

**DELANCO TOWNSHIP JOINT LAND USE BOARD  
SEPTEMBER 5, 2006**

Ms. vanGenderen called the meeting to order and led the flag salute.

**Sunshine Statement:**

Please be advised that proper notice of this meeting has been given in compliance with the Sunshine Law in the following manner. Written notice has been mailed to the Burlington County Times and Courier-Post newspapers and published in the January 16, 2006 editions. Written notice has been posted on the official bulletin board of the Township of Delanco at least 48 hours prior to the meeting.

**Present:** Mr. Chafin, Mr. Denlinger, Ms. DiCarlo, Ms. Jass, Mr. Lewandowski, Mr. Lord,  
Ms. Mader, Ms. Moore, Mr. Pawline, Ms. vanGenderen.

**Absent:** Mr. Fenimore, Mr. Matulewicz.

**Applications:**

**Ryan Homes**

**River's Edge at Delanco.**

**Completeness Determination**

**Amended Final Major Subdivision, Amended Final Major Site Plan & Bulk Variance  
Block 500 Lot 2, Block 500.01 Lot 1, Block 500.02 Lot 1, Burlington Avenue**

(Began at 7:41:40PM and ended at 10:43:33PM)

Completeness Comments:

Kenneth Meiser of Hill Wallack represented the applicant. He stated that a prior applicant worked out a settlement agreement for a Mount Laurel obligation with the Township. The Council on Affordable Housing and the court required that at least nine low and moderate income age-restricted units were to be provided. The applicant also has to comply with the Federal Fair Housing Act. The best way to provide the low and moderate income housing is to intersperse them throughout a development so that you really can't tell which unit is a low and moderate unit and which unit isn't. The federal law prohibits discrimination against families with children. An age-restricted community is an exception. Age-restricted units should be put in a separate part of a development. You can't intersperse the units in various buildings because you could be subject to federal litigation by some person or advocacy group for children challenging you. There are two ways to do that. One is to try to make the building age-restricted. The question is whether you can do that without subdividing off the property. Most legal experts say it is a gray area. You can have a subdivision so that it is clear that it is a separate legal entity for the age-restricted units. The government of Delanco felt that we should be proceeding in a way that does not open the developer or the governing body up to litigation in the future. The minimum number of units that had to be built was nine, but it was suggested that it would be preferable from Delanco's perspective to have a building with fourteen units that would all be low and moderate income units. We decided that we would take one building and make it a subdivision for the fourteen units or we could withdraw the application if the Board would prefer and take the risk of litigation. The Township's attorney felt that we shouldn't take that chance. The development will be essentially the same whether or not there is a subdivision, except that the subdivision guarantees an additional amount of security from any possible challenge under the Fair Housing Act. Originally the development was going to be 264 units. When Ryan Homes acquired the property they reduced the number to 259 units. Because of the

changes that are being made we propose to return the number of units to 264. The changes to the plan involve some minor variances. The plan promotes better planning and is entirely justifiable as a C-2 variance and there are no detriments. It promotes the goals of the Municipal Land Use Law and creates no harm. We are asking for a determination to approve the subdivision application, approve the revised site plan and to grant the variances so that we can move forward and construct the building with the fourteen low and moderate senior units.

Mr. Germano asked if they have proof that the taxes have been paid.

Mr. Meiser gave a copy of a letter from the tax collector that stated that nothing is due as of August 14, 2006 and marked it as exhibit A-1.

Mr. Meiser also advised the Board that Ryan Homes is a corporation and there are no owners greater than 10% and presented a statement to that effect which was marked as exhibit A-2.

Mr. Germano asked if the tax statement covers the lots in question.

Ms. Lameiras stated that there are numerous lots.

After some discussion Mr. Germano stated that proof that all the taxes for the properties in the development are current will be a condition of approval.

Ms. Moore asked if there are any other low and moderate units on the site other than the 14 proposed senior units.

Mr. Meiser stated that there are and that they have an obligation of 11% or 29 units. There will be 15 low and moderate family units.

Mr. Dougherty went over some additional completeness issues with the applicant's attorney. After discussing them Mr. Dougherty agreed that some items can be deferred to the final plan stage and declared the application complete.

Mr. Germano swore in John Schweppenheiser the applicant's engineer and Robin Walsh the New Jersey production manager for Ryan Homes.

Mr. Schweppenheiser went over completeness items one through eight in the board engineer's report dated September 1, 2006. He stated that the amendments before the Board are only for Phase III.

Mr. Dougherty stated that there are sidewalks that are crossing over another lot and asked if there is a blanket easement for sidewalk access to and from the development.

Mr. Schweppenheiser stated that the development was set up with a homeowners association that is responsible for the maintenance for all the open space areas. They are not fee simple town homes. Anything outside of the unit itself would be covered by a HOA.

Mr. Dougherty stated that they are creating a separate lot that is different and distinct from the rest of the parcel.

Mr. Schweppenheiser stated that the HOA that is responsible for the maintenance of the new lot would be responsible for all the amenities located within its boundaries.

Mr. Dougherty stated that easements wouldn't be necessary because it is covered under the HOA documents which would have to be reviewed. He asked if it will have a separate HOA.

Mr. Schweppenheiser stated that there was discussion that one was needed.

Mr. Meiser stated that the person from Hill Wallack that is preparing the documents for the HOA is under the assumption that a separate HOA will be required to be created. There will be discussions with the Department of Community Affairs who administers and approves them.

Mr. Germano asked if the original HOA documents need to be amended to provide access for them.

Mr. Meiser stated that it has to be discussed with the Department of Community Affairs. It is possible that the existing HOA documents will have to be revised to make clear that there has been a change. It will be the decision of the Department of Community Affairs. If they want revisions the documents will be revised.

Mr. Germano suggested that a note be placed on the plan to satisfy Mr. Dougherty's concerns.

Mr. Dougherty stated that he understands that there are no easements but access needs to be addressed to the lot. A note on the plan concerning access to and from the lot should be provided. This lot has its own independent network of sidewalks and once they cross the line they will be on another HOA's property and that's why I thought there might be access cross easements.

Mr. Schweppenheiser stated that they can add the note on the plan.

Ms. Moore asked if there are areas where the two HOA's will be sharing parking spaces.

Mr. Schweppenheiser stated that there are common parallel parking spaces along River Lane that have been designed to accommodate overflow parking throughout the entire development.

Ms. Moore asked how it will be addressed in the HOA covenants.

Mr. Schweppenheiser stated that the State will look at it and possibly revise the HOA documents that have already been submitted and approved to accommodate the additional parking need.

Ms. Moore stated that we would have no record of the changes.

Mr. Schweppenheiser stated that the HOA documents can be resubmitted to the Board for the Board's attorney to review.

Mr. Meiser stated that it can be a condition of approval.

Ms. Jass asked if the streets will be dedicated to the Township.

Mr. Schweppenheiser stated that River Lane and the connecting streets will be dedicated to the Township.

Ms. Jass was concerned that the units in building "S" will be on River Lane and on a private street. Part of the private street will be a shared expense for the HOA for the seniors.

Mr. Schweppenheiser stated that this will be brought out in the review of the HOA documents. Exhibit A-3 – A site Plan for River's Edge at Delanco dated 10-09-05 which was approved in June or July of 2005 and encompasses the new Ryan product was marked. Eagle Lane and River Lane are the main loop roads that create an "S" pattern that goes through the site. They will be turned over to Delanco Township. The interconnecting streets such as Swan Ct., Turtle Ct., Teal Ct., Fawn Ct., and Shad Ct. are private roads and no parking is permitted on them.

Ms. Moore asked which block of houses contain the affordable senior units.

Mr. Schweppenheiser marked exhibit A-4 – titled Amended Final Major Subdivision Plan for Phase III. He stated that buildings "Z, Y, X, V, and W" are identical to what was previously approved by the Board. They would like to subdivide lot 2 into three lots with the middle lot containing building "X" with the senior COAH units. The quantity of units stays the same at 52.

Ms. Jass asked which streets are adjacent to the building.

Mr. Schweppenheiser stated that Teal Ct. is adjacent to the building and there is no street directly in back of the building. There is a courtyard located there with interconnecting sidewalks. To the north is River Lane to the south is River Lane.

Ms. Jass asked if the senior HOA will only be responsible for what is in front and in back of the building.

Ms. Moore asked who will do the snow removal and be responsible for the maintenance of Teal Ct.

Mr. Schweppenheiser stated that Teal Ct. would be part of the non-senior HOA and the issue may need to be reviewed by DCA.

Mr. Germano asked where the parking will be located for the senior units.

Mr. Schweppenheiser stated that there is a garage and parking in front of the garage which accounts for two parking spaces for each unit. There is parallel parking along the north side of River Lane for overflow parking for all the units.

Mr. Meiser stated that these things will be included in the revised HOA plan and will be subject first to DCA approval and second to a review by the attorney for the Board.

Mr. Dougherty stated that a note should be on the plan stating that the HOA documents would resolve the easement issue with regard to access on Teal Ct. and the sidewalk access at the rear. He suggested that the HOA documents should also be reviewed by his office.

Mr. Schweppenheiser stated that he is not concerned about access because there is access to the sidewalks from the north and from the south from River Lane which is a public right-of-way.

Ms. Moore stated that people cannot pull into their driveway unless they go on a private road that is not part of their association.

Mr. Schweppenheiser stated that he didn't think that would be an issue with DCA and these items will be reviewed when the HOA documents are revised. He also advised the Board that they will work with the tax assessor to make sure that the unit numbers are assigned correctly. He agreed to include a table on the plan enumerating the required variances.

Mr. Walsh stated that proof of insurance had already been provided and they will provide proof that it has been provided.

Mr. Meiser went over items 9 and 10 with Mr. Schweppenheiser and agreed to revise the performance bond, performance guarantees and inspection fees if the board engineer finds it necessary.

Mr. Schweppenheiser stated that the second part of the application is an amended site plan to change the building unit configuration for building "S". Building "S" was originally approved as an Englewood six unit townhouse building between Shad Ct. and River Lane.

Mr. Dougherty stated that building "S" is in Phase II and that the applicant is before the Board for an amended site plan to change the building from six units to twelve units. The subdivision portion of the application is for Phase III only.

Mr. Schweppenheiser marked exhibit A-5 and stated that it is the amended final site plan which was revised on 07-24-06. Building "X" the COAH building has been designated with a separate lot and building "S" has been changed to six town over town units. An additional six units have been added.

Mr. Germano asked if the building foot print has changed.

Mr. Schweppenheiser stated that the building footprint for building "S" has changed slightly and the foot print for "X" remains the same.

Mr. Schweppenheiser marked exhibit A-6 and stated that it is the plot plan that has been prepared for the revised building "S" showing a driveway for each unit in the building. It is a larger unit in depth than what was previously approved which pushed the front of the building out towards River Lane. By doing that a variance is required for separation distance between the edge of the building and the curb line on River Lane. We are proposing 12.7 feet to the right-of-way and an additional 10.7 feet to the curb line in the location and 13.9 feet to the right-of-way and 10.6 feet to the curb line. The variances were necessitated by the additional depth of the unit. The water and sewer services for the building have already been installed for building "S". Additional laterals need to be added for the additional units but the main sewer line and original six laterals have been installed. We will contact the water company and the sewer authority and make them aware of what is going on.

Mr. Meiser stated that they will also submit the amended plan to the Burlington County Planning Board.

Ms. Jass suggested that the HOA documents be reviewed by someone experienced in reviewing such documents so there won't be problems in the future.

Mr. Dougherty stated that it is a legal document and that he would defer to the Board attorney for the review of the document.

Mr. Germano stated that if the Township attorney has someone at his office that is experienced in reviewing HOA documents it should be reviewed by his office.

Mr. Meiser stated that the people at DCA review them full time and stated that the Board can also have someone look at the documents.

Mr. Meiser stated that they will submit the plans to the DEP and asked Mr. Schweppenheiser if it would be necessary.

Mr. Schweppenheiser stated that all the approvals for the development are in place and he didn't think that it would be necessary.

Mr. Dougherty stated that he wanted to ensure that they will not be over any thresholds for sewer and water.

Mr. Schweppenheiser stated that the application brings the number of units back to what was originally approved.

Mr. Dougherty stated that since the application was approved for the original 265 units it would obviate the need to go back to the DEP for sewer and water. He stated that he was satisfied with the applicant's testimony concerning the completeness issues and deemed the application complete.

Since the application was deemed complete the applicant proceeded with testimony concerning the application.

**Resolution 2005-34 Comments:**

Mr. Dougherty went over his comments concerning the resolution. He stated that there are some outstanding issues of the original resolution and asked that the number of COAH units be clarified. The resolution states that there are 26 units. The applicant should note that there are 29 units, 14 of the units are to be age restricted and 15 units are to be non-age restricted.

Mr. Walsh stated that the resolution contains 26 units because 3 of the units had already been constructed.

Mr. Dougherty suggested that the issues should be addressed and be part of any new approval from the Board.

He also suggested that the applicant be responsible for the payment of a \$130,000 off-site COAH contribution.

Mr. Meiser stated that they will abide by the commitment in the settlement agreement.

Mr. Walsh stated that they will continue to pay their COAH fee until they meet their cap.

Ms. Moore asked how the recreation fee was calculated.

Mr. Walsh stated that it is a per unit contribution and thought that the amount was \$1,300 per unit and that there is no cap on the total amount.

Mr. Dougherty stated that since the number of units has changed in Phase II the plan needs to be revised.

Mr. Walsh stated that plats have been filed for each Phase of the project. The lot lines for Phase II are not going to change and questioned whether they would have to re-file an amended plan for Phase II.

Mr. Dougherty stated that the density changed.

Mr. Walsh stated that it would have been approved under the site plan.

Mr. Dougherty stated that to be accurate the number of units on the plan should be changed for Phase II.

Mr. Germano stated that it is the filed plan and it is a record of what was approved and should be changed to reflect the change.

Mr. Walsh stated that they will change the plans for II and III.

**Zoning Comments:**

Mr. Meiser went over the Zoning comments in Mr. Dougherty's report that didn't involve variances. Mr. Schweppenheiser went over the comments about parking again and stated that the number of available parking spaces (645) exceeds the RSIS parking requirements (626) and no variance will be required.

Mr. Dougherty stated that he only saw 562 spaces.

Mr. Schweppenheiser stated that there are 83 proposed parking spaces outside of a driveway and outside of a garage to make up the shortage and they are spread across Phases II, III, and IV.

Mr. Dougherty stated that they testified that there are 2 spaces per unit, plus the additional 4 is made up on on-street parking. There is no waiver or variances regarding parking.

Mr. Meiser stated that the issues in items 9 and 10 had already been discussed. He stated that the unit breakdown table will be revised to show the 75 units proposed with Phase II. A complete set of revised plans with the proposed changes will be submitted for approval.

Mr. Dougherty stated that there will be a footprint change and asked if there will be any change in impervious coverage.

Mr. Schweppenheiser stated that they will be increasing the depth of building "S" by 10 feet from what was previously approved a year ago. It is insignificant as it relates to the stormwater design.

**Subdivision Comments:**

Mr. Meiser asked Mr. Schweppenheiser if any new utility easements will be required.

Mr. Schweppenheiser stated that he didn't believe there are any required. He also stated that the water mains have been installed and that they will only have to provide additional laterals.

Mr. Germano stated that the senior building will front onto one of the side streets and that it isn't a public street.

Mr. Schweppenheiser stated that Teal Ct. is a private street.

Mr. Dougherty stated that it is a homeowners association owned street that is on a separate lot. The senior HOA has to have access to Teal Ct. for easements, for utilities, and for access. They are gaining access to their property through someone else's lot.

Mr. Schweppenheiser stated that they could create an easement that includes the entire cart way of Teal Ct.

Mr. Dougherty stated that it could be an access easement for both HOA's. He also suggested that there should also be a utility easement and that it would be beneficial to have it shown on the plan.

Mr. Schweppenheiser commented on design standards. He stated that they will meet both the active and passive open space requirements. The additional impervious coverage for building "S" is minimal and there will be no street lighting changes.

**Variances:**

Since there were no additional items to go over in the planners report Mr. Meiser decided to proceed with the "C-2" variances.

Mr. Germano stated that there is a "D" variance. He also stated that he reviewed the notice and that everything was in order. He advised the Board that a "D-6" density variance or a "D-1" use variance may be required for building "S" to increase the dwelling units from 6 to 12 units.

Mr. Meiser stated that a variance to allow multiplex uses with 7 to 14 dwelling units has previously been granted and that it is his understanding that it was granted as a "C-2" variance.

Ms. Moore stated that they granted the variances but they were specific to certain buildings.

Mr. Germano stated that because the variances were granted in one place it doesn't mean that you gave it in another place. Mr. Meiser is saying that when you allowed the 12 unit buildings that you allowed them as a bulk variance not as a use variance.

Mr. Meiser suggested that they do it both ways and hope that they meet the criteria under both "C" and "D" and proceeded with the review of the variances. Under "C" we are talking about better planning and whether the change benefits the purpose of the Municipal Land Use Law. He asked why it is better planning to permit a multiplex with 12 building units rather than 6.

Mr. Schweppenheiser stated that if you look at the increase for building "S" in the context of the entire project you will see that you are at the original density that was approved. The town over town units are intermixed better and it fits with the overall original master plan for the project. The town over town unit is an attractive unit that is nicely built and fits into this community like the ones in Phase I and will fit in Phases III and IV.

Mr. Meiser stated that one of the purposes of the MLUL is to encourage planned unit developments which incorporate the best features of design and relate the type, design, and layout of residential and other development to the particular site.

Mr. Schweppenheiser stated that this does meet the purposes of the MLUL. It is an attractive unit and has been built in Phase I and it would not be a detriment. The unit fits in with the original design concept for the project. He agreed with Mr. Meiser that it is a means of promoting the use and development of land in a manner that promotes the public health, safety, morals, and general welfare. He stated that he did not see any detriments and that it would not be a detriment to the neighborhood or the public good and would not impair the intent and purpose of the zone plan and zoning ordinance under a "C" or "D" variance. He also stated that they are maintaining the number of affordable units and it is a benefit to the overall concept of the master plan.

Mr. Meiser went over the next variance to reduce proposed lot 2 from 30,000 square feet to 19,284.

Mr. Schweppenheiser stated that it is a function of reducing the overall lot dimensions and maintaining the same number of units in each area. By minimizing the lot dimensions you are also minimizing the per unit area associated with each lot. The density has not changed in this area. He agreed with Mr. Meiser that they would be promoting senior housing which is one of the purposes of the MLUL and there would be no detriment and that it is a better planning alternative.

Mr. Meiser went over the next variance to reduce proposed lot 2.01 from 35,000 square feet to 20,374 square feet with Mr. Schweppenheiser and he agreed that the same parameters and reasons apply.

Mr. Meiser went over the setback variance that would be required for building "S".

Mr. Schweppenheiser stated that the increase in depth of the building resulted in a variance for separation distance between the corners of the buildings and the curb lines. He also stated that if the variance is not granted the building could not be built. It would not be a detriment to have the building 24 feet rather than 30 feet from the street curb line. There is plenty of room. There is 10 feet of separation between the right-of-way and the curb line.

Ms. Moore asked if the property owner can put a patio in the front yard.

Mr. Walsh stated that the current HOA bylaw prohibits an owner from doing anything on the front of their property.

Ms. Jass asked how much grassy area exists between the front door and the sidewalk.

Mr. Walsh stated that it is 12.5 feet.

Mr. Pawline stated that building "S" is closer to the street than any other building in the project and it is an issue since it is at the intersection of River Lane and River Lane which are the two most active roadways coming into the system.

Mr. Schweppenheiser stated that the increase in depth for building "S" is 10 feet at the most. The intersection is a controlled intersection with stop signs and isn't a detriment. There are no safety or health concerns.

Mr. Meiser went over the setback variance that would be required for building "X" the age-restricted building.

Mr. Schweppenheiser stated that the edge of building to the right-of-way line has been reduced from 30 feet to 20.5 feet. Because a new lot line is being added a variance will be required.

Mr. Meiser stated that they have already covered the variances listed in the planner's report and gave a brief overview of their application.

Mr. Germano stated that the Township and the builder had some disagreement over their obligation to provide senior housing in the development and to provide the senior housing was a compromise on the applicant's part.

Mr. Meiser stated that there was a legal issue as to whether the senior units were provided and they did not want to litigate it. Once it was determined that the senior units needed to be built there was a question as to how you make sure that the senior units will remain senior units. The building was redesigned and variances are required. By going back to the original number of units we are doing something that is consistent with the zoning ordinance.

Ms. Jass asked if the height of the building will change for the building with the town over town units.

Mr. Schweppenheiser stated that the height for the town over towns will remain identical with what has been previously approved and what has been built in Phase I.

Mr. Denlinger asked if it is necessary to have a separate HOA for the senior building because of the problems involved.

Mr. Meiser stated that the goal is to make it clear that this is two separate developments. If you have one HOA for both subdivided properties you get into a legal question as to whether you have gone far enough in separating the two to satisfy the Federal Fair Housing Act. There is a concern of giving maximum legal protection to the developer and governing body. If you have one HOA there is a question as to whether it is two separate developments or one integrated development.

Ms. Mader expressed her concerns about the extra 6 units.

Mr. Meiser stated that they needed to provide nine senior low and moderate units. There was a discussion on how to achieve this. You can only do an 8 or a 14 unit senior project. They felt that it was consistent with the Township's second and third round Mt. Laurel obligations and consulted with their COAH planner. We agreed to put them all in one building rather than spread them out.

Ms. Jass stated that under the Fair Housing Act in senior housing you can have 20% that are under 55 years of age. Mr. Meiser stated that most towns have adopted ordinances increasing the percentage of individuals that must be under 55 years of age. The Federal Government under the Fair Housing Act set the percentage at 80% but the Federal Government doesn't prohibit you from going to 100%.

Ms. Jass stated that she wants to make sure that the 14 units are all seniors.

Mr. Meiser stated that the resolution can make it clear that all 14 units are for seniors.

Mr. Germano stated that there has to be a positive zoning purpose that is being advanced by granting the "C2" variances. It is being advanced by helping us create senior citizen housing.

Mr. Denlinger asked if the units in building "S" will be handicapped accessible.

Mr. Walsh stated that the lower level units are ADA accessible.

Mr. Denlinger asked if there will be parking spots.

Mr. Dougherty stated that there are two parking spaces for each unit that includes the garage. There will be no on-street accessible parking spaces because the units themselves have accessible parking.

Ms. DiCarlo asking if the COAH units will be for sale units.

Mr. Walsh stated that they will be for sale.

**Public Comments:**

William Trimble – 430 Perkins Lane – He expressed his concerns about the density and stated that he is a fireman and that there is some confusion about which door provides access to the third floor. The floor plan can be confusing for Delanco's firemen and even more confusing for firemen from other towns that come in to give assistance.

Jean Mastalesz – 97 Shipp's Way – She asked if they will need a separate performance bond since they will be a separate legal entity.

Mr. Dougherty stated that the developer will be responsible for all the improvements on all the lots until the senior lot is sold individually as condo units. At that time it will become a separate entity.

Mr. Germano stated that the bonds only ensure the installation of the public improvements. Ms. Mastalesz suggested that if they are a separate HOA they should be given the means to protect themselves.

Mr. Germano stated that the improvements that are being bonded aren't ever going to be theirs. They will be dedicated to the public. The way to protect the homeowners is through the homeowners association documents.

Ms. Mastalesz asked who will review the documents.

Mr. Germano stated that he will look for somebody knowledgeable with such documents to review them.

Ms. Mastalesz asked if the Township requested that the units be senior units.

Ms. Moore stated that the original court order was vague and the Township thought that they were to be age-restricted and the builder did not think they were supposed to be age restricted.

Ms. Mastalesz asked the applicant who they met with in the Township.

Mr. Walsh stated that he met with the Mayor and attorneys Kevin Sheehan and Doug Heinold.

Ms. Mastalesz asked if anyone on the Joint Land Use Board had prior knowledge of the committee's negotiations with the applicant. She expressed her concerns about the Board's objectivity.

Ms. DiCarlo stated that to her knowledge no one from the Board had met with them, but she was not positive.

Mr. Walsh stated that there was nobody from the Board at the meetings.

Ms. Mastalesz stated that the Mayor discussed it with members of the Board.

Mr. Germano stated that nobody on the Board has indicated that the Mayor discussed it with them.

Ms. Mastalesz expressed her concern that the issue didn't come to the Board first and stated that she felt that it should have and that it is unfair to the community because influences can be made.

Mr. Walsh stated that the reason for the meeting was because of the discrepancy in the language of the original resolution concerning the COAH units. The resolution used the word may instead of shall. It was our understanding that may meant that it was up to us. The Mayor made it clear that it wasn't up to us.

Ms. Mastalesz stated that she doesn't want to see this happen on another development and that she was assured that everything concerning the Savannah Mews project will be presented directly to this Board.

Ms. Taylor stated that the agreement for affordable housing in this project is between the developer and the governing body. The Joint Land Use Board is not involved.

Ms. vanGenderen closed the hearing to the public.

Mr. Lord asked if any other buildings were considered for the age-restricted units or the additional six units.

Mr. Meiser stated that they had a minimum of nine senior units and there were very few buildings that were not originally committed. Because this was fourteen units there was no alternative.

Mr. Walsh stated that there was only one building that could accommodate the six additional units.

Ms. vanGenderen asked how the Board should proceed.

Mr. Germano stated that there are five variances. The variances listed in items 3, 4, and 5 of Mr. Dougherty's report are occasioned by the fact that they drew the lines around the senior citizen building. He suggested that they be handled together and that the variances listed in items 2, 6, and 7 need to be talked about separately.

Ms. Taylor advised the Board that she looked at the resolution and it indicated that 20 of the 27 multiplex buildings exceeded 6 units per structure and required a “D” variance. The number is now being increased to 21 buildings. The Board had previously found the increase in the number of units acceptable and the proofs would remain the same.

Mr. Germano stated that the variances are before the Board to satisfy the Township’s obligation to create affordable housing.

Ms. Taylor stated that you could question whether it is a use issue and really not a bulk issue. After some discussion it was determined that the variances in items 3, 4, 5, and 7 are “C” variances and the variance in item 2 is a “D” variance.

Mr. Germano suggested that there should be two votes on the variance and advised the Board that they also had to vote on a waiver on requiring the names of adjoining subdivisions, and the file number of the recording or the names of the owners of adjacent properties on the plan.

Motion by Mr. Lord to grant the waiver enumerated in “B. 6.” of the Board engineer’s letter, second by Ms. Moore.

Those voting in favor: Mr. Chafin, Ms. DiCarlo, Ms. Jass, Mr. Lewandowski, Mr. Lord, Ms. Moore, Ms. vanGenderen, Mr. Pawline.

Abstained: Mr. Denlinger

Approved: 8-0.

Motion by Mr. Lord to approve the “D” Variance to increase the number of units in building “S” from 6 units to 12 units, second by Ms. Moore.

Those voting in favor: Mr. Chafin, Mr. Lord,

Ms. Moore stated that she believes the multiplex unit will enhance the goals of the master plan and enhance our opportunity to provide senior housing in the community.,

Ms. vanGenderen stated that she was voting yes for the same reasons that Ms. Moore stated.,

Recused: Ms. DiCarlo, Ms. Jass.

Opposed: Mr. Lewandowski, Mr. Denlinger, Mr. Pawline.

Denied: 4-3.

Mr. Germano stated that the motion failed.

Mr. Meiser stated that it would not have failed if it was considered a “C” variance.

Mr. Germano stated that if a court was to find it a “C” variance it will have passed.

Mr. Meiser stated that the Board could determine that it is a “C” variance.

The Board decided to vote on the other “C” variances and come back to this variance again.

Motion by Ms. Moore to approve the “C” variances identified in the engineer’s report on page 5 article A. items 3-7, second by Mr. Lord.

Those voting in favor: Mr. Chafin, Ms. DiCarlo, Ms. Jass, Mr. Lord,

Ms. Moore stated that the variances are required to create the lot which will create the senior housing which is a benefit to the Township’s land use objectives.,

Ms. vanGenderen,

Mr. Denlinger voted in favor since they apply to building “X”.

Mr. Pawline.

Opposed: Mr. Lewandowski.

Approved: 8-1.

Mr. Germano advised the Board that the applicant’s attorney has asked the Board to find that the variance for multiplex building “S” that is not a senior building is a bulk variance. The Board previously found that the variance for the building was a “D” variance in 2001 when the original plan was approved. The ordinance has not changed since 2001.

Mr. Meiser stated that it has not been discussed and there isn't anything in the resolution that explains why it was a "D" variance or why it is not a "C2" variance. A "D1" variance refers to a use or principal structure in a district restricted against such use or principal structure. He further stated that he didn't see how going from one number to a higher number gets you into a restriction against a use or principal structure. There is no increase in the permitted density because there is a density for the overall development and they are not adding any additional units. We are talking about a bulk thing in the context of an overall density which remains the same.

Mr. Germano stated that the reason that he felt a "D" variance is required is because the WFD/AH district permits four different kinds of single family homes and a number of multi-family homes which includes a low-rise multi-family structure. A multiplex is an attached dwelling where possible all units should have independent outside access and units may be arranged in a variety of configurations. The essential feature is the number of residential units attached in one structure. No more than six units shall be attached.

Mr. Meiser stated that he did not see how you can change the definition of a use or structure by talking about number of units. The principal use is the multi-family townhouse.

The Board took a break so that Mr. Meiser could talk to the applicant.  
The Board returned to open session.

Mr. Meiser asked that the hearing be continued at the next meeting in order to prepare and submit a legal memorandum concerning the "C1" versus "D1" variance issue. He suggested that the Board can memorialize the resolution with respect to everything involving the subdivision. Mr. Germano stated that the Board can vote on the major subdivision and suggested that the Board wait to vote on the amended site plan because it relates to the "D" variance.

Ms. Taylor asked if the building length will change if the number of units is increased.  
Mr. Schweppenheiser stated that the length is exactly the same.  
Ms. Taylor stated that the number of units is not impacting either the overall density of the project that was already approved or the length of the building.

Motion by Ms. Moore to approve the Amended Final Subdivision, second by Mr. Chafin.  
Those voting in favor: Mr. Chafin, Ms. DiCarlo, Ms. Jass, Mr. Lewandowski, Mr. Lord, Ms. Moore, Ms. vanGenderen, Mr. Denlinger, Mr. Pawline.  
Approved 9-0.

Ms. vanGenderen advised the public that the application will be continued at the October 3, 2006 meeting and that no notice will be required.

**Meeting opened to the Public:**

Michael Depadova – 69 Shipp's Way – He stated that in October of 2005 he advised the Board about a dangerous situation with some large Locust trees that border the homes on Shipp's Way and advised the Board that he is disappointed with the inaction of the Board to prevent the situation that he had warned would happen if nothing is done to correct it. He advised the Township Committee about his concerns at their July meeting. Three trees broke in half, took down the power line and hit his home that night. The Mayor contacted Mr. Hovnanian the property owner and PSE&G concerning the removal of the trees. It was verified by an arborist that the trees needed to be removed. He stated that they want a date when the trees will be removed.

Ms. vanGenderen apologized for the Board not taking any action and stated that it was her understanding that the Board was going to require the owner to remove the trees and put up a fence and plant other trees. It was to be taken care of during their site plan application and be made a condition of their approval. We did not realize that the situation was urgent. They have not returned to the Board for site plan approval for Savannah Mews. She stated that she has been informed of the current status of the problem and received a copy of the arborists report. The Board has not been in contact with the owner and was unable to give Mr. Depadova a date for when they will be removed. The property owner has requested permission to remove the trees and should be removing them as soon as they get an approval from the Township Committee. She advised Mr. Depadova that she will contact the Mayor tomorrow.

Mr. Depadova stated that there is also an issue between PSE&G and Hovnanian concerning the wires being put underground.

Ms. Moore asked if the Board or the Township Committee has the authority to require them to remove the trees.

Mr. Germano stated that even if the Board made it a condition of their approval they have no authority to make them take them down. The Board isn't supposed to get into areas that don't relate directly to the approvals. You can't withhold an approval for something that should be approved in an effort to get somebody to do something else.

Mr. Depadova asked the Board if they could help with the matter.

Ms. DiCarlo stated that they shouldn't have to get permission to remove the trees from their property from anyone. He shouldn't be waiting for permission from Township Committee.

Mr. Germano stated that the residents can sue him if a tree damages their house.

Mr. Depadova stated that they may have to consider taking legal action but do not like to go that way because the residents can't really afford to put out money for a lawyer. We are coming to the town to help us get something done.

Ms. Taylor suggested that they also contact Mr. Hovnanian.

Ms. Jass suggested that they also prepare a petition because it is a safety issue for the residents that live near the row of locust trees and forward it to Mr. Hovaninan, putting him on notice that he will get sued.

Mr. Denlinger asked why the Township would have to give them approval to take the trees down.

Mr. Germano stated that the Township doesn't have to give them an approval and they can't make them remove them.

Mr. Depadova stated that it is a safety hazard and that they had already sent them a letter with a petition.

Mr. Pawline suggested that they hire a tree company to remove them and back bill Mr. Hovnanian.

Mr. Chafin suggested that the code official should inspect them for a hazard under property maintenance.

William Trimble – 430 Perkins Lane – He suggested that their insurance company be contacted to let them know that they have a potential liability based on their clients in action. You could cut the trees down but then you will be footing the bill for having the trees cut down.

Jean Mastalesz – 97 Shipp's Way – She stated that she has had three live wires in her backyard in the last year and feels that the trees are definitely a hazard. She reminded the Board that when Hovnanian came in for their variances they agreed to put in a 25 foot buffer with dense vegetation and agreed not to do a fence.

### **Correspondence:**

The secretary advised the Board that most of the correspondence was e-mailed to the members and that an e-mail was received from the New Jersey State League of Municipalities advising everyone that the State has not assigned the educational requirements to any particular

organization or approved any yet. Once there is an accredited course the Board members will have eighteen months from then to complete their educational requirements.

**Comments From The Board:**

Mr. Chafin distributed information concerning the Burlington County Multi-Jurisdictional Natural Hazard Mitigation Planning Project and asked the members to forward comments to him by the next meeting.

**Adjournment:**

A motion to adjourn the meeting was made by Ms. DiCarlo and seconded by Mr. Pawline. All members present voted in the affirmative.

Roseann M. Lameiras

Board Secretary

Approved: November 6, 2006