O'Brien to provide some background information as to how the matter has gotten to the Board.

Mr. O'Brien said that Copper Springs has been in the community since 1959 and has undergone a number of changes since then. It has appeared before the Board of Adjustment on at least 4 occasions, the last being in 2007 when the then owner requested an interpretation of the Ordinance and, in the alternate, a use variance to allow a number of uses that had appeared on the property between prior Resolutions in that period of time. The Board of Adjustment, in its interpretation, found that the uses that were occurring on the property and were the subject of that application were *not* allowed by the variances that had been granted, or by the Ordinance. Therefore, they were considered to be an expansion of a nonconforming use and, therefore, a use variance would be necessary to legalize/allow those uses on the property. At that point, the applicant withdrew its application for a use variance and that is the last time they were before any of the Boards. In the meantime, however, he believed that the property has changed hands twice since Ms. Laffey's ownership and asked Mr. Harrison to confirm if his belief is correct.

Mr. Harrison replied that he did not know if the property has changed hands *twice*, but confirmed that it has changed hands.

Mr. O'Brien continued and said that discussions were held with the Township about the uses that were occurring on the property, how they were not in compliance with the prior variances that had been granted, and how to deal with the uses that were occurring, as well as proposed uses, and how to square those with the allowed uses that the variances granted. He said that the Township encouraged the owner to come up with an idea for a zone that would allow these uses in this particular area and the Township further encouraged the applicant to come to the Planning Board for its review because for the last several years any new ordinances that have been introduced at the Township Committee level concerning planning and zoning have originated at the Planning Board level. To keep pace with past practice, it was felt on the part of the Township that it would be best for a concept review to be held of this idea for a rezoning and that, for the Planning Board to review that and, if necessary in their opinion, to take action – either to forward it to the Township Committee as a proposed Ordinance, or not, as the Board may please.

Mr. Hoffman agreed with the procedural standing of the matter before the Planning Board. He emphasized that administratively, legally, and procedurally this property is at what he would characterize a very early stage of processing in that there is no application for site plan, variance, or any other type of application for development as defined in the M.L.U.L. that has been filed. As he understood it, not currently at least, there is no application (in the formal sense) before the Township Committee, because for that to happen, in Sec. 40:55D-62.1 it requires that a special form of notice have been served, namely by the Township Clerk, to surrounding and nearby property owners as to the fact that there is a proposal for a rezoning to be considered at a hearing to be held on (a particular) date. He said that he was not aware that that has happened either, so what we have is the ability to evaluate not only what may be depicted on a plan, but generally what the most appropriate planning would be and there would be at least, assuming that this Board finds the subject of tonight's discussion to be productive, one further opportunity that the Planning Board would have – namely after the formal introduction of an ordinance which would have a rezoning before the Township Committee, it would be sent back for official types of comments and recommendations before this Board before final Township Committee action is taken.

Mr. Harrison said that, as Mr. O'Brien had indicated, this was the recommendation of the governing body, not formally, but that they start here with an informal proceeding before what is required to happen per the M.L.U.L. and, if the governing body does decide to go ahead with the ordinance changes, the Planning Board will see it again to make its recommendation pursuant to the M.L.U.L. He said that, if the applicant decides to do any improvements on the property if it is rezoned, it will be back before the Planning Board for site plan approval.

Mr. Connor said that he would like Mr. Harrison to proceed with his presentation, open the meeting for public comment, and close with Board discussion.

Mr. Hoffman said that he did not believe, for this type of informal discussion, that it is necessary to have the witnesses sworn.

Mr. Steven Plofker, Esq., principal of the applicant, said that he was present to advise the Board of the applicant's preliminary thoughts for the site and to see if he could generate support. He said that the applicant purchased the subject property within the last 6 months and he and his partner now own 4 tennis clubs and athletic clubs. The athletic clubs are not gyms, per se, but include tennis and indoor athletic fields in Ocean, Essex and Morris Counties. He said that he was present to answer questions and tell the Board the applicant's ideas.

In response to Mr. Harrison, Mr. Plofker acknowledged that before he purchased the subject property he did investigations as to the existing uses and prior approvals.

In response to Mr. Hoffman, Mr. Plofker confirmed that Indoor Soccer, LLC is the current owner of the subject properties. He said that the main partner is Gary Fuhrman and he and Mr. Fuhrman are the principals of Indoor Soccer, LLC, which is the record owner of both of the subject properties which they purchased simultaneously directly from Ms. Laffey approximately 6 months ago. He said that he and his partner would like to further develop the property which he described as being in a substantial state of under repair and under maintenance. He said that it is not a property that they would be proud to own in its present condition. Their plans involve upgrading it to a first class facility and to concentrate the use of the property towards tennis. He said that it was a tennis club and a lot of other things too and now consists of a very large outdoor swimming area (man-made lake) containing a lot of beach activity. He said that their plans are to get rid of those types of uses, building both outdoor tennis courts and courts that could be temporarily domed over for the winter for indoor court usage. He said that they would be retaining the existing domed facility on Lot 4.01, with no expansion. Upon review of the prior approvals, he said that in

conversations with the Township Attorney, he and his partner decided jointly that the most comprehensive way to address the issues that have been raised throughout the years from the Township and the former owner was to see if they could come to some consensus about what was the most beneficial use for the property from their own standpoint and from the town's and that is why he was here – to start that process and dialogue.

In response to Mr. Harrison, Mr. Plofker said that he and his partner own Center Court Athletic Court on North Passaic Ave., Chatham, which they purchased about 4 years ago and have substantially improved since then. It consists of a masonry metal building with 8 indoor tennis courts on the Chatham Borough side of the property line. He said that they have not expanded that facility, but have upgraded the interior in a very significant way, including all of the mechanical systems, roof systems, and interior finishings so that now it is a very attractive and well used facility. On the Florham Park side, he said that there were 12 exterior tennis courts and they improved that and upgraded the outdoor field house and added 4 paddle tennis courts on part of that property. They also sought approvals and completed the seasonal doming of 8 tennis courts (2 domes over 4 courts) which are air inflatable structures that are put up and taken down in a day and are stored over the winter. He said that it enables the members of that club to play year round. He said that they do not change the court service but they maintain it and it is lit from the interior. He said that there was a swimming pool on the site and they put in a new swimming pool, children's pool, a small playground, and generally just improved the grounds throughout the area. He said that the primary focus is really tennis but it is a recreational facility and, in a summer club, it is an ancillary use. There are a lot of families that are members and he said that they have an active swim program, however it is not an Olympic sized pool. He added that there is an active swim team for children.

In response to Mr. Harrison, Mr. Plofker said that the facility he had just described is very similar to the proposed facility in Gillette. He said that they also own a facility which they purchased within the last 3 months called Twin Oaks in Morris Twp. that is undergoing reconstruction of both the interior and exterior facilities. At present, that facility consists of 6 outdoor tennis courts, of which 5 are domed seasonally. It originally had 2 indoor tennis courts but, at present it has 1 and is being restored back to 2 tennis courts. They are also building some other athletic facilities within the existing facility which also includes a regulation size ice hockey rink. He said that their most recent purchase is a facility in Marlboro, N.J. which is an unfinished 6 court tennis facility and was purchased from a bank which was in foreclosure. He said that the prior owner did not finish it and they are in the process of reconstructing and completing that facility. He said that they also own The Soccer Domain in Montclair, NJ, which contains approximately 30,000 S.F. of indoor synthetic field turf which is used for a host of sporting activities such as soccer, lacrosse, field hockey, and all activities that can be conducted on a basic grass surface. The facility is open year round and its particular dome does not come down in the summer time and it is air conditioned for summer usage.

Mr. Hoffman asked Mr. Plofker if it has been his practice to hold onto and, perhaps in some instances, further develop these sites or have they been buying, selling, and trading them? He asked if he and his partner are in this for development and the benefits that would be served to the community, or for other reasons?

Mr. Plofker replied that he would never say that they would not sell anything that is for sale, but that is not their intent. He said that his primary business is one of commercial and residential real estate and other than an occasional condominium project, he said that they are very long term holders of property. He said that they try to be good citizens in the towns where they have properties and facilities and are very bullish about recreational opportunities. He said that it dawned on him late that we live in a climate that 6 months of the year is not hospitable for a lot of outdoor activities noting that, especially with children's sports, we seem to be on the upswing. He said that many people think that tennis had its heyday 20 years ago, but he and his partner don't believe that and feel that, with the right facilities, there is a lot of pent up demand for tennis and other recreational uses.

Mr. Hoffman asked Mr. Plofker what features of the Copper Springs site caused him to focus, seriously, upon the potential of acquiring that site? He asked if there were any particular aspects, facilities, or grounds that highlighted the desirability of the site.

Mr. Plofker replied that it is a beautiful site that on its face would appear well suited for recreation. It has been used for recreational uses for approximately 50 years and there is a park next door to it. He recognized that there are a few neighbors there – fewer than many of their other facilities. He also said that the price was compelling. Given the existing dome and the way that they interpreted the former zoning Resolution on it was that it was a use that could continue whether or not they are successful at a rezoning or expansion of the existing club or just had to revert to the former approvals and the allowable uses. He said that, to them, it is just a wonderful property with a long history that had just fallen into mismanagement and disrepair.

Mr. Briggs asked Mr. Plofker if, for marketing purposes, he was looking for the Basking Ridge, Watchung area with regard to volume and number of potential people on site.

Mr. Plofker replied that he did not profess to know the immediate areas as well as the Board members. He said that the Chatham club has turned into a youth training center on afternoons and weekends where they are really pulling youth tennis players from a wider area than he would think a normal club would, which may be anywhere from 20 minutes to an hour away. At the present time, he said that they are not anticipating that it will be of that magnet type and will really be for the service of the local communities. He said that tennis players will go to the closest available facility and he felt that 20 minutes to get to a facility seemed to be a reasonable time to him which is their general market. He said that there are 6 existing tennis courts on the site and they are proposing 12 additional courts. He said that the great thing for towns about tennis is that not that many people fit on a court. He said that the most is 4

people per court and the average is certainly much less than that (2 people per court is more the norm than 4 people). He felt that the site is well suited for that and the existing parking spaces are well suited for those type of numbers. He said that the former owner reported to him that she had in excess of 400 family members at the swim club and he said that he could only imagine what the summer weekends were like at the beach facility. He said that he did not know where they parked, but his anticipated uses are substantially less than that although one might argue that the intensity of the land usage may be more noting that tennis courts take up a fair amount of space for each court and so they will possibly be using possibility more of the land in those recreational ways, but the number of people will not come near to what was there previously.

Mayor Harrington asked Mr. Plofker what other recreational uses (besides tennis) he foresaw in the proposed expansion.

Mr. Plofker replied that he should be clear about the two different lots that are involved. He said that there is an existing dome on Lot 4.01 that was primarily used for a 5 court tennis facility for many years, although it had also been used for many years for non-tennis uses too and that he and his partner leased the property for a couple of months prior to purchasing it. He said that the structure is over 30 years old and for their purposes, it wasn't nice enough for a tennis facility. It was not lit well enough or heated well enough and it didn't have the appearance of a first class facility. He said that they then took out the nets and installed field turf (a synthetic grass) which is not glued down and is laid directly on the tennis courts. There is a granular rubber mixture that goes into the grass to make it softer and more grass like. At the current time it is used for field sports such as soccer, lacrosse, baseball and field hockey. He said that their intention is to leave the facility and continue to use it for those uses and the proposed tennis facilities will be new, first class facilities.

Mr. J. Michael Petry, licensed professional engineer, said that he was responsible for the plans submitted to the Board and, as principal of Petry Engineering, LLC, he has been working with Mr. Plofker since he did the original bubble in Montclair 12 years ago, for which he did the site work for him on it, as well as some of the structural design. He said that he has been fortunate enough to work with him on both his Twin Oaks and The Center Court projects. He said that he is a licensed professional engineer, is registered as an architect, and is licensed as a professional planner in New Jersey. He has been involved in site development and infrastructure improvements for the past 27 years.

He presented and described two display boards containing colored renderings prepared for Indoor Soccer, LLC, which were marked into evidence as follows:

- **EXHIBIT A-1** – “Freshwater Wetlands and State Open Waters Delineation Map”, dated 5/02/11, last rev. 10/05/11, which was superimposed over a Boundary & Topographic Survey prepared by Petry Engineering, LLC.
- **EXHIBIT A-2** – “Concept Plan” (undated), prepared by Petry Engineering, LLC

Mr. Petry said that Lot 4.01 is on the left side and Lot 8 on the right side and they are both located in Block 14602. He said that the total area of the two parcels together is 22.4 acres and that the parcel is encumbered by wetlands on both lots. Referring to **EXHIBIT A-1**, he said that the property itself is outlined in red and the wooded area is shown as a green/grey at the bottom and top of the map. There is a significant wooded area immediately adjacent to the R.O.W. that separates the property from the road. He said that the wetlands generally follow the wood line, specifically in the rear of the property. On Lot 8 they are located somewhere between the limit of wooded area and about 50' to the lawn side (or street side) of the wooded area. He described the delineation of the wetlands as delineated by his firm and approved by the NJDEP. On the original Lot 4.01, he said that the wetlands were delineated by another firm and are located relatively close to the wood limits. He noted that there are a couple of isolated wetlands located within the property limits, both just to the east of the existing dome and to the east of the existing pond area. Within the property, he said that there are a series of structures. The largest structure is the existing dome located on Lot 4.01 and contains approximately 31,800 S.F. under roof. There is a clubhouse immediately adjacent to that which is a one story frame structure located just off the parking area and contains 1,860 S.F. The areas immediately adjacent to the dome are used for outside recreational sports areas. On Lot 8 there are 6 existing tennis courts, 4 to the rear of the property, and 2 to the south side of the property, both of which are immediately abutting the pond and beach area. He said that the pond has a surface water area of 82,716 S.F. and the beach encompasses approximately 51,488 S.F. There is an existing one story structure that has served as the clubhouse to the swim area which contains approximately 2,200 S.F. It was his understanding that it has historically served food and provided lockers and storage facilities for the swim use. There is also a second story apartment for an employee within that building. He said that there are signs of an old foundation to the north of the beach area, however there was no information that he found that there was a building there, although he had no information that one did not exist there either. He said that there is a single family home located to the street side of the existing dome on Lot 4.01. It has a separate driveway and parking and is not at all affiliated with the paved driveway that services the recreational portion of the facility. The existing driveway is paved and striped and there is a total of 107 parking spaces there today and they are in excess in terms of the drive aisle that is necessary or required by Ordinance. He said that there is approximately 75' of pavement width there today, where it would probably be adequate to park with 60'. While he did not believe that there is opportunity to create additional parking that complies with an Ordinance in a condition where a special activity is going on at the club, he believed that you could valet additional cars (maybe 50 more) than what it is striped for today because of the additional width that is there.

Mr. Hoffman asked Mr. Petry what the status is of the applicant's proposal/request to the NJDEP as far as a Letter of Interpretation/Delineation of the wetlands. He asked if it had been acted upon.

Mr. Petry replied that the original delineation for Lot 4.01 was acted on before he was engaged and remains in effect. He said that the current L.O.I. for Lot 8 was approved by the NJDEP approximately a month ago and the reference numbers are on the plans before the Board. He confirmed that they have that as a base in terms of knowing what areas will and what areas will not be allowed to be further disturbed. He said that they have that record document in hand and it is good for 5 years.

In response to Mr. Harrison, Mr. Petry said that the existing pond on the property was not determined to be a wetland or open waters and that it was man-made. He said that there are no regulatory limitations on what they can do with the pond or the beach area, noting that those were the first questions that they had for the NJDEP. He said that they gave the NJDEP the information to show that it was a man made situation and they approved it without any restrictions on the pond itself.

He said that the applicant proposes to maintain all of the existing buildings and uses on the site with the exception of the man made pond and beach. He said that the pond (which consists of 82,717 S.F.) and beach (which consists of 51,488 S.F.) and those areas would be redeveloped to include 12 new tennis courts. Each set of 4 courts would be able to be domed for seasonal use in the winter. He said that the domes usually go up in October, but probably a little later this year. He said that the domes come down and get stored for the spring, summer and fall seasons. There will be a new 3,000 S.F. clubhouse constructed to service the tennis courts that will be immediately adjacent to the parking area and will be accessed from that parking area. The courts will be interconnected and the clubhouse area will be able to provide a check-in area for all of the courts, locker rooms, light refreshments, equipment, etc. The existing 6 courts which are shown on the concept plan in green would remain and would *not* be domed, so the total number of courts on the site would be 18. In addition, he said that a new adult pool and a new kiddie pool have been shown that are immediately west of the proposed tennis courts. The adult pool will be 30' x 40' which is the size constructed at The Center Court facility. The children's pool will be approximately 20' x 40', again the size constructed at The Center Court facility. The existing clubhouse that serviced the swimming pond would remain and would be renovated to service the pool area. He said that it makes sense and is in close proximity to the pools and the same type of thing that has historically gone on in that facility will continue for the serving of the pool area. He said that the 2nd story apartment will remain as part of that. The only other thing envisioned as part of the development would be a storage building which is proposed immediately to the east of the southerly dome. He said that they tried to keep the development as much outside of the transition areas for the wetlands as possible and the proposed storage building would be necessary to store the domes for 6-8 months out of the year. He said that it will take about 1,500 S.F. to keep them all together. The existing parking would remain based upon what they have seen in the other sites they have worked on for this developer with similar facilities. He said that he believed that the 107 parking spaces are going to be in excess of what is necessary. Based upon the ordinance that has been proposed, he said that they have utilized the existing ordinance for swim clubs, which says that they have looked to the clubhouse and they do it based upon the 2,200 S.F. clubhouse at 1 space for every 200 S.F. - that is 11 spaces. He said that they have proposed a total of 18 tennis courts and the suggestion that was given in the ordinance that has been drafted is 2 spaces per court, for a total of 36 spaces. He said that they have suggested 1 space for every 1,000 S.F. of the indoor field (31,800 S.F.), or 32 parking spaces required for that field. For the apartment, they assumed 2 spaces per unit because it is not a large apartment (per R.S.I.S.), which brings them to a total of 81 spaces excluding the single family dwelling which he had indicated is serviced by its own parking.

In response to Mr. Piserchia, Mr. Petry said that the existing playground (shown in brown) will remain, as well as the existing handball courts. He said that the existing small sheds would also likely remain. He could not answer the question as to whether the existing playground will remain. He noted that the NJDEP determined that a good portion of the handball courts are actually wetlands because that's where they made them move the line to - to include a portion of the handball courts as wetlands.

Mr. Piserchia asked what the existing single family home is used for now.

Mr. Petry replied that it is used as a residence and will be continued to be used as a residence.

In response to Mayor Harrington, Mr. Plofker believed that employees of the athletic facility live in the single family home.

Mr. Piserchia asked if that is the way he wished to continue it.

Mr. Plofker replied that they were "open". He said that housing is a nice thing to have for employees. He said that they would be happy to restrict the 3 bedroom dwelling for residential purposes only.

Mr. Harrison noted that the current Ordinance has reference to critical areas. He asked Mr. Petry to describe how those would apply to the property and the reason the applicant is requesting that they not apply in the proposed zoning district.

Mr. Petry replied that the Critical Areas Ordinance restricts development within wetland areas and flood areas pursuant to mapping that is contained within the Ordinance. It also references the FEMA map as well for flood data. He said that he developed the plan to the maximum extent possible and they are certainly not encroaching onto any wetlands in the proposal. He again noted that certain existing features do encroach into the wetlands. Furthermore,

he said that the FEMA map for flood data is a little interesting as it relates to the property. He said that when he looked at it and overlaid the map on the property, it literally cuts diagonally across the parcel, almost perpendicular to the contours. He said that on the FEMA map, this is considered an area of localized flooding. It is not the flood plain of a river, per se, it is an area of localized flooding generally due to low lying areas, flat grades, and high ground water condition. He said that they have wetlands on 3 sides of the property – along the westerly, northerly, and easterly property lines. The only place where they do not have wetlands is along the southerly property line. He said that they know they are in a flat area and an area that is wet. With regards to localized flooding, everything that they are proposing (with the possible exception of the 3,000 S.F. clubhouse – if it floods, it floods. If water ponded on the tennis courts and they could not be used for a period of time – they are not filling or doing anything that is going to create a problem. Even when the inflatable domes are up, he said that they are not water tight. He said that they are not in a situation where they are creating additional ponding outside of what they have. What they are creating is ponding where it may occur today. He said that, in these areas of localized flooding, there is not even a flood elevation that is provided by FEMA and they cannot tell them how deep the water gets. If they could, he said that they would then be able to plot an accurate line because they would be able to do it based upon contour. He said that what they are dealing with is an area that floods because it is low. He pointed to one area and said that it pockets water because it is wet and the ditches there back up. He said that they expect that to happen on the property and that they know, based upon the work they did for the wetlands, that they have very high ground water. He said that they know that when the rain falls down on the property, there is not a lot that is absorbed into the ground because the groundwater is within 2' of the surface of the parcel, maybe throughout. He said that 18" is what helps define it as wetlands, but for the balance of the property it is not that much below that elevation. He did not believe that they will be causing additional runoff from the property by constructing over where there was already water.

Mr. Plofker said that they are proposing HAR-TRU tennis courts which are a synthetic clay like surface that is commonly used. He noted that the other 6 courts on the property are constructed of HAR-TRU material. He said that they like moist areas because the courts maintain themselves much better if there is a certain level of moisture in the ground. On the other hand, he said that up to 6" of the substance allows the rain water to penetrate through it. He said that it is one of the few uses they could think of in such a damp area that actually thrives.

In response to Mr. Harrison, Mr. Petry said that he will be seeking a flood hazard jurisdictional determination from the NJDEP.

Mr. Lemanowicz said that this is the first time he has seen the plans. He did not get into drainage, traffic, and parking in his review because he had no plans to look at. With the Flood Hazard Line from the NJDEP, he said that they produce the elevation and not FEMA, therefore FEMA will not provide an elevation. They only provide zones, which are not used to determine the Flood Hazard Area. He said that, when the Flood Hazard Determination comes in, it will say a lot. With respect to the surface, he asked Mr. Petry if he had a permeability rate in order for it to be considered permeable or semi-permeable?

Mr. Petry replied that he could get that information, but they had not done permeability rates outside of the wetlands area. He said that the only reason he referenced the FEMA Map is because that is the map that the Ordinance references when establishing critical areas.

Mr. Lemanowicz said that he was talking about the clay surface of the tennis court and asked if there was a permeability rate for that?

Mr. Petry replied, "Yes" and that it could be provided. In response to Mr. Lemanowicz, he confirmed that the tennis bubbles are *not* water tight. He said that, when it rains, *you* don't get wet, but *it* gets wet inside the bubble.

Mr. Plofker explained that the bubbles are water tight from above, but it allows water to come up from underneath.

Mr. Petry agreed and said that the structure itself is cabled down and is inflated from under, but if the surface outside were flooded, water will come into the court area. He said that rain would not come down on you, it would run off the surface of the bubble, but it would come in from below from the surface, much like the vents that the NJDEP would require you to put in if you were building in a flood plain. He said that his review of the NJDEP maps didn't indicate that this had a flood hazard area established for it, but he said that they do understand that not every watercourse is studied and, as part of their submittal to them, the NJDEP would want them to establish the drainage area to the ditches and to establish a flood elevation if there were one.

Mr. Lemanowicz referred to the wetland line on Lot 4.01 and said that it does not appear that there is a buffer associated with it. He asked if there was a buffer on it.

Mr. Petry replied that there are 50' buffers on the wetlands that were in the front and there was no buffer on the wetland that runs up next to the parking lot. In fact, he said that it is marked where the 150' buffer ended. He said that he would have to go back and get information on the wetland line on the rear portion of Lot 4.01. He did not recall if there is a transition area there or not. He said that it is not shown, so his *guess* is that there wasn't one called for. He thought that what they determined at that time was that those were related to the ditches and so they didn't put a transition area on them. He said that the reviewer that came out to do Lot 8 disagreed vehemently with the person who reviewed Lot 4.01 and said that he never would have given the one on Lot 4.01. He said that he did not think that it affects the overall development plan because the applicant is not proposing any changes on Lot 4.01 – all of the proposed changes are on Lot 8. Having been battered and bruised by the NJDEP over the LOI, he said that he knew what they have and what their thought process is.

Mr. Lemanowicz asked if there will be showers in the clubhouse.

Mr. Petry replied that he did not know if they were even that far yet.

Mr. Pflfker said that there probably *will* be showers in the clubhouse.

Mr. Lemanowicz expressed concern and said that he did not know what has been set aside for sewerage disposal. He said that you cannot put a septic system in an area that was a transition area. He said that you can put buildings there by getting a Transition Area Waiver and moving things around a bit, but you can't put a septic field in it in its original shape. He said that this project would be considered a major development for stormwater and he did not see anything for that either – even an area allotted for some consideration in the plan for what is proposed for the stormwater.

Mr. Harrison replied that the applicant is not here for site plan approval and they recognize that there is a lot of work to be done. He said that part of their thinking was that they really didn't want to go through and do a lot of engineering and discover that the Township was not willing to rezone the property, limiting the applicant's ability to expand it. He said that they wanted to go through the zoning first and he felt that there are areas on the property where stormwater can be accommodated which Mr. Petry can show the Board, however they have not done the engineering to say that they need a basin to hold so many cubic feet of water in order to meet stormwater requirements.

Mr. Petry agreed and said that they have not taken their engineering to that detail of level yet and have not done their site plan work. He said that they did do a code review and looked at what is proposed in terms of NJDEP and municipal regulations. He said that they do have some areas within the front portion of the property and certainly outside of the clubhouse area where they would be able to accommodate both stormwater management and an expanded septic if they need to do it. He said that they have not done the permeability test or tested ground water yet to reveal whether those areas are suitable for this because there are restrictions when you are doing septic systems with regards to where is ground water in the existing condition regardless of whether you build a mound system. He said that he would look at those as part of their design effort, but there are existing septic fields that service the existing buildings on the property and he believed that if the soils are changing much from here to here, they have the opportunity to create something that will work to service the proposed facility.

Mr. Lemanowicz replied that he appreciated all of that and understood the concept of not wanting to go too far. He said that the only reason he brought it up was because the Board is looking at a picture with a certain percentage of a bright green lawn and we are looking at impervious area percentages and such and what this isn't showing is the area where all of these other utilities are going to be taken care of. Because once that happens, this level of development might not look the same as it does on the picture because of all the green that appears to be undisturbed.

Mr. Harrison said that what they wanted to do, which is a dilemma on their part, is to show the Board the Board t he maximum amount of development so that you get some sense under the Ordinance they are proposing under the zone change what *could* happen. He said that it is conceivable that the site constraints could be such that they will not be able to do everything that is shown in order to have a location, whether it is for a septic system or a stormwater basin – that it just may not all fit, and they recognize that. On the other hand, he said that they didn't want to mislead the Board and show one bubble for a tennis court with just 4 courts and say that they are reserving this for basins, septic, etc. and then come back and have the Township do the zone change and say, no we are doing 3 times what we showed you. He said that they didn't think that was fair and so they showed what they *could* fit on the property if the stormwater and septic work out fine, but they recognize that at the time they do the flood hazard determination, permeability testing, and stormwater calculations, the reality may be that there may not be 3 domes, each with 4 tennis courts.

Mr. Piserchia asked, if something had to be removed, is there something on the proposed plan that would be the item that would be removed?

Mr. Plofker replied that fewer tennis courts would be the thing to do. He said that the removal of one of the grouping of courts would be the logical thing to do.

In response to Mr. Piserchia, Mr. Plofker said that the existing courts (without a proposed bubble) *could* be the first to go. He said that they really haven't gotten there. He said that they could never build the existing 6 outdoor tennis courts where they are located today.

Mr. Petry agreed and said that those existing 6 outdoor tennis courts were built in what is now considered a transition area. He said that the buffer transition limit that is associated with the wetlands along the wood line is a 150' buffer. He said that the 6 outdoor tennis courts and about 60% of the existing parking are all within what is now considered to be a transition area and none of that could be rebuilt today and they certainly wouldn't be allowed to put domes over those courts without going to the NJDEP for a permit to do so.

Mr. Plofker stressed that they are not proposing to do any of that. He said that, if the Board thinks, based on septic or NJDEP, that they need more land area then sure, something is going to have to go and logically the tennis courts are taking up the most amount of area and some of them will go. He added that he felt that the proposed scheme is much more environmentally friendly than the existing scheme. He said that the main reason for his opinion is that, for the amount of chemicals that went in to make the pond swimmable up to environmental standards on an annual

basis were “astronomical”. He said that he is still trying to get the quantities and actual chemicals that were put in there. He noted that there were numerous fines and violations through the years to get the large body of water swimmable every season. He questioned where all those chemicals went and said that they just went into the ground and air. Based upon his interpretation and that of his consultants, he said that a fairly small swimming pool, compared to the large 80,000 S.F. body of water that was only swimmable because of chemicals that were added every season, is a benefit to the site.

There being no more questions for Mr. Petry, Mr. Harrison introduced his next witness.

Mr. Peter Steck, licensed professional planner, said that this is not the first time that he has been involved in the subject properties. He said that he was involved with the prior owner (Dagwood Properties, LLC) and when that owner was faced with certain interpretations, he was the witness that was going to appear. However, he said that it never came to fruition because part of the way through the proceedings before the Board of Adjustment, the applicant pulled back. He distributed and described copies of a 3 page exhibit that he *would* have presented to the Board of Adjustment at the time. He said that the exhibit did not concentrate on Lot 4.01, which is the lot to the north which is part of the subject property. The first page contains a couple of aerial photographs. The upper half shows Lot 8 and the pond largely drained. On the top of the page you can see a portion of the current dome on Lot 4.01 and to the south you can see the municipal ball field on Lot 9. Below that, he superimposed the zoning as it exists today. He noted that all of Lot 8 and Lot 4.01 to the north is in the C-Zone. He said that the second page reproduces portions of the Master Plan. The upper half shows the flood hazard information that was superimposed on the base map. It is not as definitive in terms of NJDEP limits, but he said that that is what the Master Plan used at the time. The lower half of the page shows that the Master Plan looked at this site as being separate from the C-Zone. He said that it did not include Lot 4.01 but it was recommended in the prior Master Plan as being a community serving category, so it recognized that it was a commercial recreation use that benefitted the community in general. When it got to the zoning recommendations in the Master Plan, he said that it didn't recommend a CS Zone, it said why don't you include it in the C-Zone. So, when you look at the Zoning Map today, it is in the C-Zone. He said that the final page contains some photographs that he took in 2008. He said that Photo #6 is the phantom handball court that no one seems to know exists.

As to the planning aspects, Mr. Steck said that the prior owner was just maintaining the use. He said that Indoor Soccer, LLC wants to invest in the property and make some changes. Like any business person, he said that they are desirous of some predictability. Right now, he said that it is subject to a series of variances that are not always well crafted and it is not clear what is in there. He said that one of the concerns is that this is a type of use – a commercial recreational use – that changes over time. He noted that tennis is very popular, although sometimes it is less popular. He said that sometimes it is soccer and sometimes it is lacrosse and that things change over time. When you have a variance, he said that there is a grey area – can you switch sports, etc. etc.? From a businessman's point of view, in terms of making a decision to invest in the property, he said that obviously the owner wants some predictability which he felt is one of the themes in this request. He said that if he was to look at this from a black box point of view – put a box over it and measure who is coming and going, several things seem to be happening. He said that the peak use, which was the pond and the beach, are being removed. One way to look at it is that this is being extended in time throughout the year into the winter season, but the very peak use – the time when most people would be on the property in the hot summer day on the beach and in the pool, that is going to be curtailed because the pool, swimming area, and deck will be a lot smaller. So one way to look at this is that there is an averaging going on with the proposal and that the peak will not be as great as it has in the past. Another element is that there will be more quasi-hard surfaces (the additional tennis courts), but as indicated by Mr. Plofker and those who play tennis, it is a maximum of 4 on the court at any one time. So, in terms of the density of people, that is an issue that is going down. He said that the other issue is that it is being extended throughout the season which is the reason for the domes, which really means that there is an automatic sharing of parking. In the winter time the pool is going to be shut and zero people will be using the pool. In the summertime, the pool will be active but maybe some of the other facilities such as some of the team sports might not be used in the domes, so he felt that there is a logical conclusion that there will automatically be a sharing of parking facilities and they will not all peak at the same time. He said that the Master Plan recognizes that this was a community benefit and that it is a recreational facility that is available not only to residents of the community but to the larger public. However, he said that they also think that there are some environmental benefits by eliminating the pond which is not a well regulated facility and because it is open, it requires a lot of maintenance (i.e. chemicals). He said that it will be a swimming pool that will be managed like any swimming pool and will clearly be a smaller and more contained area. From an environmental point of view, given the sensitivity of the entire area and the Great Swamp, he felt that it is clearly a better use to have there. He said that there is inevitably going to be a little struggle going on because the applicant wants the largest envelope possible and they would like to switch uses and consider different times based upon the interests of different kid groups. Simply because this is a business, he said that it has to change over time to accommodate its clients and changes in society in terms of what sports are popular and which are not. He said that he understood that the Board would like to know exactly what is going to happen over the next 20 years, 1 year at a time, and hopefully somewhere down the line there can be a compromise. He said that there can be a Zoning Ordinance that creates a somewhat larger envelope that exists with the variances because, frankly, with the variances there is no envelope. Not only do they list certain features of the property that are unclear, any time you change that there is a judgment call, whether it is an expansion of a nonconforming use, it would require the applicant to come back time and time again. He said that that is obviously not the way you can run a business and it doesn't attract an investment with that type of unpredictability in the future. He said that it made sense in his mind because this is a unique use to have its own zone. In one sense, he said that that is helpful to the Board because it can craft standards knowing exactly what it is going to apply to – it is only going to apply to this property and you don't have to worry about who is a half mile down the street and might come in for the same thing. Because the Board would be creating a special zone, as a planner, he said that he is

much more comfortable that the Board support it by amending its Master Plan which is really the way to do it in general but, especially when you are creating a new zone, it makes sense to do that. He said that right now the Master Plan does carve this out as a separate area from the C-Zone, so there is a real start there. He said that that district has to be expanded slightly and they would invite language in the Master Plan if the Board wants to go that route.

He said that the M.L.U.L. doesn't say where you start on a rezoning. He said that some people shift it to the Planning Board and he would say that, more often than not, the governing body likes to hand it off to the Planning Board. It seemed to him that one way to look at this is to, in general, craft a zone that the Board is comfortable with and that the applicant can live with in an informal way. Once there is a general agreement about the size of that envelope, the next thing to do is to amend the Master Plan, which requires a public hearing. He said that it can be a very general Master Plan in the sense that it could be amended to show a special district and there could be several paragraphs describing what is recommended in the district that would be subject to a public hearing and presumably be adopted by the Planning Board. He said that then you get into the formal ordinance process which is the introduction of an ordinance which is sent back to the Planning Board for a consistency review (that it is consistent with the Master Plan) and the governing body can actually act even though it isn't consistent with the Master Plan, but you would prefer to have that consistency. Then it goes back to the governing body at the official public hearing. Presumably the governing body recognizes that it is consistent with the recently amended Master Plan. There has to be a notice to people within 200' of the property and there is an official public hearing on that zoning amendment which is the final, official point where the public gets to comment on the exact wording of the ordinance. Even when that is done and the applicant comes in to do it, he said that the answer is that there is a site plan review. So, even though you suggest that there is a bigger envelope under which to operate this, the applicant still has to come before the Planning Board for a site plan review and that is where all of the details of the drainage basin, the calculations, and a traffic expert are discussed and the details are refined. He said that any time the applicant comes back in to alter physical improvements, he comes back to the Planning Board, therefore the Board still has a lot of control through the site plan ordinance. He said that they are at a very early stage and it is difficult to find where to start. He said that the applicant doesn't want to invest a lot of money into engineering unless they know that there is some sympathetic support from the Planning Board. He said that they feel this is a good thing for the community. With that kind of lead, with no guarantee that they would agree with an ordinance, they would be happy to provide any information needed to work with the Board Planner, at least to craft something that the Board is comfortable with. He said that they have already started in somewhat of a vacuum, with the zoning amendment that the Board has. He felt that it is a good place to start because, if adopted tomorrow, we know that we can live with those terms. He said that if the Board looks at it and potentially modifies it, at least it highlights to the applicant where they are being pinched and where they can potentially expand in the future and gives some predictability. He said that, at the end of the day, they have a new owner that wants to invest in the property, modify and improve it, and make it survive in the long run by putting it on better economic footing, but that can't be done through a variance process because every move requires public hearings, delay, and not any predictability. He said that they would like to have some predictability which is really a zoning amendment. He said that you know what you can enforce and wrap up all these past approvals into a new ordinance which would protect the applicant so that they know where they can move and expand and where he can't. He also felt that it protects the Board in that, when there is a complaint, you don't have to do hours and hours of research. There will be a site plan in the files and you will know what the limits are and if a neighbor complains that something is beyond the site plan approval granted, it is easier for your enforcing agents to follow up on it, so it benefits both sides.

Mr. Harrison asked Mr. Steck if he had had a chance to review the parking requirements.

Mr. Steck replied affirmatively. He said that one of the things he tries to do is copy from other people. He said that he used Ordinance.com and looked at other municipalities that have commercial/recreation zones and found that one thing that is true is that there is no consistency. He said that he was hoping that there were several towns that he could clip their standards, but there were none. He said that it is almost like the number of loading spaces. If you have gone through a number of commercial developments, he said that your ordinance can have loading spaces and it never coincides with what the applicant needs. Either it is a food store that needs twice as many, or they don't need any, and that is kind of what it is with parking. He said that inevitably there will be shared parking because the uses on the property will not peak at the same time. Once the beach area is removed, he said that the peak that existed in the past won't be there, so there will be some moderation of this. He said that they have drafted the ordinance in a fashion that they feel accommodates what the uses are. He said that they welcome interplay with the Board's professionals to determine what works and what doesn't but they feel it is comfortable. The one thing that he said unfortunately they can't do is find a trend with other municipalities and no one seems to have a standardized way of predicting parking.

Mr. Harrison asked Mr. Steck if, in his professional opinion, it would be appropriate to rezone the property to a separate and distinct use reflecting what is there or keeping in within the existing C-Zone.

Mr. Steck replied that he felt that it is an appropriate way to handle it specially. He said that the C-Zone was clearly not intended to cover this type of use. He said that if they were to put the use in today, as Mr. Petry said, some of the existing things could not be put there. But it is already there and is grandfathered in and he felt that it is generally a benefit to the municipality to have this resource. Given that there are some inherent limitations because of State requirements and given that the C-Zone really wasn't intended for this – in fact the Master Plan already suggests that it could be used as a separate category, he felt that it invites a new zone.

Mr. Hoffman asked Mr. Steck if he felt that creating a totally new zone for a total of 22 acres of the two lots at first blush raises the issue of whether this will have to be defended, and how difficult a task would that be, to proclaim that this somehow constitutes spot zoning, because it is not going to appear anywhere else on the municipal Zoning Map, or maybe there are other sites that he has looked at. He asked if the issue of spot zoning at least comes into play?

Mr. Steck replied that the applicant does not have any other sites and he has not looked at any other sites. He said that there are two kinds of spot zoning. There is illegal spot zoning and legal spot zoning. One of the main issues is whether it is supported by the Master Plan. The fact that you have one zone does not automatically mean spot zoning and the fact that it may benefit a property owner does not automatically make it spot zoning. He questioned if it is in the public interest, if it is supported by the Master Plan, and/or is there a rational basis? He said that there are many municipalities that have an airport zone for one airport and you could say that that is spot zoning, but it is clearly an appropriate way to handle it. He said that the issues with this are that if he crafted some zoning regulations for this property and put it somewhere else in the C-Zone, it probably wouldn't work because if you have to start from scratch and comply with all of the State environmental regulations, it is probably a zone that doesn't work in another place. So there are unique features here, partly because it is an existing use that has grandfathered components that he did not feel lend themselves to a legislative solution for other locations. He said that his recommendation for a special zone goes hand in hand with the recommendation that the Board amend its Master Plan to support this effort.

Mr. Hoffman said that currently there is an array or variety of permitted uses and activities that have been considered, allowed, and sometimes disallowed over the years by the Board of Adjustment. He asked Mr. Steck if he had prepared in his own mind a "scorecard" – that is to say are there any uses that the Board of Adjustment over the years has specifically prohibited or restricted in dealing with one or more applications that now would be permitted? In other words, since there is a definitive change in what would be allowed that would occur as part of the comprehensive rezoning for this tract that is being considered, he asked if there any additional activities that may not have been dealt with historically by the Board of Adjustment one way or another that now would be allowed, so that we get a complete scorecard or listing of what changes there would be in terms of permissibility, and those could pertain to the nature or type of use, the hours of operation, or perhaps other features of the facility?

Mr. Steck replied that the applicant is quite willing to provide the Board with a menu of what it would like to have on the property. He felt that one of the problems is that, as you can see from Mr. O'Brien's memo, these Board of Adjustment decisions happened over a long period of time and some of them are not artfully drafted where you know exactly the bounds of that decision, and that was one of the efforts that the last owner was faced with. He said that it wasn't clear and didn't say that you can't do this – it talked about athletic activities but it didn't specifically have the limits. He said that one of the issues is, that from Mr. O'Brien's point of view, frankly he could go through the Resolutions and come up with a list. From his point of view, representing the interests of the applicant, he said that his list will probably be broader than his, because he will read the same decision differently, and what we are trying to get is predictability. He felt that they could come up with a list and said that one of the reasons that we are here is that when he sat down with the new owner and they started talking about what you can and can't do, it is just not clear. He noted that the first approval was in 1957 and there was a different way of writing Resolutions then. Now the Resolutions are better crafted and the problem is that prior Resolutions are just not definitive. He said that the problem with a nonconforming use is that you are not frozen to that specific use, you are allowed to modernize a use, so if this were to be litigated, you wouldn't necessarily come up with the bounds that you read in it. He said that they would like to have an ordinance that at least significantly improves the understanding of the municipality and the owner about what the rules of the game are and he felt that that also benefits the surrounding neighbors. They know that if the applicant is beyond the lines, your enforcement staff doesn't have to look at 6 different Resolutions and there is now a site plan that exactly shows the limits of improvements, there are conditions on that approval, and we are all reading off the same page.

Mr. Hoffman replied that, if he were voting, he would still be personally interested in knowing if there are any specifically permitted or prohibited activities over the long history of treatment of this tract that we will be either losing or adding. He felt that that should be a part of somebody's presentation to help in getting a fuller picture of the plusses and minuses.

Mr. Steck said that Mr. O'Brien might be the one to take the first crack at that and then maybe he would get a chance to review it to say if he agrees or not.

Mr. Harrison said that he did not think that that would be a bad idea to do that, but part of the reason we are here is because of the debate they were having with the Township Attorney as to what was and what wasn't permitted based on differing readings of the Resolutions. He said that he did not want to suddenly revive that debate.

Mr. Hoffman felt Mr. Harrison's point was a fair one and whether something was or was not always permitted is not always black and white.

Mr. Connor felt that there are three categories: permitted, prohibited, and questionable. He felt that the Board needs to look at the questionable ones, particularly, at some point, but not tonight.

Mr. Lemanowicz said that the plan right now shows only tennis courts, so basically you will have between 8 and 16 players in each bubble. He said that the bubble doesn't seem to be sized for 4 tennis courts, it seemed to him to have some extra space in there. He asked what other field will fit in the bubble?

Mr. Plofker replied that they only designed it for tennis. He said that they are a little longer than average just because they need a walkway to get through the domes. He said that the first dome is longer than the other just because there needs to be a central area where traffic can go to the other 2 domes without disturbing the play that is going on in that dome. He said that they would not be opposed to restrictions on the use in those domes and they are intended to only be used for tennis.

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(Dr. Behr left the meeting).

The meeting was opened to the public.

Mr. Michael Malloy, Esq., said that he was representing an adjoining property owner, Ms. Patricia Badding of 260 New Vernon Rd., Gillette, immediately adjacent to the north of the existing dome. He said that one of the first things mentioned was how this came to be and he was still not “square” on it. He asked if it was the Township’s idea or the applicant’s idea?

Mr. Harrison replied that he talked to the Township Attorney and it was his recommendation that a proceeding be held before the Planning Board initially.

Mr. Malloy asked if that was the result of a determination that the applicant would be unable to proceed on a variance basis?

Mr. Harrison replied, “Absolutely not”. He said that there had been some discussions concerning the permitted uses and we reached an agreement that a potentially better way of handling it, rather than debating the multiple Resolutions, was to see whether a zone change would be appropriate. He said that he asked where the applicant should come first and it was recommended that they appear before the Planning Board. He agreed that there was a prior application for an interpretation by a prior owner or, in the alternative, for a use variance.

Mr. Malloy asked Mr. Harrison if he knew why that application was withdrawn.

Mr. Harrison replied that he did not know and that it was by the prior owner.

Mr. Malloy asked if the determination by the body unfavorable?

Mr. Harrison replied that there was no ultimate determination made. He noted that Mr. Steck was present and may be better able to answer the question.

Mr. Steck replied that, to his knowledge, there was no determination made. In the course of the proceeding, the potential purchaser appeared, and he felt that that was the motivation by the prior owner to not prosecute further the interpretation or a variance.

Mr. Plofker said that in his conversations with the prior owner, he felt that it became clear to her sometime in the middle of that process how complicated a land use approval would be to build a domed structure on the 4 existing courts in the wetlands area. He did not think that she was really prepared to proceed given the complexity and expense of it.

Mr. O’Brien disagreed and said that he believed that an interpretation was delivered by the Board of Adjustment on that application and there is a Resolution dated 10/7/08.

Mr. Hoffman felt that the document basically speaks for itself in terms of procedurally what occurred during the course of the Board of Adjustment’s dealing with that proposal. Beyond that, he said that the only way to attempt to discern the answers to some of the questions that Mr. Malloy is posing is through double and triple hearsay as to what one person may have had in mind when they chose to do something else and he did not know that it matters as long as action was legally taken since that is what counts.

Mr. O’Brien said that the Board took definitive action in terms of the interpretation and rendered a ruling, however the second step of that process was, in the alternate, a use variance should one be required by the Board to be continued as part of that application that was withdrawn by the applicant,.

In response to Mr. Malloy, Mr. O’Brien confirmed that the interpretive ruling was that a use variance was required because a change for this property was considered an expansion of a nonconforming use.

Mr. Malloy asked if the application was for an expansion of the tennis use?

Mr. O’Brien replied that it was for an additional bubble or two.

Mr. Hoffman said that it was for the placement or installation on a seasonal basis of a “bubble” or domed fabric cover over certain existing tennis courts, which courts had been allowed by prior use variance approval and that is what an interpretation was sought on – whether that proposed activity of bubbling over some of these facilities would necessitate a use variance.

Mr. Piserchia agreed with Mr. Hoffman and said that he was on the Board of Adjustment at that time.

Mr. Malloy asked for clarification that the proposed activity was a tennis activity.

Mr. O'Brien replied that we never really got that far. He said that the interpretation was whether or not doming that facility was an expansion or not of a nonconforming use and it was found that, no matter what the use was, whether it was tennis, lacrosse, or indoor rugby, that the mere act of covering the court was an expansion because it expanded the time that the court could be used and, therefore, it would be an intensity of use.

Mr. Hoffman added that the Resolution cites towards the end of the Board of Adjustment's conclusions that "It is the Board's interpretation/determination that this requires a use variance approval pursuant to Sec. 40:55D-70(d)2 due to its including an expansion of a nonconforming use". He said that it goes on further to describe to some extent what those expansion or intensification elements of the proposal would consist of – the increased time of the usage over the course of the year that tennis would be enabled or facilitated to be played there by virtue of covering over the existing structures and allowing it in inclement weather and, further, the comment was offered that "Where there is doubt as to whether an enlargement or change is substantial in nature, our Courts have taken the position that such doubt should be resolved against the enlargement or change. This can all be best evaluated by a Board of Adjustment." He said that the Board of Adjustment reached the conclusions which it did and the Resolution concludes by saying "Subsequent to the Board of Adjustment's vote on the applicant's request for an interpretation, Copper Springs (by letter of its attorney dated August 22, 2008) withdrew its request for variance approval, site plan approval, and a Development Permit. Accordingly this Resolution will memorialize (only) the Board's action relative to the interpretation."

Mr. O'Brien advised Mr. Malloy that he may obtain a copy of that Resolution through Mrs. Wolfe.

Mr. Malloy replied that he would do so. He also said that he had a copy of a 2/25/03 letter from Mr. Pidgeon, Twp. Attorney, indicating that there are a variety of activities, mentioning soccer, lacrosse, field hockey clinics, etc. that are *not* permitted in the C-Zone. He said that it is about a 4 or 5 page opinion and asked the Board if it was aware that an opinion was rendered by the Twp. Attorney that, in the C-Zone, it wasn't going to the building, the facility, or any physical structure, it was looking at use from a pure use standpoint. He quoted a portion of Mr. Pidgeon's letter.

In response to Mr. Connor, Mrs. Wolfe said that she could recall if a copy of the 2/25/03 letter was ever transmitted to the Planning Board members.

Mr. Connor said that he did not recall ever having read the letter.

Mr. Malloy said that Mr. Pidgeon had said towards the end of his letter that these are uses that he did not even consider to be accessory to a swimming and tennis club. He said that the reason he mentioned it is that his client lives right next door and his understanding was that, before the property changed hands, there were tennis courts in the bubble. He asked if that was correct.

Mr. Plofker replied that there were both tennis and non-tennis uses in the structure prior to his purchase of it.

Mr. Malloy asked if the prior owner also had field turf inside of the bubble?

Mr. Plofker replied that she did not put down the turf, but she conducted non-tennis activities on the concrete surface. He acknowledged that, when he purchased the property, he had the field turf installed within the entire interior of the bubble and that he is currently using the bubble for multiple field sports. He said that he leased the property prior to purchasing it, and it has probably been longer than 6 months since the bubble has been used for multiple field sports.

Mr. Malloy asked Mr. Plofker if he was aware that his client has had issues with noise emanating from the structure?

Mr. Plofker replied that he was aware of Ms. Badding's complaints. Since purchasing the property, he said that he is also aware of her complaints *prior* to his purchase of the property.

Mr. Malloy asked Mr. Plofker if his firm has received a citation for violating a zoning ordinance?

Mr. Plofker replied, "No, we have not".

Mr. Malloy asked Mr. Plofker if he had received a citation or summons for violating a noise ordinance?

Mr. Plofker replied that he received a citation, personally, a couple of weeks ago for violating a noise ordinance. He said that he contacted the Township Attorney and told him that he was out of the country at the time and that he did not make any noise. He said that he was not saying that his company did nor didn't, but if they were going to issue a violation, it should be to the correct party, which is not him personally.

Mr. Malloy asked if the citation was coming up for a hearing?

Mr. Plofker replied that he did not know that. He thought that the violation that was sent had been rescinded and said that he has yet to receive a new one.

Mr. Malloy asked if Mr. Plofker if he knew if anyone from the Township has conducted any enforcement efforts saying that he was in violation of the Zoning Ordinance for conducting multiple sports activities in the existing dome?

Mr. Plofker replied that they had received a letter that said that it was the letter writer's belief that they were conducting a use that was not permitted there and they wrote back and said that they disagreed completely with that and that they did not interpret that letter as a violation notice and, if they were incorrect, to please correct them and they received nothing further on it.

Mr. Malloy asked Mr. Plofker if he had in his possession at the time the letter from Mr. Pidgeon dated 2/25/03?

Mr. Plofker replied that he did not know if he did or not, but what he did have in his possession at the time was a zoning Resolution that concerned Lot 4.01 in question on the subject site.

Mr. Malloy asked Mr. Plofker what his position was on what that zoning Resolution says? That it permits any recreational activity under the dome?

Mr. Plofker said that he did not have it memorized but would happy to read what it says.

Mr. Malloy replied that he was trying to discern whether Mr. Plofker was taking the position that it is a recreational facility and he can conduct any recreational activity of any kind under the dome.

Mr. Plofker said that he was taking the position that "We obey the law and that we will conduct ourselves in accordance with the zoning Resolution on that particular site".

Mr. Malloy asked Mr. Plofker if, as far as he was concerned, he felt he could conduct multiple sports in that dome?

Mr. Plofker replied that he could conduct whatever activities are permitted by the variance granted by the appropriate Board concerning that site.

Mr. Malloy asked Mr. Plofker if, to his knowledge, he had a variance in his possession that says he can conduct field hockey, lacrosse, and soccer clinics in that dome? He asked if any Board has indicated that that is a permissible use?

Mr. Plofker said that he could read the Resolution for Mr. Malloy.

Mr. Malloy said that the reason he had asked Mr. Plofker if he had received any kind of a citation for violating the Ordinance was because in the file he had looked at in the Planning Board office, there was some indication in e-mails that the Township was holding in abeyance enforcement activities against the organization for the conduct of activities that *weren't* in conformance with the Ordinance pending his request for a rezoning. He asked Mr. Plofker if that was his understanding?

Mr. Plofker replied that when Mr. Malloy was saying "Ordinance", he was not sure what he was referring to.

Mr. Malloy replied, "The Zoning Ordinance".

Mr. Plofker said that it was his understanding that the appropriate document to look at is the zoning Resolution that was passed concerning this and it is really not going back to the Ordinance, it is really what activities are permitted by the Resolution.

Mr. Malloy asked Mr. Plofker to direct him to the language in the Ordinance that he relied on in order to run non-tennis and swim activities in the dome.

Mr. Hoffman said that he could not help but wonder where this is all leading to in the sense that these are delving into issues that have either already been or will be addressed by other agencies of the Township, be it the Board of Adjustment for interpretation on prior uses and post uses, or be it the Municipal Court if citations have been issued and need to be resolved. He said that what he thought we are here for this evening has nothing to do with adjudication and interpretation of past activities at this site, but rather whether a new, supposedly, comprehensive plan of permissible development is appropriate. He thought that it is an entirely separate issue for a different agency to deal with.

Mr. Malloy said that the reason he was asking was, among others, that if you have someone who is requesting something as far reaching – we are not talking about a variance here, we are talking about somebody who has come before you and said that they want you to amend your Master Plan.

Mr. Connor said that, if we get to the point of amending the Master Plan, and that is a whole new set of official activity where people will need to be served notice, witnesses will be sworn, and a formal presentation will be made if we get to that point, the Board is listening at this point in time and will have a number of options, one of which is to do nothing, and another is to say that we need to at least look and see if we want to do that in the Master Plan. He said that the Board is not going to do anything tonight that is going to decide this particular issue. However, he said that he would like the applicant to respond to this question, specifically because it gives us some background, but he did not want to go farther down.

Mr. Malloy replied that he was sure you would want to know that if someone is coming before you for a variance, a change in the Master Plan, a new ordinance, or whatever, you would want to know whether they are complying currently with the Ordinance that is on the books, and he felt that is extremely relevant.

Mr. Hoffman asked Mr. Malloy if he felt that that might affect their reason or impetus for seeking the relief that they are seeking?

Mr. Malloy replied, “Clearly – yes”.

Mr. Plofker said that he had before him a Resolution from the Passaic Township Board of Adjustment dated 9/25/76. He said that it states that the recommendation of the Board of Adjustment is accepted and approved a use variance granted to the former owner to permit the construction of a building 50’ in height and the use of the property otherwise identified as B1 219 for recreational purposes subject to the following conditions. He said that there are two conditions that these recreational purposes are subject to. One is to purchase one acre of property from Copper Springs Beach & Tennis Club and the second condition being that the Copper Springs Beach & Tennis Club feed back to Ridge Restoration an easement through its existing parking lot permitting the access to the parking spaces and parking for 50 automobiles. He said that those are the two conditions that limit the recreational purposes that the use variance was approved for.

Mr. Malloy felt that he was looking at the same Resolution Mr. Plofker was and said that it also mentions in the Resolution “for use as a 4 court indoor tennis facility and 6 outdoor paddle tennis courts” on the premises. He asked if there was any other Resolution that he would be relying on to indicate that it is okay to use this dome as a multi-sport facility? He said that he asked the question only because the applicant is indicating that the future use is going to be the present use. In other words they are going to continue to use this dome for multiple sports. He said that this was a dome that previously housed 4 tennis courts and so on those courts, if everybody is playing doubles, you would have 16 people. He said that he did not know how many children participate in the youth clinics that are being run using those turf facilities.

Mr. Connor told Mr. Malloy that he had made his point and the Board needs to look at it in more detail. He said that he also brought out in the text are indications of what the use was going to be. He said that he would like to have time to have it reviewed to see what the Board’s legal interpretation would be.

Mr. Malloy said that he did not wish to belabor this and said that he understood that this was the beginning of the beginning of something.

In response to Mr. Malloy, Mr. Steck agreed that this is an informal concept review right now.

Mr. Malloy asked Mr. Steck if his client’s wish list is that the Board amends the Master Plan?

Mr. Steck replied that that is his recommendation. He said that the governing body has the ultimate authority and it can change the zone even though it is not consistent with the Master Plan. It just has to explain itself in an explanatory Resolution at the time of adoption.

Mr. Hoffman added, with a higher voting requirement.

Mr. Steck replied that it is a majority of the full authorized (indiscernible).

Mr. Malloy said that, “If there is a protest”.

Mr. Steck continued and said that if everyone is here it is no different. He said that his recommendation is that, because it is a new zone being crafted, the Planning Board *consider* amending its Master Plan.

Mr. Malloy replied and then, after that, craft an ordinance.

Mr. Steck said that, in order to amend the Master Plan, you could start it in a vacuum but he had already crafted a requested zoning amendment that at least gives some meat to what we are looking for. He said that the Planning Board could make different recommendations, but we decided to go this route because at least if we know that we could operate in the fashion that we would like to operate, under the term of that ordinance.

Mr. Malloy said that, if there is an amendment to the Master Plan, and now you’ve got a proposed ordinance, it goes up to the town and the town has to introduce it and then it goes back down to the Planning Board for the statutory review by the Planning Board and recommendation. Then it goes back up to the town.

Mr. Steck agreed. He said that there is a public notice for the Master Plan amendment, but not to particular property owners, it is in the newspaper. He agreed that that is the entire process.

Mr. Malloy asked Mr. Steck if he had reviewed the Long Hill Township Master Plan.

Mr. Steck replied, “Yes”.

Mr. Malloy asked Mr. Steck if there was anything in the Master Plan that he found to be inconsistent with the attempt to establish a brand new zone benefitting a single property owner.

Mr. Steck replied that he had already testified to that and said that the Master Plan Land Use Map designates this site as separate from the C-Zone, but then it said in terms of zoning, we are going to recommend that it be in the C-Zone, so it is half of one and half of another. It recognizes that this is somewhat different from the C-Zone, but it said “for zoning purposes, the community serving land should be placed in the C (Conservation)- Zone. So it did not recommend a separate zone, but it did recognize that it is a special use.

Mr. Malloy asked Mr. Steck if that was the only thing he found that was inconsistent with the Master Plan.

Mr. Steck replied that, in his judgment, the Master Plan should be amended. He said that just to read the General Purpose statements doesn't give you any guidance, in his opinion. He said that you really have to work from the more specific end of these things. He said that in any Zoning Ordinance you could say that you would like to increase ratables, but that doesn't mean turn houses into gas stations. He said that the real issue is looking at the Land Use Plan Map, in his opinion.

Mr. Malloy asked Mr. Steck if he could guide him to other instances and other towns where they have created a new zone for a single property.

Mr. Steck replied, “Yes”. He said that the last time he crafted a zoning amendment was for Grinnell Block Pavers and they wanted to start a quarry operation up in Sussex County and the municipality amended its Master Plan and followed up with a zoning amendment. He said that there have been others, but that is the most recent one he had worked on.

Mr. Malloy asked if this was a common thing to do in the land use area.

Mr. Steck replied that it was the preferred way to handle it.

Mr. Malloy asked if it was common to spot zone, because he said that he had made the distinction between legal and illegal spot zoning, but he was going to call it spot zoning.

Mr. Steck replied that it is a fact specific situation. He said that for him to say that he engaged in 20 rezonings in his career would not indicate to you whether – he said that that he thought they were all legal rezonings and they didn't all follow a Master Plan amendment and so you handle them in different ways but there is a preference for legislative action rather than Board of Adjustment action all things considered.

Mr. Malloy again stated that we are at the beginning of the beginning of the beginning. He thanked everyone for their patience and said that he just needed to ask some of these initial questions.

There being no further comments, the meeting was closed to the public.

Mr. Connor asked for Board input. He said that one option is to look at the Master Plan with rezoning of this particular area and looking at past precedent. He noted that a couple of the current Planning Board members were on the Board of Adjustment at the time of the most recent activity.

Mr. Briggs said that obviously this is a unique property and he said that he would like to know more about the spot zoning issue from a historical prospective noting that it does not come up often although it is cited often. He asked Mr. Hoffman to provide his view on it, although not necessarily now, but after he has had a chance to review everything. Having been a part of the Planning Board and Township Committee in the past, he said that he knew that this has been an issue property for residents before and that noise seems to be the most prevalent, but he also knew that Meyersville has a certain distinct sense of community, so he felt that having the residents being able to offer their opportunity to help craft, or at least present their ideas, in crafting ordinances that this property would abide by and also giving their input is imperative. He felt that the grey zone that the Zoning Officer and other individuals have, whether it is the Fire Marshall – all of them have issues with the property because they are not quite sure where it fits in the total picture of things. Having this be an issue back to 1959, he felt cites the fact that this needs to be addressed now and we have an opportunity with a proposed applicant and a Planning Board willing to look at this and however it proceeds, at least we have a basis to work on it. He said that he did not see this going away under the current situation and looking at the 1976 Resolution, we have two lines to read off of and it is grey and hard for both the business owner, residents and the town to work off of a grey box, so this will get it on the table for everybody to give their views as to how to proceed. Looking at a quick view of the Ordinance proposal, he said that bulk standards including lot coverage have to be looked at, as well as uses and hours of operation. He said that there is a lot of detail to be looked at, however he felt that this is a good opportunity for the Board to look at this parcel.

Mr. Smargiassi concurred with Mr. Briggs and agreed that it is a very unique property with a unique history. He said that the current status and how it proceeded at this point is not ideal. He felt that both past and current property owners and neighbors would agree and he said that he would be open to looking at the property for a potential rezoning.

Mr. Piserchia added that anybody who has been a member of Copper Springs knows that it has been used in certain ways different from what was first alluded to in the Resolution dated in 1959. He said that many other types of activities have taken place on the property, so he felt that this is something a long time in coming and the town needs to remedy this for everybody – for the owner, the neighbors, and for clarity on our own books. He said that he would welcome the opportunity to do what is right now.

Mayor Harrington said that she absolutely agreed. She said that it has been a grey area and there has been way too much confusion and the business owners as well as the residents need resolution to this and this is the body to do that.

Dr. Rae said that he was definitely in favor of looking at this again and of rezoning. He said that it points to the fact that the new owners have come up with some very good ideas for the community – something that is required to vitalize the business within the area and we should be receptive to their plans and balance what they need with the needs of the homeowners in the area, which he felt can be done.

Mr. Butterworth agreed.

Mr. Connor said that his comments are similar. He noted that there are some other areas in town which are being looked at and need to be rezoned. He said that it is not one single spot, but nevertheless it is a group of properties where most all of the uses are according to variances and we are actively looking at rezoning some of those. He said that it is unique only because this is one large property and the other small properties are less than the total acreage of the amount we are looking for in this one. Secondly, he said that we are always getting more and more requests for recreation and he felt that we need to balance all of the needs – the needs of the property owners, the needs of the residents in Meyersville around this area and the needs of the Township. He said that we need to have those discussions and come to some sort of resolution and it seemed to him that that is the consensus of the Board.

Mr. Hoffman said that he could give some guidance on the issue that Mr. Briggs had posed, namely some input on what is meant, what is allowed, and perhaps what is prohibited by the term “spot zoning”. He referred to Sec. 34-8.2 of the Cox and Koenig treatise, which is the leading authority on zoning issues in New Jersey. He said that that section begins by saying that “Spot Zoning” has been defined as “re-zoning of a lot or parcel of land which benefits an owner for a use that is incompatible with surrounding uses and not for the purpose or affect of furthering the comprehensive zoning plan” of the municipality. He said that giving as the principal source of that authority two former distinguished planners of this State, Moskowitz and Lindbloom. He noted that Carl Lindbloom was a predecessor to Mr. O’Brien. Continuing the excerpt from that leading authority states “Put yet another way where a zone change is designed to relieve a property owner from the burden of a general regulation it will be stricken as unacceptable “spot zoning”. He said that one case of the Appellate Division held that “re-zoning of a lot owned by a bank from residential to office/professional was not spot zoning where it served a valid municipal purpose and was consistent with the planning objectives of the master plan”. He said that it also states that “An ordinance which is enacted to advance the general welfare by means of a comprehensive plan is unobjectionable even if it was initially proposed by private parties and these parties are, in fact, its ultimate beneficiaries” citing a case, Gallo, where the Court held that rezoning residential property to allow greater density was not spot zoning just because it happened to benefit a particular developer, and had been requested by that developer. He said that it is how a proposed regulation allowing or disallowing usage of land affects or impacts surrounding properties at the community that is the test of whether it is permissible or impermissible spot zoning. The fact that the originator of the idea for the proposal stands to benefit does not disqualify it – it is rather just one factor to consider.

Mr. Connor said that it looks like the Board would at least like to address the question of rezoning this particular piece of property and area. He asked Mr. O’Brien to begin that activity and talk or discuss or come up with some sort of recommendation that the Board could use as a beginning for possible revisions to the Master Plan. Secondly, he asked him to also look at all of the other areas within the Township that might now be zoned in the Conservation Zone that this might be applicable. He said that he was not saying that he will find any, but he said that he would like to find out if there might be one or two areas that have perhaps been overlooked that are not as large as this but might also fit this pattern because he felt that would be an important piece of information.

Mayor Harrington said that, in doing thorough and extensive research into all of the history, she felt it is probably a worthwhile useful exercise to understand the residents complaints that have been issued and filed against the property in looking at the zoning in order to try and address some of those concerns that have been raised in the past, when something is drafted.

Mr. O’Brien replied that, with the Mayor’s permission, he would refer that to the Zoning Enforcement Officer.

Mayor Harrington replied that she was sure that he could help Mr. O’Brien in providing all that detail.

Mr. Hoffman respectfully suggested that, apart from the efforts that which counsel put forth this evening to question the motivation and basis of action and proposed action, it may have been quite helpful if his client were to appear here and state, “These are some of the issues I have encountered and this is what I have had to deal with, hopefully if the appropriate authorities of this municipality are going to seriously consider rezoning, I would like you to take z, y, and z into account”. He felt that that would be helpful.

Mr. Connor agreed and said that he would offer to anyone, not only the person that appeared before the Board, if there are Meyersville residents who wish to contact the Board in writing, that would be fine and he offered them to

give this preliminary input. He said that, obviously, they would have a chance for regular input when we get to hearings, but that would something that could be very useful.

Mr. Malloy said that, for the record, his client *is* present this evening.

Mr. Hoffman said that this is a public hearing and he was not saying that it should be done this evening, but this would be *an* appropriate time, perhaps not due to the hour, but at some point he felt that the Board would be interested in hearing that type of input.

Mr. Malloy replied that he felt that she has every intention of giving the Board that input.

Mr. Connor said that he was just inviting her in the interim to provide some written documentation, which he felt would be helpful.

Mr. Malloy said that they welcomed the opportunity to do that and thanked Mr. Connor.

Mr. O'Brien said that it was his understanding that the Mayor would like to get some of the past activities that have occurred in terms of complaints concerning the property and the Board would like to see some type of outline draft of what a Master Plan amendment might look like and what direction it would go in.

Mr. Briggs asked if Mr. Lemanowicz will be looking into parking, permeable surface, etc., or is that down the road?

Mr. O'Brien replied that that is part of the ordinance. He said that the Master Plan should give some broad guide work to it, but the specifics would be in an ordinance to follow.

Mr. Lemanowicz felt that one of the large hurdles to be dealt with is that the way the proposed Ordinance is written right now is that the site is exempt if from critical areas. He felt that that is a significant item that would be in the Master Plan amendment.

Mayor Harrington said that there are a number of significant items she felt that the proposed Ordinance is either silent about, such as the critical areas that need to be tightened a bit.

Mr. O'Brien said that, if adopted as written, it would be the only zone in the Township.....

Mr. Connor interjected that that was the reason he didn't want to get into going through the ordinance recommendations which he felt would have been premature. He added that he had a number of questions too, but we will get to the ordinance area in a few months and those questions can be worked out and some may become moot depending on what is recommended.

With regard to a time frame and some sort of action from the Board, Dr. Rae said that it seemed to him that we are talking about a lot of things that need to be done, however we now have a business owner who sounds to him to have made a very significant investment and having a time frame would certainly help him.

Mr. Connor agreed and said that the next meeting will likely have a discussion of the Valley Road Business District and some recommendations to come before the Board from the Subcommittee and he suspected that that will be a significant meeting. However, he agreed that the Board should get this turned around as quickly as possible.

Dr. Rae asked if the Board could commit to even a ball park time frame.

Mayor Harrington added, at least to know when we might schedule the next step.

Mr. O'Brien replied that the next meeting, if it is on Valley Road, will be our second meeting in October and the first meeting in November is open, which would be enough time for him.

Mrs. Wolfe said that the first meeting in November will be held on the 8th.

Mr. O'Brien said that the Board will have a discussion on a draft framework of a Master Plan amendment on that date.

Mr. Connor agreed. He added that it may result in that the Board may not want to do it – who knows?

Mr. Hoffman posed the question of whether it was envisioned that we are talking about an amendment or change to the Land Use Plan Element, or to the Recreational Element, to both, or perhaps other elements? He said that it may touch upon different aspects and different elements of the Master Plan.

Mayor Harrington felt that that should be a part of the discussion.

Mr. Connor said that the notation of the maps that are here was that a portion of the Land Use Map from was from the 1996 Master Plan, so it may well have come from there although he added that he was not certain.

Mr. O'Brien felt that you would have to start there and also include the other elements, but he said that the Land Use Plan is the basic framework.

Mr. O'Brien asked Mr. Harrison to provide him and Mr. Lemanowicz with copies of the exhibits he had presented this evening.

Mr. Connor said that we did not get the originals, only the revised.

Mr. O'Brien agreed that there were two and said that they would like to see both of them.

There being no further questions, the meeting adjourned at 10:50 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator