

**MINUTES**

**OCTOBER 14, 2014**

**PLANNING BOARD**

**LONG HILL TOWNSHIP**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

Chairwoman Dapkins called the meeting to order at 7:30 P.M. She 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, 2014.

**MEETING CUT-OFF**

Chairwoman Dapkins read the following statement: Announcement is made that as a matter of procedure, it is the intention of the Planning Board not to continue any matter past 10:30 P.M. at any Regular or Special Meeting of the Board unless a motion is passed by the members present to extend the meeting to a later specified cut-off time.

**CELL PHONES AND PAGERS**

Chairwoman Dapkins read the following statement: All in attendance are requested to turn off cell phones and pagers as they interfere with the court room taping mechanism.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

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

Excused:

Suzanne Dapkins, Vice-Chairman  
Brendan Rae, Mayor's Designee  
Ashish Moholkar, Member  
Guy Roshto, Member  
Gregory Aroneo, Member  
Timothy Wallisch, Member  
David Hands, 1<sup>st</sup> Alternate

Guy Piserchia, Mayor  
J. Alan Pfeil, Chairman

Kevin O'Brien, Bd. Planner  
Thomas Lemanowicz, Bd. Engineer  
Dan Bernstein, Bd. Attorney  
Cynthia Kiefer, Bd. Secretary

Ms. Kiefer advised Chairwoman Dapkins that she had a quorum and could proceed.

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

**APPROVAL OF MINUTES**

Dr. Rae moved approval of the minutes of the August 12, 2014 meeting. The motion was seconded by Mr. Wallisch and was unanimously approved by Voice Vote. Chairwoman Dapkins and Mr. Moholkar were ineligible to vote since they were not present at that meeting.

The minutes of September 9, 2014 were approved as written on motion by Committeeman Roshto and seconded by Mr. Hands. Chairwoman Dapkins, Dr. Rae and Mr. Wallisch were ineligible to vote since they were not present at that meeting.

**RESOLUTION OF MEMORIALIZATION**

1221 VALLEY ROAD LLC  
1221 Valley Road  
Block 10411, Lot 1

#14-02P  
Minor Site Plan, Dev. Permit  
Waiver, Bulk Variances

It was noted that the version of the resolution in front of the board members was not the most recent. The Board decided to defer action until the next break when Ms. Kiefer could retrieve the track changes document that would highlight the most recent revisions.

**PUBLIC COMMENT AND QUESTION PERIOD**

Chairwoman Dapkins asked if there were any questions or comments from the public on items not listed on the agenda. Seeing none, she closed the hearing to the public.

**PUBLIC HEARING (cont'd)**

RESTORE MEYERSVILLE LLC.  
596 Meyersville Road  
Block 14701, Lot 27

#14-01P  
Prelim/Final Site Plan,  
Dev. Permit

## PROOF OF SERVICE PROVIDED

Present: William Kaufman, Applicant  
John J. Delaney, Attorney for the Applicant  
Christian M. Kastrud, Engineer for the Applicant  
Gerard J. Legato, Attorney for Concerned Citizens of Meyersville

John J. Delaney, attorney with the law firm of **Lindabury, McCormick, Estabrook & Cooper**, Westfield and Summit, New Jersey, introduced himself and stated that he was representing the applicant. He noted that there was a new individual seated next to Mr. O'Brien, Board Planner, and asked his name.

Mr. O'Brien introduced Sam Liebman and explained that he was a planning student who graduated recently with honors from Rutgers University, The Bloustein School. He added that Mr. Liebman was simply an observer and would not participate in the hearing.

Mr. Bernstein stated that this was in effect a "redo" since there was an allegation of conflict. To clean the record, they had agreed to start anew. He added that he had spoken to Mr. Legato also. Mr. Bernstein said that they would be covering ground that they had covered before perhaps in a more summary form but as a result he wanted to swear in Mr. Kaufman and review the testimony with him.

Chairwoman Dapkins noted that she had viewed the DVD of the meeting that she had missed (August 12, 2014).

Mr. Delaney stated that, while he appreciated what Mr. Bernstein had said, he did not particularly agree with the allegation of conflict however he would proceed.

Mr. Bernstein swore in Mr. Kaufman.

Mr. Kaufman stated his address as 1932 Long Hill Road, Millington.

Mr. Delaney told Mr. Kaufman that they would be going over some ground both to get everything on the record again and also to refresh the Board's recollection. He asked Mr. Kaufman if he was a licensed architect in the State of New Jersey.

Mr. Kaufman responded that he was.

Mr. Delaney asked Mr. Kaufman if he had testified before many boards in the State of New Jersey.

Mr. Kaufman stated that he had.

Mr. Delaney asked if Mr. Kaufman was the architect of record for this application.

Mr. Kaufman stated that he was.

Mr. Delaney offered Mr. Kaufman as an expert witness and as a principal.

Chairwoman Dapkins stated that the Board would accept him as such.

Mr. Delaney asked, as the representative of the owner of the property, if Mr. Kaufman had previously submitted an application before this Board.

Mr. Kaufman answered that he had.

Mr. Delaney said that the process had started in April of 2013 with an Application Review Committee consisting of three (3) board members, the Board Engineer Mr. Lemanowicz, and the Board Planner Mr. O'Brien. He asked if Mr. Kaufman had participated in that process.

Mr. Kaufman answered that he had.

Mr. Delaney asked if Mr. Kaufman had presented two (2) distinctly different plans.

Mr. Kaufman answered that he had. One was a mixed use complex consisting of ten (10) apartments over retail. The second option was a volleyball facility similar to what was being presented in this application. That volleyball facility was identical to the one presented in the previous application.

Mr. Delaney asked which proposal the committee preferred.

Mr. Kaufman said that there had been a lot of discussion about both and that there had been little objection at that point from anybody. He felt that there was a tendency to lean towards the volleyball facility over the higher density residential over retail scheme.

Mr. Delaney asked if the issue of use was discussed at any of those meetings.

Mr. Kaufman answered that it was.

Mr. Delaney asked if Mr. O'Brien looked through the zoning ordinance and made a determination that the volleyball training facility was a permissible use under the Land Use Ordinance in Long Hill Township.

Mr. Kaufman answered that Mr. O'Brien had done so.

Mr. Delaney asked if Mr. Kaufman had taken that design and formed it into an application which was then presented to the zoning officer of Long Hill Township as part of a Site Plan Application.

Mr. Kaufman answered that he had.

Mr. Delaney asked if the township's zoning official concurred with Mr. O'Brien that the proposed facility was a permitted use.

Mr. Kaufman answered that he had.

Mr. Delaney asked if the zoning officer issued a Letter of Denial.

Mr. Kaufman answered that he had.

Mr. Delaney asked if the letter made any mention as to a use variance being required.

Mr. Kaufman answered that it did not.

Mr. Delaney asked if Mr. Kaufman had appeared before this Board in September of 2013 and presented professional testimony, exhibits, and experts as is customary for these types of applications.

Mr. Kaufman answered that he had.

Mr. Delaney asked how many months of hearings did the Planning Board hear this case.

Mr. Kaufman answered six (6) to seven (7) months.

Mr. Delaney asked if Mr. Kaufman had consulted with an independent professional planner in regards to this and the previous application.

Mr. Kaufman answered that he had.

Mr. Delaney asked if she had found the use based on the Municipal Land Use Ordinance to be permissible.

Mr. Kaufman answered that she had.

Mr. Delaney asked if she had provided testimony to that effect before this Board.

Mr. Kaufman answered that she had.

Mr. Delaney asked if members of this Board visited a similar operation currently being run by the proposed tenant to observe the traffic, the parking, and general activity of the facility.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if that application had been approved by this Board.

Mr. Kaufman said that it was not.

Mr. Delaney asked if a resolution was drafted and memorialized by this Board.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if use was ever mentioned as a condition of denial in this Board's resolution.

Mr. Kaufman answered, "No."

Mr. Delaney asked, following the denial of the first application, if Mr. Kaufman had made revisions to the plans based on the public comment, the Board's professionals, and the Planning Board members and submitted a revised application to the township within a relatively small period of time—two (2) weeks of the vote.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if this application being discussed tonight was similar to the one that was presented to this Board previously.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if it was the same type of facility.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if it was the same number of volleyball courts.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if it was the same use.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if it was the same tenants.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if the only changes made were based solely on the recommendations of this Board and in response to the public's comment.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if, at any time during these hearings for the previous application which was an identical use facility or in the preceding hearings, any Long Hill official, board member, Board Attorney, professional planner, or professional engineer, gave any indication that the proposed facility was not a permitted use.

Mr. Kaufman answered, "No."

Mr. Delaney asked if it was true that this Board denied the previous application despite, in Mr. Kaufman's view, the overwhelming and indisputable significant improvements to the site, the improved stormwater conditions, the substantial reduction in lot coverage, the limited low impact use proposed and the recommendations and endorsements of the police department, numerous members of the public who came out in support of the project, and others.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if the basis for denial was primarily the aesthetics of the structure, the size of the building, the lot coverage and the consideration that if in possibly some hypothetical use in the future this business were to fail, there might not be enough parking to satisfy the requirements of the town ordinance.

Mr. Kaufman answered that that was his understanding.

Mr. Bernstein stated that that was objectionable because the resolution spoke for itself. Everyone could read the resolution and if in fact it went to another body, that body would read that resolution. However, he allowed Mr. Kaufman to answer the question.

Mr. Kaufman said that from his understanding after reading the resolution and sitting through six (6) or seven (7) months of meetings, primarily the Board had concerns about the aesthetics of the building, the potential future use that could not be defined at that time, that possibly this Board had a responsibility towards future use and the amount of parking that was to be considered for that use, and lot and building coverage.

Mr. Delaney said that although this was a new application, it had emanated out the previous application.

Mr. Kaufman answered, "Yes."

Mr. Delaney said that unlike the old application, Mr. Kaufman was not seeking any variances.

Mr. Kaufman answered that that was correct. This application was not asking for any variances.

Mr. Delaney said that Mr. Kaufman had previously testified as the applicant, the applicant's representative, the architect, the landlord, and the planner for this application. He asked him to briefly give a summary of this application.

Mr. Kaufman said that he had listened over the course of the numerous applications and the better part of a year very carefully to everything the board members and their professionals outlined and suggested along with

comments from the public. The public had engineers that they had hired. He put all those comments back into the drawing board and reconfigured the new application which was before the Board. The new proposed building's footprint was reduced so that the building coverage variance was eliminated. The orientation was completely reconfigured based on the Board's comments and the public with respect to the perpendicular orientation of building to the street to lessen the visual impact. The previous application was parallel to the street. It was now turned so that the narrow side of the building faced the street. The structure was moved even further away from property lines even though it was not encroaching on the side yard setbacks. It further increased the side yard setbacks. The proposed building conformed to all the bulk requirements of the ordinance with respect to area, height, and setbacks.

Mr. Kaufman said that the building conformed architecturally to the ordinance's Design Standards as it related harmoniously to all the other buildings in Meyersville. At the previous meeting, he testified as to the specific materials and that he had pulled components from all the other buildings--materials, roof pitches, colonial details, windows, and proportion--in order to conform with the Design Standards so that it would relate harmoniously with all the other buildings in Meyersville. The proposed building contained specific elements such as the brick façade on the first floor, painted clapboard siding, colonial style shutters, and portions of the build which related directly to the blacksmith's shop which was referred to by the township's Historic Commission. The blacksmith's shop was located on the property immediately to the west and the Historic Commission made reference that this proposed building should relate in some way to that structure. He copied the actual material and the use of the shuttered closed windows on the new utility section, the gymnasium section, of the proposed facility. On the back it had the same stucco and the same closed window shutter details to reference that building and the Historic Commission's comments.

Mr. Kaufman added that a large landscape berm with evergreen plantings was designed to screen the parking entirely from the east property line even though there was only a small section of the property line to the east that actually neighbored a residential lot. That residential lot was not in a residential district; it was a non-conforming residential lot—it was too small, not a permitted use and had multiple driveways accessing Meyersville Road. He did not believe that there would be a long term future for that property however he wanted to respect that there was a residence there currently. In addition to the 25 foot required buffer, he added a substantial landscape berm in that area as well.

Mr. Kaufman continued and discussed the street trees. He said that the multiple mature Bradford Pear street trees along the face of the property would be preserved. He was adding more trees. There had been a lot of discussion with the planner and Shade Tree Commission with respect to the spacing of those trees and the sight lines. He felt that the property was now nicely appointed with street trees that were consistent with the neighborhood character.

Mr. Kaufman felt that the most important aspect of the application which had been overlooked was that currently this was an abandoned, dilapidated, defunct junkyard that would be greatly improved with the development of this new project. The property had been in that condition for many years and would remain that way unless something was constructed there. He felt that this represented a significant improvement. He reiterated that it would reduce the currently uncontrolled stormwater runoff from 57% or 58% to 40% with complete engineering controls and infiltration. The improvement would be undeniable from a mathematical engineering perspective and also from a theoretical common sense perspective.

Mr. Delaney said that Mr. Kaufman would be cleaning up an unsightly junkyard. He noted that there had been extensive testimony in the previous application and said all of that would be done under the supervision of professionals.

Mr. Kaufman said that that was correct.

Mr. Delaney said that it was his understanding that this facility would be similar to one in another town and that children were involved.

Mr. Kaufman answered yes. He then reiterated testimony that had been given indicating that the facility was primarily for children, mostly girls, from the ages of 11 to 18 years old. These children would be dropped off and picked up at the site. They would commence training and practicing in two (2) hours sessions and increments and then they would leave the site with a ride from a parent or carpool.

Mr. Delaney asked if the testimony that was just proffered came by way of the fact that Mr. Kaufman was a parent in the organization as well as the future landlord for the organization.

Mr. Kaufman answered that that was correct.

Mr. Delaney asked what the hours were for the drop offs and the operation.

Mr. Kaufman answered that the operation hours would be 9:00 a.m. to 10:00 p.m. seven (7) days each week. He noted that he was the architect for the facility and as such, had had countless hours of meetings with the owners, coaches and operators of the facility in order to create the most efficient design. He added that he had two (2) daughters in the program who had spent several years in this club travelling to the facility in Flemington. They practiced on different nights of the week so he had to drive to Flemington every day of the week including

Saturdays for almost two (2) years. He had experienced the operation every day of the week for the better part of two (2) years. He felt it was a simple business model. There were three (3) playing courts and each roster carried eight (8) to ten (10) players. Those players practiced in two (2) hour time intervals. Three (3) teams practiced at the same time. They might scrimmage each other. He noted that the word "scrimmage" had been loosely used by members of the public and other people not familiar with this facility so to clear that up, he said that scrimmages involved players already on site. They would not increase the amount of people that would come to the site or the numbers of alleged spectators. There would be no spectators because this would be a practice facility. Players from Court A would be mixed with players from Court B, sometimes different ages, sometimes different skill levels, to give them game-like opportunities to train. He felt that it was important to note that it was a very simple business model and that it had not changed during the course of this operation in over ten (10) years. It had been successful. The Flemington facility was used as an example although it was not an exact replica because it was a mixed use facility. However, he was able to carefully count and monitor the situation on a daily basis in Flemington in order formulate the most efficient design for this proposed facility.

Mr. Delaney asked, in terms of Mr. Kaufman's firsthand knowledge of the operation, if he could give an estimate of how many times he had visited the Flemington facility over the past two (2) years.

Mr. Kaufman answered that he had visited it well over 50 times.

Mr. Delaney asked what days of week had Mr. Kaufman visited the site.

Mr. Kaufman answered Monday, Tuesday, Wednesday, Thursday, Friday and Saturday. He noted that he had visited the site on a Sunday possibly twice for some summer activities.

Mr. Delaney asked if Mr. Kaufman arrived by car.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked, in those 50 visits, if Mr. Kaufman had ever witnessed any accidents in the parking lot.

Mr. Kaufman answered, "No."

Mr. Delaney asked if Mr. Kaufman had ever seen anybody injured.

Mr. Kaufman answered, "No."

Mr. Delaney asked if Mr. Kaufman was always able to find a parking space.

Mr. Kaufman answered, "Every time."

Mr. Delaney asked if Mr. Kaufman had ever heard any parent complain about parking or circulation issues on the site.

Mr. Kaufman answered, "No."

Mr. Delaney asked Mr. Kaufman if the owner of the facility, his future tenant, had ever given him any indication that the parking was inadequate at that facility and a cause for concern in the new facility.

Mr. Kaufman answered, "No."

Mr. Delaney said that he was aware that the application was just seeking Site Plan Approval however they did have a traffic expert, Mr. Karl A. Pehnke, testify. He asked Mr. Kaufman if he was familiar with Mr. Pehnke's report.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if Mr. Kaufman wanted to comment on the report's conclusions as they related to his personal experiences.

Mr. Kaufman said that the report had concluded that the facility would not require more than 24 spaces which included a factor of safety based on his professional engineering calculations and his observations when he visited the site. It seemed consistent with what Mr. Kaufman had experienced. Mr. Pehnke gave detailed descriptions in his report as to how people would be picked up and dropped off. Every time he mentioned it, Mr. Kaufman could envision himself as any one of those cars at any given time in that scenario. He felt it was very accurate.

Mr. Delaney asked, based upon Mr. Kaufman's firsthand knowledge and his opinion as a professional architect, if he concurred with Mr. Pehnke's findings that 24 spaces would be adequate for the proposed facility.

Mr. Kaufman answered, "Yes."

Mr. Delaney said that the original proposed plan for this application provided for 33 spaces which were almost 40% above what was required.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked, after carefully considering the comments from the public and the Board with respect to the potential future uses and special unforeseen events, if that number had been increased to 42 or 75% more than required.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if that was in addition to Mr. Pehnke's factor of safety.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked, in addition, based upon the feedback of the Board and its professionals and the comments raised from the public regarding the filtration basin, if Mr. Kaufman had eliminated the basin and replaced it with a large flat lawn area.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked, based upon Mr. Kaufman's knowledge of the site, if this area would be suitable for future parking for some hypothetical unforeseen use or emergency overflow should the need arise.

Mr. Kaufman answered that he believed it would.

Mr. Delaney said, with respect to the flat area, if Mr. Kaufman were a future owner with a desire to convert that lawn to parking, he would have to come before the Board for Site Plan Approval.

Mr. Kaufman said that he was aware of that.

Mr. Delaney asked if Mr. Kaufman agreed with that.

Mr. Kaufman answered, "Yes."

Mr. Delaney said, based on Mr. O'Brien's comments, did Mr. Kaufman also widen the drive aisle by over two feet (2') making the turning around easier and safer.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if Mr. Kaufman would like to comment on the Long Hill Township's police department report.

Mr. Kaufman said that the report was innocuous with respect to the parking and the circulation. The Police Chief supported Mr. Pehnke's testimony to the effect that there weren't any safety concerns with respect to the proposed design. The Police Chief added that he thought it would be a good place for kids to have a physical outlet.

Mr. Delaney asked Mr. Kaufman to comment on the number of homes in the Meyersville section.

Mr. Kaufman said that there were two (2) homes in Meyersville. There was a non-conforming single family home immediately to the east of the property and there was one across the street, the former trading post which was once a mixed use antique shop and residence on Hickory Tavern Road.

Mr. Delaney asked what Mr. Kaufman meant by "non-conforming"?

Mr. Kaufman answered that they were not permitted to be there by ordinance.

Mr. Delaney asked if Mr. Kaufman was talking about use.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked if there were any other violations.

Mr. Kaufman said that they were in violation with respect to the minimum lot size, setbacks, and some other bulk requirements.

Mr. Delaney asked how close was the nearest conforming house to the closest corner of the proposed new building.

Mr. Kaufman estimated about 500 feet away.

Mr. Delaney asked Mr. Kaufman, in his opinion as an architect, would there be any chance that a person could hear noise emanating from the proposed facility from the closest conforming residential property.

Mr. Kaufman answered, "No."

Mr. Delaney asked Mr. Kaufman, as a parent.

Mr. Kaufman answered, "No."

Mr. Delaney asked Mr. Kaufman, with his knowledge of the organization and its activities.

Mr. Kaufman answered, "No."

Mr. Delaney noted skepticism from the audience and asked Mr. Kaufman how he could be sure.

Mr. Kaufman said that first of all, the noise level in the building when it was in full operation was estimated to be within 60 to 80 decibels. As he had testified previously, the STC (Sound Transmission Class Rate) of a steel structure with stucco exterior and insulation would be around 50. Therefore the ambient noise level outside of the building in Meyersville which was the average noise measured with a sound meter during several days and times, ranged between 65 dB and 90 dB. That noise came from cars driving by, wind blowing in trees, birds chirping, electric fans and air conditioners from local buildings, and other nondescript sounds. If some noise were to somehow escape through an open door or window, the sound level would be inaudible 500 feet away. In fact, the noise level just outside the building would be less than that of a regular human conversation. Sound levels that low could not travel to any part of the property line. It was an engineering impossibility. Mr. Kaufman said that if he were to yell as loudly as he could this evening, to think that someone in their home 500 feet from this building could hear it would not be a logical assumption even if the windows or doors were open. It certainly would not exceed the decibel rating in the township's ordinance. He did not think it was a logical inference. It did not make any engineering or mathematical sense given the construction of the proposed building and the type of activity.

Mr. Delaney asked Mr. Kaufman, based on the information provided to Mr. Kaufman by the Long Hill Township officials, if it was his understanding that this Board would determine the parking requirements for the proposed project.

Mr. Kaufman answered, "Yes."

Mr. Delaney asked Mr. Kaufman, as a parent and a professional, if he felt the parking was more than sufficient.

Mr. Kaufman answered, "Yes."

Mr. Delaney said that the Board had hired an attorney by the name of Gerry Legato (*sic*). He had been before the Board arguing about a variance for parking. He asked Mr. Kaufman to comment.

Mr. Kaufman said that Mr. Legato was attempting to make a few arguments with respect to different sections of the ordinance. He did not agree with any of Mr. Legato's assessments but mostly with respect to determining the jurisdiction of the parking. Mr. Kaufman felt if common sense was applied, it would come out. He thought that Mr. Legato was confusing the distinct sections of the ordinance that had to do with use and design standards. He felt it was evident to everyone that fitness clubs were a permitted use in the Meyersville Hamlet Zone under Section 122.11.2 which specifically stated that. In Section 123 of the ordinance, other uses specifically prohibited were listed. Volleyball, fitness, or training centers or anything remotely similar to those, were not listed under that section. For the two (2) years that he had been going through this, since April of 2013, he had made it abundantly clear through testimony of professionals and witnesses that the volleyball training center was similar to fitness and that there were many different types of fitnesses. He had discussed that in length and that he believed that a volleyball training center was similar to fitness. He noted that at a previous hearing, Mr. Legato had concurred with that statement.

Mr. Kaufman said that the second issue was the one of parking. In his interpretation of the ordinance, parking was regulated in the Design Standards section which was 151.1.c. When reviewing the parking requirements, the activities surrounding that use were most clearly similar to recreation. The fitness use being proposed was specific to court space and the amount of people using those courts would be limited by the type of activity not the size of the building. The ordinance did not specify, in this section, outdoor recreation. It used the term "recreation" but did not specify "outdoor recreation". He felt that the attorneys were very careful about the words being used when writing ordinances. Words that were relevant would not be accidentally omitted when trying to define a definition. Therefore, he felt it was implicit that the word "recreation" could mean something different and "outdoor recreation" would not be the same as "indoor recreation".

Mr. Delaney asked Mr. Kaufman about a common sense reading of the ordinance.

Mr. Kaufman answered with an example. If a tennis training facility was being proposed in this exact same space, one (1) tennis court would fit in the same space that three (3) volleyball courts fit. The most people possible on a tennis court during any type of regulated activity would be four (4). Adding a trainer and a coach and a couple of others would boost the number to ten (10) people. Based on the logic that somehow this was linked to square footages, Mr. Legato might have everyone believe that the tennis requirement with those ten (10) people would have the same parking requirement as a Walgreen's which would be unlimited, unfettered access from the public



into the retail space. He felt that this was where logic and common sense had to be applied. Why would anyone relate a Walgreen's to a training facility with a court in it that had a limited number of people. He felt it was very clear in the ordinance that that was the opposite of what he was proposing which was a very regulated use of the courts. There was control over the number of people coming in and out, control over the number of people in the building. If for some reason the facility were to grow as has been suggested, he still would not be able to put more people on the court and train them properly. The activity would be limited based on the limitations of the structure and the parking. If the parking became an issue, he would say that there could not be any more people. He felt that the authors of the ordinance properly and conscientiously inserted semi-colons instead of commas which was discussed at a previous meeting. He noted that there was a semi-colon in that section between the words "health and fitness centers" and "retail trade services". It was a distinct grammatical separator. There were commas used in this same sentence and there were semi-colons. The reason why this held water in terms of definition was because the ordinance didn't just stop there. The ordinance had a section with definitions: Section 111 "General Terms". In that section, retail trade service was defined. He felt it was not a coincidence that "fitness" was absent from that definition. He added that fitness centers were not a part of the definition of retail trade service because there was no logical connection between the two uses. That was why it was separate and why there was a separate definition in the definition section of the ordinance. He noted that this was his interpretation based on having read hundreds of ordinances. The ordinance clearly defined retail trade services as separately and distinctly from fitness and this was why the ordinance had granted the discretion over the amount of parking to the approving authority. It wasn't the only thing that the boards had discretion over. There were multiple uses in the ordinance where the boards had discretion over parking and he felt this was extremely relevant to what was being discussed because tennis would need a different amount of parking than basketball which was different than baseball which was different than indoor soccer which was different than racquetball. All of them were different from volleyball. To Mr. Kaufman, it made perfect sense that the Board would have to listen to the testimony of the tenant or the occupant or the applicant and make a decision based on that testimony.

Mr. Delaney asked if Mr. Kaufman, as the applicant, the professional, and a parent, strongly believed that the proposed parking would be more than adequate.

Mr. Kaufman answered, "Yes." He added that this was good planning practice. It was precisely what would prevent the unnecessary and irresponsible overbuilding of unused parking spaces. He said that parking contributed directly to site water runoff and stormwater and ultimately flooding resulting from over paving. The authors of the ordinance knew that there was no need for that and wrote in clear definitions. He had done his best to be convincing in the argument that he had provided more than adequate parking. Even potential future uses would have an opportunity to expand should this use become defunct.

Mr. Delaney stated that the applicant's professional engineer, Christian M. Kastrud, was present to testify as to the engineering in the new revised plans.

Mr. Delaney asked if Mr. Kaufman wanted to add anything further to his testimony.

Mr. Kaufman said that in recent reports from Mr. O'Brien, there were several comments one of which had to do with the location of the trash enclosure. The only real change on the architectural plans was that the trash enclosure had been relocated further north on the site away from the street based on Mr. O'Brien's suggestion.

Mr. Kaufman said there was a second comment in the report which related to the covering of the trash enclosure with a roof and an awning had been added. These were the only two (2) changes made to architectural drawings that were resubmitted to the Board from his previous testimony.

Mr. Kaufman also wanted to mention that this process had gone a little differently from the previous other processes insofar as he had attempted to work "sort of offline" with the Board professionals to try to "check all the boxes" for a lot of the issues that were raised. There was a meeting a couple weeks ago with Mr. O'Brien, Mr. Kastrud, and Mr. Lemanowicz. Several items were discussed and on the architectural side, all of them had been resolved. Mr. Kastrud was going to testify as to the latest report issued by Mr. Lemanowicz and he believed that they had hit all the major items there as well.

Mr. Delaney offered Mr. Kaufman to the Chair as a witness.

Mr. Wallisch asked if there were 45 parking spots on the current design.

Mr. Kaufman answered that there were 41 spots.

Mr. Wallisch asked if the original thought was that 24 plus some spares would be adequate.

Mr. Kaufman answered that 24 plus some spares would be adequate. There were 33. After hearing feedback and comments from the Board, a few more spaces were added because the detention basin was placed underneath the parking area and that area required pervious pavement by design. That enabled him to add a few more spaces. He noted that Mr. Bernstein had made comments at the last meeting about what might happen down the road if this facility were to change hands or another owner were to come through. He wanted to make sure he had adequate parking for not just this facility but if there was a special event or something not discussed that evening and five (5) or ten (10) more people showed up or some of the spaces were snow-covered, there would be an ample factor of safety.

Mr. Wallisch asked if 41 spaces were placed there because that's what would fit.

Mr. Kaufman answered that he could have squeezed more on the site but at some point it became irresponsible because he did not want to over pave for the sake of over paving. He could have added more but he felt that he was at a place where he had shown that there was more than enough for what was needed and there was a flat area of lawn that could be used in an event of an emergency. Ultimately, he could come back with another application to add more spaces.

Mr. Moholkar asked if Mr. Kaufman had stayed at the Flemington facility when he drove his children there.

Mr. Kaufman said if it was a Monday night, he would go to the Appleby's down the road and watch the football game. If it was a night that he only had to drive one direction which was often the case because he would carpool with four (4) girls, he dropped them and came home. Someone else would pick them up at 11:00 at night. He did a little of both. There were times in the two (2) years when he had stayed for no more than one (1) or two (2) practices because it was really boring. There was not a lot going on there that a parent could get out of it. His wife would take the opportunity to go shopping when it was her turn.

Mr. Moholkar asked if this was typical of the other parents.

Mr. Kaufman said that in the Flemington facility there was a small bleacher area. He had never seen more than one (1) or two (2) people sitting there at any given time except when the kids came off to change their shoes to leave. There might be a couple of girls sitting on the bleacher but they were not spectating. They were getting ready to go.

Mr. Moholkar asked how far away from the facility was the Appleby's Mr. Kaufman had mentioned.

Mr. Kaufman answered that it was about a mile or a mile-and-a-half away. Right off of Route 31 there was a cluster of different activities and shopping things.

Mr. Aroneo said, for the record he knew that he had questioned at one of the hearings, in terms of the Board's acceptance, without any deliberation of the accepted use of fitness center, health club, why Mr. Kaufman had called this a fitness center in his application as opposed to something else like a recreational facility.

Mr. Kaufman said that that was what it was. It was closely related to a fitness center by looking at what was listed in the ordinance. He wanted to find the thing that most closely related to the activity because in an ordinance design, one could not conceivably list every possible business. There were categories. This was a fitness training center that was specific to a sport. The times had changed faster than the ordinances. People train for all kinds of things that have to do with fitness. To him that was why fitness made the most sense. Had it been an arena or some kind of a stadium, he would not have classified that way because clearly it would be a different use. Clearly though that was what would go on in this facility—people would be coming to train because competitions would be off site.

Mr. Aroneo asked during the times when no players were scheduled to be there, would they be able to come in and use the facility at their will and leisure and use the equipment.

Mr. Kaufman said there was no equipment. There would be three (3) nets set up and some jumping and training aids but they would be used with the teams and at the times scheduled for practice. There would be no room for them to do anything else. They could come a few minutes earlier to stretch and stay a few minutes later but there would be no opportunity for them to do anything else on this site.

Mr. Aroneo said that his impression of a fitness center/health club was something where someone had a membership. They would pull in, work out for a half hour or an hour, take a shower, go back to work, and go on with their day. This wasn't that, in his opinion. He noted that Mr. Kaufman had referenced the general definitions and terms in the ordinance. It was not part of retail trade and service. He asked if the ordinance actually described what the Township Committee at the time thought was the definition of a fitness center.

Mr. Kaufman answered that it did not describe what a fitness center was. His point was that in the Design Standards section or Use section (he noted that he might be confusing them) it clearly distinguished between fitness and health facilities *and* retail trade services. It further went on to define retail trade services therefore those two should not be linked together because the ordinance defined them in two (2) different places.

Mr. Aroneo referenced the New Jersey regulations on health clubs [NJS 13:45A-25.1 a) 1)]. He quoted Section "B" which said, "The term 'Health Club' shall not include a single focus establishment/facility that is devoted to the development of one particular physical skill or activity or enjoyment of one specific sport." He noted that the proposed facility was devoted to the development and training of one particular sport, volleyball.

Mr. Kaufman agreed.

Mr. Aroneo said that that differed at least in the New Jersey—

Mr. Kaufman said that that was the definition of "health club" not "fitness".

Mr. Aroneo asked if it was more similar to a health club or more similar to a volleyball facility.

Mr. Kaufman said that "volleyball facility" was not listed. "Fitness center" was listed and he felt it was more closely related to fitness. He said that at some point it came down to semantics. He applied the proposed use with the common sense language of the ordinance and then decided whether or not it made sense. For two (2) years they had gone under the impression that it was an accepted use. The Board had accepted it. The planner had accepted it and endorsed it in his report. The attorney had accepted it. All these people wouldn't just be arbitrarily applying it just because he, Mr. Kaufman, had said it. It made sense because it was logical and it followed the stream of—

Committeeman Roshto asked if the facility that Mr. Kaufman had visited more than 50 times in the past two (2) years had a shared parking lot.

Mr. Kaufman answered yes.

Mr. Hands asked Mr. O'Brien about the original zoning application. He asked how detailed the application was about the proposed use. Were there plans or was it just stated as a fitness center?

Mr. O'Brien said that the application asked what use was proposed and in this case the use listed was "fitness center".

Mr. Hands said that the board members had heard it had gone before the zoning officer first.

Mr. O'Brien said that the zoning officer reviewed all applications for development for conformance with the zoning ordinance.

Mr. Hands asked how detailed was that discussion or application or documentation.

Mr. O'Brien answered that it was a letter prepared by the zoning officer either accepting and passing and application or denying the application.

Mr. Hands asked how detailed that application was. He wanted to know if it was similar to the one in front of the board members.

Mr. O'Brien answered that it was the same as the one that was part of the file on the application in which the zoning officer found that this applicant needed to apply for Site Plan Approval.

Mr. Hands said, "Because...?"

Mr. O'Brien answered because he based it upon his interpretation that this was an allowed use and that site plan was required because site plan was required for all commercial activities.

Mr. Hands asked if his understanding of it was that it was simply a statement of "fitness center". At that point in time, did the application detail the size or use other than just "fitness center"?

Mr. O'Brien said that he could not speak for the zoning officer but he could say that the application before the zoning officer consisted of the township form as well as a statement of principal points or an addendum to the application by the applicant which laid out the basis of the application.

Mr. Hands asked the same question of Mr. Kaufman.

Mr. Kaufman answered that there were paragraphs or statements of points where the activities were listed for the facility and most of the things discussed were in an abbreviated form.

Mr. Hands asked if that person would have had a clear understanding of the purpose.

Mr. Kaufman answered yes. He added that if there was a question, normally the zoning officer would call to ask. He did not recall the exact language in the application however there were areas to fill out what the proposed use was going to be. That information was taken from his preliminary hearings with the Application Review Committee that had happened several months prior. It had always been consistent. He had not tried to manipulate any words or change anything to lean it in one way or another. This was what had been proposed from Day One.

Mr. Delaney asked if Mr. Kaufman had ever met with the zoning officer.

Mr. Kaufman answered that he did not recall.

Mr. Lemanowicz referred to Mr. Kaufman's earlier comments that he had taken sound readings on site. He asked if that information had been reduced to a report that could be reviewed.

Mr. Kaufman answered no. He had taken sound readings from a device that was part of a mobile phone—average decibel readings—for his own use. There were no official sound readings. They were for his use when compiling the data for the logic stream. There was no direct calculation for every material. It was a class rating for the building. Give or take a margin of error of 5% to 10%, it would be pretty accurate.

Gerald Legato, attorney with the *Legato Law Firm LLC*, Somerville, New Jersey, introduced himself as the attorney for “Concerned Citizens of Meyersville”. He asked if Mr. Kaufman recalled Mr. Bernstein’s resolution which was voted upon by this Board. He indicated that he was doing this from memory and believed that Mr. Bernstein had opined that this Board, as it went through the application, might discover that the use was not the applicable use and would pass judgment at that time. He asked if Mr. Kaufman recalled such a statement.

Mr. Delaney stated that he would not let the witness answer the question unless Mr. Legato could produce the resolution.

Mr. Bernstein produced a copy signed by Mrs. Dawn Wolfe, Planning and Zoning Administrator.

Mr. Legato stated that it would take him a few minutes to find the statement in the resolution. Mr. Bernstein offered to find it while Mr. Legato asked other questions.

Mr. Legato agreed. He asked Mr. Kaufman if he was an acoustical engineer.

Mr. Kaufman answered that he was not.

Mr. Legato asked if Mr. Kaufman was an engineer at all.

Mr. Kaufman answered that he was not. He was an architect.

Mr. Legato said that all the testimony Mr. Kaufman had just given was just his opinion as a layman.

Mr. Kaufman said it was his professional opinion as a professional architect. He added that architects deal with sound transmissions through building walls on a regular basis and as an architect; he was trained to do so.

Mr. Legato asked Mr. Kaufman why he felt this Board had complete discretion to set the number of parking spaces for this facility.

Mr. Delaney asked Mr. Bernstein if that was an appropriate question. Mr. Bernstein felt that it was appropriate since Mr. Kaufman, as an architect, had analyzed zoning ordinances and answered the questions that Mr. Delaney had framed for him cogently. He didn’t think that because Mr. Legato was asking them, Mr. Kaufman’s mind would freeze.

Mr. Delaney stated that he felt that it had already been answered.

Mr. Legato said that he could be more specific. Off street parking was set in the ordinance in Table 151.1(c). He handed Mr. Kaufman a copy and noted that there were just a few areas where the Board had complete discretion. On page 2, “Open Space and Recreation”, “Other Public Uses as determined by the Approving Authority” and “Public Utilities and Institutions as determined by the Approving Authority” were the only ones he could find where the number of spaces was discretionary. He noted that Mr. Kaufman had said earlier that the number of spaces was *often* discretionary. In many many applications the Board was able to set their own number as they saw fit on an ad hoc basis.

Mr. Kaufman noted that Mr. Legato had skipped over agricultural uses which also said “As determined by Approving Authority”. He noted that it was located on the first page under 151.1(c), the second use listed was “Agricultural Uses” and it said “as approved—”

Mr. Legato said that he had missed that one.

Mr. Legato asked which one Mr. Kaufman felt that this application qualified for.

Mr. Kaufman answered that he had already stated for the record earlier that this application would fall under the “Recreation” segment of this. He then stated to Mr. Legato that he wanted to make it clear that he was not the one who determined this. He was simply offering his suggestion as to why he believed the Board and its professionals chose that. He did not get to make the determination as the applicant or the architect. He simply read the ordinance, did his own interpretation, designed accordingly, and presented the facts to the professionals that were on the other side. In this case, this was what the Board had determined and what its professionals had determined. He agreed with it.

Mr. Legato asked what the Board had determined.

Mr. Kaufman answered that they had jurisdiction over the amount of parking spaces.

Mr. Legato asked when the Board had made that determination.

Mr. Kaufman said that he believed it had been stated in Mr. O'Brien's report that the Board had the final say as the approving authority.

Mr. Legato disagreed. He said that it said the Board must decide how many parking spaces in accordance with 151.1(c). He was sure that that was what Mr. O'Brien had said.

Both agreed to ask Mr. O'Brien what his report had said.

Mr. Bernstein swore in both Mr. O'Brien and Mr. Lemanowicz. He asked Mr. O'Brien if he was the Planner for the Zoning Board and the Planning Board.

Mr. O'Brien responded that he was.

Mr. Bernstein asked Mr. Lemanowicz if he was the Engineer for the Zoning Board and the Planning Board.

Mr. Lemanowicz responded that he was.

Mr. Bernstein asked both if they had reviewed all the applications for both boards.

Both Mr. O'Brien and Mr. Lemanowicz responded that they had.

Mr. Legato asked Mr. O'Brien, if in his latest report to the Board, he could tell them what he had said about the Board's need to set the number of parking spaces.

Mr. O'Brien answered that on page 7, Item E "Open Items", No. 1 stated, "Board to set parking requirements."

Mr. Legato asked if Mr. O'Brien meant that the Board might do that ad hoc or did he mean that it had to be done in conformity with Section 151.1(c).

Mr. O'Brien said that Section 151.1(c) stated that in "Open Space and Recreation Uses" the parking was "as determined by Approving Authority" therefore it was this Board's determination as to how much parking would be required for its use.

Mr. Legato said, "If, indeed, it is Open Space and Recreation". He asked if that was correct.

Mr. O'Brien said yes.

Mr. Legato asked if it was a "Retail Service Provider", what the parking requirements would be.

Mr. O'Brien answered that it was one (1) per 200 square feet of floor area.

Mr. Legato asked if "Open Space and Recreation" was defined anywhere in the statute.

Mr. O'Brien said that "Open Space" was defined but not "Recreation".

Mr. Legato asked how "Open Space" was defined.

Mr. O'Brien answered that it was found in Section 111 of the Ordinance. On page 21.1 the term "Open Space Use" was defined as "any use of open space for park or open un-roofed recreational purposes, conservation of land, or other natural resources for historic or scenic purposes".

Mr. Legato thanked Mr. O'Brien and asked Mr. Kaufman if it was his opinion that his facility fell under the definition of "Open Space".

Mr. Kaufman answered no.

Mr. Legato asked why.

Mr. Kaufman answered because it specifically stated "un-roofed" facility. This was a roofed facility. He felt that it did fall under "Recreation".

Mr. Legato asked if it was a recreational activity.

Mr. Kaufman said it was.

Mr. Legato asked if it was *primarily* a recreational activity.

Mr. Kaufman said that he felt that they had been through this.

Mr. Legato asked Mr. Kaufman if it was his position that his proposed facility qualified for treatment as to parking as "Open Space and Recreation" primarily because it was a recreational facility.

Mr. Kaufman said that it was his position that he agreed with the determination of the Board's professionals that this Board had jurisdiction over the parking because in the definition that was just read back, clearly recreation was separate and distinct from open space because open space was delineated under the definition as an "un-roofed" activity; recreation was something different. It was different with respect to parking and he noted that he had made that argument earlier when he finished his testimony with Mr. Delaney. He had explained quite clearly what his position was, and that he agreed that the recreation part of the fitness use was what determined the parking.

Mr. Legato referred to the first application which had been declined and asked Mr. Kaufman how he had listed the use.

Mr. Kaufman said that he did not recall.

Mr. Legato asked if it would be fair to say that it was listed as "Recreation, Health Club and Fitness Center".

Mr. Kaufman said that he did not recall.

Mr. Bernstein asked if Mr. Legato had a copy of that application to expedite the questioning. He then noted that he had the section of the resolution which discussed use and parking. There was discussion between Mr. Legato and Mr. Bernstein as to whether or not that was what Mr. Legato was referring to.

Mr. Legato referred to the Board minutes from October 8, 2013. He noted that Mr. Kaufman had said, according to the minutes, "Meyersville has become a hub for recreation and although there was a lot of vehicular traffic it was not a prime retail or other type of commercial use location." He said Mr. Kaufman felt that an academy was an appropriate use. He added that Mr. Kaufman apologized for the confusion caused by listing multiple uses in the application. He further noted that Mr. Kaufman stated that the words "fitness, health club, and recreation" came directly from the ordinance and that Mr. Kaufman felt that they were similar uses, not compound uses, because it was all centered on volleyball. Mr. Legato asked Mr. Kaufman if he listed three (3) uses on the application at that time.

Mr. Delaney asked Mr. Bernstein where they were going with questions about the previous application.

Mr. Bernstein asked Mr. Legato to read what the application said to Mr. Kaufman.

Mr. Legato said that he did not have the application handy.

Mr. Bernstein asked if the first application was framed in terms of fitness facility while mentioning volleyball.

Mr. Kaufman answered yes.

Mr. Legato said that he did not think that that was what it said. He thought it said for use "recreation—"

Mr. Bernstein said that if Mr. Legato did not have—

Mr. Legato said that he did not have it and Mr. Kaufman could not remember so it was a moot point.

Mr. Legato asked how the use was listed in the second application.

Mr. Kaufman said he believed that it was listed as a fitness center and that he had been instructed to clarify it a bit further because there were two (2) uses in the same category—health and fitness centers. He felt it was more closely related to fitness center.

Mr. Legato said that if it was a fitness center, he wanted to discuss parking. He said that Mr. Kaufman maintained that the fitness center was a recreational facility with **respect to parking**.

Mr. Kaufman said he believed that that was what he had stated ten (10) minutes earlier.

Mr. Legato asked if Mr. Kaufman maintained that it was a recreational use for anything else other than parking.

Mr. Kaufman said he did not understand what Mr. Legato meant.

Mr. Legato asked if it was best characterized as a recreational facility.

Mr. Kaufman answered that it was indoor recreation.

Mr. Legato clarified, "Other than parking."

Mr. Kaufman answered again that it was indoor recreation. It was a volleyball fitness training facility. He felt he could not be clearer. He reiterated that he was not the one who determined the use and he was not the one who

determined the interpretation of the use or the parking. He was simply concurring with his own reasoning as to why and how the Board had jurisdiction.

Mr. Legato said that the reason he was troubled was because recreation was not an approved use in the Meyersville zone, which he felt Mr. Kaufman already knew.

Mr. Kaufman said that he did not believe that was correct. He felt that **outdoor** recreation was not a permitted use. He said that it was specifically stated in the ordinance that **outdoor** recreation was not a permitted use.

Mr. Legato asked if Mr. Kaufman felt that that was the difference.

Mr. Kaufman felt it was clear that there was a difference between indoor and outdoor recreation.

Mr. Legato asked if Mr. Kaufman felt that indoor recreation was an approved use in the Meyersville zone.

Mr. Kaufman said that fitness was a permitted use in the Meyersville Hamlet Zone.

Mr. Legato said that that went back to fitness. He asked what happened to recreation. He asked Mr. Kaufman if he was aware of the fact that recreation was not an approved use in the Meyersville zone.

Mr. Kaufman said that he had answered that question by saying no because outdoor recreation was not permitted. He felt that Mr. Legato was making up a new term.

Mr. Legato asked what Mr. Kaufman was basing that on.

Mr. Kaufman answered that he was basing it on the definition.

Mr. Legato asked, "The definition of what?"

Chairwoman Dapkins interjected that she felt they were getting nowhere. Both were repeating the same things.

Mr. Delaney agreed and thanked the Chair.

Mr. Bernstein asked Mr. Legato to finish with Mr. Kaufman because he felt that there were other people in the audience. After that, Mr. Legato would have a shot at Mr. O'Brien. He said that everyone understood Mr. Legato's position and Mr. Kaufman's position.

Mr. Legato said that Mr. Bernstein had written in the memorialization resolution that the proposed use for the first application was "indoor recreation, health club, fitness training center". He asked if Mr. Kaufman recalled that that was the use listed on the first application.

Mr. Kaufman said that he would defer to Mr. Legato. If that was what it said, he would not deny it. He simply didn't recall--

Mr. Legato interrupted saying that for some reason it had gone from indoor recreation—

Mr. Kaufman interrupted and asked to be able to finish his answer. Mr. Bernstein agreed. He said that if Mr. Legato was reading from the resolution, he would take Mr. Legato's word that it was an accurate reading.

Mr. Legato asked why Mr. Kaufman changed it and why did he eliminate "recreation and health club" and make it just a "fitness training center" on the second application?

Mr. Kaufman said that he did not change it. He had refined and made it shorter so that it would be easier and less to interpret.

Mr. Legato said that he was finished with Mr. Kaufman. He asked Mr. O'Brien if recreation was one of the approved uses in the Meyersville Hamlet Zone.

Mr. O'Brien answered that the Meyersville Hamlet Zone which was listed in Section 122.11 of the Ordinance, listed nine (9) permitted primary uses and among them were "...health clubs, fitness centers, as well any other use in the opinion of the Approving Authority primarily intended...is substantially similar to those identified in this subsection." He said that the word "recreation" was not listed.

Mr. Legato asked if it said that any use not specifically approved was expressly prohibited.

Mr. O'Brien said that that was correct.

Mr. Legato asked if he was right to conclude that, if this was primarily a recreational use it was not an approved use and was specifically rejected.

Mr. O'Brien said that the applicant had placed an application with this Board under the heading of a "fitness center". That application was allowed by the zoning officer to come to this Board for Site Plan Approval. This Board had been treating it as a permitted use under those definitions.

Mr. Legato said that he understood that; however if this Board concluded that this was primarily a recreational use, would it preclude it from being approved in the Meyersville zone?

Mr. O'Brien said that he was unsure that this Board would make any determination as to a use. He looked to Mr. Bernstein for advice since the application was before the Board for Site Plan Approval. If it was before the Zoning Board of Adjustment for an interpretation or appeal or use variance, they would make a determination of use. He said that in reference to Mr. Legato's question concerning a determination of use, he was not sure if it was properly before this Board.

Mr. Legato asked if Mr. O'Brien was directing the question to Mr. Bernstein.

Mr. O'Brien said he was looking to Mr. Bernstein for guidance.

Mr. Delaney interjected that there had been no appeal filed to the Zoning Board.

Mr. Bernstein said that the zoning officer had made a determination and no one had appealed it. The better course would have been within 20 days of the zoning officer's decision to have filed an appeal. That was the statutory period with the Board of Adjustment under 40:55D-70a. He felt it was an interesting question as to whether, at this stage, it could be raised. It was an issue that ideally would have been before the Board of Adjustment. They had not heard it. He spoke to the zoning officer who stated that he had relied on the Moskowitz book (The Latest Illustrated Book of Development Definitions). He had sent both attorneys a letter to that effect. The Moskowitz book defined fitness center as a number of uses, one of which was "courts" and from that the zoning officer made a determination. The Board would hear the entire application and possibly the attorneys might submit memos as to whether the Board at this stage had jurisdiction entertain whether it was a permitted use or not.

Mr. Legato asked if the Board, at any stage, had that jurisdiction assuming that the 20 day appeal period had passed.

Mr. Bernstein said that there were questions about that. He left it to the attorneys to write short memos as to whether this was before the right Board.

Mr. Legato said that that was not what he had in mind. He had a narrower question: Could this Board decide, at this stage, that this was not an approved use.

Mr. Bernstein said if there were ten (10) judges, not all would agree.

Mr. Delaney said, for the record, that the appropriate course of action would have been to take an appeal within the appropriate timeframe to the Zoning Board. He said that he had just concluded a case in Chatham Borough—

Mr. Legato asked if it was a published case.

Mr. Delaney said it was a public case, but not a published one.

Mr. Legato stated that if it wasn't published, it was not persuasive here.

Mr. Delaney said that his client had gotten approval to install a generator. A neighbor was very upset. The zoning officer had issued 125 similar permits. An appeal was filed at 19 days. The Board made the decision that the zoning officer had made the decision. This would have been the appropriate procedure for this issue. He felt to raise this at the "23<sup>rd</sup>" hour was preposterous.

Mr. Bernstein asked the attorneys to write memos before the Board made its determination.

Mr. Legato asked if, right now, this was an open question.

Mr. Bernstein answered that it was.

Mr. Legato said that in the resolution, Mr. Bernstein said that (a) that the Board had said, "If the proposed use was considered 'Open Space and Recreation' the amount of parking was 'as determined by the approving authority'".

Mr. Bernstein said there was a question as to whether it was "Open Space and Recreation" or was it "Retail Service". Mr. Legato had argued that it was a "Retail Service" of five (5) spaces per 1000. The applicant had argued that it was "Recreation" as determined by the Board.

Mr. Legato asked Mr. O'Brien, if it was a recreational facility, would it be an approved use in the Meyersville Hamlet. He added that this was a hypothetical question since there was an open question as to the use.



Mr. O'Brien answered that the recreational use was not listed under the permitted primary uses. The use that had been cited by the applicant, fitness center as well as health club, were both listed as permitted primary uses. He noted that Mr. Bernstein had pointed out the Moskowitz reference book (Latest Illustrated Book of Development Definitions) which defined health clubs and fitness centers. Using the fitness center definition, as Mr. Bernstein had said the zoning officer had used, he would have found that under the term "fitness center" on page 158 of the 2004 edition, was defined as "see health club". Health club was defined on page 185 as "an establishment that provides facilities for aerobic exercises, running and jogging, exercise equipment, game courts, swimming facilities, and saunas, showers, massage rooms, and lockers." It was followed by a comment, "health clubs may also include eating facilities and shops selling a variety of sports equipment and clothing. Instruction programs, aerobic classes, and weight control programs may be offered. Clubs are usually open only to members and their guests."

Mr. Legato asked if that particular definition rang any bells for Mr. O'Brien regarding his advice to the Planning Board in 2008 when Mr. O'Brien did his research on parking and he listed in his report a series of actions that were taken back in 2008.

Mr. Delaney objected because he felt that they were going far afield.

Mr. Bernstein said that he was not sure that when they went back to 2008, they were "striking any gold". He said the ordinance was what it was today and he felt that they had gone as far as they were going to go.

Mr. Legato felt it was crucial that this issue be discussed.

Mr. Bernstein said that he had told Mr. Legato that he would have an opportunity to speak. He could not get everything on cross examination. Mr. Bernstein felt that they were not making any progress.

Mr. Legato asked for three (3) more minutes and Mr. Bernstein agreed.

Mr. Hands asked Mr. O'Brien to repeat the definition of health and fitness club. He wanted to know if it inferred a single use or inferred that many of those uses must exist together to be classified a health club.

Mr. Bernstein asked Mr. O'Brien if that was the newest book and Mr. O'Brien said that it was.

Mr. O'Brien reread the definitions. He said the uses listed were distinct and all could go on in one facility or just one in a facility.

Committeeman Roshto said that according to that definition, it was synonymous with a health club.

Mr. O'Brien said that it did use the term "game courts". Fitness center said "see health club" and "health club" had "game courts". He noted that they were synonyms in that book.

Committeeman Roshto said that he felt that everyone knew what a health club was and asked that they move on from this.

Chairwoman Dapkins asked Mr. Legato to proceed.

Mr. Legato asked Mr. O'Brien if he recalled in 2008 that this very Board considered what kind of recommendations to make with respect to a certain ordinance that would increase—

Mr. Delaney objected.

Mr. Bernstein interrupted and said that he felt they were going too far afield. He said the ordinance was what was there today. In Mr. O'Brien's report he listed the history of it and Mr. Bernstein did not feel that they had to go into the history again. He noted that when Mr. Legato gave his presentation, he could do so but at this point they should move on and let other people—

Mr. Legato asked if he could ask Mr. O'Brien if he wrote this memo.

Mr. Bernstein said that he could.

Mr. Delaney asked for a copy of the memo to see what was being discussed.

Committeeman Roshto asked that the board members get copies also.

(Copies were distributed.)

Mr. Bernstein said that he did not think that this would be put into evidence. It discussed what happened to the ordinance in 2008.

Mr. Legato said that it was extraordinarily important.

Mr. Bernstein said that if Mr. Legato wanted to testify when it was his turn, Mr. Bernstein would not stop him. But at this point, Mr. Bernstein felt that this had gone beyond reasonable cross examination. He then asked Mr. Legato if there were any other questions that he had not covered in use and parking, etc.

Mr. Legato said that he was okay at this point but added that he would have to make a few points in his summary.

Mr. Bernstein agreed.

The Board recessed at 9:15 p.m.

### RECESS

The Board reconvened at 9:25 p.m.

Chairwoman Dapkins asked if there were any members of the audience who wished to ask questions.

Elaine Zindel, 317 Meyersville Road, asked Mr. Kaufman if he had ever looked at the CJVA schedule on the internet.

Mr. Kaufman answered that he had not.

Mrs. Zindel asked if he was aware that it included each team, the name of each player, the name of each coach, and the individual schedules.

Mr. Kaufman said that he was aware of it now.

Mrs. Zindel asked if he was aware that on May 28, 2014, a day after Mr. Pehnke was permitted to speak without being on the schedule, that six (6) of the 16 teams practicing had 13 players, four (4) teams had 12, and only one (1) team had 10 players.

Mr. Kaufman answered, "No."

Mrs. Zindel asked if he was aware that on September 29, 2014 the schedule had five (5) teams with 13 players, four (4) teams with 12 players and only one (1) team with 10 players.

Mr. Kaufman answered, "No."

Mrs. Zindel asked if he knew how many teams were observed by Mr. Pehnke on Thursday, December 12, 2014.

Mr. Kaufman said that he did not recall.

Mrs. Zindel asked if he knew how many players Mr. Pehnke had observed.

Mr. Kaufman said that he did not recall.

Mrs. Zindel asked if Mr. Kaufman would like to look it up on his memo.

Mr. Bernstein asked her to show Mr. Kaufman a copy of the memo.

Mrs. Zindel asked for the total of number of players in and out.

Mr. Kaufman asked her what time she would like to look at.

Mrs. Zindel answered the total of athletes in and athletes out.

Mr. Kaufman said the total athletes in from 7:00 p.m. to 8:15 p.m. was 35. Total out observed was 29.

Mrs. Zindel asked for a total for both.

Mr. Kaufman answered that "in" was 35 and "out" was 29.

Mrs. Zindel said that the total was 64.

Mr. Kaufman reiterated his previous answer.

Mrs. Zindel said that students coming in were coming in for the 8-10 session. Students leaving at 8:00 were departing from the 6-8 session and the total of those two should be the total number of students observed.

Mrs. Zindel said that she wanted to talk about the totals for the entire study, the entire time that they looked at the facility. She said the total was 64.

Mr. Kaufman said that they were discussing a time period of one (1) hour and 15 minutes.

Mrs. Zindel agreed.

Mr. Kaufman said again that 35 student athletes were coming in during that period and 29 left.

Mrs. Zindel asked if he agreed that the total was 64.

Mr. Kaufman did not agree.

Mr. Bernstein said that the Board would take judicial notice that 29 plus 35 equaled 64.

Mr. Kaufman said that he didn't know what relevance the total of 64 had since one was a minus and one was a plus.

Mrs. Zindel asked if the turnover time was the peak period for parking requirement. The time between the two sessions, the session ending from 6-8 and the time starting from 8-10, was that the interval Mr. Kaufman had said was the peak period for parking requirements?

Mr. Kaufman said, "Yes."

Mrs. Zindel said that if 35 students came in at that time period they would be coming in to attend the 8-10 session.

Mr. Kaufman said that that was a reasonable assumption.

Mrs. Zindel said that the 29 that were leaving would be leaving from the 6-8 session.

Mr. Kaufman said that seemed reasonable as well.

Mrs. Zindel said when she looked at the schedule on the CJVA internet site, CJVA.org, it showed that their peak usage—she asked if he agreed that he had never looked at the schedule therefore he was not aware that a total of 86 students had been scheduled at the peak schedule from the CJVA.

Mr. Bernstein rephrased the comment into a question.

Mr. Kaufman said that he did not know specifically what Mrs. Zindel was referring to. "I do know that there are two (2) facilities in Flemington that are operating simultaneously and that schedule could mean all teams at that time. I don't know. There is 'rack' facility and there is this facility so there could be two (2) other courts in consideration."

Mr. Bernstein felt that Mr. Kaufman was not familiar with site that Mrs. Zindel was speaking about. He said that Mrs. Zindel had set up her testimony and Mr. Kaufman was not aware of the site so she could testify on it when it was her turn.

Mrs. Zindel asked Mr. Kaufman if he was aware that what Mr. Pehnke said in his memo did not agree with the schedule of the CJVA for their peak period.

Mr. Kaufman said he was not aware that there was any relationship to what was on the internet and what Mr. Pehnke observed.

Mrs. Zindel said that Mr. Kaufman did not believe the CJVA's schedule.

Mr. Kaufman said he did not know what the site's relationship was to Mr. Pehnke's report.

Mrs. Zindel asked if he agreed if there was a difference between the two, that that would affect the parking estimates.

Mr. Kaufman said that they didn't necessarily relate to one another because they could be talking about two (2) facilities, not just a single facility. He said that they were very clear when Mr. Pehnke gave his report and when he (Mr. Kaufman) had given his testimony what would actually happen at this facility which was the subject of this application which is limited by the three (3) courts and the amount of players per team and that regulated the amount of ingress and egress and the number of drop-offs and pick-ups. That had been very clear from all the testimony and it was not relevant to a website posting schedules which could be anywhere—

Mrs. Zindel interrupted.

Mr. Bernstein interrupted Mrs. Zindel and asked Mr. Kaufman to finish his comment.

Mr. Kaufman said—a website that he had no knowledge of or experience in knowing who offered it, for what teams it related to, or what facilities they would be practicing at. It could not possibly be relevant to the Mr. Pehnke's report.

Mrs. Zindel asked if he was aware that the website showed when the teams are practicing offsite and not at Flemington.

Mr. Kaufman said that he was not familiar with the website so to any other questions regarding the website he would have to answer, "I don't know."

Olga Argumova, 691 Meyersville Road, asked if Mr. Kaufman remembered when Kym was present at the beginning of this number 2 application that she had told them that the operation time would be from 9:00 a.m. to 10:00 p.m. seven (7) days a week.

Mr. Kaufman said that that was correct.

Mrs. Argumova asked if during this meeting, Mr. Kaufman had said that it would be from 9 to 10 and occasionally when there were events, it would be after 10:00 p.m.

Mr. Kaufman answered that he had not said that. He had said that occasionally there could be less use on a weekend but the hours of operation would be 9:00 a.m. to 10:00 p.m., seven (7) days a week.

Mrs. Argumova asked if he said that it could up to 10:00 p.m., no later.

Mr. Kaufman answered that that was correct.

Mrs. Argumova asked if Mr. Kaufman was aware that the proposed facility was in the middle of a residential area just across from another property with affordable housing and other people next to it and he was proposing noise up to 10:00 p.m. seven (7) days a week.

Mr. Kaufman said that the Meyersville Hamlet was not a residential zone.

Mrs. Argumova asked if Mr. Kaufman disagreed that just across from the proposed building there was affordable housing.

Mr. Kaufman said that there were five (5) apartments across the street in a mixed use facility along with a restaurant. He said that, as mentioned earlier, those apartments would not be affected by the noise coming out of the inside of the proposed facility.

Mrs. Argumova asked if Mr. Kaufman understood that it was a residential area just across the street.

Mr. Kaufman said that he understood that there was a restaurant across the street that was a part of the property where the five (5) apartments were located. There were fans, mechanical equipment and air conditioning units on the roof of that restaurant. He added that there were also refrigeration units behind the restaurant that made quite a bit of noise that would be far more of a concern to the residents across the street than this proposed facility that was several hundred feet away and across a busy road.

Mrs. Argumova said she had no further questions and left the podium.

Ed Zindel, 317 Meyersville Road, asked Mr. O'Brien if he knew, according to the state sound statutes, where the sound levels should be taken.

Mr. O'Brien said that the sound levels should be taken at the property line and that there were two (2) different standards—one for night and one for day.

Mr. Zindel said that that was correct. He then asked where the nearest residential property line was located.

Mr. O'Brien said that the nearest residence to the volleybarn—

Mr. Zindel interrupted and said, "The nearest residential property line which is where the sound measurement would be taken."

Mr. O'Brien said that any sound measurement would be taken on any property line. The nearest residential use would be next door to the east.

Mr. Zindel said that that was not correct. He noted that there was a tenant over the veterinary clinic which would make it the nearest residential property line to the west. It was 31 feet from the structure.

Mr. O'Brien said that he would not disagree and would defer to Mr. Lemanowicz.

Mr. Zindel said that testimony was given that people would not hear this sound 500 feet away. He said that that was not what the sound statute was. The sound statute said it was the nearest residential property line which was 31 feet away, 65 dB was the maximum sound level for night.

Mr. O'Brien said that that was the sound level for during the day. It was 50 dB at night. It did not specify whether it was residential or non-residential but the measurement would be taken at the property line.

Mr. Zindel said it was the nearest *residential* property line. He said that that was the exact wording.

Mr. O'Brien said that there were different standards in play here.

Mr. Zindel asked Mr. O'Brien if he knew of any sound abatement material that would reduce decibel levels by 50%.

Mr. O'Brien answered that he could not answer that question.

Mr. Zindel said that he spoke with sound abatement specialists and they could not reduce sound levels by anywhere near that much—

Both Chairwoman Dapkins and Mr. Bernstein interrupted and stated that this was the question period.

Mr. Zindel thanked them and left the podium.

Robert Goss, 37 Ideal Street, Meyersville, asked what would happen if the people went bankrupt and the building remained empty.

Chairwoman Dapkins said that that question had been asked multiple times before however she would answer it anyway. The next owners would have to come back to the Board if they were interested in changing the use.

Debra Schmitt, 486 Meyersville Road, asked if she understood correctly that this application was for a fitness center.

Mr. Kaufman answered, "Yes".

Ms. Schmitt asked what the rules for parking determination would be if a fitness center were located in any other part of this community.

Mr. Kaufman said he presumed that they would be the same as they were where they were being proposed now as a permitted use.

Ms. Schmitt said that was 1/200 square feet.

Mr. Kaufman said they had not agreed that that was the standard. The standard was that the Approving Authority had the jurisdiction over the amount of parking.

Ms. Schmitt said that her understanding of this whole thing was that if it was a recreation use, the Board could determine but now it had been said that it was not a recreation use, it was a fitness center which then fell under the standard rules for the Business Zone which was 1/200 square feet. Therefore—

Mr. Delaney interrupted and said that this was not a question.

Mr. Bernstein asked Mr. Kaufman if he would agree with the questioner that if it was considered Retail Service, it would be five (5) spaces per 1000 square feet and if it was considered a Recreational Use, it would be determined by the Board.

Mr. Kaufman said that that was correct.

Mr. Bernstein said that the Board would make the determination as to which methodology would be applied.

Mr. Kaufman said that that was correct, with respect to parking.

Mr. Bernstein asked Ms. Schmitt if that was her question and she answered that it was.

Ms. Schmitt left the podium.

Arthur Brown, 479 Meyersville Road, asked Mr. Kaufman if he thought that any member of the public in the room wanted this building on this property.

Mr. Delaney advised his client not to answer.

Mr. Bernstein said that it was a legitimate objection.

Chairwoman Dapkins said that Mr. Brown could ask the question however Mr. Delaney had the right to advise Mr. Kaufman not to answer.

Mr. Bernstein said that 1000 people could object but if it was a permitted use and complied with the zoning and complied with the site plan, it would not matter. The Board would have to approve it. It was not a vote of "We like it". There were legal considerations and therefore the liking or disliking shouldn't play a role in the Board's determination.

Mr. Brown asked Mr. Kaufman if he agreed with Mr. Legato in those points that he (Mr. Legato) made about parking. He said the public had been trying to make these points since Day One.

Mr. Delaney again directed his Mr. Kaufman not to answer.

Mr. Bernstein rephrased the comment and asked Mr. Kaufman if he agreed that the public had made the same arguments previously as were made today: that it was a retail personal service use that would require five (5) parking spaces per 1000 square feet.

Mr. Kaufman said that he had heard the public recently make those comments about parking after Mr. Legato came on. Parking had become the staple of their argument. He had heard that argument before from Mr. Legato but not prior to that.

Mr. Bernstein said that Mr. Kaufman had made the argument that it was recreation and the Board should determine it.

Mr. Kaufman agreed.

Mr. Bernstein said that the applicant and the objectors had been pretty consistent.

Mr. Kaufman agreed.

Mr. Brown said that these were points that the public had tried to make over and over. Mr. Legato had "sent it home" and yet that evening they were still discussing a legal use.

Chairwoman Dapkins asked if there were any further questions.

Mr. Aroneo asked if this would be the last opportunity to question Mr. Kaufman.

Mr. Bernstein asked Mr. Delaney if Mr. Kaufman would come back to any subsequent meetings.

Mr. Delaney answered, "Hopefully."

Mr. Bernstein said that he assumed that if another question arose from a board member, Mr. Kaufman would be happy to answer.

Mr. Kaufman agreed.

Mr. Aroneo said that he would ask Mr. Kaufman now. He asked if Mr. Kaufman would comment on the ventilation of the building.

Chairwoman Dapkins said that this had been described in the first application. She asked if anything had changed.

Mr. Kaufman answered that it had not. As he had stated earlier, the only change from the plans that he testified to earlier was the location of the garbage bin, at the request of Mr. O'Brien, and the addition of an awning to cover that bin because the ordinance required that there be a roof structure over the top of the recycling bin. Those were the only architectural changes. More specifically, he noted that he had discussed the use, or lack thereof, of mechanical fans and he had said there were not going to be mechanical fans that faced out of the building in the court area. He had also mentioned that there would be an operable mechanical ridge vent that would allow heat to escape in the summer months. He added that primarily the busy season for this facility would be from December through June which, in the evening hours would not be an issue in terms of heat exhaustion. In terms of the summer months, during the day to allow some of that to escape, there would be a hand chain pull mechanical ridge vent. He and Mr. Lemanowicz had a brief dialogue about whether there would be enough convection in the building to actually allow it to ventilate. Mr. Kaufman said that even if someone did kick the door open to allow some ventilation, there would not be a significant amount of noise escaping from that open door which was all the way to the back of the building. It was 100-and-something feet to the berm, not 37 feet. It was all consistent. None of that had been changed.

Mr. Aroneo said if it was correct that Mr. Kaufman did not design the Flemington facility.

Mr. Kaufman answered that he had not.

Mr. Aroneo asked if that facility had a ventilation system.

Mr. Kaufman answered that there was no ventilation that he was aware of. There were some portable Modine heaters for the winter however there was no other ventilation. Occasionally, a garage door was opened. It was a

converted warehouse facility so on some days in the summer it got hot and a mechanical overhead door was sometimes opened.

Committeeman Roshto asked if the emergency exit doors had alarms on them.

Mr. Kaufman said that he did not believe that it was a code requirement. He had not designed it in however if the fire marshal said that alarmed doors were required, he would certainly provide that. There was only one door and to his knowledge, it was not alarmed. He noted that the main egress doors were in the front of the building.

Chairwoman Dapkins indicated to Mr. Delaney that the Board was finished with Mr. Kaufman.

Mr. Delaney said that Mr. Kastrud would be his next witness.

Cecelia Cilli, 11 Sassafras Place, Gillette, asked Mr. Kaufman if all three (3) courts were occupied and all of the parents were there, were there any guarantees that the parents would leave them off or that they were going to carpool. She asked if there was a contract about that and was that part of the agreement. She noted that she had been to many places and parents sit there. She added that there were so many unanswered questions when the website was viewed—

Mr. Delaney objected.

Mr. Bernstein said, "Let her ask the question before you object."

Mr. Delaney said that Mrs. Cilli had posed one question and now there was a statement following it.

Mrs. Cilli said she was asking a question. She said that they had seen the things that were scheduled and Mr. Kaufman could not answer the questions. He was reluctant to bring back the person who was going to run this to answer these questions. She asked if that person could be brought back.

Mr. Bernstein asked Mr. Kaufman if he intended to bring the operator back to these proceedings.

Mr. Delaney answered that they did not intend to bring back Kymberly Mottern, the operator. He noted that the Board had heard Mr. Kaufman testify that he had been there 50 times and there had been no problems.

Mr. Bernstein asked Mrs. Cilli if she had any other questions.

Mrs. Cilli answered no. She added that there were many questions that were unanswered when the schedule was viewed on the website. She then thanked the Board.

Mr. Bernstein swore in Christian M. Kastrud, engineer for the applicant.

Mr. Delaney asked Mr. Kastrud to place his credentials on the record.

Mr. Kastrud said that he had graduated from Tufts University with a Bachelor of Science in Civil Engineering. He added that he had 12 credits towards a Water Resources Degree in Engineering from Rutgers University. He stated that he was a licensed professional engineer in the states of New Jersey and Pennsylvania, both currently in good standing, and the owner of **Kastrud Engineering**, Bound Brook, New Jersey. He had been doing engineering site plans and subdivisions, work of this nature, for 20 years.

Mr. Delaney asked if Mr. Kastrud had testified before many boards in the State of New Jersey as an engineer.

Mr. Kastrud answered that he had.

Mr. Delaney offered Mr. Kastrud as a licensed engineer. Chairwoman Dapkins accepted.

Mr. Delaney asked Mr. Kastrud if he had been involved in this project for both the first and second application.

Mr. Kastrud answered that that was correct.

Mr. Delaney asked if Mr. Kastrud had worked extensively with Mr. Lemanowicz, the Board Engineer.

Mr. Kastrud answered that that was correct.

Mr. Delaney asked if Mr. Kastrud had submitted some recent plans.

Mr. Kastrud answered that that was correct.

Mr. Delaney asked if Mr. Kastrud had reviewed those plans with Mr. Lemanowicz.

Mr. Kastrud answered that that was correct.

Mr. Delaney asked Mr. Kastrud to give the Board a general recollection and also testify to what the new plans were.

Chairwoman Dapkins said that they intended to end the meeting at 10:30 p.m.

Mr. Bernstein said that the Board had to vote to recommend an ordinance to the Township Committee so they would have to stop at 10:15 p.m.

Mr. Delaney said that that was fine.

Mr. Bernstein noted that the board members did not have the colored plan and suggested that it be marked **Exhibit A-1**.

Mr. Delaney said that it was a little later than "A-1".

Ms. Kiefer said that the next exhibit would be **Exhibit A-6**.

Mr. Bernstein said that they were starting over.

Mr. Delaney said that the other exhibits were in evidence.

Mr. Bernstein then agreed to call it **Exhibit A-6**.

Mr. Bernstein asked that the date be added (October 14, 2014).

Mr. Kastrud said that **Exhibit A-6** was a colored rendering of Sheet 3 of 7 of the site plan. He said that they had gone back to the drawing board for this second application and changed the alignment. He noted that the board members had heard Mr. Kaufman tell them that he had changed the alignment of the building to face in a northerly-southerly direction with the narrow part of the building facing out toward Meyersville Road. There would be a parking lot along the easterly side that would contain 41 spaces. There had been discussions about whether or not the spaces would be adequate for the parking. They had heard the testimony that this site would operate between eight (8) to ten (10) people per team, three (3) teams, for a total of 30 participants arriving at the site. Carl Pehnke's examination of the existing facility in Flemington revealed that there were 35 players arriving at a point and 29 leaving. Based on the testimony provided this evening of eight (8) to ten (10) per team, three (3) teams for a total of 30 players, he felt that it certainly fit within that and that this parking design adequately provided parking for the number of vehicles that would be arriving and departing from this site during the operating times and the changeover times.

Mr. Kastrud said that they had provided landscaping. Mr. Kaufman had talked about a berm unaware that there was a residence above the actual veterinary clinic to the west. Extensive screening along the easterly property line was provided to screen the residential property as well as to the north which was the Great Swamp. The four (4) pear trees along the front of the property were preserved and additional street trees were added in front. From an engineering standpoint, that was basically it. It was a simple site plan with a building and a parking lot.

Mr. Kastrud added that there was underground detention which was a change in the location. Originally it was located in the northwest part of the site, discharging towards the northwest corner. That entire alignment had been changed and the entire drainage system was now underground. It discharged to the northeast out into the Great Swamp.

Mr. Delaney asked if Mr. Kastrud had had a chance to work with Mr. Lemanowicz and Mr. O'Brien. He asked Mr. Kastrud to tell the Board what the results of those meetings were.

Mr. Kastrud stated that the first report from Mr. O'Brien dated October 8<sup>th</sup> raised a few questions. The open items started on page 7. The applicant had no issues with any of the items. He was requesting a Design Waiver for Item No. 3, the lack of providing a landscape buffer within the parking aisle. The township ordinance required that with 15 spaces there had to be landscaped island. The applicant felt that with the landscaping up against the building and the landscaping berm to the east, he was providing for the intent of the ordinance. An additional landscaped island was not necessary within the parking lot.

Mr. Kastrud said that the only item that they had was a note on the plan that indicated that the mounting height of a lamp was 16 feet. The township ordinance required a maximum height of 15 feet so that had to be changed. He noted that one (1) foot would not change any of the Isolux patterns and lighting as required by the ordinance would be provided. Mr. Kastrud then asked Mr. O'Brien if there were any other outstanding items that he would like him to address.

Mr. O'Brien said that Mr. Kastrud would have to discuss Item No. 5 with Mr. Lemanowicz on the pervious coverage however a percentage would have to be supplied to see whether variance relief was necessary. Item No. 6, the proposed street trees being planted (as opposed to the ones being kept) needed to be clearly shown as located on the applicant's property. Currently, they were centered on the property line.

Mr. Kastrud said that that was acceptable.



Committeeman Roshto asked, in reference to Revision 6 on page 3 of 7, if there were trees to the east of the parking lot since they were not shown on his plan.

Mr. Kastrud said that a landscape plan was superimposed on the colored rendering of sheet 3 (**Exhibit A-6**).

Mr. O'Brien went on to Item No. 7 which concerned a two (2) year planting guarantee.

Mr. Kastrud said that that was acceptable.

Mr. O'Brien said that that was all that he had open.

Chairwoman Dapkins asked if Mr. Kastrud had a copy of the Environmental Commission's report of October 14, 2014.

Mr. Kastrud answered that he did. He said that environmental concerns had been discussed. The Great Swamp Watershed Association had had their own engineers review the plans. He noted that he had not discussed this with anybody from the Environmental Commission directly however he felt that from an environmental perspective, this application addressed all aspects of stormwater regulations for major development. Not only was the runoff volume and rate being addressed, but water quality was also being provided for. This was all addressed since last September. There were the same parameters—

Chairwoman Dapkins said that the report was suggesting some type of vegetative filter.

Mr. Kastrud said that that would not work in this situation. If it could, the applicant would have used that opportunity to design for stormwater runoff. If there was five (5) or six (6) acres, a totally different stormwater system could have been designed. Water would run off the parking lot down directly through the porous pavement into an underground detention system.

Mr. Kastrud referred to Mr. Lemanowicz's report of October 7, 2014. He said that he had had a chance to meet with Mr. Lemanowicz regarding the plans just prior to submission. There were still about six (6) minor engineering items that needed to be addressed on the plans. One was a saddle connection to the sewer and Mr. Kastrud was providing a saddle detail. He felt that Mr. Lemanowicz wanted a profile of the entire sanitary sewer system from the building going all the way out to the street. That would be added to the plans.

Mr. Kastrud noted that the height would be updated in the table to be consistent with the architect's plans.

Mr. Kastrud stated that porous pavement had been provided in the parking area and counted as a 40% reduction which the township ordinance allowed. That had been discussed at the meeting and they came up with the idea that they could not necessarily pave the entire lot and say that it was 100% pervious. That was not the intent of the ordinance. There was a meeting discussing what would be an appropriate amount and ultimately it would be up to the Board to decide what would be a reasonable reduction for the impervious coverage. The application proposed 40%.

Mr. Lemanowicz said that this was a concept that was not really clear. Porous pavement looked essentially like a sponge made of asphalt and the water would go through that. The ordinance allowed for a reduction in lot coverage if a pervious pavement was used but it did not say what that reduction was supposed to be. It related to drainage. Mr. Kastrud was suggesting 40% and that was a common void ratio when dealing with stone. It was used in other calculations. It did not seem unreasonable but he was hoping that Mr. Kastrud would have something else to back that up as far as manufacturer's data. That data only looked for the water that would go through it. It did not have anything to do with lot coverage in the zoning sense. Those two concepts had to be kept separate. They were not talking about 40% with respect to how much water would go through it. They were talking about what percentage of lot coverage credit from the zoning standpoint, would the Board want to give for pervious pavement because the ordinance was not specific.

Mr. Kastrud said, as a parallel, some towns did not count decks as impervious coverage. They do not count against lot coverage. Some towns gave credit for pavers. He was asking for this in lot coverage. He said the number was not arbitrary. It definitely had a backing by the void ratio of stone. If the impervious coverage for the zoning calculation was reduced by 40%, it would put the lot coverage at 39.3%

Mr. Lemanowicz said that the reality of it was that the zoning intent of a lot coverage restriction was partially based in drainage but it was also based in aesthetics. If the idea was that if it was porous pavement, it would only count as lot coverage, then theoretically, the entire piece of property could be paved with porous pavement. He did not think that the ordinance suggested that.

Mr. Hands asked if impervious went down to 20%, would that increase the lot coverage.

Mr. Kastrud answered that if the Board were not to grant as much credit, it would increase the lot coverage.

Mr. Hands asked if that were the case, would they need a variance.

Mr. Kastrud answered that that was correct or they could modify the plans to eliminate some of the pavement.

Mr. Hands said that because it was so close, it was a material number.

Mr. Kastrud said that they had built up to that point. They could also ask for 100% but he did not know whether it was reasonable or not. He noted that that was Mr. Lemanowicz's point—100% was not a reasonable number from an aesthetic standpoint. From a stormwater standpoint, the porous pavement did not give any runoff. From an aesthetic standpoint, paving the entire lot was not the intent of the ordinance. However, asking for 100% credit would put the coverage down to 27% of the impervious coverage.

Mr. Moholkar asked if there was some math.

Mr. Hands asked what the right number was because it was very material to get it close to a reasonable number.

Committeeman Roshto asked if the Board should request that Mr. Lemanowicz study this and come back with a recommendation.

Mr. Bernstein asked if there was no credit given for the pervious nature, what the number would be.

Mr. Kastrud answered, if it was counted as 100% impervious, that it would certainly be over 40% but he did not know the exact number. They would then reduce the parking down to 33 which was where they were before, to get back down underneath 40%. They had taken advantage of a unique technique to allow for additional runoff to be captured subsurface and that allowed them to gain a few extra spaces based on the concerns that they heard from the public and the Board.

Mr. Hands said that that was a tradeoff.

Mr. Kastrud agreed and said it was a balance.

Mr. Aroneo said that he agreed with Mr. Hands and Committeeman Roshto. He felt that it was a material number and it was too important to leave to an arbitrary guess-timate. He felt that there had to be a standard.

Mr. Lemanowicz said that the material was not that common. He added that Mr. Kastrud had related one project that it was used on and possibly Mr. Lemanowicz could get more detailed information on the make-up of the product.

Mr. Kastrud said that he could get a detailed make-up of the product. He said that there was a balance here. They looked at it from a zoning standpoint and what the intent of the ordinance was when it was decided that 40% lot coverage was the appropriate lot coverage for this zone.

Committeeman Roshto said that he would be more comfortable if the Board Engineer, Mr. Lemanowicz, could study this and come back with some recommendation, given the balance that they had just heard about, as to what would be an appropriate percentage.

Mr. Lemanowicz answered that he would be able to do that.

Mr. Moholkar said that he would expect that the various sizes of gravel would have more or less sieve ability in terms of how much water would come through. He felt that the Environmental Protection Agency (E.P.A.) would have some numbers on this.

Committeeman Roshto asked if Mr. Lemanowicz could have a couple options for the Board.

Mr. Lemanowicz said that he would give the Board some scenarios.

Dr. Rae asked if Mr. Lemanowicz had considered this in the past.

Mr. Lemanowicz said that he had been involved in it however this Board had not. He wanted to make sure that the board members understood what the material was.

Dr. Rae referred to the number that was in question.

Mr. Lemanowicz said that they had discussed it and 40% was something that seemed like it would be in the area and a place to start. He had asked for more support for the number however he would work with Mr. Kastrud and independently.

Committeeman Roshto clarified that he wanted a professional opinion from the Board's professional engineer as to what he believed were the right alternatives.

Mr. Lemanowicz said he understood that but he was trying to get as much information as he possibly could.

Dr. Rae asked Mr. Lemanowicz if he had any opinion tonight.

Mr. Lemanowicz said that 40% seemed to be a decent number. He and Mr. Kastrud had discussed getting more information to present to the Board to support that number. He would be doing that now.

Mr. Kastrud said that there were two items that they were looking at. The D.E.P. (Department of Environmental Protection) and the B.M.P. (Best Management Practices) manuals considered porous pavement 100% pervious. Water would go through it faster than any storm. No storm would pond on any porous pavement if it was properly maintained. He then said that they were trying to take an engineering standard and translate that into a zoning standard and he felt that Committeeman Roshto was asking what would be a reasonable number.

Committeeman Roshto said, "Exactly".

Mr. Kastrud said it would not be reasonable to pave the entire property.

At this point, Chairwoman Dapkins stated that this would have to be continued to the next meeting since there was another item on the agenda.

Mr. Delaney asked if the next meeting was on the 28<sup>th</sup>.

Chairwoman Dapkins affirmed that it was.

Mr. Delaney said that he had a commitment for the first one-and-one-half hours of that meeting however he would have his partner cover the meeting until he could get there. He also signed a "Consent to Extension of Time for Decision" to the 29<sup>th</sup>.

Mr. Legato said that he would be present and expected to make his presentation at that time. He added that he had some questions for Mr. Kastrud.

Mr. Kastrud stated that he would be available during that meeting.

Chairwoman Dapkins announced to the public that the application would be carried to October 28, 2014 without further notice.

Ms. Schmitt made a request away from the microphone that was inaudible.

Chairwoman Dapkins asked that the Resolution of Memorialization for 1221 Valley Road LLC, Application #14-02P, be rescheduled for a vote on October 28, 2014 since the copies the board members received were incomplete.

Ms. Kiefer apologized for the error and affirmed that the resolution would be placed on the agenda for the October 28, 2014 meeting.

Chairwoman Dapkins then referred to "Ordinance 340-14 Increasing the Number of Class IV Members on the Township Planning Board, Amending Section 171 of the Township Land Use Code Entitled 'Planning Board'".

Mr. O'Brien said that when the Township Committee reviewed a Land Use Ordinance, they referred that ordinance to the Planning Board to make a finding as to whether or not the proposed ordinance was or was not consistent with the Master Plan.

Chairwoman Dapkins said that it was her understanding that this would eliminate the alternates.

Committeeman Roshto said that it would make the alternates full members, not eliminate them.

Mr. O'Brien said that there would be no alternate members under the version dated October 7, 2014.

Ms. Kiefer added that she had been advised that it should say, "Increase the Number of Class IV Members of the Planning Board to Six".

Mr. O'Brien said that on the first page, in the first paragraph, "Nine" was a mistake. He added that Class IV Members were the civilians on the Board, not the elected officials.

Mr. Hands said there was still the opportunity to have four (4) alternates however they were not going to have any alternates.

Mr. O'Brien said that the Municipal Land Use Law would allow the Planning Board to have up to four (4) alternates and that it was at the option of the township as to how many, if any, they desired.

Mr. Wallisch asked what the purpose of the change was.

Committeeman Roshto said that the mayor felt that in order to keep qualified members on the Planning Board it would be better to have a nine (9) member board instead of a 7/2 member board. He felt there would be continuity on the Board.

Mr. Bernstein said that there should be a motion that the proposed amendment would not be inconsistent with the Master Plan.

Mr. O'Brien said that the Board should direct their secretary to communicate that to the Township Committee and the Township Clerk. He added that the Board could entertain the thought of having alternates and that the quorum for a nine (9) member board would increase to five (5) from four (4) where it was currently.

Dr. Rae said that he did not want to consider it.

Mr. Bernstein felt that the Board could entertain public comment. Mr. Legato asked how this would impact the current application.

Chairwoman Dapkins said that it would not take effect until 2015.

Mr. Legato said then it would have no effect whatsoever.

There was a question from Cecilia Cilli that was off-microphone and was inaudible.

It was noted by a board member that in the proposed amendment it said that it would take effect on January 1, 2015.

Dr. Rae motioned, Mr. Wallisch seconded and a Roll Call Vote was taken. Those in Favor: Mr. Aroneo, Mr. Moholkar, Dr. Rae, Mr. Wallisch, Mr. Hands, Chairwoman Dapkins. Those Opposed: NONE. Abstained: Committeeman Roshto.

Mr. Wallisch motioned to adjourn. Dr. Rae seconded the motion and the meeting was adjourned at 10:30 p.m.

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CYNTHIA KIEFER  
Planning and Zoning Secretary

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Date