

HILLSBOROUGH TOWNSHIP PLANNING BOARD

APPROVED PUBLIC MEETING MINUTES

January 14, 2021

Chairman Carl Suraci called the Planning Board public meeting of January 14, 2021 to order at 7:35 p.m., announcing: This meeting will be conducted virtually. The public will be given an opportunity to participate remotely through the advertised Zoom link or choice of phone numbers identified in the public meeting notice. Members of the public should use the “raise hand” feature in Zoom, or *9 if participating by telephone, to indicate you would like to be recognized to speak.

Meeting and application documents have been made available at <https://hillsboroughnj.civicclerk.com/> in accordance with the public meeting notice.

Applicants will be presenting remotely and will identify themselves before testifying.

SALUTE TO THE FLAG

All stood for the Pledge of Allegiance.

ANNOUNCEMENT OF MEETING NOTICE

This meeting has been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 (“Sunshine Law”). Notice of the 2020 Annual Meeting Schedule has been provided to the officially designated newspapers, the Township Clerk, posted on the bulletin board at the Hillsborough Township Municipal Complex, and posted to the Township’s Website.

Additional notice has been provided to communicate that this meeting is being conducted according to the Governor’s Executive Orders and pursuant to P.L. 2020,c.11, which allows for meetings to be conducted electronically; and pursuant to the local Finance notices recently established.

ROLL CALL

Board Members: All marked “present” participated via Zoom

Mayor Shawn Lipani - Present

Robert Wagner, Jr. – Absent (*Recused*)

Deputy Mayor Frank DelCore - Present

Robert Peason – Present

Carl Suraci, Chairman – Present

Neil Julian, Vice Chairman – Present

Nathan Santaromita – Absent

Ron Skobo – Present

Kenneth Hesthag, Secretary – Absent

John Ciccarella (Alt. #1) – Present

Curt Emmich (Alt. #2) – Present

Board / Township Professionals participating: David K. Maski, PP, AICP, Township Planning Director; Eric M. Bernstein, Esq., Board Attorney (Eric M. Bernstein & Associates); Robert Yuro, PE, CME, Board Engineer (T&M Associates); Michael Lombardozi, CSR, Board Court Reporter; and Fred Kinzler, IT Staff.

CONSIDERATION OF MEETING MINUTES

None

CONSIDERATION OF RESOLUTIONS

None

PLANNING BOARD BUSINESS

- 2020 Planning Board Annual Report

A motion to approve was made by Mayor Lipani, seconded by Deputy Mayor DelCore. No comments.

Roll Call: Mr. Emmich – yes; Mr. Ciccarella – yes; Mr. Skobo – yes; Mr. Peason – yes; Deputy Mayor DelCore – yes; Mayor Lipani – yes; Vice Chairman Julian – yes; Chairman Suraci – yes. Motion carries.

BUSINESS FROM THE FLOOR (*For Matters Not on the Agenda*)

None

CONSIDERATION OF ORDINANCES

None

APPLICATIONS

- **CP East Brunswick, Inc. (Cyzner) – File 20-PB-05-MSPV** (TOD: 02-28-21) - Block 178, Lots 2 and 3.01 (formerly Lot 3.A) – 420 and 430 Amwell Road. Applicant seeking preliminary and final major site plan approval; ‘c’ bulk variances; and waivers, on Property in the TC, Town Center Zone, and within the ASD, Architectural and Site Design Overlay District. **APPLICATION ADJOURNED TO JANUARY 28, 2021 WITH RE-NOTICE.**

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Chairman Suraci acknowledged the adjournment of the CP East Brunswick, Inc. application to January 28, 2021 with re-notice.

- **Campus Associates, LLC (Weiss) – File 20-PB-13-MSP** – Block 58, Lot 1.05 – 4 Campus Drive. Applicant seeking preliminary and final major site plan approval, ‘c’ bulk variance; and waivers, to construct a multifamily development consisting of four 3-story, 24-unit residential buildings, and a club house, with associated parking, lighting, landscaping, utilities, stormwater and improvements, on Property in the Multifamily Inclusionary Overlay District within the I-3 Light Industrial Zone. (EC Review: 11-09-20)
Application hearing continued from December 03, 2020 without further notice.

Exhibits from December 03, 2020:

Exhibit A-1 – Existing Features Plan, dated L/R 09-30-2020

Exhibit A-2 – Proposed Conditions – Site Plan

Mr. Bernstein asked Chairman Suraci if he had reviewed the recording from the December 03, 2020 Hearing and will provide a signed form to the Planning Office to the same.

Chairman Suraci stated he had reviewed the hearing prior to this meeting.

Mr. Bernstein therefore confirmed Chairman Suraci would be eligible to participate and potentially vote on the application.

Marc Policastro, Esq. of Giordano, Halleran & Ciesla, PC, representing Campus Associates, LLC. Called Mr. Barr to testify.

Victor Barr, Jr., RA of VLBJR Architects Inc., was sworn, provided his qualifications, was accepted by the Board, and gave the following testimony in response to questions asked by Mr. Policastro:

Mr. Barr described **Exhibit A-3 – Unit Breakdown**. He said the proposal is for 96 residential units, 73 market rate and 23 affordable units, as in conformance with the 24% affordable requirement. He showed **Exhibit A-4 – Floor Plan**, as a typical unit floor plan. All of the units are within 4 three-story building, each building containing 24 units, or 8 units per floor. The distribution of market-rate units is 17 one-bedroom units of approximately 800 sf.; 52 two-bedroom units at approximately 1,200 sf.; and 4 three-bedroom units of approximately 1,500 sf. The distribution of the affordable units is: 5 one-bedroom units of an average of approximately 650 sf., which is in conformance with the litigation settlement agreement which requires one-bedroom COAH units to be a minimum of 575 sf.; 13 two-bedroom units of approximately an average of approximately 1,000 sf., which is in compliance with the litigation settlement agreement, which requires two-bedroom units to be a minimum of 725 sf.; and 5 three-bedroom units of an average of approximately 1,200 sf., which is in compliance with the litigation settlement agreement, which requires three-bedroom units to be a minimum of 1,060 sf. The COAH units are distributed throughout the site, with all buildings containing some COAH units. None of the COAH units will contain dens.

Exhibit A-5 – Clubhouse Floor Plan was shown. The one-story 3,100 sf. accessory building will be the Clubhouse, to contain the leasing and management office, a fitness center, community and game room, parcel pick-up room, and bathroom facilities. The Clubhouse features an exterior covered patio area adjacent to a pool and amenity patio area.

Exhibit A-6 – Typical Residential Building Elevation was shown. This elevation would be from the parking area, but the other elevation will basically look the same since they are “back-to-back units”, which means the units on one side are the same as the other side. All of the residential buildings will basically look the same.

Mayor Lipani asked if the colors and materials are in compliance, being that the exhibits are not presented in color.

Mr. Barr said they are, and will be described further throughout his testimony.

Mr. Barr said the three-story buildings are non-elevator buildings for the maximum height of 44 feet, measured from grade plain to the highest point on the roof.

Exhibit A-7 – Schematic Clubhouse Elevation was shown. This is the front elevation of the Clubhouse. The one-story Clubhouse is proposed with a maximum building height of 20 feet, measured from grade plain to the highest point of the main room, not including the architectural feature of the cupola.

The buildings are 150 feet in length, in conformance with the maximum allowable building length (Exhibit A-4). The design materials, colors, and details (Exhibit A-6) are coordinated from building to building, creating cohesive visual relationships between buildings.

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Board Engineer, Robert Yuro, PE CME, asked that the sheet entitled “Unit 3C-B Floor Plan” be entered as an exhibit, if it had not been already.

Mr. Barr said unit 3C-B shows the living room and dining room. The next room on the exterior wall to the left is one of the bedrooms. To the left of that is a second bedroom, and to the left of that bedroom is the master bedroom. All of those rooms are on the exterior wall.

Mr. Yuro said his question is on the room between the bathroom and the kitchen.

Mr. Barr said the room between the bathroom and kitchen is a laundry/storage room.

Mr. Yuro asked if that room can be converted into a bedroom or living space.

Mr. Barr said no, the reason being that you cannot have a bedroom without natural light and air on something other than the first floor.

Chairman Suraci asked for information on the “1C-B” floorplan.

Mr. Barr described the area in question as a balcony, and a mechanical room to its side. All of the HVAC equipment is within the unit. All are self-contained units so there are no condensers on the grade around the buildings.

Mayor Lipani asked if each unit has its own hot water heater.

Mr. Barr said each unit has its own.

Mayor Lipani asked if the units will use electric or gas facilities in the kitchen and hot water.

Mr. Barr said he was not sure at this point.

Mr. Policastro said they will get an answer to that question.

Mr. Emmich said building off of Mr. Yuro’s comment on 3C-B, all of the other units have a smaller washer-dryer area; a type of closet space. He asked if the laundry area should be condensed so it does not become a bedroom, and gives more living space.

Mr. Barr said they were trying to give whatever extra space we had to the unit in terms of storage, because it is a three-bedroom unit. I guess we can reconfigure it into a separate room and put the washer-dryer and water heater in an alcove similar to that of the other units.

Mr. Bernstein asked if the Board’s concern is that this will turn into a fourth bedroom.

Mr. Emmich said potentially, yes.

Mr. Bernstein asked Mr. Policastro if the applicant is willing to condition on the record there will be no more bedrooms than what are called for in one, two, or three bedroom space, and that they will not permit such to occur?

Mr. Policastro said yes, we can stipulate to that.

Chairman Suraci asked the dimensions of that space.

Mr. Barr said probably 7 or 8 feet by 7 or 8 feet.

Mr. Emmich said visually, it looks equivalent to the other bedrooms, which is why he raised the issue.

Mr. Barr said the other bedrooms are probably 7ft. 6in. or 8 ft. by about 10 ft., not including the closets.

Mr. Policastro asked Mayor Lipani to rephrase his question about the utilities.

Mayor Lipani asked if the utilities will be gas or electric.

Mr. Policastro said they will be gas.

No additional questions from the Board.

Open to the public.

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Chairman Suraci called for questions for this witness from the public.

Marianne Sawade – 142 Johansen Avenue

- Ms. Sawade asked the Board to adjourn this meeting, being that the applicant just provided a 24-page piece of evidence the same day of the meeting, as well as a revised site plan yesterday or the day before. The public has not had the ten days in advance to review this information.

Mr. Bernstein asked Mr. Policastro if any of Mr. Barr's testimony was in reference to the two items Ms. Sawade mentioned.

Mr. Policastro said none of the testimony given was in reference.

- Ms. Sawade said she had no questions for this witness.

Deputy Mayor DelCore said there will be an opportunity for the issues raised by Ms. Sawade to be addressed, but this is not the appropriate time for this witness.

Susan Gulliford – Hunt Club Road

- Ms. Gulliford asked if a color rendering would be shown.

Mr. Barr put Exhibit A-6 back up, which was not in color.

Mayor Lipani asked that a condition of approval be that the Board Engineer and Mr. Maski would have to approve the façade, as well as the Planning Board, if needed, before any permits be given.

Mr. Policastro said, presuming you are asking that it be consistent with the testimony provided.

Deputy Mayor DelCore added, and with the architectural design standards.

Mr. Policastro said that would be acceptable.

No further questions for this witness.

Matthew Seckler, PE, of Stonefield Engineering & Design was sworn.

Mr. Bernstein asked Mr. Policastro if any of the testimony to be provided relates to the newly submitted items.

Mr. Policastro confirmed Mr. Seckler's testimony will not relate to the new information, which by the way were exhibits, so the ten-day rule does not apply to exhibits.

Mr. Seckler provided his credentials, was accepted by the Board, and gave the following testimony based on questions asked by Mr. Policastro:

Mr. Seckler said he is the Traffic Engineer for this project. The Traffic Impact Study, dated June 22, 2020 was submitted for this application. This site is located on the northbound side, or east of Route 206. Access to Route 206 is via Campus Drive. As part of this study, counts taken on Route 206 prior to Covid when traffic volumes were at their normal peaks, was used. Route 206 carries about 35,000 vehicles per day. This study concentrated on how the intersection of Route 206 and Campus Drive would function should this project be approved. The trip generation manual from the Institute of Transportation Engineers was used to determine the amount of traffic being generated would be less than one new trip every minute during the peak hours. Outside the peaks, outside the rush hours, the counts drop significantly. During the busiest hours, you are expected to have about 35 new cars in the morning peak hour and 42 new cars in the evening peak hour, heading to Route 206. We analyzed the intersection on Campus Drive and Route 206 northbound, and found the level of service would be consistent with the existing condition; approximately a 15 second average wait, depending on the cars platooning through on Route 206 when the light is red at Brooks Boulevard. Jughandles are available at Dukes Parkway and Brown Avenue. The trip generation of this site is less than a number of the uses for the underlining zone, such as a daycare center, medical office, or office building. All would generate levels of traffic that would likely be greater than what is being proposed.

This site exceeds the Residential Site Improvement Standards (RSIS) parking rates. There is sufficient parking per the New Jersey standards. The drive aisles all meet the 24 foot industry standards; all parking spaces are at least 9 ft. by 18 ft. From a traffic standpoint, this site will not significantly impact the off-site intersection at Route 206 and Campus Drive. This is a permitted use and the site has been designed appropriately in terms of the parking and circulation.

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Mr. Emmich asked specifically when the measurements were done, pre-pandemic.

Mr. Seckler said 2017 counts on Route 206 were used, and then grew them to basically two years into the future using a NJDOT growth rate of 1.25% compounded on itself.

Mr. Emmich asked if a permit is needed from the State to make any adjustments for the Route 206 traffic light, or require State approval.

Mr. Seckler said they are not looking to make any changes. We received a letter of “no interest” from the NJDOT. If that has not already been provided to the Board, we will provide it.

Mr. Yuro said he had not seen that letter, and asked that it be provided.

Mr. Seckler agreed.

Mr. Yuro referenced comments in his review memo, dated November 17, 2020. He said items 9, 10, 11, and 12 in Section C, Traffic Impact, had been addressed by Mr. Ford at the December 03, 2020 meeting to his satisfaction.

No further questions from the Board.

Chairman Suraci called for questions from the public for the witness.

No questions from the public.

Mr. Policastro called the environmental consultant to testify.

Thomas Auffenorde of EcolSciences, Inc. was sworn, provided his credentials, was accepted by the Board.

Mr. Policastro said very narrow questions had been asked at the last hearing, with regards to environmental issues. He asked Mr. Auffenorde to address those specific questions.

Mr. Policastro said a letter dated January 13, 2021 had been submitted. He said they did not need that letter in the record, but entered it into the record as an exhibit. Mr. Auffenorde’s testimony will relate to the very specific questions raised by the Board and the public at the last hearing.

Mr. Bernstein asked Mr. Policastro if he would make Mr. Auffenorde available for a future hearing, to question him not only on his testimony tonight, but in reference to the document received this afternoon, the timing for which had been raised by Ms. Sawade earlier.

Mr. Policastro said they need not refer to the letter this evening at all. He said they will withdraw the letter from the record. Mr. Auffenorde will testify to the very specific questions raised at the last hearing.

Mr. Bernstein asked if any Board members would like to be hearing on the issue.

Vice Chairman Julian raised concerns with no having enough time to digest Mr. Auffenorde’s letter, and would like sufficient time for the Environmental Commission and the Board’s professionals to be able to thoroughly review the document and provide comment. He said noted Mr. Auffenorde’s letter seems to contradict the comments of the Environmental Commission. He asked if Mr. Auffenorde had walked the site.

Mr. Policastro asked Mr. Auffenorde if he had walked the site.

Mr. Auffenorde stated he had.

Mr. Policastro said they would make Mr. Auffenorde available as needed, and would ask for a special hearing in accordance with the settlement agreement.

Mr. Maski advised on the upcoming scheduling.

February 04 was decided on as an additional meeting for the Campus application.

Mr. Bernstein advised this would not be a “special meeting” but a regular meeting at which the Board and the public will have an opportunity to cross-examine the witness. If the Environmental Commission and/or Board members has comments make in relation to both the testimony provided and the letter provided.

Mr. Maski confirmed the letter had already been provided to the Environmental Commission late this afternoon.

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After a brief discussion on whether or not the letter would be withdrawn, Mr. Policastro agreed to keep the letter in the record, entered as Exhibit A-8, and be addressed at a February 04.

Mr. Bernstein advised the Board, its professionals, and the public that they may ask questions in reference to the letter provided by Mr. Auffenorde. However, that does not preclude any from asking additional questions at a February 04 hearing, for what has been marked as “Exhibit A-8”.

Mr. Policastro concurred, but said Mr. Auffenorde’s testimony tonight should be in reference to the questions asked at the last hearing.

Mr. Bernstein agreed and restated his previous comments.

Exhibit A-8 – EcolScience Letter, dated January 13, 2020 was entered into the record.

Mr. Auffenorde said the main issue that carried over from the December meeting had to do with the drainage feature that extends up into the site.

Mr. Policastro advised Mr. Auffenorde to only address his points as to the questions raised at the last meeting.

Mr. Auffenorde said this is small surface water drainage feature or stream that is near or at a drainage divide. These kinds of features are sometimes regulated and sometimes not. Usually they are not regulated by the NJDEP and by Hillsborough Township and their stream corridor ordinance. The administrative history of this feature is that we received a Letter of Interpretation (LOI) from the NJDEP in 2001. The LOI is the way the NJDEP establishes what features they are going to regulate under the Freshwater Wetlands Protection Act. These would be wetlands and also water features. In 2001 the LOI identified a water feature, which is the excavated ditch feature along the eastern boundary of the site; sort of in the backyard of the neighboring resident on Johansen. The smaller feature that runs up through into the site was not identified as regulated water. That LOI was extended in 2006 without revision, and extended further under the Permit Extension Act. Eventually it expired and we got a new LOI in 2017. The 2017 LOI did not identify this feature as regulated water by the NJDEP. The feature is interior to the wetlands; it is not an independent feature.

A subsequent application was made as part of this application to the NJDEP for some minor wetland impacts, and during that review process the NJDEP decided to take jurisdiction of that feature. The NJDEP sent a hand mark-up of the extent of it, and so it was added to the plan. The NJDEP told us at that time, that the riparian zone associated with that feature was 50 feet. That has been added to the plan. It is important to make the point that just because the NJDEP regulates a feature that does not mean it is regulated under the Township’s Stream Corridor Ordinance. They are two different regulations; one does not necessarily mean you are regulated under the other. As testified to by Mr. Ford in December, and corroborated by Mr. Yuro, features that have a drainage area of less than 50 acres typically are not regulated under the Township’s Stream Corridor Ordinance. My testimony is that that has been my experience as well in doing many projects in Hillsborough, and not given the buffer of 150 feet.

Vice Chairman Julian said there is a difference of opinion from some of the members of the Environmental Commission who walked the site, with the interpretation of a “stream” as a water course, then Mr. Auffenorde. He reiterated that the Environmental Commission needed to be able to comment on the letter.

Mr. Policastro commented that Mr. Auffenorde’s testimony was on questions raised at the last meeting, not the letter.

Putting Mr. Auffenorde’s letter aside, Vice Chairman Julian addressed the comments in the November 17, 2020 Environmental Commission memo. That letter defines a “stream” as a water course having a source and a terminus banks and channels which water flows at least periodically. That is where the disagreement is. The Commission is viewing it that the water does flow periodically while Mr. Auffenorde is saying based on his interpretation of the requirements and his experience that it is not.

Mr. Auffenorde said he did not disagree that it is a water course and that it could not be regulated by the NJDEP. He said in his experience, a feature like this with a drainage area of less than 50 acres, has not been subjected to Hillsborough Township’s Stream Corridor Ordinance.

Chairman Suraci asked if State regulations trump local regulations from a legal perspective.

Mr. Bernstein said where the State regulations and local regulations address the same issue, the State regulations and/or laws or statutes take precedent over the local. The question is whether or not in fact the State regulations preempt the Township in this matter.

Mr. Policastro said even if there is not a notion of preemption, it still does not apply.

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Mr. Auffenorde said it brings up an interesting legal question, which I do not know the answer to. The Township's ordinance is dated in 2005. At that time, the NJDEP did not have under the flood hazard area regulations; they did not have a riparian zone. There was a major revision and adoption of the regulations in 2007 where they added a riparian zone adjacent to streams, wherein activities would also be regulated that disturbed vegetation. Under 188-64(D) of the ordinance, under 'D(e)' which says...*This is not intended to conflict with any applicable regulations from the New Jersey Department of Environmental Protection, which shall govern.* Therefore, it is now a legal question if this ordinance even applies now that the NJDEP regulates riparian zones.

Vice Chairman Julian said the ordinance does not require a 50 acre drainage area as well. That would be another discussion.

Mr. Auffenorde said that is sort of been the way it has been applied. If the Township applies a 150 foot stream corridor to all of these small features, many, many people would have this constraint on their property than currently anyone suspects. There is a practicality of where a very restrictive ordinance like this should apply. The last project I worked on where it did apply was for the Town Center project. It was for the stream corridor from Royce Brook, which is a very distinctive feature with very definite bed and banks.

Mr. Policastro asked Mr. Auffenorde if his testimony is that it does not apply to this scenario.

Mr. Auffenorde said based on the drainage area and guidelines that have been applied in past applications; that is correct.

Vice Chairman said he had not walked the site, but those from the Environmental Commission who did do not think it is a "small waterway". Again, that is where the disagreement is.

Mayor Lipani said he walked the site at 7:30 a.m. this morning. There is water existing in the waterway. He asked Mr. Auffenorde to explain the intent of a 50 foot riparian zone verses a 100 foot zone. What is the purpose or intent of creating that zone as far as protection and/or buffer?

Mr. Auffenorde said the intent of the NJDEP's riparian zone is to protect. There is a permit process whereby disturbances can be approved. It is basically to protect streamside vegetation.

Mayor Lipani said so it is not necessarily to control water flow, but to protect the vegetation near the water.

Mr. Auffenorde said that is correct, with a focus on forested vegetation that provides shading to help keep water temperatures cooler, etc.

Mr. Policastro asked Vice Chairman Julian who these "others" he referred to as having disagreed.

Vice Chairman Julian said he was referring to members of the Environmental Commission who had walked the site, namely Michael Follie and input from Dr. Christopher Obropta, who he described as experts in their fields.

Chairman Suraci informed Mr. Policastro that Dr. Obropta happened to be attending the virtual meeting, as one of the members of the public.

Christopher Obropta, PhD, PE – 605 Cornwall Court

- Dr. Obropta was sworn and provided his qualifications to the Board.

Mr. Bernstein said the basic rationale to bring you forward is to expound on Mr. Julian's reference, as to who you are, and to ask if you have been on this site.

- Dr. Obropta confirmed he had walked the subject site and saw the stream the Saturday after the Environmental Commission meeting when originally presented, December 14, 2020. He said he had not been on the site since.

Mr. Bernstein noted this did not preclude Dr. Obropta from coming back at the February 04 meeting, relative to any EcolScience's letter.

Mr. Bernstein asked if anyone else from the Environmental Commission was with him when he walked the site.

- Dr. Obropta said Chairman Deborah Boyea also attended.

Mr. Bernstein asked Dr. Obropta if he had been made aware of any other Commission member that had walked the site.

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- Dr. Obropta said he was not aware.

No questions from Mr. Policastro.

No further questions for Dr. Obropta.

Mr. Bernstein noted Dr. Obropta has the right to remain on the call as a member of the public and to attend the February 04 meeting.

- Dr. Obropta confirmed his availability to attend the February 04 meeting, as requested by both the applicant's attorney and the Board.

Mr. Maski asked for clarification from Mr. Auffenorde as to the citation on the State preemption.

Mr. Auffenorde responded, Section 188-64D(1)(e).

Mr. Ciccarelli asked if the current site layout is based on a 50-foot riparian zone.

Mr. Auffenorde said it is.

Mr. Bernstein advised the public that questions could be asked of the witness as to the testimony offered this evening. There will be another opportunity to question the witness related to the letter, which has been marked as Exhibit A-8 and any other environmental testimony, at the February 04, 2021 Planning Board meeting.

Marianne Sawade – 142 Johansen Avenue

- Ms. Sawade asked for clarification as to what was meant by "NJDEP took jurisdiction of the water feature."

Mr. Auffenorde said it had not been previously identified by the NJDEP as a regulated water. They told us they were going to take jurisdiction over, in other words; it would be subject to a riparian zone and any activities in the riparian zone in the water would be regulated and require a permit, as of October, 2020.

- Ms. Sawade asked Mr. Auffenorde if he was familiar with the new regulations as of April, 2020 regarding riparian zones.

Mr. Bernstein asked that Ms. Sawade be sworn in since she appeared to be giving testimony.

- Ms. Sawade was sworn in.

Mr. Policastro said he had no issue with Ms. Sawade being sworn to provide lay testimony.

Mr. Bernstein asked Ms. Sawade if she held any licenses in engineering, environmental engineering, or related items.

- Ms. Sawade said she did not.

Mr. Auffenorde said he did not believe the Raritan River was a Category 1 Water. Dukes Brook, to which the site sort of drains, is certainly not a Category 1 Water.

- Ms. Sawade said she had found contradictory information directly on the NJDEP website, and advised further on her findings, and the multiple sources she explored. She asked why this information had been omitted when preparing the original wetlands delineation and subsequent application forms.

Mr. Auffenorde said it was not omitted, and that he had a disagreement with Ms. Auffenorde on the facts. He said information provided in Ms. Sawade's letter clearly stated it was for "informational purposes only", and that one needs to look at the official stream classifications, which are found in NJAC7:9(b). Mr. Auffenorde said it is not a Category 1 Water.

- Ms. Sawade continued to share information she said she had obtained through her research.

Mr. Policastro stated the question had been asked and answered four times already.

Mr. Bernstein asked Ms. Sawade if she had any more questions for this witness based on the testimony provided tonight.

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- Ms. Sawade said had not further questions for tonight.

Mayor Lipani asked if it was possible for Mr. Auffenorde to provide the Board with the report he referenced ahead of the February 04 meeting.

Mr. Auffenorde said it is included in his letter (Exhibit A-8).

Mr. Emmich asked if the Board's professionals can validate if that information is accurate.

Mr. Yuro confirmed they (T&M Associates) will review the information before the February hearing.

Mr. Bernstein confirmed he would as well.

John Tutunjian – 150 Johansen Avenue

- Mr. Tutunjian asked Mr. Auffenorde if he had any experience with building a three-story building within 50 feet of a stream that is deemed by Somerset County as a "flood hazard area", and that within 50 feet of a C-1 Water, for residential purposes.

Mr. Auffenorde said not a building.

Meryl Bisberg – 4 Hickory Hill Road

- Ms. Bisberg asked how the area of drainage is determined, in reference to the statement "drainage less than 50 acres".

Mr. Auffenorde said it is determined based on topography. This particular feature that extends up into the site, you would determine the area based on the lay of the land that drains into the stream to the point where it intersects the feature that runs along the eastern property line. That is the drainage area of the feature we are talking about. It would not include the drainage area that goes up through the woods, all the way up to the school; that's its own drainage area. The engineer calculates the drainage area based on the topography of the land and how much area of land would flow into that feature.

- Ms. Bisberg asked how many acres the drainage area is.

Mr. Auffenorde said the engineer would have that information, but it is less than 50 acres.

Mayor Lipani said, as per the reference in the Environmental Commission's report, the area is 13.8 acres.

Mr. Bernstein asked if Mr. Ford can confirm the area at some point.

Mr. Policastro agreed.

Christopher Obropta, PhD, PE – 605 Cornwall Court

- Dr. Obropta asked if a map of that drainage area could be provided to the Environmental Commission to review before the next meeting.

Mr. Auffenorde agreed.

- Dr. Obropta noted regulations change over time. NJDEP's flood hazard regulations recognize 50 acres as an area, but it has exemptions. If you have a defined channel, it does not count. He asked Mr. Auffenorde if he understood that an area could be less than 50 acres and still the flood hazard rules would apply.

Mr. Auffenorde said he understood.

- Dr. Obropta asked Mr. Auffenorde if it were less than 50 acres, then the Township's Stream Corridor Ordinance could apply too.

Mr. Auffenorde said that would be correct; it has just not been my experience or the experience of the project engineer.

- Dr. Obropta asked if anywhere in the ordinance it says 50 acres is the limit.

Mr. Auffenorde said no; it is a guideline.

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- Dr. Obropta disagreed with it being a guideline. He said it is not in the regulation; it is just how it has been interpreted.

Mr. Policastro asked Dr. Obropta if he agrees that is how it has been interpreted.

- Dr. Obropta said he did not acknowledge that; that is what Mr. Auffenorde is saying. I do not believe that should be how it is interpreted.

Mr. Policastro clarified; Dr. Obropta stated that is how it has been interpreted.

Chairman Suraci asked who is the one who has interpreted it. We do not know, so it is kind of hypothetical at this point, unless we know for certain.

Michael Folli – 38 Garretson Lane

- Mr. Folli said he is also a member of the Environmental Commission. He said the NJDEP did not previously identify this water feature as a regulated feature, but an LOI has nothing to do with determining whether or not a water feature is a regulated feature. He asked Mr. Auffenorde if he was aware of that.

Mr. Auffenorde asked if the reference to “regulated” refers to the Township’s ordinance.

- Mr. Folli said no, under the Flood Hazard Area Act by NJDEP.

Mr. Auffenorde said NJDEP has over the years, it has been their intent that if something is a “water” under the LOI and the Freshwater Wetlands Act; it is also going to be regulated under the flood hazard. It is not in the regulation, but that is sort of where they are trying to go.

- Mr. Folli asked, doesn’t a flood hazard area verification determine?

Mr. Auffenorde said the LOI identifies waters that are regulated under the Freshwater Wetlands Protection Act. They may not be regulated, I guess, under the Flood Hazard Area.

- Mr. Folli agreed. He said further questioned the term “regulated” water with Mr. Auffenorde, as he restated his previous comment.
- Mr. Folli said they can agree to disagree. The purpose of an LOI is to determine stability...

Mr. Bernstein interrupted the speaker to be sworn.

- Mr. Folli was sworn in and reviewed his credentials for the Board. He indicated he had not walked the property to this point.

Mr. Policastro asked Mr. Folli if he was in support of this project.

- Mr. Folli stated he is in support of any project that meets our requirements.

Mr. Policastro posed his question again. He said if you were on the Planning Board, would you vote for or against this project.

- Mr. Folli said he had not heard all of the testimony and therefore had no idea how he would vote.

Mr. Policastro raised his question again.

Mr. Bernstein advised Mr. Folli he did not have to answer the question.

Chairman Suraci asked Mr. Policastro the purpose of his questioning.

Mr. Policastro said this is within the ambit of a COAH proceeding, which is providing low and moderate housing. I believe the focus is misguided and trying to cut through this “testimony”. He told Mr. Folli, I accept your credentials but think we are losing sight of the fact this is a COAH proceeding. I believe at the last hearing that Mr. Yuro agreed with Mr. Ford’s interpretation of how it’s been interpreted. Mr. Policastro said his question is very fair to ask.

Mr. Bernstein said Mr. Folli had answered the question by saying he has no opinion on the project one way or the other. While there is an inclusionary component, and there are conversations we had with the Court and the Master, there are

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still environmental and related issues that have to be addressed with or without an affordable housing component.

Mr. Policastro commented on Mr. Folli's opinion.

Chairman Suraci told Mr. Policastro that the questioning is out of character. This line of questioning has never been raised by any other affordable housing applicant.

- Mr. Folli said he was confused as to why an LOI is being used to determine regulated water jurisdiction. Regulated water is a specific legal term according to the regulations. I appreciate the wetlands delineation and NJDEP has approved that, but when NJDEP comes back during the review of a Flood Hazard Area Permit, they "take jurisdiction" of a feature they had not before. Mr. Folli said it is my professional opinion that it is not that they did not take jurisdiction before, but that they did not have the opportunity, before they saw the Flood Hazard Area Permit. The Flood Hazard Area Permit is what defines "regulated features". NJDEP has not changed their mind; it is that they never saw it before in that respect.

Mr. Auffenorde acknowledged Mr. Folli's statement, and said that is correct that the LOI speaks to the Freshwater Wetlands Protection Act, and a verification speaks to the Flood Hazard Control Act, but there is overlap in that they both regulate waters. Although it is not 100%, very often water under wetlands is also a water under the flood hazard area rules, but not always the case.

- Mr. Folli agreed.

Mr. Auffenorde said to your point, the Department has taken jurisdiction of it under the flood hazard, and told us to add it to the plan, which we have. They have told us the riparian zone is 50 feet, which we have added. We will comply with the regulations.

- Mr. Folli asked if the applicant applied for a Flood Hazard Area individual permit and/or a Flood Hazard Area of Verification.

Mr. Auffenorde said we applied for both, as I recall.

- Mr. Folli asked if a response or approval has been received to date for those permits.

Mr. Auffenorde said they had not. We are still addressing the questions by the Department.

- Mr. Folli asked if they were still within the 90-days.

Mr. Auffenorde said no, that they had to withdraw and will be resubmitting.

- Mr. Folli said he agrees with Mr. Auffenorde that the stream is not a Category 1 Water. He said NJ Geoweb specifies spatially what is and is not a Category 1. He said he agrees that tributaries to C-1 waterways are waterways under certain conditions.

Break (9:23pm – 9:30pm)

Christine Nazzaro-Cofone, PP of Cofone Consulting Group, LLC was sworn in, reviewed her credentials, was accepted by the Board, and gave the following testimony in response to questions asked by Mr. Policastro:

Ms. Cofone said this is a substantially conforming application. The applicant is requesting only three variances. This site is within the Overlay District of the I-3 Zone, which makes it a permitted use. The purpose of that overlay is to implement the Township's affordable housing obligation. This is an important project in Hillsborough because it results in the creation of units and therefore important to your settlement agreement.

The purpose of the Multi-Family Inclusionary Overlay District is to provide an incentive for the construction of affordable multi-family housing in the I-3 District. The standards are intended to offer maximum flexibility for site design and selection of dwelling unit types, in order to create a balanced housing pattern attracted to all income and aged segments of the community as part of the Township's Fair Share Housing Plan for meeting the region's low and moderate income housing need.

This project has a 24% set aside which means of the 96 units on-site, the applicant is proposing to do 23 as affordable units. The percentages can vary, but a typical set aside in New Jersey is 15% for a rental project.

The applicant is seeking variances for the following: sign height of 6 ft. 4 in., where the ordinance requires 4 ft.; for the height of the accessory structure of 30 ft. where 20 ft. is required; and for the percentage of trees that are going to be removed, about 37% where 20% is permitted.

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The plans will be revised to conform with the trash enclosures by eliminating two parking spaces, which will provide for the parking on all three sides and the swing doors. There may be the possibility of providing one additional dumpster area at the terminus of one of the drive aisles.

Ms. Cofone provided testimony as to why she believed the variances could be granted without detriment, under the C-2 Criteria. She advised the accessory (Clubhouse) structure had been designed to create a cohesive relationship between the buildings, and therefore in compliance with the intent of the overlay ordinance. Similarly, the ordinance requires that the sign supports be concealed and encourages enhanced sign design. The additional 2 ft. 4 in. for the signage is to provide an attractive sign with an attractive base at the terminus of Campus Drive. The sign could be reduced to comply, but it offers a better zoning alternative to grant the signage as proposed.

The maximum impervious coverage permissible in the overlay zone is 30%, where 22.9% is proposed. The required open space is required to be 40%, where 48.7% is proposed. The residential buffer is required to be 100 ft., where this buffer is at 230 ft. at some points. This is not a situation where the applicant is clear cutting the site. Mr. Ford (Engineer) had testified as to the quality of those trees, as second generation trees, where they are not the type of mature trees Section 188-160 is serving to regulate. Section 188-160 speaks to the removal of mature trees throughout all land within the Township.

The plan before the Board was appended to the Settlement Agreement, so it is something that has been vetted by the Township at length. Section 2.43 in the Settlement Agreement talked about nothing preventing Campus from applying for some bulk variances. Ms. Cofone said the various relief that is required in conjunction with this application is certainly de minimis in light of the fact that this is such a substantial portion of the Township's affordable housing plan that results in the creation of actual affordable housing units. If you did not implement this plan, the Township would have to go back and amend your Court adjudicated settlement. The burden of proof has been met for the C-1 criteria for the trees, and the C-2 criteria for the other variances. Criteria "A" can also be included since this is an inclusionary development at a 24% set aside, as well as criteria "E". You can be comforted that we are not overbuilding the site, and that this plan is consistent with the vision you had for the overlay. The MLUL does not hold any applicant to the burden of proof that there be no detriment, just that benefits of the grant of the variance would outweigh any detriment. It is in my opinion as an affordable housing Special Master a very substantial and important component of your plan. It is absolutely consistent with the concept plan, which looks very similar to the plan that the Board is evaluating tonight.

Mr. Emmich asked for confirmation of the sign location.

Ms. Cofone said it is on the project site on Campus Drive, to the east of the driveway. There is nothing out by Route 206.

Mr. Bernstein asked Ms. Cofone how she determined that 23 affordable housing units to be a substantial portion of the hundreds of units within the Township's obligation.

Ms. Cofone said this is a 24% set-aside on a project that results in the actual creation of units. Hillsborough also got a vacant land adjustment here. Which mean the Township was given an adjustment to build less affordable housing units than your obligation is required to be, because you do not have enough land or enough projects to redevelop or zone, so that makes those projects the ones to generate the live units.

Mr. Bernstein asked Ms. Cofone if she was familiar that all of the interveners agreed to a 24% set-aside.

Ms. Cofone acknowledged that Hillsborough was able to achieve a much greater set-aside than most townships.

No questions from the Board.

Questions from the public.

Susan Gulliford – Hunt Club Road

- Ms. Gulliford asked if environmental issues and such can be ignored in the service of the 24% affordable units.

Ms. Cofone stated this application is not ignoring any of the ordinances in town. The settlement agreement states, nothing shall preclude Campus Associates from applying for a variance, so there is nothing inappropriate that three variances are being sought.

- Ms. Gulliford asked the importance of comments from the Environmental Commission.

Mr. Policastro said the Environmental Commission may give guidance to this Board, but is not voting on this application. The Board may accept or reject the comments of the Environmental Commission.

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Mr. Bernstein noted for the records, that the existence of state and local regulations are not superseded by an inclusionary development application. As long as they are not required items above and beyond what others are required.

John Tutunjian – 150 Johansen Avenue

- Mr. Tutunjian asked Ms. Cofone to address her experience with building this close to wetlands and problematic flood zone area.

Ms. Cofone said she is not pushing affordable housing. Hillsborough, as well as every other municipality has been assigned an obligation. She said she would rely on the testimony offered by the project's team regarding environmental matters.

Mr. Policastro said they have done many projects over the past thirty years, which have received approvals from NJDEP.

Ms. Cofone said all of the projects are subject to outside agency approvals. Just because this is an affordable housing project, does not mean it gets to escape the NJDEP, NJDOT, or any other State regulation. If a project cannot obtain outside agency approvals, it simply will not be built, and the municipality will have to go back to the drawing board. Hillsborough has already deemed this project suitable. There are four things called "ables" that make a plan suitable to be included within the Plan: the project has to be suitable; available; developable; and so evidenced by the fact it is in the Court approved settlement agreement.

Mr. Bernstein said the Court determined it was part of the plan, as Campus Associates was an intervenor to the Township's declaratory judgement action. Whether the Township found it suitable or not is not the issue here.

- Mr. Tutunjian asked, if the State deems you cannot build within 50 feet, but within 150 to 300 feet away, would Campus have to change the plans to have less buildings.

Mr. Policastro said the question is beyond the scope of what the witness has testified to.

Nancy Guancione - 58 Campbell Road

- Ms. Guancione expressed her concern about the tree removal. She asked why about twice as many trees will be removed than the 20% permitted, and asked for more information on the hardship waiver being requested.

Ms. Cofone said she read the statement into the record on tree removal because it speaks to mature trees. We stand by the fact we are not having a deleterious impact on that section of the ordinance. While we are taking down about 38% of trees, 48% of the site is also being maintained as open space. She said from a planning point of view, we are not going to have a substantial detriment because of the removal of secondary trees. As part of the agreement, the application is to refrain from imposing cost generative requirements. That is a very typical provision. When you have an affordable housing or an inclusionary housing site, you do not want to impose such features on that development, that would be unnecessarily cost generative.

- Ms. Guancione asked if the Board had granted the tree removal relief.

Mr. Bernstein said a decision had not yet been decided yet. Secondly, it is in the agreement because in order to see affordable housing or inclusionary developments built, that municipalities are not allowed to impose cost generative items that would make the costs for such housing more difficult. It is not that the Township has granted an economic waiver, but that effectively has been the law. An economic waiver is being done because the courts have told municipalities such as Hillsborough, that you cannot make developers generate certain cost generative items because it will prevent them from building the affordable housing.

Mr. Policastro agreed.

- Ms. Guancione stated she is opposed to this project, for the record.

Marianne Sawade – 142 Johansen Avenue

- Ms. Sawade asked Ms. Cofone if she had been involved with Hillsborough and the affordable housing settlement.

Ms. Cofone said she had not. My role in this application is to provide testimony as a Professional Planner on the variances required, being retained by the Applicant, Campus Associates.

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- Ms. Sawade asked if there was an exception in the agreement that this property would not be developable subject to environmental concerns.

Ms. Cofone said she was not aware of that.

Mr. Policastro said that is not a question for this witness.

Mr. Bernstein said the application is being reviewed by the Board in the context of the zoning, the Township ordinances, state law, and related items. Those are the parameters the Board is considering this application in.

- Ms. Sawade noted some of the flooding that had taken place in her neighborhood. She said the zoning was put in place due to Court order, so Hillsborough had to agree.

Ms. Cofone objected. She said Hillsborough had a choice to develop their plan in conjunction with a Special Master, with the affordable housing planner, and Township Planner, so Hillsborough had a choice. This is not a town that lost its immunity and had the court running the process, so it is not accurate to say Hillsborough did not have a choice. Ms. Cofone said she can only answer questions based on her testimony.

- Ms. Sawade said she wanted to express that this neighborhood cannot take on any more water, and said this project will be a disaster for her neighborhood.

No more questions from the public.

Mr. Bernstein asked Mr. Policastro to extend the time of decision to at least February 28, 2021.

Mr. Policastro agreed.

Mr. Bernstein advised that if anyone wishes this Board to consider anything relative to this application, whether it be the applicant, the Board's professionals, or the public, excluding Mr. Policastro and myself; that such material must be received by the Planning Department by 4:00 pm on Friday, January 22.

Mr. Policastro said they will comply. He said he did not agree that the applicant did not comply with the MLUL.

Mr. Bernstein and Mr. Policastro discussed exhibit deadlines.

Mr. Bernstein proposed the application be continued to Thursday, February 04, 2021 without further notice.

A motion to continue Application 20-PB-13-MSP was made by Mayor Lipani, seconded by Vice Chairman Julian. Mr. Peason suggested that by February 04, the applicant address the difference between a flood zone and a drainage waterway, so we can get straight if it is or is not a special flood hazard area.

Mr. Bernstein advised Vice Chairman Julian that the January 22 deadline would also include any formal comments by the Environmental Commission.

Vice Chairman Julian advised the Environmental Commission will not be meeting until January 25.

After discussion, it was agreed that any comments from the Environmental Commission would be made immediately following. Mr. Bernstein advised the public that the Environmental Commission comments are the exception to the deadline.

Roll Call on carrying the application: Mr. Emmich – yes; Mr. Ciccarelli – yes; Mr. Skobo – yes; Mr. Peason – yes; Deputy Mayor DelCore – yes; Mayor Lipani – yes; Vice Chairman Julian – yes; Chairman Suraci – yes. Motion carries.

Mr. Maski noted upcoming applications scheduled.

ADJOURNMENT

A motion to adjourn was made and seconded. All were in favor; motion carries.

The meeting adjourned at 10:25 p.m.

*Submitted by:
Debora Padgett
Planning Board Clerk*