

**HILLSBOROUGH TOWNSHIP PLANNING BOARD**  
**APPROVED PUBLIC MEETING MINUTES**  
**March 10, 2022**

Chairman Carl Suraci called the Planning Board Regular Public Meeting of March 10, 2022 to order at 7:30 p.m. The meeting was held in the Courtroom of The Peter J. Biondi Building. All stood for the Pledge of Allegiance.

Chairman Suraci announced: 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 2022 Annual Meeting Schedule has been provided to the officially designated newspapers, the Township Clerk, posted on the Township's Website, and available at the Hillsborough Township Municipal Complex.

Application documents have been made available on the Township's website at <https://hillsboroughnj.civicclerk.com/> and complete applications files are available in the Planning and Zoning Department for inspection, in accordance with the public meeting notice.

**ROLL CALL**

Mayor Shawn Lipani – Present  
Robert Wagner, Jr. - Absent  
Committeeman Frank DelCore – Present  
Robert Peason – Present  
**Carl Suraci, Chairman** – Present  
**Neil Julian, Vice Chairman** – Present

Nathan Santaromita – Present  
Ron Skobo – Absent (*Recused*)  
**Kenneth Hesthag, Secretary** – Present  
John Ciccarelli (Alt. #1) – Present (*Recused at 8:22pm*)  
Patricia Smith (Alt. #2) – Present

Board / Township Professionals: David K. Maski, PP, AICP, Township Planning Director; Eric Bernstein, Esq., Board Attorney (Eric M. Bernstein & Associates); Drew Di Sessa, PE, CME, Board Engineer (Pennoni Associates); Michael Lombardozzi, CSR, Board Court Reporter; and Caz Bielen, Township Videographer (Premier Media).

**CONSIDERATION OF MEETING MINUTES**

- November 05, 2020

A motion to approve was made by Mr. Ciccarelli, seconded by Committeeman DelCore. No comments.

**Roll Call:** Mr. Peason – yes; Mr. Ciccarelli – yes; Committeeman DelCore – yes; Mayor Lipani – yes; Vice Chairman Julian – yes; Chairman Suraci – yes. Motion carries.

- July 01, 2021 – Executive Session (Date corrected as noted here)

A motion to approve was made by Secretary Hesthag, seconded by Mr. Peason. No comments.

**Roll Call:** Mr. Peason – yes; Secretary Hesthag – yes; Mr. Ciccarelli – yes; Committeeman DelCore – yes; Mayor Lipani – yes; Vice Chairman Julian – yes; Chairman Suraci – yes. Motion carries.

- December 02, 2021

A motion to approve was made by Mayor Lipani, seconded by Secretary Hesthag. No comments.

**Roll Call:** Mr. Peason – yes; Mr. Santaromita – yes; Secretary Hesthag – yes; Mr. Ciccarelli – yes; Committeeman DelCore – yes; Mayor Lipani – yes; Vice Chairman Julian – yes. Motion carries.

**CONSIDERATION OF RESOLUTIONS**

None

**PLANNING BOARD BUSINESS**

None

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

Chairman Suraci opened comments from the floor and advised the Board had adopted a five-minute timeframe for such.

**Tim Veracco** - 3 Franklin Drive

- Mr. Veracco asked which outside agencies the Toll Bros. application needs approval from.

Mr. Bernstein said he believes it is the SUSCD; SCPB; NJDEP; and DRCC.

- Mr. Veracco commented that according to his follow up, the monitoring well that was supposed to have been installed in 1994 was installed in October, 2021. There was no testing being done during the whole period of time as prescribed in the resolution of 1994. Runoff testing from the two tributaries was also supposed to be done as prescribed but had not been until October, 2021 as well. Mr. Veracco questioned how that was not caught.
- Mr. Veracco said he also identified violations from NJDEP every year the Golf Course has been in existence in the septic test water. He noted he informed Mr. Carr from the Township Health Department about it.

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- Mr. Veracco further expressed his concerns on how the Toll Bros. development will affect the wells in the Claremont Development. He advised the residents will continue to follow up on these matters with entities other than the Township.

**Richard Onderko** - 325 North Main Street, Manville – Mayor of the Borough of Manville

- Mayor Onderko commented that the Manville Borough Hall is still decimated from the flooding from Ida, and noted that he made the newspaper. Referencing the Toll Bros. application approved at the last Board meeting, Mayor Onderko asked if the ordinance to change the zoning at the Golf Course was Court mandated under the affordable housing settlement.

Chairman Suraci responded that the Township Committee changes the zoning.

Board Attorney, Mr. Bernstein confirmed the property was part of the settlement.

- Mayor Onderko said it is ironic that 174 luxury homes could be tied to affordable housing. The affordable housing associated will likely be on the border of Manville. Mayor Onderko spoke on potential flooding and asked that Hillsborough share half the tax revenue from these homes with Manville. He stated Manville is drowning. Mayor Onderko asked that Hillsborough try to stop building on the Hillsborough-Manville border.

Chairman Suraci said the State has control of this issue and our representatives have done nothing. He suggested Mayor Onderko reach out to Assemblyman Zwicker and said this issue is a concern for all of us in this State. As you know, Affordable Housing and the Fair Share Housing Center do not care about infrastructure in general. They have a myopic view point that is just about affordable housing.

Mayor Lipani said Manville does not have the affordable housing problem because Manville is already at about 90% impervious. It does not appear that best management practices were considered when building the large parking lot in the center of town or building throughout Manville. He said we understand your concerns but it is unfair to throw shots at Hillsborough for building on the Manville boarder because there is building everywhere in town.

- Mayor Onderko responded by saying they are not receiving any help.

Committeeman DelCore welcomed Mayor Onderko to set up a time any day of the work week to discuss the matter further.

Brief comments were exchanged.

**Maria Janucik** – 720 East Frech Ave., Manville and Hillsborough Township Property Owner, 2155 Camplain Road

- Ms. Janucik spoke against Mayor Lipani's comments to Mayor Onderko. She said Manville is an old town where Hillsborough is still building and there is a concern for the stormwater; flooding is getting worse.
- Ms. Janucik questioned why the Health Department had not followed up on the concerns raised by the previous speaker.
- Ms. Janucik voiced her concerns about the Toll Bros. application and questioned why Board members vote in favor when they know there are serious flooding issues.

**Tom O'Donnell** – 33 Anne Street

- Mr. O'Donnell said he was not able to make the last meeting for the Toll Bros. application. He said he has read the affordable housing settlement and agrees it said the Township will cooperate, but that that agreement does not govern the Planning Board. He asked Mr. Bernstein if that is a valid interpretation of that agreement.

Mr. Bernstein said the Planning Board is not a party to the agreement, but I do not agree with the statement that this Board is not bound by the zoning nor the agreement. The Planning Board is not part of the litigation but is bound by the zoning change that was put into place as part of the agreement.

- Mr. O'Donnell said it was expected that the Planning Board would approve the project as submitted.

Mr. Bernstein said that is correct.

- Mr. O'Donnell questioned why the Board has these public meetings where residents come up crying, sharing their stories, comments and questions when at the end of the day we are moot because of that agreement.

Mayor Lipani said the reason for the meeting is to put on record the testimony of the professionals and owner, and put on

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the record the exhibits and comments; there is no backroom deal. All of the proofs are put on the record.

Committeeman DelCore said there is latitude as to what the Board can do. The Board can choose to vote as we did in Campus, but in some cases, the risk of those votes may outweigh what the overall affordable housing program would be. The reality is in the event that our immunity is stripped, builders will be able to build affordable housing wherever and however they want, and all local rule goes away. That is not farfetched; we were told pretty clearly what the implications will be. If you look at any of the litigation around this State on affordable housing; the New Jersey Supreme Court and our Legislators don't care. Affordable housing is all they want; they do not care about schools, roads, infrastructure, sewer, or flooding. So we have to figure out how to make that work.

- Mr. O'Donnell said the Board challenged the residents to do our homework and come back, which we did at the last meeting. He said it was said that the Board would make a decision on the 23<sup>rd</sup>, and asked if the approval of the Toll Bros. application had a timeline dictated in the agreement.

Mr. Bernstein said no. He questioned Mr. O'Donnell's comment on a date certain by pointing out the Board was never scheduled to meet on the 23<sup>rd</sup>. The matter was heard March 03 and a decision was made on the application.

- Mr. O'Donnell asked the timeline to contest a decision by the Board.

Mr. Bernstein suggested Mr. O'Donnell look up the deadline.

- Mr. O'Donnell expressed his dissatisfaction as to how the objections of the residents were not considered as to the credibility of the stormwater witness.

Vice Chairman Julian said he believes the Board does everything in its ability to diligently work within the confines of the regulations from NJDEP, the County, and the like. Board members spend hours doing their due diligence and take the comments from the public seriously. We go through this process but the ultimate arbiter is going to be NJDEP and the other outside agencies. We have to work within the confines of the current regulations.

- Mr. O'Donnell reference an email chain between Mr. Bernstein and Toll Bros. regarding the test wells. He said for 25 years the Golf Course has been in violation of pollution and have been putting the residents of Claremont at risk. Mr. O'Donnell questioned why the residents of Claremont were never told to have our wells tested as abutting property owners. He further referenced emails provided in response to his OPRA request.
- Mr. O'Donnell said they (Claremont) are going to continue to challenge this with their own experts. He requested that the Township go back to requiring permits for Royce Brook to have the huge tent on their property and all of the noise pollution that comes from it. He finished by saying Royce Brook Golf Course has not been a good neighbor.

**Andrea Stuart** - 35 Burniston Court

- Ms. Stuart asked if there were any plans for infrastructure, like Police, Fire, and the schools. She gave examples of how the school classrooms are over seating capacity, and how children are being bused outside of their districts. She questioned the building of warehouses and the trucks they bring,; flooding; and general infrastructure

Mayor Lipani said the Board of Education handles the schools. We increase Police as the population goes up. We are still under a volunteer Fire Department, unless we go down the path of having a paid Fire Department. As has been mentioned, the Legislators do not care about the infrastructure. It is up to us as to how to work around it the best we can.

- Ms. Stuart said Country Classics provided funds to build Amsterdam School. She asked if Toll Brothers is going to do something similar because our schools are crowded now. We pay decent taxes for decent schools; it's an honest question.

Committeeman DelCore said the honest answer is that it will depend on the taxpayers because they are going to have to vote whether or not they want another school. The Board of Education cannot build another school without it going to a referendum.

Committeeman DelCore said we work with them on planning, but cannot drive that process for the school systems. It is a completely separate organization. Property taxes cover both budgets, but we have no say in the decision process as a governing body.

Chairman Suraci explained the days when you could ask or strongly imply for such infrastructure are long gone because there was a quid pro quo. It is now up to the goodness of a developer to make a proper donation.

- Ms. Stuart said there have also been issues with flooding at the schools. She said if we keep building, there is not

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going to be room for another school or two.

**Doug Eden – 55 Anne Street**

- Mr. Eden said he believed the Settlement Agreement with Toll Brothers specifically said we could not ask for any additional funding to address the infrastructure issues. He said since he last spoke on the Toll Brothers application, he found out there were VOC violations for Royce Brook, which the residents were not able to ask about. There were nine VOC violations between 2000 – 2009 and Royce Brook Golf has been in violation every single year. The VOCs include acetone and benzene, as found in their sanitary sewer system. The violations cited by NJDEP from the testing all showed that Royce Brook had a permit, but that permit was only until 2009; each noted “pending”. Now there is no one to ask since the Board does not know; perhaps you should.
- Mr. Eden said since 2019 he had been asking for the results for the wells that were supposed to have been put in place to protect our well water for the 200 homes or so in our area. Come to find out, the property owner was responsible to put those wells in place as of the Resolution from 1994, but the property owner never did it. Mr. Eden said he was later told that the purpose of those wells was for quantity not quality, but he said that was not the case
- Mr. Eden asked that the wells for the entire development be retested and that the results be available. The test results we know of for Royce Brook are only the handful of wells they test in their sanitary sewer system. He said he is concerned with development fracturing the shale and all of that stuff getting into our groundwater. It is a health issue; they would not have put it in the 1994 Resolution if people were not concerned about it back then. Mr. Eden said everyone dropped the ball and now we are stuck. He asked if anyone can follow up on this.

Mayor Lipani said he cannot change what happened in the past but moving forward, we will make sure the wells that are supposed to be there are, and that the testing that needs to be done will be. I do not believe violations that NJDEP imposed upon Royce Brook would have come to us; otherwise they would have been fined.

Committeeman DelCore said the approval would include whatever was to have been done. Either Royce Brook or the applicant would have to ensure that. As the Mayor said, that does not take care of what should have happened but they will have to ensure that. If NJDEP was testing the sanitary sewer they would have a record of the traces they were finding. He said I think you can be relatively sure that for any chemicals found, if they were significant cases, they would have required additional work to be done. The NJDEP takes contamination seriously. Committeeman DelCore said we are going to continue to track that; that is part of the agreement going forward that now we have to ensure that testing is being done.

Vice Chairman Julian said if there were chemicals found in the sanitary sewer, you might not have the same issue with the wells because that is two different systems.

- Mr. Eden expressed that his questions and concerns had been dismissed and that no one came back to tell him he was right. He noted the well testing is \$600 and that it should not be the responsibility of the home owners to take care of it. He said if he had been dumping chemicals on his property for 25 years, he would be held responsible to remediate it before any permit would be issued. He questioned how Royce Brook and Toll Brothers are privileged to be able to get permits, including from the NJDEP.
- Mr. Eden read from a letter he identified as being from Michael Carr from the Hillsborough Township Health Department, dated February 10, 2021, to Denny Miami, Vice President of Billy Casper Golf, the property owner of Royce Brook Golf Course. *“Please provide written documentation that you have taken all necessary steps in order to fulfill compliance with the prior Planning Board’s Resolution for this property within 30 calendar days of this letter. Failure to meet these requirements set forth in this Resolution and this correspondence, this could result in legal action and/or negatively impact future plans for this property”*. Mr. Eden continued, reading *“As of the date of this letter, Royce Brook Golf has failed to produce any additional documentation indicating that the requirements of this resolution are being met, including but not limited to, no best management practices for the use of chemicals have been made available. No results from monitoring wells that was required to be installed for the impact to the residential potable wells by chemicals, pesticides, fungicides, fertilizers and herbicides used by Royce Brook Golf. No results from any semi-annual testing of surface water as it exits the property and indicates any impact to the neighboring surface waters”*.
- Mr. Eden asked if anyone was aware if any of these conditions have been met.

Several members said they were not.

- Mr. Eden further expressed his concerns and said that Toll Brothers should not be able to get any permits until this has been resolved.

Chairman Suraci pointed out Toll Brothers is the applicant. He said we hear your concerns and understand the current

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owner has not been a good neighbor. Unfortunately, this is beyond the jurisdiction of this board since we only had to hear from the applicant, not the property owner. However, there were points raised and they were heard.

- Mr. Eden said we are going to be impacted from this as long as we live in our homes, downstream of this project. He said having affordable housing should not be at his expense or the expense of the residents whose homes are impacted. Mr. Eden said they have not yet heard back from NJDEP or the Watershed.

**Tim Veracco** - 3 Franklin Drive

- Mr. Veracco commented that members have said this is not within the Board's jurisdiction, but he questioned who has accountability.

No further comments from the public.

**CONSIDERATION OF ORDINANCES**

None

Mr. Ciccarelli recused himself prior to the Harvard Way JMJ4, LLC application.

**APPLICATIONS - PUBLIC HEARING**

- **Harvard Way JMJ4, LLC (Redcom / SAI) – File 21-PB-09-MSPV** – (TOD 03-31-22) - Block 58, Lot 1.09 – Route 206 (a/k/a Harvard Way). Applicant seeking preliminary and final major site plan approval, 'c' bulk variances, and waivers, to construct a 107,366 square foot warehouse and associated improvements, at the end of Harvard Way, on Property in the I-3, Light Industrial Zone. (EC Review: 09-13-21 and 02-28-22) (*Hearing #1 - 11-18-21; 01-13-22 - Adjourned; Hearing #2 02-10-22) REVISED Plans/Report Last Revised 01-26-22 - Application continued from February 10, 2022 without further notice.*

**Exhibit from 11-18-21 Hearing:**

**Exhibit A-1** - Colorized Proposed Conditions Exhibit

**Exhibits from 02-10-22 Hearing:**

**Exhibit A-2** – Colorized Artistic Rendering of the Warehouse Building, dated 06-25-21

**Exhibit A-3** – Colorized Proposed Conditions Exhibit Illustrating the Current Site Plans L/R 01-28-22

**Exhibit O-1** – Narrative Section from the Van Cleef Engineering Drainage Report (Report dated 04-30-21 L/R 10-2021, revised 12-2021, revised 01-26-22) Pages 1-6

**Exhibit O-2** – Appendix I from the Van Cleef Engineering Drainage Report, L/R 01-26-22 (33 pages)

**Exhibit O-3** – Appendix K from the Van Cleef Engineering Drainage Report, L/R 01-26-22 (3 pages)

**Michael O'Grodnick, Esq. of Savo, Schalk, Gillespie, O'Grodnick & Fisher, P.A.**, representing the Applicant, gave a brief reintroduction of the application. He emphasized this is an approved use in this zone. This site has been approved for an industrial building for decades.

Mr. O'Grodnick said testimony was heard from Gregory Readington on behalf of the applicant; from our Planner, John McDonough, PP; and Traffic Engineer, Betsy Dolan, PE. at the November 18, 2021 meeting. Testimony was also presented at the January 13 (error – meeting date was February 10, 2022) hearing by our Registered Architect, Roberto Martinez, and concluded our testimony from Civil Engineer, Michael K. Ford, PE. Witnesses were cross-examined by the public and opposing counsel, Mr. Asch, Esq. Mr. Ford will be called to hopefully finish up the cross-examination.

**Michael K. Ford, PE, PP, of Van Cleef Engineering Associates, LLC**, still under oath, was called up for cross-examination.

**Opposing Counsel, Jordan M. Asch, Esq. of Asch Legal, LLC**, reintroduced himself for the record as representing the **Green Hills Community Group**.

Mr. Asch referred back to Exhibit O-3. He asked Mr. Ford to read some of the figures from the exhibit. Mr. Asch said based on the figures, the impervious coverage is just over 62.5%.

Mr. Ford said the impervious coverage Mr. O'Grodnick referenced is for the site. Sixty percent is permitted for the zone. The figures referenced are for the studied area of the drainage, which includes the off-site. Area 'A' includes the subject site as well as the existing building on Lot 1.08. He said as per my previous testimony, we elected to be conservative and treat the off-site existing industrial building as if it were not there and analyze that drainage area in the proposed condition and apply the reductions required. We would only be required to address the on-site. That 62.5% is the area we are applying the reductions to. You are not required to apply the reductions to areas you do not disturb or are off your site.

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Mr. Asch said the combined total of the two lots is above the 60% impervious.

Mr. Ford said that includes the roads. The zoning does not apply to the roads, which have higher impervious coverage by default.

Mr. Asch asked about the pond constructed wetland proposed and green infrastructure rules. He said a pond constructed wetland is allowable only when it is designed as an online system. He asked Mr. Ford to explain what an online system is.

Mr. Ford said he was not sure of the reference to "online" and said the existing basin is within the study drainage area and part of that 10.99 acres you referred to; Drainage Area 'A'. Everything flows through the basin so that would not be offline.

Mr. Asch repeated the question.

Mr. Ford said online would mean it drains through that basin.

Mr. Asch said the minimum drainage area to construct upon a wetland is 25 acres.

Mr. Ford said that is correct but if you go on to the regulations, it says that areas less than that are permitted as long as you do a water budget. We did a water budget analysis on a monthly basis. It was discussed at the last hearing that that be expanded to analyze it for a daily basis, and for three different years of wet, dry, and average year. This was also discussed at the Environmental Commission meeting on February 28. The applicant agreed to do that.

Mr. Asch asked if that additional analysis has been done.

Mr. Ford said that is correct; it has not been submitted to the Board. We have done a preliminary analysis. It has not been submitted to NJDEP yet.

Vice Chairman Julian read from the Environmental Commission memo for the record. He read: *"Dr. Obropta stated that the water budget for the basin / constructed wetlands requires year averages for three years; a wet year, dry year, and average year. However, the current water budget provided by the applicant does not include this information. The information is required to be provided in the water budget to approve the constructed stormwater wetland design."*

Mr. Ford stated we shall comply.

Mr. Asch asked Mr. Ford if he was aware of the flood prone areas at and around the site, and the concerns of the adjacent neighborhood downstream of the project.

Mr. Ford said yes.

Mr. Asch asked if a study had been done for the surrounding areas.

Mr. Ford said we have done an analysis in accordance with the regulations. As previously stated, my understanding is the Township has engaged the Municipal Engineer to do a study to do a more regional analysis, to look for ways to address the existing drainage issues in that area and the flooding. He answered I have not done that analysis.

Mr. Asch asked more questions on the drainage area.

Mr. Ford said this site eventually drains into the Raritan River. We have only done analysis for our disturbed areas, as required by Code, not for the Raritan River.

Mr. Asch asked Mr. Ford to explain the difference between peak flow rate control and runoff volume.

Mr. Ford said State regulations NJac7:8 lays out the stormwater management standards. In those standards they deal with quantity control and the methodology for addressing the standards for quantity control include an option which is standard, to take the pre-developed flows for the design storms; the 2, 10 and 100-year storm, and reduce those peaks by a specific amount. As stated in my prior testimony, we lowered those peak flows substantially below what is required. With regard to volume, once you meet that standard for the peak flow reductions, there are no additional requirements that you reduce volume. By virtue of adding impervious coverage to a site, you are going to increase volume.

Mr. Asch asked Mr. Ford if it was correct to say you meet the peak flow compliance requirement but still cause greater volume runoff from the site.

Mr. Ford said that is correct; the numbers are in our report. He said that is permitted by the Code.

Mr. Asch asked Mr. Ford if he agreed with the statement by Mr. Decker regarding stormwater runoff, as stated in the Environmental Commission report.

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Mr. Ford said he was not at that meeting and could not comment on the context.

Vice Chairman Julian read the referenced comment into the record from the Environmental Commission report. *"Mr. Decker agreed, as such Dr. Obropta stated that the proposed basin design affects the long-term but not the short-term condition, so flooding is still at risk for neighbors and a more detailed regional stormwater management analysis should be completed."* He said he does agree with the reduced peak flows for the 2, 10, and 100-year storm.

Mr. Asch asked, despite having complied with the requirements, is it possible this project could still cause flooding.

Mr. Ford said that would be the subject of a regional analysis. I have not done that analysis and do not know the answer to that.

Mr. Asch addressed runoff calculations found in Mr. Ford's drainage report, last revised 01-26-22, Appendix C, page 1 of 25, and Appendix D, page 1 of 40.

Mr. Ford noted Appendix A has a summary for all of the numbers. He said we are not disputing that the volumes increase from pre to post; it is in the report.

Mr. Asch said despite not having done a downstream analysis, that by increasing the volume runoff for the 2-year storm, that this project will not exacerbate the flooding conditions for neighboring residents and properties.

Mr. Ford said we have complied with the regulations. That type of analysis is not required.

Mr. Asch asked a similar question regarding the peak flow.

Mr. Ford said that would involve a regional study. The timing of discharge is part of it.

Mr. Asch moved to the variances and waivers being sought. He asked why the spillway could not be relocated to another location on the property.

Mr. Ford said due to elevations. You have to put the emergency spillway at the low end. The basin exists, as does the emergency spillway. We are endeavoring to expand and enhance the emergency basin and raise and reconstruct the emergency spillway.

Mr. Asch asked if Mr. Ford if his testimony said that it is not possible to relocate that emergency spillway.

Mr. Ford responded, we have located where it has to be based on grades.

Mr. Asch asked if it is good practice to locate a spillway towards the adjacent residential properties in such a flood-prone area.

Mr. Ford said the emergency spillway would only act in an emergency case. If I had my choice to put it in another place I would. The areas you are referring to are downstream of this so even if the spillway was moved to the south end of this basin, ultimately the water would go in the same place.

Mr. Asch asked for more information on the economic hardship waiver.

Mr. Ford repeated prior testimony. He said we are not looking to get out of planting that total number of trees calculated. We will plant as many trees as possible on-site. If the Board Engineer finds other locations that are suitable for on-site trees, we would plant them, but to the extent they couldn't be fit on-site, we are willing to make a contribution to the Town so that trees can be planted anywhere in town.

Mr. Asch asked Mr. Ford if they are seeking almost 8% more than the 60% allowed for tree removal.

Mr. Ford said that is correct; a variance is required. As was stated, we submitted a plan that required less than the 60% but at the request of the Environmental Commission to make the basin bigger. Even being at 68%, we were asked at the last meeting to look at making the basin even bigger to the south. We would be glad to work with the Board Engineer to do that, but that would result in the removal of more trees. This additional 8% is not to make way for anything but the regrading for the basin to make it bigger. Those areas would be re-vegetated, so effectively, the wooded area being disturbed is going to be restored. The granting of relief is a Board decision.

Mr. Asch asked if trees provide any benefit for stormwater runoff.

Mr. Ford said yes. He reiterated that the analysis was done as if the trees for the adjacent lot were still there. Land cover is part of stormwater management analysis. Wooded areas are considered to have less runoff than other types of land cover.

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Mr. Asch asked if the tree removal will have any detrimental impact on the stormwater runoff from this site.

Mr. Ford said we will be putting back the trees where the 8% is being disturbed. We have made several revisions to address the comments, and are proposing to replace 190 trees now on the plan. Again, if the Board Engineer finds suitable locations for additional trees, we will plant them.

Mr. Asch addressed the NJDEP permits applied for.

Mr. Ford replied we prepared the wetland permit plan. The wetland permit application has been submitted to NJDEP and is now pending. That permit is being administered by the applicant's environmental consultant, Ed Kuc of Eastern States Environmental. He stated he is not a wetlands permit expert and did not submit the permit for this project, so therefore he would not answer with more detail.

Mr. Asch asked if the design of this project would be impacted if that permit could not be secured.

Mr. Ford reiterated that all outside agency approvals, including the NJDEP, will be secured as would be required.

Mr. Asch referenced the resolution for the prior approval for this site. He said that resolution required that the applicant complete an engineering study developing remedial solutions to alleviate the existing and potential flooding problems as detailed in the February 1988 Downstream Impact Study. He said this applicant has not endeavored to conduct any such study or to develop any such remedial solutions.

Mr. Ford said the fact that we are expanding the basin well beyond what would be required for us to meet the regulations regarding the peak flow reductions is substantial.

Mr. Asch had no further questions for Mr. Ford.

Mr. Bernstein reminded the Board that the public has not yet had an opportunity to question Mr. Ford.

Break 9:00pm – 9:10pm

Vice Chairman Julian said some of the comments from the Environmental Commission were already discussed. He said the Commission had reviewed the application prior to the first Planning Board hearing, and then requested an additional meeting last Monday, and generated another report. He said one of the issues was the classification of the soils. A witness from Whitestone was there. There was a discussion between the difference of soils between the "Cs" and "Ds". Mr. Kopacz, PE from Whitestone Associates went over how they went about classifying the soils and the fact that they determined it is a "D" soil.

Mr. Ford said that is correct.

Vice Chairman Julian, Planning Board Liaison to the Environmental Commission, read from the most recent Environmental Commission Report: *The Commission asked if this reclassification of soil from "D" to "C" was approved or commented on by the Somerset-Union Soil Conservation District. The Commission recommends that the township contact the SCD to determine whether they approve of changing the soil group for this project groups from "C" to "D". Chapter 6 – Groundwater Recharge of the BMP Manual states, "The assignment of HSG D to any development site areas should be discussed with the local Soil Conservation District prior to proceeding to help ensure that the site soil data is accurate."*

Vice Chairman Julian said the Environmental Commission feels that resubmitting the application is not good enough. The Commission would like a discussion with them to make sure they understand the soils are classified from "C" to "D". An approval letter does not mean they specifically evaluated the reclassification of the soil type, so we want to make sure that was done. The Commission also discussed the General Permit 1, and agreed the General Permit for the repair maintenance of the existing stormwater basin does not apply when the existing basin design is being changed. It should be at the discretion of the NJDEP as to whether or not a freshwater wetland individual permit is required. That application may need to be resubmitted.

Vice Chairman Julian further read: *The Best Management Practices Manual (BMP) is a forebay which requires for the basin. However, the applicant's "Grading, Drainage & Utility Plan" does not include a forebay. If a forebay is not included, the basin would not be designed in accordance with the NJDEP Best Management Practices Manual and the Township would be in violation of the town's MS4 permit from NJDEP. As such, a forebay is required to be shown on the design plans for the proposed basin extension.*

Mr. Ford said the applicant does not object to the two comments regarding that SUSCD requirement. The applicant has already said they will comply with the requirements of the NJDEP. As to the forebay, the NJDEP BMP Manual shows an illustration of what a constructed wet pond looks like, which includes a forebay. It may have been misconstrued that a forebay is absolutely required, but Section 10.4 from the BMP Manual, under pretreatment (p. 4), bullet point three states:

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*Pre-treatment may consist of a forebay or any of the BMPs found in Chapters 9 and 11.* In this case, we provided BMP in advance of the basin in accordance with Chapter 9 or 11; so that is the intent. As part of the review comments NJDEP has provided resulted in the changes to the basin that has been classified as "wetlands" and mapped as such, to be reconstructed and enhanced to be a constructed wetland pond in accordance with the new standards adopted, to qualify for green infrastructure, now shown on the plan.

Vice Chairman Julian noted this is a different mechanism.

Mr. Ford said pretreatment is for water quality prior to discharge to the basin. Chapters 9 and 10 deal with those mechanical treatment devices. Review of the BMPs we have placed and approval are subject to the Board Engineer and the NJDEP.

Mr. Di Sessa said the measures the forebay would handle are being handled by the other BMPs proposed on the site for water quality. They are treating the stormwater prior to it reaching the basin as the forebay would. He said I agree with Mr. Ford's assessment of the way it is designed precludes the need for the forebay.

Vice Chairman Julian noted that the best case scenario would be to reduce the size of the warehouse so that additional trees did not need to be disturbed for the basin. The Commission asked if the parking footprint could be reduced to meet the tree ordinance at the 60% maximum. Tree clearing was also discussed by the Commission. No tree clearing between April 01 and August 31 to protect the protected bat species, in accordance with Fish and Wildlife Standards.

Vice Chairman Julian said one of the comments from the public at the Commission was related to whether a water separator or a device should be incorporated in the design to mitigate any pollutants in the event of flooding.

Mr. Ford said we submitted the complying application with regards to the 60%. The applicant is asking for the waiver to make the basin larger to enhance the stormwater management. With regards to the water quality, it is my understanding that the Commission discussion acknowledged the runoff from those paved areas is being treated by the mechanical treatment devices. It should be noted that by virtue of the wet pond having a permanent pool is another water quality measure. Other than making the basin qualify as green infrastructure, there is no water quality analysis credit being taken for the constructed wet pond but there are water quality measures there as well. There has been no discussion for additional measures. There is no trench drain here where we could add some oil/water separator to. Here all of the runoff is flowing away from the building towards those mechanical treatment devices.

Mr. Ford said we expected the limitation for removal of trees to be part of a condition of the NJDEP approval. We agree to comply with that.

Open to the public

**John Tutunjian** – 150 Johanson Avenue

- Mr. Tutunjian asked Mr. Ford if he was aware if anyone had gone back to this area during a major storm to see how that water is flowing.

Mr. Ford said he had been back to the area a number of times, including after Ida.

- Mr. Tutunjian described the area during a major storm. He said the water from Green Village flows down to their area. The basin is not working properly. We need to fix the problem before we build anymore. There is a major problem that the water is not flowing to the Raritan River. He said he had three feet of water in his house from the last storm and had never had water before like that.
- Mr. Tutunjian shared more of his concerns for the flooding to his neighborhood.

Mayor Lipani reminded the public that in the interest of keeping the process moving, the floor is open for questions for the witness; comments can come later.

**Grant Kolmer** - 144 Taylor Avenue

- Mr. Kolmer asked for information on the new outlet structure.

Mr. Ford said within the detention basin, the outlet structure is referring to the device that controls the discharge from the basin. It is a structure with a series of either weirs or orifices that are part of the analysis that allow water to run out at different rates.

- Mr. Kolmer asked about the noise generated from the warehouse and any mitigation that would help with that.

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Mr. Ford said he is not a noise expert and had not testified to such.

- Mr. Kolmer asked if there are priority areas for trees to be planted for the Green Hills Neighborhood.

Mr. Ford repeated his previous testimony for the tree plantings. He said I am not certain trees are good for noise mitigation; sound walls are. There are no plans for sound walls.

- Mr. Kolmer asked what the maintenance responsibilities for the basin would be.

Mr. Ford said there is an Operation and Maintenance Manual that has been prepared for the basin. That manual is recorded at the County Clerk's office, so it is a discoverable document that goes with the title of the land to identify any owner for the responsibilities of the basin. The Township requires that these basins be inspected periodically and those reports are submitted to the Township Engineering Department regarding stormwater facility maintenance. It would be the owner's responsibility to maintain the basin.

- Mr. Kolmer asked where the maintenance stops. Are the drains included?

Mr. Ford said the owner of this property would be responsible, and if there is an easement on the property that has stormwater facilities that are installed or maintained by others, it would be their responsibility. This would be laid out in the easement or whatever document was recorded as part of those improvements as well.

- Mr. Kolmer asked if all of the water behind to be going downstream will enter into this basin.

Mr. Ford said we have done a drainage analysis that delineates the drainage area that goes to the basin as part of our report.

- Mr. Kolmer referenced the water to the right of the site.

Mr. Ford said that area is not part of the calculation. The drainage map shows what area goes into the basin.

- Mr. Kolmer asked the depth of the basin.

Mr. Ford said it varies. The permanent pool is 4 ft. deep. The maximum is about 4 ft. to 5 ft. above that.

- Mr. Kolmer asked the distance between the edge of that water to the edge of the Green Hills Neighborhood.

Mr. Ford showed the exhibit. He said he did not have the exact number but that it was over 100 ft. to the residences.

**Susan Gulliford – Hunt Club Road**

- Ms. Gulliford referenced the most recent Environmental Commission memo.

Mr. Ford said Mr. Julian followed up with all of the elements to be addressed.

- Ms. Gulliford asked about any restrictions on storage for the tenants.

Mr. Ford said he would not be the one dealing with the occupants. We have addressed the roof runoff on the outside.

**Maria Janucik - 720 E. Frech Ave., Manville and Hillsborough property owner**

- Ms. Janucik asked the total number of trees to be cut down.

Mr. Ford answered 421 trees will be removed in total, as per the most recently revised plans.

- Ms. Janucik asked when the basin that is there now was constructed and how it can be considered if it has not been maintained

Mr. Ford said it is my understanding it was in the late 80's. One of the concerns is that that basin has not been properly maintained. Part of this application will be an enhancement to make it bigger and put in place mechanisms to ensure the maintenance moving forward, both by virtue of the applicant and owner, and reporting now required to the Township.

- Ms. Janucik asked if an entirely new basin should be constructed at this point.

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Mr. Ford said that basin serves a purpose with or without this development for the existing warehouse and Harvard Way and Campus Drive. The drainage from those areas goes into the existing basin. However, it had not been properly maintained.

Mr. O'Grodnick said this applicant did not own the property during the time that it fell into disrepair.

- Ms. Janucik commented further on the basin.

Mr. Ford said we are substantially improving the basin with the expansion and revegetation converting it to a wetland constructed wetland pond, adding an outlet structure, and changing and raising the spillway. As stated, the Owner's Operation Manual will be recorded for discovery.

- Ms. Janucik read from the SCPB letter dated 06-04-21 in reference to the stormwater.

Mr. Ford said Lot 1.08 is the lot with the warehouse. The basin was for that lot and the future development of Lot 1.09, which is the subject property.

- Ms. Janucik questioned how a project from more than 30 years ago is involved with this application and commented further.

No further questions for Mr. Ford.

Chairman Suraci advised on the time and confirmed the Board would not be extending past 10:30pm for new testimony.

**Opposing Counsel, Jordan M. Asch, Esq. of Asch Legal, LLC**, representing the Green Hills Community called his first witness.

**Clay Emerson, PE, PhD** was sworn in, provided his credentials.

Mr. Asch requested Dr. Emerson be recognized as an expert Engineer, specifically in the field of stormwater management hydrology and general hydrologics.

Chairman Suraci questioned Dr. Emerson further, and was accepted by the Board as an expert witness.

Dr. Emerson gave the following testimony in response to questions asked by Mr. Asch:

Dr. Emerson confirmed he had been very involved in the amendments to the stormwater management rules in the State over the past four years or more. He stated he thoroughly reviewed the application before the Board, including the plans and stormwater report in detail.

Dr. Emerson stated he prepared a report in response to the stormwater.

Mr. O'Grodnick objected to the submission of any document not previously submitted to the Board in anticipation of the hearing.

Mr. Asch said the report is not being submitted for approval by the Board.

Mr. Bernstein pointed out Mr. Asch's previous objections regarding prior reports being presented to this Board, and had raised the issue of timeliness. He said it is disingenuous to the Board that the report has not been previously submitted; you are asking the Board to opine on a report they have not seen. He advised the report should have been provided to the Board and professionals, as well as to Mr. O'Grodnick in advance, since Mr. Emerson intends to testify as to the report.

Mr. Asch said the report is being presented as an exhibit as is allowed under the Land Use Law. He said Mr. Emerson has had the benefit of hearing all of the testimony in preparing his report. He will offer testimony and will be cross-examined.

Mr. Bernstein advised Mr. Asch that he placed himself and his client as an Objector in this case. By placing yourself as an objector, you become a party to this application to the extent that you want the Board to hear the claims made by you and your client, including any expert testimony. He said even if the MLUL exempts you from the 10-day rule; to have a witness who is obviously being called to testify as an expert on an expert report, begs the question of why this Board and your adversary, as well as the Board's professionals, have not seen this report prior to his testimony.

Mr. Asch stated that is not the process in the MLUL.

Mr. Bernstein said Mr. Asch is not here as a member of the public, resident, or concerned citizen. He is here as counsel on behalf of a recognized client who has objector standing. You do not get to pick and choose with part of the MLUL you

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would like to follow when it comes to providing documentation to this Board.

Mr. Asch referenced a previous comment from Mr. O'Grodnick. He stated he is following the process and that the report was not available 10-days in advance.

Mr. Bernstein said any issue with Mr. O'Grodnick can be addressed with him. He said my client, this Board, is about to hear from your qualified expert witness that none of its qualified experts nor the Board, has had an opportunity to review. He said this is a quasi-judicial process; you know what the rules are.

Mr. Bernstein and Mr. Asch discussed the matter further exchanging similar comments.

Mr. Bernstein pointed out Mr. Asch is producing this witness for the purpose of rebutting the applicant's application for the purpose of the Board to consider whether or not it is going to consider his opinion, as it relates to the Board's decision.

Mr. Asch said he would like to present the report as an exhibit along with Mr. Emerson's testimony.

Mr. O'Grodnick objected to the submission of the report.

Mayor Lipani said your witness stated he has been at the previous meetings. He asked if this report had been ready at any of the previous hearings.

Mr. Asch said this report had been prepared three different times because the applicant had been continually amending this application.

Mayor Lipani said so theoretically, you could have submitted the report long ago, with amendments afterwards if there had been changes. You chose not to submit it at any time.

Mr. Asch said that is putting an unfair burden on my client.

Mr. Peason asked if there is a way to provide expert testimony without a report.

Mr. Asch said of course; one of their witnesses testified without a report. He said I am entitled to show it and if I am not, that is appealable.

Mr. Bernstein clarified that Mr. Asch is allowed to show it. The issue is that the Board has a right to see it prior to the testimony, like every other expert report that is provided to this Board as part of an application, whether it is by you, Mr. O'Grodnick, or any other party with standing. The people that do not have to do that are members of the public who don't have standing per se. You sought objector status at the beginning of this hearing. The Board is not going to deny you the opportunity. However; the Board wants to see the report before there is testimony and will want Mr. Di Sessa and Mr. Maski to review it in case they have questions about it and want information prior to. That is no different than any other expert report that is ever produced before this Board.

Mr. Asch again stated those reports are submitted for approval; this report is not. It is submitted as an exhibit as an aide to Dr. Emerson's testimony.

Mr. Bernstein asked Mr. Asch for a specific statute he could look at and advise accordingly. He commented further.

Mr. Asch again said I am entitled to present this report as an exhibit because it is not being submitted for approval, which is how the MLUL is set up.

Mr. Bernstein said none of the reports submitted by Mr. O'Grodnick are for approval. They are submitted in support of his application just as your expert report is being submitted in support of your claim in opposition to the application. If the Board wants to have your witness testify without the report that is for the Board to determine, but I am not recommending it.

Mr. Asch again questioned whether or not Dr. Emerson's report would be able to be submitted as an exhibit as an aide to his testimony.

Mr. Bernstein stated Dr. Emerson's report should be submitted prior to Dr. Emerson's testimony at another meeting so that everyone gets a chance to look at it.

Chairman Suraci said in fairness to everyone, we are going to end tonight's hearing and Mr. Asch is to submit the report to this Board, our professionals, and to Mr. O'Grodnick for review prior to reconvening to a future date. He stated I want everything to be completely transparent.

Mr. Asch if that is how the Board would like to proceed; I have made my position clear as to my interpretation of the rule.

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Chairman Suraci responded by saying I want full transparency in all of these proceedings. I am not looking to waste everyone's time and resources.

Mayor Lipani said we are not denying you; we want to hear the testimony of your professional and your case, but we want to be able to review it. It is not fair for the Board to ask Mr. Di Sessa a question in the middle of testimony without it.

Mr. O'Grodnick again offered to meet with the objector and the Board's professionals to try to resolve any stormwater concerns in anticipation of the next hearing.

The next meeting date was discussed.

Committeeman DelCore asked Mr. Asch if he intended to submit the report at some point so the Board could review it.

Mr. Asch said he intended to submit it as an exhibit to my witness' testimony. The Board would see it then. The testimony would be very descriptive and the witness would be subject to cross-examination.

Mr. Maski said exhibits are typically a sheet or two. He asked how many pages the witness' report is.

Mr. Asch said it is along the lines of 10 pages.

Scheduling was further discussed.

All parties settled on April 14. Mr. O'Grodnick provided a verbal time of decision through May 31, 2022.

Mr. Bernstein advised the witness' report will be due by March 24.

Mr. Asch requested it be given 10 days in advance of the April 14 hearing.

Mr. Maski asked if the report is done.

Mr. Asch said it has been done but there has been testimony. He said I do not know if it will be changed.

Mr. Bernstein revised the deadline to be Friday April 1.

Mr. Maski said then the report will be in my hands no later than April 1.

Chairman Suraci stated it is to be in no later than noon so it can be distributed prior to the weekend.

Mr. Asch said understood, but for the record I have to place my objection that this is not how the rules are set up and how the process is meant to work.

Mr. Bernstein advised the motion is to continue this hearing to April 14, 2022 without notice. The applicant will provide a time of decision rule to May 31, 2022. The objector shall present his expert report to the Planning Director by noon on Friday, April 01, 2022, and also provide copy of same to the applicant's counsel at the same time.

A motion to approve, as stated was made by Mayor Lipani, seconded by Mr. Peason.

**Roll Call:** Mr. Peason – yes; Mr. Santaromita – yes; Secretary Hesthag – yes; Ms. Smith – yes; Committeeman DelCore – yes; Mayor Lipani – yes; Vice Chairman Julian – yes; Chairman Suraci – yes. Motion carries.

Chairman Suraci said there was no business scheduled to the March 24 business agenda.

A motion to cancel the March 24, 2022 meeting was made by Mr. Santaromita, seconded by Mayor Lipani. All were in favor; motion carries.

Chairman Suraci noted the next meeting will be April 07.

**ADJOURNMENT**

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

The meeting adjourned at 10:10 p.m.

*Submitted by:  
Debora Padgett, Planning Board Clerk*