

RESOLUTION

**TOWNSHIP OF HOWELL PLANNING BOARD
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY
DENIAL OF PRELIMINARY AND FINAL SITE PLAN
WITH ANCILLARY BULK VARIANCE RELIEF**

**Denied: January 30, 2020
Memorialized: April 2, 2020**

**MATTER OF: MONMOUTH COMMERCE CENTER, LLC
APPLICATION NO.: SP-1052**

WHEREAS, an application seeking preliminary and final site plan approval with ancillary bulk variance relief has been made to the Howell Township Planning Board (hereinafter referred to as the “Board”) by Monmouth Commerce Center, LLC (hereinafter referred to as the “Applicant”), on lands known and designated as Block 5, Lots 2 and 3, as depicted on the Tax Map of the Township of Howell (hereinafter “Township”), and more specifically located at Randolph Road, Oak Glen Road, and Lakewood-Allenwood Road in the SED (Special Economic Development) Zone; and

WHEREAS, the Applicant appeared before the Board on May 9, 2019; June 6, 2019; June 20, 2019; July 29, 2019; September 19, 2019; October 10, 2019; November 7, 2019; December 5, 2019; as well as January 16, 2020 and January 30, 2020 with regard to this application; and

WHEREAS, the Board has heard testimony and comments from the Applicant, witnesses and consultants, and with the public having had an opportunity to be heard; and

WHEREAS, a complete application has been filed, the fees as required by Township Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised.

NOW, THEREFORE, does the Howell Township Planning Board make the following findings of fact and conclusions of law with regard to this application:

1. The property consists of two lots located on the south side of Randolph Road, at the intersection with Oak Glen Road, and Lakewood-Allenwood Road in the southern end of the Township and on the border with Lakewood Township. The two lots together contain 99.5 acres in area and are currently undeveloped. The parcels are primarily wooded with the exception of the remains of three small buildings on the southeastern end of the subject Property. The subject Property has approximately 2,540 feet of frontage on Randolph Road, 542 feet of frontage on Oak Glen Road, and bifurcated frontages of 702 feet and 78 feet along Lakewood-Allenwood Road. The north branch of the Metedeconk River, a Category One waterway, traverses along the southern property line of the site with associated Riparian Buffer and wetland area with buffer encumbering the site along said stream which also serves as the municipal and county boundary between Howell Township and Lakewood Township, Ocean County, to the south.

2. The Applicant is proposing to construct a commercial center with 1,242,102 s.f. of warehouse space within nine (9) buildings. The proposed development will include 706 parking spaces, 142 trailer parking spaces, and 234 loading spaces. Access to the subject Property was initially proposed as follows: five (5) new driveways and curb cuts on Randolph Road.

3. The composition of the space and parking for each building was initially proposed as follows:

Building A – 139,000 s.f. warehouse, 83 parking stalls, 25 loading stalls, 33 trailer stalls

Building B – 150,000 s.f. warehouse, 49 parking stalls, 28 loading stalls, 33 trailer stalls

Building C – 150,000 s.f. warehouse, 49 parking stalls, 28 loading stalls

Building D – 150,000 s.f. warehouse, 50 parking stalls, 28 loading stalls

Building E – 85,500 s.f. warehouse, 108 parking stalls, 24 loading stalls

Building F – 150,000 s.f. warehouse, 51 parking stalls, 28 loading stalls, 38 trailer stalls

Building G – 148,921 s.f. warehouse, 46 parking stalls, 28 loading stalls, 38 trailer stalls

Building H – 123,600 s.f. warehouse, 43 parking stalls, 20 loading stalls

Building I – 144,581 s.f. warehouse, 86 parking stalls, 25 loading stalls

4. The buildings are to be serviced by municipal water via connection to a proposed 12 inch watermain along the existing roadway site frontages connecting to existing mains within Lakewood-Farmingdale Road west of the site and an existing main within Brook Road (Ocean County Route 26) south of the site. Municipal sanitary sewer service is also proposed via off-site connection to an existing main along Oak Glen Road north of the site. A surface area infiltration basin discharging into the existing wetland area is proposed along the Lakewood-Allenwood Road site frontage for stormwater management purposes. Landscape and lighting improvements, refuse enclosure areas, and trash compactor areas are also proposed. All proposed improvements are located outside the Riparian Buffer area onsite and an 8.5 foot wide area of right-of-way dedication is proposed along the Randolph Road site frontage as well as a dedication area along oak Glen Road near the Lakewood-Allenwood Road intersection.

5. Approximately 74 acres of the wooded area is proposed to be disturbed. The Applicant proposes to plant 243 shade trees; 50 ornamental trees; 940 evergreen trees; 1,245 deciduous shrubs; 285 ground cover plants and 580 ornamental grasses to replace the trees which will be removed from the site. A roadway dedication of 8.5 feet in width along the frontage of Randolph Road is proposed in favor of the Township.

6. The subject Property is located within the SED (Special Economic Development) zoning district.

7. The Applicant also proposes phased construction of the site improvements as follows:

Phase I — Construct Buildings D (150,000 s.f.), E (85,500 s.f.) and I (144,581 s.f.) with associated drives, parking and loading spaces and utilities, including construction of the water main from Oak Glen Road through the site to Randolph Road as well as construction of the stormwater basin and all off-site water and sanitary sewer connections.

Phase II — Construct Buildings C (150,000 s.f.) and H (123,600 s.f.) and associated drives, parking and loading spaces and utilities.

Phase III — Construction of Buildings B (150,000 s.f.) and G (148,921 s.f.) with associated drives, parking and loading spaces and utilities.

Phase IV — Construction of Buildings A (139,500 s.f.) and F (150,000 s.f.) and associated drives, parking and loading spaces and utilities.

8. The Applicant revised the plans to eliminate the proposed office building and replacing same with an 85,500 s.f. warehouse/industrial building (Building E).

9. The subject Property is surrounded by a mixture of residential and industrial uses. Industrial uses are located to the north and west. An electrical substation is located to the west. Lakewood Township is located to the south where mostly single-family dwellings exist. Wooded areas and a few small dwellings are located to the east. The Cornerstone Calvary Church site is located on the opposite side of Oak Glen Road from the subject Property. The properties to the north and west immediately surrounding the site are also within the SED zoning district. The lots to the east are within the ARE-2 (Agriculture Rural Estate) district.

11. The Applicant requires the following variance relief:

- §188-63 – A 50-foot buffer around the perimeter of the property is required where adjacent to any residential use or residential zone. The properties to the east of the site are within the ARE-2 zone, which is a residential district. The buffer as prescribed by §188-63.E has not been provided.
- Outdoor storage:

12. The Applicant initially required the following design waiver relief:
- a) §188-22 – To permit an average a maximum footcandle greater than 0.5 and minimum footcandle of 0.2.
 - b) §188-32.C.6 – To permit no landscaping surrounding a garbage/recycling enclosure.
 - c) §188-193.B.1 – To permit a tree management plan at a scale of 1” = 100’
 - d) §188-225.G – All lots are required to have access to a public sidewalk within the right-of-way. No sidewalk is proposed within the ROW of any of the surrounding streets.
 - e) §188-226.F – To permit the parking areas to have no separation from the buildings by a bollard, curb, or other protective device. Please note that the Applicant indicated at the TRC meeting that they may utilize structural measures as a protective device. The application should provide testimony describing the measures they will use to address this section of the Ordinance.
 - f) §188-231C – Corner lots shall have no more than 2 freestanding signs or wall signs. The Applicant is proposing 18 wall signs and 5 freestanding signs.
 - g) §188-106.I.1 – No off-street loading and maneuvering area shall be located in any front yard. Building E’s loading space is located within the site’s front yard, which is situated along Oak Glen Road.
 - h) §188-226.E – Parking lots which are visible to the public shall be surrounded by a visually impervious screen, hedge, or wall at least 3 feet in height. The parking areas in between the buildings will be generally visible from Randolph Road, and no screen of three feet in height is provided. It is noted that additional landscaping has been provided to screen the parking lots. However, as a result of the proposed driveways that will lead into the parking lots, the parking areas will remain visible to the public.

I. May 9, 2019 Hearing

13. Attorney Craig Bossong appeared as counsel for a collective of objecting homeowners in the area.

14. Counsel for the Applicant, Meryl Gonchar, Esq., stated that the subject Property is located in Block 5 Lots 2 and 3 within the SED (Special Economic Development) Zoning District and that the Applicant was seeking Preliminary and Final Site Plan Approval, ancillary “C” variance relief, and design waiver relief. She explained that the Applicant was proposing nine (9) warehouse buildings. Ms. Gonchar explained that an originally proposed office building had been eliminated. This resulted in a total of 1,242,102 s.f. to be built out in 4 phases. She stated that the subject Property is just shy of 100 acres. Ms. Gonchar then stated that the Applicant requested “C” variance relief with regard to the requirement of 50 foot wide 4 season buffer adjacent to residential zone. She also noted that an entity related to Applicant is considering occupying some of the buildings.

A. Testimony from Applicant’s Engineer, Steven Cattani, PE

15. The Applicant then presented testimony from its engineer, Steven Cattani, PE. Counsel for Objectors did not object to qualifications.

16. Mr. Cattani presented an exhibit with an aerial representation of the subject Property and surrounding area. He testified that the subject Property is currently wooded and was previously utilized as an equestrian use from the 1930’s to the 1960’s or 70’s. He noted that the subject Property has been vacant since the equestrian use ceased. Mr. Cattani explained that he had not found any records going back to the 30’s or 40’s confirming that the subject Property was used for farming. He further testified that ruins or former horse stables and some type of buildings associated with the staff or some other operations on the property were located to the south. He noted that an oval-type shape located on the eastern portion of the property represented the large horse race or training ground that was used. Mr. Cattani also stated that the subject Property contained approximately 100 acres at 99.57 acres.

17. Mr. Cattani then explained that the Applicant was proposing to dedicate some of the right-of-way on the frontages to the Township thereby reducing the acreage to 99.01 acres.

18. Mr. Cattani then introduced Exhibit A-16, a color rendering of the overall site plan. He identified the proposed location of the nine warehouse buildings in the northern portion of the subject Property. Mr. Cattani then described the location of each building. This specifically included the buildings to the east as well as the smallest building to the northwest.

19. Mr. Cattani testified that stormwater management systems would be located along the eastern and northeastern portions of the property.

20. Mr. Cattani then testified that the Applicant proposed five (5) driveways to access the subject Property along Randolph Road: one at westernmost portion of property servicing the front of two warehouse buildings to the west and four (4) additional driveways aligning with the site access driveways into the property as vehicles move easterly towards Oak Glen Road. He noted that the Applicant was not proposing any driveway locations on Oak Glen or Lakewood-Allenwood Road.

21. Mr. Cattani then testified regarding the proposed phases of the development. He stated that Phase 1 would include the following:

- i. Buildings: the full construction of Buildings D, E, and I which are the easternmost buildings and the stormwater management basin located to the east and southeastern portion of the subject Property.
- ii. Improvements to the full frontage along Randolph Road including: widening, right-of-way dedication, new curbing, new stormwater management structures.
- iii. Improvements to the full frontage of Oak Glen Road to the northeast including: a third full lane.

- iv. Utilities: The Applicant will bring water and sewer to the subject Property. A gravity sewer main will be utilized.

22. Mr. Cattani next testified that a sewer connection is currently available on Oak Glen Road through an existing Ocean County trunk line. He also identified an existing water main on Rt. 547 to the west of the subject Property and to southeast of property across the border in Lakewood. Mr. Cattani testified that the Applicant intended to connect to the available line in Rt. 547 down Randolph Road, across the frontage, down Oak Glen Road, and then down Lakewood -Allenwood Road, tying into the Lakewood water main to the east and service the subject Property.

23. Mr. Cattani testified that the Applicant had started the application process with the water company which has initially indicated acceptance of the proposed layout. He further testified that the Applicant had met with the relevant entities regarding the sewer lines. Mr. Cattani stated that the Applicant was informed that a Township owned sewer line would have to be constructed in Randolph Road which would tie into a MRSA owned section in Oak Glen Road and the Ocean County line in Lakewood.

24. Mr. Cattani then testified regarding the other utilities available along the subject Property's frontage and stated that the Applicant would be looking to tie into those existing lines.

25. Mr. Cattani further testified that the proposed development included traditional warehouses (ex: furniture supplier), and that the Applicant was not proposing manufacturing or storage of any kind of hazardous materials or automobile operations, nor was the Applicant proposing any outdoor operations. He further stated that there would be no vehicle parking other than tractor-trailers and those vehicles required for daily operations. He added that tractor-trailer maintenance would also be prohibited. Mr. Cattani stated that the Applicant had not considered

refrigerated warehousing because tenants were not yet lined up. Mr. Cattani explained that Kennedy International is a related entity and is considering using one or two of the buildings, but that the Applicant had not targeted any particular types of tenants.

26. Mr. Cattani acknowledged that the project would affect the traffic in the area and frequency of trucks but noted that warehousing is a permitted use in the zone. In response to a Board inquiry, Mr. Cattani stated that 24/7 access to the site would be proposed.

27. The Board expressed concern about overnight truck parking/idling. Mr. Cattani testified that the Applicant was not requesting any relief from standard hours of operation and that the Applicant would discourage and provide signage regarding overnight parking of cabs.

28. Mr. Cattani then testified regarding the requested variance for buffering to residential zones or uses. He noted that the Applicant is required to provide a 50 ft. buffer along its Lakewood-Allenwood Road and Oak Glen Road frontages. Mr. Cattani explained that the Applicant was requesting variance relief to permit the existing vegetation in the 50 ft. buffer zone and supplement with more evergreen vegetation in areas that have less.

29. Mr. Cattani then testified regarding the landscaping plan. He stated that in furtherance of the buffer, the Applicant was also proposing to maintain as much vegetation as possible in the front 60ft of yard on Randolph Road. He stated that evergreen and deciduous plantings would be included along the roadways and the islands around the buildings and that the Applicant would also be providing ornamental trees and shrub growth along the parking areas. Mr. Cattani testified that the Applicant would provide infill along frontages and landscaping around the detention basin. He also stated that about 25-30% of the 100 acres would remain green.

30. Mr. Cattani then addressed the design waiver required for lighting. He testified that some drive aisles and trailer parking were only lit to .2 footcandles where .3 footcandles are required. He noted that this was because less light fixtures at a higher lumen were proposed. Mr. Cattani testified that the Applicant had proposed mounting heights of 24 ft. which is consistent with the Ordinance and that the fixtures are LED and dark sky compliant.

31. The Board expressed concern about the lighting plan and suggested that some of the lights be on motion-sensor after a certain time and/or dim some lights after a certain hour.

32. Mr. Cattani then testified regarding the waiver for plantings around the proposed recycling enclosures. He stated that the enclosures were proposed in the rear of buildings and were to be enclosed by a chain-link fence with privacy slats. He further testified that the enclosures would not be seen from the road frontage or vehicular parking areas.

33. Mr. Cattani testified that the enclosures would be 10x10 with four (4) for each building. The Board inquired regarding who is responsible for trash and recycling (putting dumpsters back into enclosure). It was represented that the Applicant is also proposing a commercial condominium association so that no one tenant is responsible for maintaining common areas. Mr. Cattani testified that any trash compactors would be separate from the recycling enclosures at issue.

34. The Board Professionals stated that the Township Code requires that the Applicant provide an estimate of the quantity of recyclable materials generated within a week, and sufficient storage area must be provided to store one to four weeks accumulation.

35. Mr. Cattani then testified regarding the requested relief on the scale of the tree management plan provided. The Applicant provided a plan where a scale of 1 inch equals 100 ft.

where the Ordinance requires that the scale should not exceed 1 inch equals 50 ft. Mr. Cattani felt the scale was appropriate given the size of the subject Property and the fact that it supplies additional information regarding calculations that is above what is actually required by Ordinance.

36. Mr. Cattani next testified regarding the Applicant's request to pay into the tree replacement fund in lieu of providing the replacement trees required on site. He testified that he interpreted Section 188-195(a) to mean that if the tree replacement calculation generates a total that is "exponentially excessive," then the contribution should not exceed \$35,000 per acre. Counsel for the Board questioned the witness on what would constitute "excessive." Mr. Cattani testified that the Applicant would be required to replace 30,792 trees and is only proposing to replace approximately 500 at a cost of \$9 million. The calculation as provided by the Ordinance would cap the contribution at around \$2.6 million.

37. Mr. Cattani then testified regarding the waiver for sidewalks to be constructed within the right of way. He stated that due to the industrial nature of Randolph Road, there are no other sidewalks in the area and that sidewalks would also not be appropriate in the proposed development.

38. Mr. Cattani next testified regarding the requested relief for signage. He stated that the Applicant was proposing five (5) signs in the driveways along Randolph Road as well as a monument sign at each location and two building number signs on each building for a total of 18 building mounted signs. The Ordinance limits signage on a corner lot to no more than two freestanding signs and two wall signs.

39. Mr. Cattani also stated the Ordinance does not permit loading areas in a front yard (188-105(i)(1)). He asserted that the Applicant was providing adequate buffering and landscaping around the site. Mr. Cattani testified that with respect to loading spaces requiring a minimum depth of 60 ft, that all loading spaces adjacent to building were 60 ft. but that the parking stalls in the parking fields are 55 ft. in length.

40. Mr. Cattani then testified that the parking lots would only be visible is at the driveways. He stated that it would be impossible to comply with the Ordinance's requirements at the throat of the driveway. Some Board members proposed the Applicant consider a reduction in the number of driveways.

41. Mr. Cattani then stipulated that the requirements of Section 188-106(g), (Foundation Plantings) would be satisfied.

42. Mr. Cattani then testified that the loading docks would be located at the finished floor levels of the buildings but that the parking level for tractor trailers would be below finished floor level. He also noted that a snow removal plan would be proposed.

43. In response to a Board inquiry regarding sign illumination, Mr. Cattani testified that the Applicant was proposing front lit signage.

44. In response to a Board inquiry regarding the difference between warehousing versus "fulfillment centers," Mr. Cattani testified that fulfillment centers tend to have more staff and more activity, and that it is a more intense use overall. He explained that the Ordinance requires 704 passenger vehicle spaces for the proposed development and that 706 are proposed, and that 32 truck loading spaces are required and 142 are proposed.

45. In response to Board inquiries Mr. Cattani testified that the following would be included in Phase 1 of construction:

- v. Construction of Buildings E, F, and I (three rightmost buildings); the entire stormwater management basin; improvements to Randolph and Oak Glen Roads; the installation of a sewer system in Randolph Road; the installation of a complete watermain loop from Rt. 547 along the frontage of Randolph Road, down Oak Glen Road to Lakewood;
- vi. Water mains would be brought into site and terminated at loading areas; and
- vii. Utilities would be run from the road onto the site so that the road would only be disturbed one time.

II. June 6, 2019 Hearing

45. Counsel for the Objectors, collectively known as HOPE, Craig Bossong, appeared and presented the Board with a cover letter containing his list of clients.

A. Continued Testimony from Applicant's Engineer, Steven Cattani, PE

46. Mr. Cattani continued his testimony and presented Exhibit A-18 regarding refuse and recycling calculations. He stated that the calculations assumed two cubic yards of recycling per employee per year, which would equate to 150 cubic yards on average per building, which is three cubic yards per week per building. Mr. Cattani further testified that the Applicant was proposing three recycling enclosures per building, with two cubic yards per enclosure, for a total of 6 cubic yards of storage per building. Assuming a weekly pickup, he believed the Applicant had provided sufficient storage. He further stated that the

Applicant could increase the proposed storage to four cubic yard units in the same enclosure if the Board so required.

47. With respect to the Board's previous inquiry regarding a snow removal plan, Mr. Cattani testified that he did not believe that all of the parking spaces would be utilized at all times, so the areas designated in A-19 should not impact parking or circulation on site. In response to further Board inquiry, Mr. Cattani testified that the designated collection areas were lower in grade and would not contribute to runoff in the parking lot.

48. Mr. Cattani further testified regarding the proposed construction phasing. He explained that the Applicant would construct a full water main loop during Phase 1 and would not have to break into the road a second time for the tap. He further stated that the Applicant planned to construct a gravity sewer main and that sanitary water and sewer would be internal to the site. He estimated that construction of the entire site would take 4-5 years. He further confirmed that the Applicant would be paving the full width of Randolph and Oak Glen Roads.

49. Mr. Cattani testified that the Applicant was not prepared to reduce the number of driveways at this time and would defer any further questions to the Traffic Engineer.

50. Mr. Cattani then submitted A-20, a video of the site plan which included a simulated drive by of the site.

B. Cattani Cross-Examination

51. Counsel for the Objectors HOPE, Mr. Bossong, then began for cross-examination. He inquired as to the widening of Randolph Road and Mr. Cattani testified that additional dedication would be added to the existing right-of-way for an additional 30 ft. half width. He noted that the road currently has an undersized right-of-way at 33 ft., but that the Applicant

was proposing improvements of a 12 ft. travel lane and an 8 ft. shoulder as well as the paving of the rest of the road along the frontage. The improvements would make the road 28 to 36 ft. wide, but it would remain only one lane in each direction. Mr. Cattani further testified that tractor-trailers would likely be making righthand turns from Rt 547 into the site.

52. In response to Counsel's inquiry, Mr. Cattani testified that the trailer parking would not affect the site circulation. Counsel raised the issue of how long the trailers would be permitted to stay in the spaces and whether the area was actually outdoor storage under the Ordinance. Counsel for the Applicant relied upon Section 192-18 and asserted that Ordinance exempts trailers from being considered outdoor storage.

53. In response to Counsel's inquiry, Mr. Cattani testified that approximately 10% of each building was projected to be office space.

54. Mr. Bossong then inquired regarding the Applicant's proposed commercial condominium associations. The Applicant's counsel objected stating that the type of ownership is irrelevant and that the Board could not treat the application differently because of the type of ownership proposed.

55. The meeting was then opened for questions to the public.

56. Brandon Reo, 3 Brooke Road, inquired about the maintenance of the proposed stormwater basin since the well on his property would only be 300 ft. away. Mr. Cattani testified that he was not prepared to address any well contamination at the time.

57. Joan Osborne, 28 Bronia Street, inquired regarding the consideration of utilizing solar power and the question was deferred to the architect. Ms. Osborne then inquired regarding what controls were being put in place for melting snow which would likely have

salt or other chemicals in it running off into the river. Mr. Cattani stated there were no measures being considered at that time.

58. Ms. Osborne then inquired regarding a separate turning lane for the trucks and Mr. Cattani testified that no such improvement was planned but that he did not anticipate that they would have to make wide turns and obstruct oncoming traffic. He deferred further questions on the subject to the traffic engineer.

59. Ms. Osborne then inquired why the riparian buffer was used in the Applicant's calculations. Mr. Cattani stated that the protected land was used in the Applicant's calculations of impervious coverage as is permitted by Ordinance.

60. Lastly, Ms. Osborne inquired regarding the parking calculations and Mr. Cattani testified that they were based on the total square footage of the warehousing and office spaces. He stated that the square footage would add up to about 3 acres of land covered by passenger parking but noted that the Applicant was not seeking parking relief.

61. No other members of the public expressed interest in cross-examining Mr. Cattani.

III. June 20, 2019 Hearing

62. Mr. Caliguire appeared as counsel for HOPE and submitted a revised list of clients marked as O-2.

A. Architectural Testimony – Rick Pratt, AIA

63. The Applicant then presented testimony from its Architect, Rick Pratt, AIA. Mr. Pratt testified that the plan included nine buildings, eight of which were similar in size and the ninth, which would be smaller, noting that all nine buildings would be similar in design.

64. The Applicant submitted Exhibit A-21 which depicted color renderings of Buildings D and E. Mr. Pratt testified that the overall height of the buildings would be 45'ft. and that each building would contain indents along all four faces to comply with Ordinance requirements. He noted that the plans would be revised because the distance between some of the indents currently exceeded what is required by the Ordinance.

65. Mr. Pratt then testified regarding the materials that would be used in the project. He stated that the buildings would be constructed in concrete with reveals in three shades of grey and that the concrete would be eight inches thick and reinforced, satisfying the bollards requirement. Mr. Pratt also noted that there would be rectangular steel columns on the interior by the windows for added safety protections in lieu of separate bollards.

66. Mr. Pratt further testified that the Applicant was not seeking LEED certification but had designed the buildings with certain LEED characteristics including: a white roof to decrease solar gain, accommodation for future solar panels; all of the steel structure would be recycled steel; concrete would include recycled content where possible; and LEED lighting would be used throughout the interior.

67. Mr. Pratt then testified that the Applicant was seeking to have larger interior tenant spaces than the minimum required and that office space would account for about 10% of the total square footage.

68. In response to a Board inquiry regarding ingress and egress as it pertains to first responders, Mr. Pratt testified that the building would meet fire code requirements. He added that after meeting with the responding Fire Department, a representative stated that they would not review the application regarding access.

69. In response to a Board inquiry regarding restrooms, Mr. Pratt indicated that there were none planned at the moment because the interior of the buildings would be designed with the prospective tenants. Mr. Pratt did, however, testify that there was no plan to include floor drains in the main area of the warehouse and even if they were required, there would be no change in the overall site plan.

70. In response to a Board inquiry regarding rooftop equipment, Mr. Pratt testified that the roofs were designed as single slope roofs with the low side of the roof along the docks. He further testified that the units would be air changing, not conditioning, and would be placed on the loading dock side, not visible from roadway. Mr. Pratt further testified that the offices would have smaller rooftop AC units but parapet height would block the sightline.

71. In response to a Board inquiry regarding storage of hazardous materials, Mr. Pratt testified that the building code allows for a certain amount of hazardous materials but in 20 years, he had yet to encounter any dangers or issues.

B. Pratt Cross-Examination

72. Counsel for HOPE represented that he had no questions for Mr. Pratt. The public was then given an opportunity to ask questions of him.

73. Ms. Joan Osborne of 28 Bronia Street, inquired as to the storage of hazardous materials and Mr. Pratt testified that nothing coming from within the building in terms of hazardous materials would flow into the stormwater basin. Ms. Osborne then inquired about the plans for “future” solar, and Mr. Pratt stated that the only thing that matters is whether the steel is being reinforced from the beginning, which it is. Ms. Osborne lastly inquired regarding the HVAC system. Mr. Pratt testified that the systems had not yet been designed

yet but that it would likely include several smaller units across the building. He further stated that the Applicant would comply with any noise ordinances with respect to those units.

74. Brandon Reo, 3 Brooke Road, also inquired regarding the potential for hazardous waste leaching from the buildings. Mr. Pratt testified that he could only state that the buildings were being designed to meet all building codes.

75. John McNulty, 4 Arnold Blvd., inquired about the venting of the buildings and Mr. Pratt testified that the proposed roof units would circulate the air in and out of the buildings. Mr. McNulty also inquired about roof runoff and Mr. Pratt indicated that the buildings would have downspouts connecting them to the detention basin.

C. Traffic Testimony

76. The Applicant then presented testimony from its Traffic Engineer, Justin Taylor, PE. Counsel for HOPE raised an objection regarding continuing with this testimony due to the fact that the traffic study had been requested to be updated with additional information and that traffic was a significant portion of the objection to the project. The Board determined it was appropriate to continue with the presentation of the evidence.

77. Mr. Taylor testified that the traffic impact study report was completed on March 8, 2019 and most recently revised on April 26, 2019. He stated that he evaluated surrounding roadways, intersection control, intersection geometry and existing traffic on roadways to get a baseline for traffic during peak commuting hours. The peak commuting hours were identified as 7:00 to 10:00 AM and 3:30 to 6:30 PM. Mr. Taylor testified that traffic counts were conducted in September and October of 2018 at the following intersections: Rt. 547 and Randolph Road; Randolph Road and Oak Glen Road; Oak Glen Road and Lakewood-Allenwood Road; Maxim Road and the Park; Herbertsville Road and Rt. 547.

78. Mr. Taylor testified that the intersection of Herbertsville Road and Rt. 547 was observed to be already operating over capacity during the evening peak hour and that the same problem was noted at Oak Glen Road and Lakewood-Allenwood Road.

79. Mr. Taylor next testified that the traffic projections utilized in the traffic study were reached by implementing the code for general warehousing, Land Use Code 150, per the Institute of Transportation Engineers. He noted that the site had not been designed to handle a fulfillment center and that the difference would be a more intensive employee count.

80. Mr. Taylor then stated that when there is no tenant lined up for a warehouse project, it is recommended to use the Land Use Code to determine trip generations. He further testified that he generated traffic projections for various phases of construction and then assigned it into the intersections identified. Mr. Taylor stated that he also met with the Board's Professionals about other developments in the area that were approved that might impact traffic in the area. This resulted in two additional developments being included (41 Randolph Road and Monmouth County Transfer Station). He noted that the Cornerstone Church project was not yet concluded. It was noted that at time of the instant testimony there had only been a preliminary approval for the church. Mr. Taylor testified that he did not believe the Church's approval would impact the relative traffic calculations for this site. Nevertheless, the Board requested that Cornerstone's traffic study be reviewed.

81. Mr. Taylor then testified that he utilized the NJDOT background growth rate of 2% per year in his calculations. He then opined that other uses that fall under "industrial" such as manufacturing and medical offices would generate double the traffic than the proposed site.

82. Mr. Taylor testified that the trip generation range used was 0.02 to 1.93 AM and 0.01 to 1.8 PM trips per 100,000 sq. ft, which included office space. The Applicant then submitted Exhibit A-22, a traffic generation chart, which noted that the site would have 107 passenger vehicles coming in and 32 passenger vehicles going out in the morning rush hour, for a combination, with trucks, of 134 in and 40 out for a total of 174 trips. Mr. Taylor testified that he utilized the peak hours at each of the intersections, which varied from 3:30 to 4:30 and 5:00 to 6:00 PM. He further testified that he did not look at the site generated peak hour because such analysis was not customary and that peak street hour is more determinative for traffic purposes which is the prescribed methodology by ITE.

83. Mr. Taylor next testified regarding putting the traffic on the roadway. He stated that he routed traffic based on whether it was truck or employee, and that trucks would not be permitted to proceed in certain directions. He noted that he believed the Rt. 547 corridor has capacity to handle the traffic oriented towards Rt. 195. Mr. Taylor testified, however, that the intersection of Rt. 547 and Randolph Road is currently failing, even before the traffic projections for this site.

84. Mr. Taylor testified that the intersection of Rt. 547 and Randolph Road needed to be signalized and that the Applicant has agreed to widen Randolph Road by 14 feet along frontage and widen Oak Glen to add lefthand turning lanes onto Randolph Road and Lakewood-Allenwood Road. He added that traffic signal coordination would have to be done with the County to give extra time for Rt. 547.

85. In response to a Board inquiry, it was noted that there is no limit on percentage of office space in a warehouse as prescribed by Ordinance, but that the parking was calculated

as if 145,000 sq. ft. of the total space was office. Mr. Taylor testified that he worked with the Applicant's civil engineer to design the site layout and ensure sufficient parking.

IV. July 29, 2019 Hearing

86. Counsel for HOPE, Mr. Bosson, entered his appearance on the record before the Applicant resumed with the testimony from its Traffic Engineer.

A. Continued Taylor Testimony

87. Mr. Taylor testified that subsequent to the last hearing date, he reviewed the Cornerstone Church traffic study and spoke to the preparer of that study. He stated that he incorporated that information into a supplement to the traffic study dated 7/17/19, A-24. Mr. Taylor testified that the Church represented that services would occur on Sundays and 7:00 PM on Wednesdays. Mr. Taylor opined that these hours of operation would have no impact on the peak hour operations of the Applicant's proposal. He also noted that the Church is slated to make road improvements including widening along its frontage of Lakewood-Allenwood Road. Mr. Taylor stated that those improvements would work in concert with the Applicant's proposed improvements thereby allowing a full righthand turning lane coming down Lakewood-Allenwood Road onto Oak Glen Road and eliminating an over-capacity movement.

88. Mr. Taylor then addressed a July 26, 2019 letter from the Board's Professionals regarding his Supplemental Traffic Study Report. The letter requested additional information because the cars from the Church were not put on the roadways during peak hours. Mr. Taylor testified that the ITE trip generation number for the Church is 8-20 cars during the peak hour for churches, but this specific Church would not be putting those cars

on the road. Mr. Taylor maintained his position that the traffic from the Church would have no impact on the results of his traffic study.

89. Mr. Taylor next testified regarding access to the site and circulation within the site. He stated that in its present condition, there was no access to the site. He then stated that the Applicant was proposing five driveways along Randolph Road where the Ordinance permits one access point per 250 ft. of frontage, meaning that per the Ordinance the Applicant would be permitted to have 10 driveways. Mr. Taylor opined that the proposed number of driveways should promote safe circulation within the site. He noted that he looked at neighboring properties and that the proposed number of driveways was consistent with other developments in the area.

90. In response to the Board's concern regarding the number of driveways, Mr. Taylor testified that the ITE recommends that trucks and passenger vehicles have separate access points. He stated that the proposed driveways were spaced between 375 ft. and 575 ft. apart. He also noted that where the Ordinance requires that an access point must be at least 30 ft. from the property line, the proposed driveways would be approximately 130 ft. from the west and over 200 ft. from the east property lines. He also indicated that two of the proposed driveways would be located essentially opposite of Arnold Steel's existing driveways which is the optimal location.

91. Mr. Taylor then testified regarding the sight distances for the driveways. He stated that there is a requirement of 680 ft. for tractor trailers and 445 ft. for passenger vehicles.

92. Mr. Taylor opined that five driveways is appropriate for the length of the frontage of the project and noted that three of the driveways were designed for accommodating

trucks, without crossing lanes on Randolph Road or within the site. He testified that he used a CAD program to design site for circulation purposes.

93. Mr. Taylor next testified regarding stacking or queuing along the driveways on site. He stated that there was at least 100 ft. from the stop sign to any drive aisle which leaves room for four to five cars or one tractor-trailer. He stated that he believed the driveway lengths were sufficient based on peak hours and how long it would take for a gap large enough for a vehicle to pull out of the driveway.

94. The Applicant the submitted a turning radius exhibit. Concern was raised that the exhibit was not previously submitted for formal review by the Board Professionals and that the document illustrated that there would be little or no room for error for tractor-trailer turns before they are over a curb or into oncoming traffic. Mr. Taylor testified that the driveways are approximately 40 ft. wide at the throat to accommodate trucks and 60 ft. at its widest point, noting that the driveways could be modified further to accommodate tractor-trailers.

95. The Board expressed concern that the driveways were not wide enough as designed to accommodate inbound and outbound tractor-trailers at the same time, based on the radius of their maneuvers.

96. Mr. Taylor then testified regarding each of the individual driveways. Starting with the westernmost driveways, he stated that it was contemplated for use by both trucks and passenger vehicles, allowing trucks to access the main aisle through the middle of the site and to the southern portion of the site. He noted that this driveway provides access to the

parking fields for Buildings A and F. He stated that the next driveway toward the east provides access to loading docks for Buildings A and F and B and G.

97. Mr. Taylor next testified that the middle driveway would feed the passenger vehicle parking for Buildings B, G, C, and H. The fourth driveway would also be designated for trucks and would lead to the loading bays for Buildings C, H, D, and I. He then stated that the easternmost driveway would provide access for passenger vehicles to Buildings D, E, and I. He explained that the ITE recommends keeping trucks and passenger vehicles separate so that is what the plan proposes.

98. Mr. Taylor next testified regarding the traffic at Phase 4 of the project. He noted that 20% heavy vehicles is standard and projected an AM peak of 35 trucks total with 27 in and 8 out, and a PM peak of 36 trucks total, 10 in and 26 out. Mr. Taylor also testified that the 243 loading docks provided were determined by ITE.

99. Mr. Taylor projected a Phase 4 AM peak of 139 total trips, with 107 in and 32 out, and a PM peak of 141 trips with 38 in and 103 out. He noted that there were 706 parking spots proposed for cars.

100. Mr. Taylor next testified regarding the on-site parking requirements. He stated that the office space would be ancillary to the warehouse, but that he generated the requisite number of parking spaces for office space and warehouse space separately to have a conservative number of parking spaces. Mr. Taylor opined that the number of parking spaces being provided was more than required. Mr. Taylor did not believe the trailer parking were loading spaces.

101. Mr. Taylor next testified regarding prior accidents and speeding conditions along Randolph Road. He stated that he had requested data from the Howell Police Department regarding speeding citations and accidents for the past three years which affirmatively showed that speeding is a problem in this area. Mr. Taylor opined that the introduction of a development would cause incidents of speeding to decrease because of increased traffic. Mr. Taylor testified that the data from 2016 to 2019 did not reveal more than five accidents within any one year which is the threshold where it would be considered a problem. He identified four accidents at the Randolph Road and Rt. 547 intersection, three of which were vehicles turning from Randolph Road to Rt. 547. Mr. Taylor indicated that the installation of a traffic signal at this location would eliminate concern and increase safety.

102. Mr. Taylor next testified that without the installation of a traffic signal, there would be an AM delay of 665 seconds as opposed to 297 seconds in the no build condition, and a PM delay of 1,356 seconds as opposed to 921 seconds in the no build condition. Mr. Taylor further testified that queue lengths would be between 1,300 to 1,400 ft and in the no build condition they would be about 41 vehicles.

103. Mr. Taylor further testified that the intersection at issue is under Monmouth County jurisdiction. The Board noted that it did not have a role in whether the intersection would become signalized and/or when such a project would be completed. He stated that he had met with the Monmouth County Planning Board but had not yet submitted a formal application regarding the light. He stated that he was informed that the County was investigating the concerns. It was noted that the Applicant was granted a submission waiver regarding the County Planning Board application, and there was no guarantee that the

mitigations proposed would be implemented by the County. The Board stated it was requiring the application be made at this point.

104. The Board then expressed concern regarding internal circulation and the parking of the tractor trailers due to the limited room for error by drivers required by the circulation plan as it was designed.

105. The Board also raised concerns regarding the Herbertsville Road intersection. Mr. Taylor testified that he believed that the majority of traffic would be headed to and from Rt. 195. The Board inquired as to why only two signalized intersections were studied. Mr. Taylor stated that the NJDOT recommends studying unsignalized intersections within 1,500 feet of an access point. The Board also expressed concern regarding the other intersections in the area on Lakewood-Farmingdale Road.

106. Mr. Taylor also testified that he used previous traffic counts obtained by McDonough and Rea and that the evening peak hour was determined to be 3:30 to 4:30 PM. He therefore relied upon a report and raw data prepared by a different firm in reaching his own conclusions.

107. Mr. Taylor also testified that he attended a Ramtown Fire Department meeting on June 10, 2019 and was informed that the Fire Department would not review plans for access to the site but only the location of the hydrants.

108. The Board Professionals expressed concern that the Applicant's traffic impact study needed to be reevaluated to address the fact that a signal at Randolph Road and Rt. 547 is not guaranteed.

B. Cross-Examination of Mr. Taylor by the Public

109. Maureen Woolley of Victory Road, inquired how the proposed development would impact the traffic at the 547 intersection. Mr. Taylor testified that it was not an intersection that was studied.

110. Catherine Moore, 757 Oak Glen Road, inquired as to the noise from increased traffic but it was deemed outside Mr. Taylor's expertise. Ms. Moore then inquired as to what would prevent trucks from traveling down Randolph Road. Mr. Taylor replied that the exits would be signed for "no left turn" out of the site and that tractor-trailers would be directed to Rt. 547.

111. Mary Rose Malley, 730 Oak Glen Road, noted that bridges in the area were damaged and closed for several months in 2018 due to a storm. She asked how this impacted the accuracy of the traffic counts. Mr. Taylor testified that the McDonough and Rea Report stated that the bridges in the area were not closed at the time the counts were taken.

112. Joan Osborne, 28 Bronia Street, also inquired about the McDonough and Rea Report. Mr. Taylor testified that they did conduct all of the traffic counts and that he discussed their work with them and was satisfied with their methodology. Mr. Taylor stated that he believed that McDonough and Rea had conducted a lot of work in this area and that peak commuting hours were used. When questioned about the accuracy of live counting versus video recorded counting, Mr. Taylor testified that they are equally accurate. He further testified that no measures were taken by his firm to confirm the accuracy of the counts.

113. Ms. Osborne also inquired about the ITE trip generation rates utilized and Mr. Taylor stated that the calculations were done for warehouse uses in suburban locations, and he further stated that retail as a permitted use inside a warehouse would not affect his traffic study because he believed that the ITE data contemplates show rooms in warehouses. Mr. Taylor also testified that he relied upon updated trip generation information from ITE. Ms. Osborne then questioned Mr. Taylor regarding the impact of the bridge closures on his study.

114. Lastly, Ms. Osborne inquired as to the accessibility of the site for tandem trucks. Mr. Taylor testified that they have a better turning radius, so they would have no problem accessing the site. Mr. Taylor also stated that he used 55 ft. trailers in his calculations but did not know what length a double trailer would be necessary.

V. September 19, 2019 Hearing

A. Further Direct Testimony From Mr. Taylor

115. The Applicant began by presenting further testimony from Mr. Taylor. Mr. Taylor submitted a revised driveway access Exhibit, A- 29: Driveway Circulation dated September 19, 2019. He indicated that the revisions to the driveways did not eliminate access points but rather reduced the number of egress driveways. Mr. Taylor testified that Driveway “A” was altered with an increased radii and compound curb but would continue to serve as a two-way drive for trucks; Driveway “B” was revised to an entrance only for trucks; Driveway “C” remained unchanged for passenger vehicles; and Driveway “D” would be a full movement driveway for tractor-trailers. Mr. Taylor testified that he introduced an access aisle in the interior of the site for passenger vehicles that want to access Buildings

“D” and “E,” which required a reduction in length of Building “D” by 6,000 sq. ft.; however, the square footage of Buildings “B” and “C” were subsequently increased for a net zero change in square footage. Mr. Taylor testified that Driveway “E” was also revised to an entrance only driveway and that the entrance at Driveway “B” was revised to enter in the middle of the loading dock aisles.

116. Mr. Taylor further testified that the outbound driveway radii were proposed to be 25 ft. to discourage trucks from travelling east. The Board continued to express concerns regarding the driveway radii and the Applicant agreed to continue to work with Board Professionals on its design.

117. The Board also raised a concern about revised levels of services due to the elimination of two egress driveways and stated that it wanted a revised analysis. It was also stated that there had been no analysis which took into account the possibility that the proposed traffic signal would not be installed. Counsel for the Applicant stated that the safety of ingress and egress is what is under the purview of the Board, not general traffic in the area, and that the Applicant was not seeking an approval conditioned upon the installation of a traffic signal.

118. With respect to the prior questions about the impact of the area bridge closures around the time of the traffic count, the Applicant resubmitted the McDonough and Rea letter dated February 19, 2019 stating that the bridge in Ramtown was closed but that the detour route was not within area that was studied. Mr. Rea, however, was never made available for questioning.

119. With respect to the prior questions about the impact of Friday peak hour studies, Mr. Taylor testified that he reviewed data for a whole week worth of counts in the same area for another project to show that the Friday data fell in the middle.

120. Mr. Taylor then testified that according to the Manual on Uniform Traffic Control, the standards are met that show that the intersection of Randolph Road and Rt. 547 warrants a signal. He stated that the project was not currently in the County capital improvement plans, but that the County represented that, hypothetically, if a private developer wanted to fund the project it likely would not object.

B. HOPE Cross-Examination of Taylor

121. Counsel for the Objectors, HOPE, was then given an opportunity to cross-examine Mr. Taylor. When asked about the Syncro models for driveways, Mr. Taylor testified that the output printouts were provided but not the computer file. Counsel for HOPE requested the entire computer file but Mr. Taylor refused, stating he did not want to make any review easier for the Objectors' expert.

122. Mr. Taylor indicated that the fact that one of the September 2018 counts was conducted on the first day of school had no impact on his study.

123. Counsel for HOPE then raised the issue of Friday evening traffic counts due to his beliefs about the religious practices of a neighboring town (Lakewood). The Board explicitly rejected this line of inquiry.

124. Mr. Taylor then testified regarding the specific breakdown of cars, tractor-trailers, and busses in the traffic count.

125. Counsel for HOPE then inquired regarding the disparity in the morning peak traffic counts at Randolph Road and Rt. 547. Mr. Taylor indicated that this was a result of balancing the intersections. He stated that he increased all of the volumes at all intersections (i.e., took the worst case scenario and applied it to all the other intersections). He also testified that he used guiding principles from ITE for trip generation.

126. Mr. Taylor then testified that although the Applicant was proposing widening Randolph Road, he believed the road could handle the project without such improvements. In response to a question regarding the proposed lefthand turn restrictions, Mr. Taylor testified that NJDOT approvals would not be involved on a municipal roadway.

127. Mr. Taylor further testified that 33 trucks per hour would be coming to the site even during the non-peak hours. He also indicated that there was no significant difference between the morning and evening peak hours with regard to tractor-trailer traffic, but that the peaks are affected by employees coming and going.

128. Mr. Taylor testified again with respect to the sight distances for ingresses and egresses for the driveways but stated that he did not know the sight distances for interior intersections on site.

129. In response to Counsel's inquiry regarding the tractor-trailer parking, Mr. Taylor stated that there would be a total of 234 loading spaces and 142 parking stalls and that the parking stalls were not required by Ordinance.

130. In response to Counsel's inquiry, Mr. Taylor stated that Driveway "A" would be a full-movement driveway and that trucks would not cross the center line when making the turn in. With respect to Driveway "D," Mr. Taylor testified that trucks would need to utilize

the whole width of Randolph Road in order to egress. He also confirmed that improvements were not proposed for the shoulder on the opposite side of the road to mitigate premature damage from the weight of the truck traffic.

131. Mr. Taylor testified that the proposed changes to Building D's square footages were not included in a revised site plan.

132. In response to a Board inquiry, Mr. Taylor stated the Applicant would comply with any outstanding comments from the Board Professionals.

C. Further Cross-Examination From the Public

133. Nicole Woolley, 223 Victory Road, inquired about the trip generation of tractor-trailers and whether there was any consideration for the installation of traffic signals at other side roads (Victory, Miller, Easy, Oak Glen). Mr. Taylor stated that he did not analyze those intersections for signals as part of his traffic impact study.

134. Kathi Novak, 16 Stratton Drive, inquired regarding the traffic at the intersection of Maxim Road and Rt. 547. Mr. Taylor stated that at full buildout with minor alterations of traffic signal timing, the intersection would be operating at a level E or better (55 to 80 seconds of delay). Mr. Taylor also discounted Ms. Novak's concerns regarding Soldier Memorial Park at the corner of this intersection and stated that tractor-trailers would be using Rt. 547 to get to Rt. 195 which would be safe.

135. Tina Smilek, 33 Charles Street, inquired regarding the issue of firetrucks coming in through the passenger vehicle entrance and overlapping onto the egress side of the drive and what would happen with the cars trying to get out during that emergency. Mr. Taylor testified that the vehicles would be funneled to another driveway. Ms. Smilek also

questioned Mr. Taylor about the impact of the closure of the bridges on the traffic counts and the necessity for the 234 loading docks, 142 trailer parking stalls, and 706 car parking spaces.

136. Joan Osborne, 28 Bronia Street, inquired regarding the trip generation data and whether the background traffic volume growth rate was specific to Monmouth County as a whole or to the Township. Mr. Taylor testified that the growth rate was an average of the entire County. Ms. Osborne also inquired as to whether Mr. Taylor was aware that the traffic study that he used for the Transfer Station had actually been discarded by the County in favor of completing their own traffic study. He stated that he was aware that the County was doing so but that the information was not yet available to the public. Ms. Osborne then asked about whether there would be access to public transit at the site for future employees. Mr. Taylor indicated that he had no information on that subject at that time. Lastly, Ms. Osborne questioned Mr. Taylor about Mr. Troutman's memo regarding the bridge closure's impact on the traffic study, pointing out that it was not signed nor was it certified. Mr. Taylor acknowledged this and stated that he relied upon the professionalism of the prior firm and its opinion.

137. Marc Parisi, 2 Castle Court, inquired regarding the need for screening along the trailer parking spaces. Mr. Taylor stated that he was not the proper witness for this question. Mr. Parisi then inquired regarding the traffic queuing at Old Tavern Road and Rt. 195. Mr. Taylor testified that he did not analyze ramps from Rt. 195 as part of his study but did analyze the intersection at Rt. 547 and Old Tavern Road and believed that with traffic signal modifications, the level of service would remain the same. Mr. Parisi then questioned Mr.

Taylor about Monmouth County's Master Plan which designates Rt. 547 as a scenic road but Mr. Taylor testified that he was unaware of this designation.

VI. October 10, 2019 Hearing

A. Continued Testimony From Mr. Taylor

138. The Applicant began by presenting additional direct testimony from Mr. Taylor. Mr. Taylor stated that he had made additional revisions to the Circulation Plan since the September 19, 2019 hearing. He explained that he had made a reduction in the radii in the egress movements to encourage trucks to make lefthand turns. He also stated that the egress driveway radius was reduced to 5 ft. Mr. Taylor further testified that this would be sufficient for a passenger vehicle to make a righthand turn but encouraged trucks to follow the proposed prohibition. He also testified that nothing else on the plan had changed from a circulation standpoint.

139. Mr. Taylor then testified in response to a prior Board inquiry regarding the analysis for the levels of service of the driveways without the proposed traffic signal. He stated that the original proposed driveways would operate at a C or better, assuming a full buildout of the site and the construction of the Waste Transfer Station and the 41 Randolph Road project. He stated that the revised driveways would not affect traffic. The Board Traffic Engineer expressed skepticism that the traffic coming in and out of the driveways would not be affected by the lack of traffic signal.

140. The Board raised a concern that vehicles would seek an easier route out when traffic is backed up past the driveways and that the study did not account for the increased traffic offsite. Mr. Taylor responded that all articulated vehicles would be prohibited from making the righthand turn. Board Counsel inquired as to the relevancy of a Title 39

provision and Mr. Taylor represented that a Title 39 provision would be helpful but not necessary for the safety of the ingress and egress of the site.

141. Board Counsel then asked for clarification of what intersections were analyzed that led to the conclusion that ingress and egress was safe for all of proposed driveways. Mr. Taylor testified that the following were included in the study: Brooke Road and Lakewood-Allenwood Road; Oak Glen Road and Randolph Road; Randolph Road and Site Driveways; Randolph and Lakewood-Farmingdale Road; Lakewood-Farmingdale Road and Maxim Road; Lakewood-Farmingdale Road and Old Tavern Road/ Herbertsville Road.

142. Mr. Taylor testified that the five driveways and five offsite intersections were included in the study for the overall network impact on the driveways. He explained that the study did not take into consideration the diversion of traffic from the site egress from the site should the queue back up to 1,300 feet but that the driveways would still operate safely. Mr. Taylor testified that the queue with the installation of the proposed traffic signal would be 197 ft.

143. Mr. Taylor then testified that the permitted ancillary use of retail was not taken into account for the traffic impact study.

B. Continued Cross-Examination by HOPE

144. Objectors' counsel inquired as to what the largest vehicle would be that could make a righthand turn with a 5 ft. radii. Mr. Taylor responded that this was not analyzed for anything larger than a passenger vehicle. Mr. Taylor also testified that his queuing calculations included the projected percentage of tractor-trailers.

C. Continued Public Cross-Examination

145. Kathi Novak, 16 Stratton Drive, inquired regarding the McDonough and Rea traffic data relied upon for the Transfer Station and Mr. Taylor testified that he was confident that the data was collected within standard practice and that he relied upon the trip generation as well as incorporated the counts because he is not an expert in that type of trip generation. He testified that the trip generation data was calculated based on information provided by that Applicant and that the County's new traffic study was not publicly available yet.

146. Tina Smilek, 33 Charles Street, inquired about Mr. Taylor's reliance on the data he received from McDonough and Rea. He stated that he had full confidence in the same because the conclusions were based on national standards and so another traffic engineer would have the same opinion on the safety of the site. Mr. Taylor testified that he believed that there would not be any potential for danger at any time but indicated that he had only driven down Randolph Road during rush hour two or three times personally.

147. Lisa Doud, 93 Merrick Road, Farmingdale, asked about the potential of a situation where a car could be waiting behind a truck to make a left-hand turn and is delayed by a truck blocking traffic while it is pulling out. Mr. Taylor indicated that a tractor-trailer would need to utilize the full width of the road to make the left-hand turn.

148. Frances Famelio, 157 Lanes Pond Road, inquired about the intersection of Miller Road because Miller Road leads to Lanes Pond Road which has direct access to Rt 9. Mr. Taylor testified that he did not anticipate trucks proceeding to Rt. 9 even though there were no prospective tenants at this time.

149. Rich Mertens, 11 Inkberry Lane, asked about whether there were any projections regarding traffic available for the construction phase of the project. Mr. Taylor indicated that it was not something he studied for a Planning Board application.

150. Patricia Isbcreht-Kelly, 615 Fort Plains Road, asked how many times Mr. Taylor had personally been to the site. Mr. Taylor stated that he had visited six or seven times and that two or three of those visits were during peak hours. Mr. Taylor further testified that he had not personally counted the vehicles. Ms. Isbcreht-Kelly also questioned the appropriateness of this use in this area (rural houses and horse farms). Mr. Taylor stated that it was a permitted use.

151. Samantha Friedman, 42 Shenandoah Drive, inquired about proposed improvements to make the right from Randolph Road onto Rt. 547. Ms. Friedman questioned the sight distances for that intersection and how a truck would be able to pull out without going over curbing.

152. Mark Parisi, 2 Castle Court, questioned Mr. Taylor once again regarding Rt. 547 being designated as a scenic road. Mr. Taylor stated that he had not verified that information. With respect to a question about traffic counts, Mr. Taylor testified that data collected is usually collected on a typical Tuesday, Wednesday, or Thursday, or a Monday afternoon. He stated that retail traffic was not contemplated in the traffic study but that the Applicant would not condition its application on not having retail space because it was a permitted accessory use.

153. Mr. Parisi then questioned whether a traffic signal would be necessary at the Rt. 547 intersections at Maxim and Old Tavern Roads. Mr. Taylor testified that there would be increased queuing at those intersections but that he believed signal timing modifications would mitigate the problem but that they would also have to be done by the County.

154. Mr. Parisi then questioned Mr. Taylor once again regarding the ramps at Rt. 195. Mr. Taylor testified that they were not studied because the studies are typically done at the

signaled intersections. Mr. Parisi then inquired as to whether there should have to be a study by DOT or the County due to the potential queuing at these points.

155. Janet Coakley, 3039 Lakewood-Allenwood Road, questioned how Mr. Taylor could project which direction the trucks would come and go from if the Applicant has no idea who the tenants will be. Mr. Taylor testified that the assumptions were based upon the size of the buildings without specific tenants in mind. He further testified that Rt. 547 was classified as an “urban major collector roadway” according to straight line diagrams (State document). He stated that this designation can co-exist with a designation as a scenic road as well.

156. The Board requested a more formal definition of the term “urban major collector roadway.”

157. The Board then inquired regarding the portion of the traffic that would be generated by tractor-trailers only. Mr. Taylor testified to the following: AM peak- 27 in- 8 out, PM peak- 10 in- 26 outs.

D. Direct Testimony From Applicant

158. The Applicant then presented testimony from Henry Guindi, a Principal of the Monmouth County Commerce Center, to speak to the use of trailer parking spaces on the site. Mr. Guindi testified that he had 27 years of warehousing experience as an importer. He further stated that modern warehouses all have trailer parking spaces and that they wait in the parking spots until there is a door available to unload. Mr. Guindi testified that trailers could wait for up to a day or two.

159. In response to a follow-up question from Board counsel, Mr. Guindi testified that drivers would unhook the trailer portion from the cab if they needed to go somewhere to sleep for the night.

160. Mr. Guindi further testified that he was also the principal of a related entity with the same principals as the Applicant and is one potential tenant of the facility. He clarified that he could only represent the operations of his own company but not the rest of the future unknown tenants.

161. In response to a follow-up question from Board counsel, Mr. Guindi testified that the Applicant would agree to a time limitation of 96 hours for trailer parking as a condition of approval as well as a condition that no one could sleep on site.

162. Mr. Guindi next testified that the building specifications were not intended for cold storage at the moment but that it was a possibility depending on the market demand of future tenants.

E. Cross-Examination by HOPE

163. Objector's Counsel was then given an opportunity to cross examine Mr. Guindi. Counsel inquired about the necessity for 142 parking spaces if there is going to be high turnover and 234 loading docks. Mr. Guindi responded that most loading docks would be for outbound trucks and that there would not necessarily be an available inbound loading dock if there are multiple trucks that show up at the same time.

164. In response to a Board inquiry, Mr. Guindi testified that Mr. Taylor had visited another one of his warehouse sites and had discussed his operations regarding trip generation with him.

F. Cross-Examination from the Public

165. Janet Coakley, 3039 Lakewood-Allenwood Road, inquired as to what type of goods Mr. Guindi imports. He responded that he did not warehouse any hazardous materials and only ships household merchandise.

166. Robert Johnson, 757 Oak Glen Road, inquired as to whether any ordinances existed regarding noise generated by refrigeration trucks. Mr. Guindi indicated that the Applicant would be required to comply with all noise ordinances. He also testified that no idling of vehicles would comply with State Administrative Code requirements.

167. Tina Smilek, 33 Charles Street, questioned whether there was a possibility that tenants might sublease their space. Mr. Guindi testified that there would not be any restrictions on subleasing but that it would likely have to be approved by the proposed condo association. Ms. Smilek expressed concern about the potential for tenants with 24/7 operations.

VII. November 7, 2019 Hearing

168. Before the continued presentation of evidence from the Applicant, Objectors' Counsel (HOPE) appeared and submitted an updated client list which was marked O-3.

169. Counsel for the Applicant then stated that the Monmouth County Planning Board had determined that it had jurisdiction and that it would require the installation of the traffic signal as a condition of approval. Counsel further stated that the County Planning Board had requested additional information in the form of a concept drawing for the intersection and the modifications proposed. The Applicant declined to provide the concept plan when asked by Counsel for the Board.

A. Planning Testimony

170. The Applicant next presented testimony from its Planner, Elizabeth McManus, PP. Ms. McManus proceeded to provide an overview of the subject Property. She stated that the subject Property contained nearly 100 acres with a utility right of way to the west with Metedeconk River immediately to the south. Ms. McManus further testified that the subject Property was located in the Special Economic District (SED) and that ARE-2 districts (Residential Zone) were located to the north and east.

171. Ms. McManus then testified that the zoning for the subject Property had remained the same since the Township's 1995 Land Use Element which was included in the Municipal Master Plan. She stated that the intent of that zoning designation was to permit light manufacturing, office and research, and warehousing in appropriate locations. Ms. McManus noted that according to the Township's 2006 Zoning Map, the subject Property remained in the SED zone.

172. Ms. McManus next testified regarding the 2014 Master Plan Re-examination Report, the Master Plan 2017 Re-examination Report, and the 2017 Land Use Element. She stated that the character of the Township had not changed since the last Master Plan and that none of the documents addressed any changes to this SED District. Ms. McManus testified that that the Township has had a multitude of chances to change the policy regarding the zoning of the SED zone and has chosen not to. She stated that the SED Zone is intended for economic development where rail and highway structures are readily available.

173. Ms. McManus then testified regarding the bulk standards for the subject Property and stated that the development was compliant with respect to: minimum lot area; maximum lot coverage (55.4 % proposed where less than 70% required); and that the level of intensity was below what is permitted by Ordinance.

174. Ms. McManus then discussed the relief that the Applicant required. First, Ms. McManus testified that the Applicant was seeking variance relief from Section 188-63, which requires a 50 ft. buffer next to a residential zone. Ms. McManus stated that the relief was limited to a specific area where the Applicant was seeking to retain existing trees. She explained that a c(2) variance was appropriate because it is preferable to retain the existing vegetation; and that it was preferable to conserve the taller and more mature trees. She explained that the Applicant was largely compliant with the buffer requirement except for this limited area and that she believed the benefit substantially outweighs any detriments.

175. Ms. McManus then discussed the required design waiver relief. The first design waiver was for a loading area in a front yard. Ms. McManus testified that this relief was for a 60 ft. area along the eastern property line where a proposed loading area fronts the street and that it is less than 5% of the frontage overall. She characterized the relief as de minimis.

176. Ms. McManus then discussed the requested design waiver relief for plantings around a recycling enclosure. She testified that each building would have its own enclosure proximate to the building, along the loading area. She opined that this was not a typical design because the enclosures were within the “activity areas” of the site.

177. Ms. McManus next discussed the requested design waiver relief for shade trees in the parking lot area and explained that the Applicant could not provide trees within the parking area like a typical commercial use due to truck circulation. Ms. McManus asserted that she believed that the Applicant was still providing a significant number of plantings in a different location/format.

178. Ms. McManus next discussed the requested design waiver relief for screening the parking lots visible to the public with an impervious screen hedge or wall. She testified that

as you drive by the property driveway entrances, the parking lots would first be visible and that it would require an atypical design to fully shield the parking lot from public view at the driveway entrances.

179. Ms. McManus then discussed the requested design waiver relief from constructing sidewalks within the right of way. She testified that there is a lack of pedestrian destinations in the area and on the site, as well as a lack of connecting sidewalks in the area. Ms. McManus added that by not providing sidewalks, the Applicant is able to reduce impervious cover and tree clearance along property line.

180. Ms. McManus then discussed the requested design waiver relief from the minimum and average lighting levels. She testified that the Ordinance requires a 0.3 footcandle minimum and 0.5 footcandle maximum average and that the Applicant was proposing 0.2 footcandles in isolated locations in parking lot. Ms. McManus stated that the Applicant also exceeded the permitted average because some areas were proposed at 1.2 footcandles. She asserted that this non-compliance would be mitigated by the proposed level of buffering. Ms. McManus then stated that exceedance resulted from the Applicant's plan to use fewer light fixtures at higher lumens.

181. Ms. McManus then discussed the requested design waiver relief from providing a protective device between the building and all parking and loading areas. She testified that the building itself was proposed to be constructed of 8 inch reinforced concrete walls which would provide the same protection as separate bollards.

182. Ms. McManus next addressed the requested design waiver relief for signage. She testified that the Ordinance permits a maximum of 2 freestanding signs on a corner lot but that the Applicant was proposing one freestanding sign at each entrance and 2 building

number signs on each building, where only two wall-mounted signs are permitted. Ms. McManus testified that the extra signage would ensure safe navigation through the site.

183. Ms. McManus then discussed the requested design waiver relief for minimum loading area size. She stated that the Applicant was proposing 12 ft. x 55 ft. parking stalls where 12 ft. x 60 ft. is required for loading areas. She maintained that the 12 ft. x 55 ft. spaces were only trailer parking between the buildings and that all designated loading areas were in compliance with the Ordinance. She also testified that the size of the parking stalls equated to a reduction in impervious coverage.

184. Ms. McManus then testified that multiple goals and objectives of the Master Plan were advanced by the application. She also asserted that the plan would promote the protection of neighborhood characteristics by enforcing buffer areas between residential and non-residential areas. Ms. McManus opined that the Master Plan recognized the need to adapt to changing dynamics and demands of a diverse and increasingly globalized economy and that this plan advanced that goal. She further stated that the proposed development advanced the goal of utilizing the potential for economic and rehabilitation plans in strategic locations within the Township, where appropriate, and to encourage land use development that can provide economic opportunities while at the same time balanced the preservation of neighborhood character and protect environmental resources

185. Ms. McManus next testified that all required buffering to the Metedeconk River were being satisfied. She added that the negative criteria was met by granting the buffer relief and that there is no substantial detriment.

186. Ms. McManus then stated that it was her opinion that what she characterized as “trailer parking” did not require variance relief. She, however, recognized the Board’s

determination that this area constituted outdoor storage which did not require relief. Ms. McManus testified that §188-79(b)(3)(b) states that outdoor storage is permitted in a screened rear yard only. Ms. McManus noted that the term “outdoor storage” is not defined in the Ordinance but that §192-18 (Littering Ordinances) uses the term “outdoor storage” and that in that section the term does not apply to motor vehicles or equipment. Ms. McManus stated that she believed that trailer parking is an accessory use and that outdoor storage is typically used to describe things like inventory or things being held for future disposal.

187. Counsel for the Objectors argued that the fact that a trailer loaded with inventory could remain in the parking stalls for an indefinite period of time was “ludicrous.” He then cited §307 of the Howell Code which addresses trailer storage. Counsel argued that trailers should not be exempted just because they are part of a motor vehicle and that Code 307-5(b) should govern whether the trailers constitute outdoor storage.

188. Ms. McManus testified that the parking spaces would be located between the buildings instead of behind and that a C variance is appropriate because the deviation would advance the goals of planning enumerated in the MLUL at N.J.S.A. 40:55A-2. She specifically cited subsection (h) and asserted the plan promotes the free flow of traffic and logical site circulation. With respect to the negative criteria, Ms. McManus testified that there is no detriment to the public good from a safety and operational standpoint and that the spaces would be screened from public view. She then stated that the granting of relief was consistent with the goals of the Master Plan for this zoning designation and that the benefit outweighs any detriment.

189. Ms. McManus then testified regarding the request to make a contribution to the tree replacement fund in lieu of planting the replacement trees on site. She stated that the

tree replacement ordinance, 188-195(a), provides for the onsite replacement trees if possible, but that if there are physical difficulties or undue hardship, offsite tree replacement, or a contribution tree replacement fund may be requested. The ordinance provides that an Applicant may make a contribution in lieu of planting trees at \$300 per tree, not to exceed \$35,000 per developed acre.

190. Ms. McManus stated that there are a significant number of existing trees on the site and that the contribution would be capped out at \$35,000 per acre since there are 30,391 trees needing to be replaced. Ms. McManus explained that for the 71.71 acres to be developed at \$35,000 per acre, the contribution would be approximately \$2.6 million. She then testified that since the proposed use is permitted and does not exceed bulk or intensity limitations, the Applicant had presented the proofs necessary to meet the requirement of showing impracticability of providing the trees. She also opined that an ordinance would not ordinarily be read to require a permitted use to be eliminated due to the preservation of trees.

191. The Board then inquired regarding the proposal for a reinforced wall versus the bollard required by the ordinance and Ms. McManus responded that the proposal achieved the same goal of protection with an aesthetic advantage of a less cluttered parking area.

192. The Board then inquired as to why requirements for the trailer parking to be located in the rear yard could not be complied with. Ms. McManus testified that relief was required due to the angle of the roadway, the necessity of the placement of the loading docks, and access to parking.

193. The Board then inquired regarding the Applicant's request for relief from planting shade trees in the parking lot. Ms. McManus responded that she was skeptical as to whether

trees would survive on small landscaped islands and that they were not conducive to the circulation of the trucks.

B. Cross-Examination of McManus by HOPE

194. Objectors' Counsel was then permitted to cross-examine Ms. McManus. Mr. Bossong inquired about the Applicant's need for variance relief from the 50 ft buffer requirement and Ms. McManus stated that the purpose of the request was to leave the current natural plantings, but that the Applicant was also proposing to supplement the plantings and is not requesting relief from depth requirements of the buffer.

195. Objectors' Counsel then inquired about the Applicant's justification for relief for the size of the proposed trailer parking spaces (minimizing impervious coverage) and asked whether the elimination of a number of spots would not have the same effect. Ms. McManus indicated that it would.

196. Objectors' Counsel then inquired regarding the historic agricultural use of the subject Property and if historic pesticide sampling was conducted as required by the Ordinance (188-4 and 188-21). Ms. McManus stated that she did not know if any such sampling had been performed. Counsel then asked if she was aware that failure to comply may result in a denial of the application. The Applicant stated that some testing had been performed and that the Ordinance requirement would be satisfied.

C. McManus Cross-Examination by Public

197. The matter was then opened to the public for questioning of Ms. McManus.

198. Pat Heaney, 56 Vienna Road, inquired regarding any plans for non-structural stormwater management strategies and it was determined that this question was outside of Ms. McManus's purview.

199. Carl Reichenbecher, 41 Brook Road, inquired as to whether the Applicant was meeting all obligations for protecting the Metedeconk River and whether Ms. McManus was aware that it provides the drinking water for surrounding towns. Ms. McManus testified that she was not aware of the use of the River to its full extent.

200. Joan Osborne, 28 Bronia Street, questioned the SED designation because the subject Property does not have a highway or railroad structure readily available. Ms. McManus testified that the zoning was adopted by Township and that it is not her interpretation. She did, however, opine that the proposal did fulfill the intent of the zoning. In response to a question regarding public transit, Ms. McManus testified that she was not aware of any nearby bus stops. Ms. Osborne raised a concern regarding the requested waiver of the sidewalk requirement since Ms. McManus testified that she was not aware of the demographics of future workers or how they would get to work (i.e.: walking from bus stops or if they otherwise did not have cars). Ms. McManus reiterated the Applicant's reasons for the requested sidewalk relief and testified that there would be designated pedestrian crosswalks within the interior of the site.

201. Ms. Osborne then questioned why the DEP constrained property was utilized in calculations for impervious coverage. Ms. McManus testified that the calculations complied with Ordinance requirements. Ms. Osborne asked if the Applicant still required the number of requested items of relief if the buildings were scaled back. Ms. McManus testified that the number of buildings was not relevant and that the question was hypothetical and would require a complete redesign of the site. Lastly, Ms. Osborne inquired about the number of trees being replaced onsite. Ms. McManus testified that 593 trees were being placed

throughout the site and could not comment on whether replacing more trees would reduce the carbon in the air.

202. Mike Bernstein, 3 Colleen Court, inquired regarding the proposed trailer storage and whether it would be for tractor trailers or shipping containers. Ms. McManus testified that the spaces would be for trailers on wheels, not storage containers. Mr. Bernstein then questioned how the Applicant could request relief from refuse management requirements if tenants were unknown. Ms. McManus testified that it is a general operational issue. Lastly, Mr. Bernstein inquired about the economic benefits of the project and specifically if she had calculated the lost property values. Ms. McManus testified that the application fulfills the Master Plan and zoning goals and that they do not necessitate an economic analysis.

203. Anthony Bove, 17 Old Tavern Road, inquired about the traffic study and was advised that the question was outside of this witness' purview.

204. Marc Parisi, 2 Castle Court, inquired regarding the Applicant's requested contribution to the tree replacement fund. Ms. McManus testified that the Applicant was willing to pay the \$2.6 million into the tree fund and that the site buildout was based on market demand and that the Applicant would not clear cut the whole lot during Phase 1. Mr. Parisi also inquired about the stormwater management plans and was advised that this was not within the witness' purview.

205. Kathi Novak, 16 Stratton Drive, inquired as to whether anyone had considered the potential air pollution. The Applicant represented that it would meet any requirements set forth regarding air pollution but that air pollution was outside the purview of consideration of this Board.

VIII. December 5, 2019 Hearing

206. Counsel for the Applicant represented that all direct testimony had been completed subject to the need for rebuttal evidence. Counsel also represented that the required soil testing was resubmitted, and further testing was performed but maintained that the provision of the Ordinance cited by the Objectors did not apply because it was limited to sites where children would have access.

207. Counsel for Objectors (HOPE) stated that the Applicant had not submitted any of the additional traffic information necessary to address the Board's previously raised concerns.

A. Direct Testimony from HOPE's Traffic Engineer

209. The Objectors then presented testimony from their Traffic Engineer, Joe Fishinger, PE. Mr. Fishinger testified that he had either been present at the previous hearing dates in person or watched the videos of the hearings online.

210. Counsel for the Applicant objected to the Objectors' exhibits because they were not provided 10 days in advance and the exhibits were a combination of new information and a restatement of the Applicant's Traffic Engineer's data. The exhibits were permitted.

211. Mr. Fishinger testified that Exhibit O-4, the ITE 10th Edition Trip Generation Data, showed four different options for peak hour operations trip generation. He stated that the Applicant could have used three other times as the designated peak hours and that the difference was the adjacent street peak versus the generator (i.e., a school). Mr. Fishinger agreed that the Applicant should be using the peak hour of adjacent street traffic but that it should also be using the average rate number which were higher than the numbers used in Applicant's Traffic Impact Study. Mr. Fishinger stated that a higher average rate trip generation should have been used because tenants were not currently known. He added that

because there are five access points, the site could behave as five smaller developments. He opined that the trip generations used by the Applicant underestimated the traffic at the site due to so many unknowns.

212. Mr. Fishinger next testified regarding Exhibit O-5, a Trip Generation Comparison. Mr. Fishinger stated that Mr. Taylor was correct in that these are the numbers out of the Manual but that there was only one data point since sites like this are not typically used on a Saturday. It was his opinion that the comparison should therefore be discounted. Mr. Fishinger also stated that there are very few data points for offices on a Saturday because most offices are closed.

213. Mr. Fishinger further testified that a project developed under Land Use Code 720, Medical Office, at 400,000 s.f. is not realistically a medical/dental office but a regional hospital at that size. He asserted that the ITE does not have study numbers for a medical office over approximately 100,000 s.f. and so from a practical standpoint this comparison is not realistic.

214. Mr. Fishinger next addressed Exhibit O-6, Peak Hour Traffic Volume Comparison of Rt. 547 and Randolph Road. He explained that he pulled traffic count information from three different sources: the March 2016 count performed by McDonough and Rea for the 41 Randolph Road application; the 2018 counts from the Applicant's traffic study; and the May 2019 counts collected by his office at the same intersection.

215. Mr. Fishinger also testified that the total numbers from the Applicant's counts were considerably lower than either of the other two counts and underrepresented traffic conditions in the area. He explained that he only chose to re-do this intersection due to

limited resources, and that his office used a system called “MyaVision” which is a digital video program and over 99% accurate.

216. The Board asked for comments regarding the adjusting of counts for balancing intersections, Mr. Fishinger testified that Mr. Taylor had manually assigned traffic routes within his model for the Sychro program. He also stated that if there was any significant backup at the intersection, any frequent users of the site would know to make a right instead of the left out of the facility and use a different route to get around the congestion. He stated that this re-routing was not accounted for in the Synchro model.

217. Mr. Fishinger then testified regarding Exhibit O-7, Truck Restrictions and Traffic Regulations, explaining that the law does not require approval or review by NJDOT except for weight limit restrictions and weight limit restrictions.

218. Mr. Fishinger next addressed Exhibit O-8, Traffic Analysis Comments. He testified that the Synchro report printouts did not correctly account for the heavy vehicle percentage, and that the existing conditions and full buildout of the site percentages were identical. Mr. Fishinger testified that the full buildout would have a 95th percentile queue of 54 vehicles, which did not include trucks.

219. Mr. Fishinger next testified regarding Exhibit O-9, the Applicant’s Planned Improvements. He stated that the Monmouth County Planning Board was going to require a traffic signal but that the Applicant had not yet provided a concept plan. He stated that the proposed geometry would require new curb lines as well as a substantial road widening. Mr. Fishinger estimated the cost for this project would be over a \$1.2 million and that it would also require over an acre of right-of-way which would also need to be acquired by eminent domain. He added that utilities would also need to be moved and that ultimately the

improvements would be a multi-year process in order to acquire all the property, get all the permits, and complete the construction.

220. Mr. Fishinger then testified regarding Exhibit O-10, a Copy of the Vehicle Circulation Exhibit with Annotations. He asserted that despite repeated revisions, locations still existed where there would be vehicle conflicts. Mr. Fishinger explained that this meant that vehicles would cross and need to turn into opposing lanes. He opined that the design did not accommodate tractor-trailers for proper circulation.

221. Mr. Fishinger concluded that the Applicant's traffic impact study did not accurately represent the traffic impact of the proposed buildout.

B. Cross-Examination of Fishinger

222. Counsel for the Applicant then cross-examined Mr. Fishinger. She inquired as to what entity had retained him and the source of his payment. Counsel for the Objectors objected to this line of questioning regarding who was paying the witness but stated that the retainer agreement was between his office and the witness. Counsel for the Applicant stated that it was a relevant question as to whether competition is paying or involved in paying for his services.

223. Counsel then questioned Mr. Fishinger regarding Exhibit O-5. He stated that he was not appearing as a planner but that he was also a licensed planner. Mr. Fishinger explained that the exhibit was the Applicant's exhibit but also included his own colorization. He could not verify whether the building sizes contained were accurate. Mr. Fishinger then testified that all of the Applicant's trip generation numbers were consistent with the ITE, but his criticism was that they were based upon inconsistent data. He highlighted that the size of the hypothetical medical office was larger than proposed in the ITE.

224. Counsel for the Applicant then inquired regarding Exhibit O-6 and Mr. Fishinger testified that his office generated the counts but not him personally and that he did not personally put out cameras. With respect to the September 13, 2018 count by the Applicant, Mr. Fishinger further testified that typical daily variations within 10% is normal for intersection counts.

225. Counsel also inquired regarding the May 23, 2019 count, confirming that it was the Thursday before Memorial Day Weekend. With respect to Mr. Taylor's balancing of the traffic count, Mr. Fishinger testified that he did not know if the numbers used were higher than actual counts because he only studied one intersection. He believed this doubt to be reasonable because the counts were not representative of the traffic in the area. He further testified that the Synchro report contained the following data: total AM peak: 1,471; total PM peak: 1,098. He stated that the numbers in the traffic counts were relevant because they were lower than the 2016 and 2019 counts. He reiterated that he only had the resources to perform this analysis for one intersection.

226. Counsel then inquired regarding Exhibit O-7- and stated that there had not been any testimony on weight restriction. Mr. Fishinger testified that his interpretation as a traffic engineer was that a weight restriction and truck limitation are the same thing and that he was not aware of restrictions based on length of a vehicle.

227. Counsel then inquired regarding Exhibit O-9. Mr. Fishinger testified that the concept plan had not been discussed with anyone outside his own office. She further asserted that the Monmouth County Planning Board had exclusive jurisdiction to approve the signal, not the Board. Mr. Fishinger testified that he had no recollection of any discussion of costs of improvement but that regardless of who is paying for the project, property takings would

be required. Counsel inquired as to if Mr. Fishinger further testified that full buildout would take five years and that it was not clear at what point in development the improvements would be necessitated.

228. Counsel then inquired regarding potential car queuing. Mr. Fishinger responded that the 1,350 ft. was calculated at 25 ft. per car. He stated that it would be the 95th percentile in the evening peak hour without a traffic signal. Mr. Fishinger acknowledged that the County was requiring the improvement as a condition of approval and that queuing would be less with the light. He further stated that this information was included because the improvements were going to take time and in the interim, this is a condition that could occur. Mr. Fishinger testified that although he was present at the County Planning Board meeting where the improvements were discussed, he only heard the public comments. He did not know whether the County Planning Board was definitively approving the application if there was a complete list of conditions.

229. Counsel for the Applicant indicated that she would hold her remaining questions for a future meeting.

C. Public Cross-Examination of Fishinger

230. The matter was then opened to the public for questions of Mr. Fishinger.

231. Nancy Reichenbecher, 41 Brook Road, inquired as to why his traffic counts were only collected at the intersection of Randolph Road and Rt. 547. Mr. Fishinger reiterated that it was due to limited fund available for study.

232. Jim Sullivan, 16 Nate Lane, inquired as to whether there was an issue with the 2019 counts being done on the Thursday before Memorial Day Weekend and if those numbers could be extrapolated to a Friday in the one to two hours before sundown. Mr.

Fishinger testified that he only looked at whether the Thursday was for a typical mid-week rush hour peak.

D. Continued Cross-Examination of Applicant's Planner

233. Joanne Delio, 10 Station Place, had questions about drinking water and septic. It was determined that those questions should have been directed to the Applicant's civil engineer.

234. Robert Johnson, 757 Oak Glen Rd, inquired as to whether the witness felt it was acceptable to put this project where there are three bridges and therefore only one access road. Ms. McManus testified that she believed it was appropriate based on the zoning designation. She declined to answer questions regarding improvements to Rt. 547 because they were more appropriate for the traffic engineer.

235. Tina Smilek, 33 Charles Street, inquired as to Ms. McManus' experience. She testified that she had not planned a project of this size before, but that she had planned a smaller self-storage site and worked with another municipality regarding desirableness of a warehousing project of about 750,000 sq. ft. Ms. Smilek then questioned who was paying her. McManus testified that the Applicant is paying her.

IX. January 16, 2020 Hearing

236. Before the continuation of the Applicant's cross-examination, Counsel for the Objectors' (HOPE), Mark Caliguire, Esq., placed his appearance on the record and confirmed that there was no change in the client list.

A. Continued Cross-Examination of Fishinger

237. The Applicant then continued its cross-examination of the Objectors' Traffic Engineer. Counsel questioned how the three sets of counts presented as Exhibit O-6 was calculated. Mr. Fishinger testified that he used an electronic method which utilized a digital camera system whereas the Applicant's count was done manually.

238. Counsel then inquired regarding Exhibit O-8. Mr. Fishinger testified that the printouts included were the latest from the Synchro program.

239. Counsel then questioned the disparity in the traffic counts. Mr. Fishinger testified that his morning count was 909 vehicles at the intersection and that the 2018 count had 827 vehicles. He agreed that he had previously testified that there could be a daily variation of around 10%.

240. Lastly, Counsel for the Applicant inquired about Exhibit O-5. Mr. Fishinger agreed that Mr. Taylor's numbers were consistent with the ITE. Specifically, with regard to medical offices, he observed, however, that the ITE did not have any data points for medical offices of 400,000 sq. ft. He further testified that he would not be willing to say that data point available would be a quarter of what was included in the report due to the complexity of the requisite equation.

B. Taylor Rebuttal Testimony

241. The Applicant then presented rebuttal testimony from Mr. Taylor regarding the traffic impact study.

242. Mr. Taylor testified regarding the use of the ITE fitted curve noting that Mr. Fishinger stated that average rate should have been used instead. He explained that the ITE flowchart (pg. 28 of ITE Handbook) included the recommended process for choosing

average rate or whether an equation should be used to calculate trip generation. He stated that the chart leads to the conclusion that a fitted curve equation should be used based on the number of data points available. Mr. Taylor further testified that if the average rates for trip generation were used, it would be 40 cars higher in the morning from 174 to 211, and approximately 60 cars higher in the evening from 177 to 236. He stated that he had run the capacity analysis based on those numbers and that the results for the levels of service of the driveway did not change.

243. Mr. Taylor then testified that he had performed the calculations for trip generation of a 100,000 s.f. medical office and determined that it would still generate more trips than the proposed warehouse by nearly double.

244. Mr. Taylor then addressed the traffic counts and testified that they were adjusted and balanced up to the heaviest traffic counts for the peak hours at all the intersections, and then also balanced up to account for the 2016 41 Randolph Road project traffic count. He believed that this resulted in a conservatively high volume. Mr. Taylor further testified that the numbers used in his analysis were actually between 4% and 17% higher than his actual traffic count.

245. Mr. Taylor next testified that he agreed with Mr. Fishinger that NJDOT approval would be required to post a weight limit restriction on a public roadway. He noted, however, that Title 39 vests municipalities with the authority to govern other traffic rules including regulating entrances and exits from parking lots open to the public. Mr. Taylor stated that the Township could limit turning movements in and out of the parking lot without NJDOT approval.

246. Mr. Taylor also testified that he incorporated trucks in his calculations for traffic impact and queuing with regard to signalizing the intersection. He added that he could not say why the available counts from 2016 were higher than the Applicant's 2018 counts.

247. Mr. Taylor then testified that he was currently working through a design with the Monmouth County Planning Board for the signalized intersection but that it had not yet been developed. He stated that he did not disagree, in general, with Mr. Fishinger's concept plan.

248. Mr. Taylor submitted Exhibit A-36, a Revised Driveway Circulation Plan and testified that he had revised the plan to narrow some of the driveway lanes down to 12 ft. for outbound lanes which eliminated the concern regarding encroachment. He explained that he moved center line.

C. Cross-Examination of Taylor

249. Objectors' Counsel inquired regarding Exhibit A-35, the ITE trip generation flowchart. Mr. Taylor testified that he used the flow chart in his own analysis. Counsel then reserved the right to ask further questions about exhibit A-36 after Mr. Fishinger was given an opportunity to review the proposed revised design.

D. Public Cross-Examination of Taylor

250. The matter was then opened to the public for additional questions.

251. John Gurizo, 707 Oak Glen Road, inquired as to whether any analysis had been performed of traffic coming from the east of the subject Property. Mr. Taylor confirmed that his analysis had been performed and that the Applicant was proposing improvements on Oak Glen Road in the form of widening along the property's frontage. Mr. Gurizo responded that his concern related to improvements on Oak Glen Road to the intersection with Squankum

Road because that part of the road is 100% residential and would inevitably see spillover from the traffic to avoid the new proposed light.

252. Tina Smilek, 33 Charles Street, questioned how many times Mr. Taylor had been back to site since his previous testimony. Mr. Taylor responded that he had returned once. Ms. Smilek also inquired regarding the revisions to the driveways and Mr. Taylor testified that the striping modifications were all on the tractor-trailer driveways to the site. He stated that a firetruck entering through a passenger vehicle entrance would still go over center line. Ms. Smilek raised questions about Mr. Taylor's reliance on McDonough and Rea's traffic counts

253. Ron Springer, 494 Lakewood-Farmingdale Road, inquired about Mr. Taylor's knowledge regarding the congestion at the intersection of Herbertsville Road and Rt. 547. Mr. Taylor acknowledged congestion issues at that intersection.

254. Kristen Burke, 14 E. Shenandoah Road, inquired regarding proposed road improvements. Mr. Taylor stated that the Applicant proposed improvements only along its frontages.

255. John McNulty, 4 and 12 Arnold Blvd., questioned whether Mr. Taylor's traffic impact study included any type of failure mode analysis. Mr. Taylor testified that he had analyzed existing operations and compared build and no build scenarios. He was confident the proposed design would work.

256. Nelson Santos, 768 Oak Glen Road, inquired as to who would be responsible for repaving Rt. 547 as a result of the increased traffic.

257. Laurie Oaster inquired regarding the potential for queuing of tractor-trailers on Randolph Road. Mr. Taylor stated he did not anticipate this being an issue.

258. No other members of the public expressed interest in the application at this time and public questions were closed.

259. Counsel for HOPE withdrew the objection regarding the soil testing requirements and assured that the Applicant satisfied the Ordinance requirements.

X. January 30, 2020 Hearing

A. Continued Taylor Cross-Examination

260. Counsel for HOPE continued with his cross-examination of Mr. Taylor. Specifically, with respect to Exhibit A-36. Mr. Taylor testified that he had shifted the center line out the entrances for Driveways A and D. This was done to accommodate a wider turning radius. He also testified that the tractor-trailers would have to utilize the full width of Randolph Road, including the proposed new shoulder, to exit the site.

B. Public Testimony

261. Dawn Van Burnt, 21 E. Shenandoah Road, testified that she had a video of existing traffic conditions taken by her and Susan Springer, 494 Lakewood-Farmingdale Road to present for the Board's consideration. She stated that it was taken over the course of the previous three to four months at various points along Rt. 547. Due to the fact that the third individual who took video was not yet present at the meeting, Ms. Van Burnt continued with her non-video testimony.

262. Ms. Van Brunt testified that she was the founder of the group known as HOPE which was an Objector in this matter. She stated that the neighborhood had a rural nature and was concerned with overdevelopment. She explained that she was considering leaving town after 20 years. She expressed concern regarding the safety of the children playing sports

at the park. Ms. Van Brunt further testified that the breakdown of a tractor trailer would render the road impassible.

263. Kirsten Gallo, 23 E. Shenandoah Road, testified that she had concerns regarding the safety of the roads for tractor-trailers. She attempted to introduce data and statistics about the impact of tractor-trailers on air pollution and its resulting adverse impact on health. Counsel for the Applicant raised an objection to the testimony as being expert in nature. The Board permitted the testimony and advised that Ms. Gallo was not being considered an expert.

264. Barbara Lloyd, 695 Oak Glen Road, testified that she did not live in a development. She stated that she objected to an industrial site coming into a completely residential area.

265. Andre DeGarneau, 34 Porter Road, testified that he took some of the video, referenced earlier, on January 16, 2020 around 10:00 PM. The video was then marked as an exhibit, O-11, and played for the Board. The Applicant raised an objection to video because of the lack of specific dates, times, and days of the week of the other portions of the recording and because it was not provided to the Applicant in advance. The Board accepted the video giving it the appropriate weight as discussed infra.

266. Mr. DeGarneau also raised concerns regarding the size of the project, the traffic and the ability of Rt. 547 to handle the volume of trucks. He further raised concern about potential hours of operation.

267. Susan Springer, 494 Lakewood-Farmingdale Road, submitted a document containing accident report data for the 24 years since the area was designated as “industrial.”

268. Tina Smilek, 33 Charles St, expressed concerns regarding the project's potential environmental and traffic impacts. She questioned the qualifications of the Applicant's planner due to her experience in planning projects of a similar size and scale. Ms. Smilek also testified that she believed the proposed parking was excessive based on the traffic counts provided and that the application did not promote the general welfare of the community.

269. Fred Gasior, 24 Grismill Road, testified that he is a retired State Trooper with experience in weighing and inspecting trucks and that trucks on local roads are very dangerous. Mr. Gasior also testified that he grew up next to the transfer station in Woodbridge-Carteret and recalls how trucks destroyed the local roads, that the Turnpike ramps had to be reconstructed, and that there were clouds of diesel smoke that lingered due to idling trucks. He further testified that he would move out of town if this project was constructed.

270. Ron Springer, 494 Lakewood-Farmingdale Road, testified regarding his concern for children crossing the road near Soldier Memorial Park. He further stated that his house was built before WWII and that he could feel the physical effects of trucks braking and driving due to his limited set back. Lastly, Mr. Springer testified that he had spent 20 years developing a farm but would leave if the project was approved.

271. John McNulty, 4 and 12 Arnold Blvd., testified that he owns property 100 ft from the subject Property and that he had concern regarding traffic from tractor-trailers. He further testified that he was concerned about the traffic's impact on his health, including the contamination of well water from stormwater runoff. Mr. McNulty further testified that when he bought his property he removed an existing warehouse and created a farm because he believed it would be an asset and improve the quality of life in the area.

272. Catherine Moore, 757 Oak Glen Road, testified that she lives approximately 1000 ft from site and that she was concerned with increased traffic and the reduction of property values. Ms. Moore testified that this project would be a threat to the safety and health of residents and would affect the quality of life if approved.

273. Mike Bernstein, 3 Colleen Court, testified that he believed that just because you can do something does not mean you should. He stated that he was concerned that the Applicant was not responsible for anything outside of the site and that there are still too many unknowns about the project.

274. Carl Reichenbecher, 41 Brooke Road, expressed concerns regarding traffic, particularly the increase in trucks since there is significant school bus traffic. He noted that another recently-approved project was also going to put 200+ trucks on the road. Mr. Reichenbecher then testified regarding his water quality concerns as a result of the removal of 30,000 trees.

275. Chris Garrick, 25 Firestone Drive, expressed concern regarding the project's potential impact on endangered species that would be lost from the clearing of the trees.

276. Nancy Reinchenbecher, 41 Brooke Road, testified that she was skeptical regarding the adequacy of the Applicant's traffic impact study. She also stated that she was concerned about increased flooding from the removal of so many trees, tax increases to cover road repairs as a result of the traffic, and whether the project would really create jobs that would pay a living wage.

277. Michele November, 74 Cascades Ave., testified that she is a retired police officer from New York City and expressed her concerns regarding the policing of tractor-trailers.

She stated that in her experience the trucks would disregard signage on roadways. She also believed that the quality of life would be impacted as a result of queuing.

278. Joan Osborne, 28 Bronia Street, testified that the Applicant was asking the Board to take a leap of faith by seeking preliminary and final approvals. She expressed skepticism regarding the traffic study and stated that the traffic information was based on projections upon the ITE and supported by the limited data. Ms. Osborne testified that there was a difference between how warehousing operated 20 years ago when the subject lot was originally zoned as SED. There was then a discussion regarding §188-45, off-tract improvements, and pro rata contributions. Counsel for the Board stated that when there is a permitted use, offsite traffic cannot be considered because the law assumes the Governing Body already considered the issue and this Board can only consider ingress and egress. Ms. Osborne expressed further concern regarding the project's environmental impact.

279. Pamela Noumair, 141 Arnold Blvd., testified that she lives around corner from the site and that she believes that the infrastructure cannot handle the increased traffic and tractor-trailers. Ms. Noumair also expressed concern that the projected truck traffic was unknown because the tenants were unknown. Lastly, she expressed a concern that the removal of the significant number of trees would affect any endangered species in the area.

280. Paul Rehberger, 147 Arnold Blvd., testified as to his concerns regarding the increased truck traffic to move the goods in and out of site and their ability to traverse the access roads.

281. Samantha Friedman, 42 E. Shenandoah Road, testified that her husband is a business owner nearby and that she was concerned that their livelihoods would be adversely affected because of the increased traffic reducing the number of customers.

282. Marissa Lamonte-Pulsen, 17 Freedom Court, testified that she lives 5 miles from the proposed site. Ms. Lamonte-Pulsen expressed concern regarding additional traffic on Aldrich Road. She stated that she has to stand out on Aldrich Road with her children waiting for their school bus and is very concerned for their safety. She noted that there have been fatal accidents on Aldrich Road due to the high speed limits and that children will be waiting for the bus with tractor-trailers going by. Ms. Lamonte-Pulsen stated that this project is a problem for Howell at large, not just the immediate neighbors.

283. John Gurizo, 707 Oak Glen Road, testified that he is retired and has been a resident for 44 years. He stated that approval of this project would decrease the quality of life and as a result there will be an increase in the number of tax appeals.

284. David Albertson, 28 Nate Lane, testified that he has been a resident of Howell for 10 years and is raising his children in the Township. He believed that the project would diminish the quality of life.

285. Marc Parisi, 2 Castle Court, testified that he believed that the Applicant was trying to develop the property as intensely as possible. He stated that he was aware that a denial would result in an appeal to Superior Court. Mr. Parisi testified that he had significant concern regarding the traffic impact and safety due to the fact that a significant number of school busses utilize the roadways around the site. He further stated that the Applicant should not be permitted to use the 25 acres of constrained land to its benefit in calculations for impervious coverage.

286. Karen Schmitt, 74 Cascades Ave, testified that she is a retired NYPD detective who moved to Howell for a better quality of life and that after surviving 9/11, she had concern regarding air quality and the pollution from the increased tractor-trailer traffic.

287. Pat Heaney, 56 Vienna Road, testified that she was concerned about the lack of sustainability and green infrastructure proposed for the project. She stated that the stormwater management techniques being proposed were outdated and that commercial River Friendly status and LEED certifications should be required.

288. Lina Docasal, 64 Dunella Way, testified that she moved to Howell from the city for a better quality of life and that she had safety concerns for children crossing Oak Glen Road with the addition of all of the tractor-trailers. She also expressed concern for the potential degradation of the roads from increased traffic.

289. Euzelma Santos, 768 Oak Glen Road, testified that she has a special needs son who has high sensitivity to loud noises and needs to get to therapy twice daily and was concerned that her child will be affected by the increased traffic on Oak Glen Road. She further testified that she had safety concerns due to the number of children that live on Oak Glen Road. Ms. Santos testified that her main concerns are traffic on Oak Glen Road and the project's environmental impact. She then presented a picture originally found in the Asbury Park Press from November 25, 2019 depicting an accident on Rt. 547 involving a school bus. She expressed concern with what would have happened to the children on the bus, of which her son was one, if there was a tractor-trailer behind the bus.

290. Ms. Janet Coakley, 3039 Lakewood-Allenwood Road, testified that she spoke at the meeting when the subject Property was designated as part of the SED Zone regarding limited access to the site and was assured by town officials at that time that the expected development of the site was a self-storage center or a doctor's office, and that it was not expected to be significant development. Ms. Coakley further testified that she believed that the Applicant is entitled to the use but not the abuse of the property, and that the application

shows no respect for the environment. She further testified that she had significant concern about increased flooding on her property due to the adequacy of the stormwater management system with the removal of so many trees. Ms. Coakley noted that a small warehouse was built across the street from her property and that she has experienced many adverse impacts due to the light, noise, and truck traffic. Ms. Coakley concluded by raising concern about the potential for the bridges in the area to be damaged by the increased tractor-trailer traffic which would leave her landlocked as she was during Superstorm Sandy.

291. Mr. Schulz, 149 Yellow Brick Road, Farmingdale, testified that he did not exactly know the location of Randolph Road, but that the project appears that it will require a four-lane highway to accommodate the resulting traffic.

C. Testimony from the Board Engineer

292. After having the benefit of hearing all traffic testimony, the Board's Traffic Engineer then provided additional comments. Mr. Winckowski stated that he had concern regarding the access points on Randolph Road and the intersection of Rt. 547 and Randolph Road. He stated that he could not opine on the safety of the access points without more definitive answers about the installation of the traffic signal at that intersection, and that he was not satisfied that the access plan was sufficient based on the information available to him at that time.

293. Counsel for the Applicant questioned the Board's Engineer regarding his statements about the necessity for the Applicant to provide the concept plan for the traffic light prior to any approval since the County Planning Board indicated it would not approve the application without the installation of the signal. In response to further inquiry from Applicant's counsel, Mr. Winckowski stated that he had questioned the Applicant's traffic

study regarding the levels of service at the driveways because the traffic study assumed certain traffic routes without knowing the tenants of the buildings and also assumed 100% compliance with signage that would direct all tractor trailers out of the facility to the left.

D. Closing Statement from HOPE

294. Counsel for the objectors known collectively as HOPE then gave his closing statements. Counsel stated that the Board needed to consider whether this project is appropriate for this site as well as the detriment to the community. Counsel noted that both traffic engineers agreed that there would be a substantial increase in traffic. Counsel noted that the Objectors' traffic expert prepared a concept design of what would be required for the installation of the traffic signal in order to illustrate for the Board just how much would be required for such an improvement, including the time, expense, and acquisition of additional land. Additionally, counsel noted that per the Applicant's traffic study, the truck traffic would remain virtually the same during peak hours as the rest of the day, totaling an average of one tractor-trailer every two minutes.

295. Objectors' Counsel argued that the variances and waivers being requested by the Applicant were of its own making as a result of the design it proposed. Counsel noted that the Township Ordinances do not require the inclusion of the trailer parking spaces that have been proposed and determined by the Board to constitute outdoor storage. Counsel further noted that the project proposed approximately six times the number of loading spaces required by Ordinance and therefore concluded that the additional trailer parking is excessive and unnecessary, adding that there is no way to know if the trailers would comply with any 24 to 48 hour limitation.

296. Counsel for HOPE further stated that he believed the Applicant was taking advantage of the DEP restricted land in its calculations for the benefit of overdeveloping the remaining acreage of the lot.

E. Applicant's Closing Statement

297. Counsel for the Applicant then provided her summation and noted that the standard for an application which proposes a permitted use are not substantial benefit because the municipality necessarily already made that determination when designating a property's zoning. Counsel noted that the Applicant had not requested any bulk variances and that the zoning of the subject property has been in place for 24 years.

298. Counsel for the Applicant further stated that the Applicant could have submitted multiple applications for smaller buildings on separate lots that would have yielded more driveways and would not have required the type of improvements that the proposed project does. Counsel then continued that the Applicant was requesting the buffer variance to save mature, healthy trees, but would rip them out and put up the strictly required plantings if the Board so required. Counsel also maintained the Applicant's position that the trailer parking does not constitute outdoor storage, but that the Applicant could alter the striping of the spaces to turn them into 110 ft. tractor-trailer parking spaces which, she submitted, would not constitute outdoor storage. Additionally, with respect to the same variance request, the Applicant took the position that the spaces were buffered because the entire site is required to be buffered, and that the parking spaces are located at the rear of the building.

299. Counsel for the Applicant argued that the purpose of the SED Zone is economic development and that the taxes on this property, as the Applicant proposes to develop it,

would yield a significant amount of revenue which would contribute towards road improvements that the public expressed concerns about.

300. Counsel for the Applicant then went through each of the requested design waivers. She noted that the Applicant was no longer seeking a waiver for the inclusion of one tree for every 10 parking spaces. She also stated that the Applicant could provide the plantings around the recycling enclosures if required but maintained that such a requirement did not make sense given the proximity to the tractor-trailer loading spaces. She then stated that the granting of waiver relief with respect to the sidewalks is appropriate because they would not connect to any other sidewalks in the area. Counsel continued by stating that the Applicant's proposal for building construction eliminated the need for separate bollards, but that the Applicant would be willing to put in separate bollards if required.

301. Counsel then addressed the requested lighting waivers stating that since the average footcandles at the property line would be zero, there would be no impact from exceeding the average footcandles permitted, but that the Applicant could increase lighting to meet the minimum footcandle requirement.

302. Counsel then stated that the waiver relief for additional signage was necessary to ensure safe movement throughout the site. She also stated that the Applicant was no longer requesting a waiver for the size of the loading spaces.

303. Counsel also stated that the subject Property was being developed within the bulk standards permitted and that as a result there was no room to replace the approximately 30,000 trees being removed. Counsel opined that a denial of this waiver request would amount to using the ordinance as a tool to reduce permitted development on the property.

304. Counsel closed by noting that offsite traffic is not a basis for this Board to deny the application and that this property was maintained as part of the SED Zone in the most recent Master Plan that was adopted by the town.

305. The Board has received, reviewed and considered various exhibits and reports with regard to this application. Those exhibits and reports are set forth on the attached Exhibit List, and all exhibits and reports as set forth on said Exhibit List have been incorporated herein in their entirety.

WHEREAS, the Howell Township Planning Board, having reviewed the proposed application and having considered the impact of the proposed application on the Township and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Township of Howell, the Board finds that amended preliminary and final major site plan approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50, respectively, with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70c and design waiver relief pursuant to N.J.S.A. 40:55D-51 is hereby denied.

The Board will resolve all conflicting testimony and facts within the following legal analysis. The Board finds that the Applicant has proposed a permitted use on the subject Property. The Applicant does, however, require relief from multiple portions of the Township Code. This relief evolved throughout the course of the hearing and it now requires less than originally applied for.

I. Initial Requests For Relief Which the Applicant Either Satisfied or Agreed To Satisfy

As previously stated, the Applicant revised its plans throughout the course of the hearings and also stipulated that certain ordinance provisions would be satisfied. The Applicant initially requested the following relief which is no longer applicable:

- A. **Section 188-105G**- All areas between the parking area and the building shall be landscaped.
- B. **Section 188-226F**- All off street parking, off street loading and service areas and outdoor dining/seating areas shall be separated from walkways, sidewalks, streets or alleys by curbing or other protective device, such as bollards.
- C. **Section 188-228C**- Roofing offsets shall be provided along any roof measuring longer than 75 feet in length.
- D. **Section 188-107**- minimum loading stall size of 12 ft. x 60 ft.

II. Required Variance Relief

The Applicant requested variance relief from Section 188-63E. The Board and the Applicant have a disagreement concerning compliance with Section 188-79(3)(b) which regulates outdoor storage.

A. Variance Relief from Section 188-79B(3)(b)

As previously stated, the Board and the Applicant have a disagreement concerning the applicability of Section 188-79B(3)(b). Section 188-79 contains the zoning requirements for the SED Zone. Subsection B identifies the permitted uses in the SED Zone. Subsection B(3)(b) regulates accessory uses and states: “[O]utdoor storage shall be permitted in a screened rear yard only. No outdoor storage shall be permitted in association with a multipurpose recreation and sports complex”. The Applicant has argued that the area where tractor trailers and their containers will be stored is a parking area. For the following reasons,

the Board has found that this is an outdoor storage area which fails to meet the ordinance requirements.

1. Interpretation of the Ordinance

The necessary first step in resolving this legal dispute is for the Board to resolve the issue of the definition of an outdoor storage area. It must first be noted, however, that the Board affirmatively stated that the Township's Zoning Board has jurisdiction to interpret the zoning ordinance pursuant to N.J.S.A. 40:55D-70b. The Zoning Board's interpretation would have been binding upon this Board. The Board further cited DePetro v. Tp. of Wayne Planning Bd., 367 N.J. Super. 161 (App. Div.), certif. den. 181 N.J. 544 (2004) wherein the Appellate Division suggested that that the Zoning Board would have been a more appropriate forum. Neither the Applicant nor the Objector chose to avail themselves of that option. This Board therefore resolves the issue.

As previously stated, the Ordinance does not provide a definition of "outdoor storage". The Board must therefore interpret this provision. The principles governing the interpretation of a zoning ordinance are the same as those for interpreting legislation in general. Tp. of Pennsauken v. Schad, 160 N.J. 156, 170 (1999). Those principles require that an ordinance should be interpreted to "'effectuate the legislative intent in light of the language used and the objects sought to be achieved.'" Merin v. Maglaki, [126 N.J. 430, 435 \(1992\)](#). See also State Dep't of Law & Public Safety v. Gonzalez, [142 N.J. 618, 627 \(1995\)](#). The first step of statutory construction requires an examination of the language of the ordinance. Bergen Comm'l Bank v. Sisler, [157 N.J. 188, 202 \(1999\)](#). The meaning derived from that language controls if it is clear and unambiguous. Id. If the text, however, is susceptible to different interpretations, a board should consider extrinsic factors, such as the statute's purpose, legislative history, and

statutory context to ascertain the legislature's intent. Wingate v. Estate of Ryan, 149 N.J. 227, 236, 693 A.2d 457 (1997); Lesniak v. Budzash, 133 N.J. 1, 8 (1993). Above all, a board must seek to effectuate the "fundamental purpose for which the legislation was enacted." New Jersey Builders, Owners and Managers Ass'n v. Blair, 60 N.J. 330, 338 (1972). Thus, for example, where a statute or ordinance does not expressly address a specific situation, a board will interpret it "consonant with the probable intent of the draftsman 'had he anticipated the matter at hand.'" AMN, Inc., supra, 93 N.J. at 525. In that regard, "[i]t is axiomatic that an ordinance will not be construed to lead to absurd results." State v. Provenzano, 34 N.J. 318, 322, 169 (1961).

The Applicant and the Board do not disagree regarding the location of the area and that this area is not in a rear yard and is also not screened. Rather, the disputes concerns whether the use itself is "outdoor storage." The Applicant modified and refined its proposal during the course of the hearing process. At the conclusion of the hearings, the Applicant proposed that the area in question would be limited to the parking of trucks with attached trailers. The trailers could be loaded with products or empty. The Applicant further agreed that it would limit such parking for a period of no more than 24 hours. These are the undisputed material facts which will guide this Board's interpretation.

The Applicant placed heavy reliance upon language it found in Section 199 entitled: "Littering." The Applicant specifically relied upon Section 199-18 entitled: "Outdoor Storage Restricted." Like the Zoning portion of the Code, Section 199 also does not include a definition of "outdoor storage". This Section specifically states:

No person shall leave, store or place upon any property, for a period in excess of 96 hours, where a business is conducted, any equipment, furniture, furnishings or stock-in-trade that is used, acquired or in any way comes into the possession or under

the control of the person owning or in control of such property, unless the same is within a building or structure, or unless enclosed by a solid fence or wall not less than four feet nor greater than six feet in height, constructed so as to keep out children and trespassers. Such buildings and enclosures shall have solid doors or gates at all openings therein for ingress and egress, and suitable locks shall be maintained on such doors or gates. This section shall not apply to motor vehicles or other type of equipment used in the transportation of persons or property.

The Applicant highlighted the 96 hour requirement and noted that it was limiting its trucks to staying no more than 24 hours.

The Applicant further argued that it had modified its proposal to prohibit trucks from detaching and leaving trailers by themselves on site. Rather, the trailers would be attached to the truck and therefore would simply be the same as any other automobile. It argued that both of these factors rendered the area a “parking lot” rather than an “outdoor storage area.”

The Board disagrees with the Applicant’s interpretation. As an initial matter, it fundamentally disregards the statutory requirements for the adoption of a zoning ordinance. The adoption of zoning ordinances is generally governed by N.J.S.A. 40:49-2. Zoning ordinances, however, also have special requirements mandated by the Municipal Land Use Law. Zoning ordinances are required to be referred to the planning board for review in order to determine consistency with the municipal master plan. N.J.S.A. 40:55D-26a, N.J.S.A. 40:55D-64. A governing body may only adopt a zoning ordinance which its planning board has determined not to be substantially consistent with the municipal master plan by a vote of the majority of the full authorized membership and upon the adoption of a Resolution which provides the reasons it disagrees with the planning board. N.J.S.A. 40:55D-26a, See Also, Jennings v. Bor. of Highlands, 418 N.J. Super. 405, 422-425 (App. Div. 2011) (governing body members have an implied duty to at least read the comments and recommendations of the planning board). The public also has rights which are special to the adoption of a zoning

ordinance. The Municipal Land Use Law permits property owners to file a protest of a proposed zoning ordinance. N.J.S.A. 40:55D-63. A zoning ordinance can only be adopted with the affirmative vote of two-thirds of the full membership of a governing body. Id.

The Applicant seeks to use what it believes to be the definition of “outdoor storage” which is contained in the section of the Township Code which specifically regulates littering. None of the parties dispute that this section is outside the zoning and land use sections of the Code. This provision was therefore never referred to this Board for a determination as to consistency with the municipal master plan nor was the public afforded its statutory right to file a protest to the provision. The Applicant essentially argues that the definition section of a zoning ordinance can be adopted or amended through the adoption of a general police power ordinance. The Board cannot accept this position. First, it deprives the public of statutory and constitutional due process rights. It also avoids the enhanced voting requirements which could apply concerning adoption. A governing body cannot fundamentally regulate land use and zoning through non-zoning and land use ordinances unless those ordinances are also referred and opened to protest. This subtle backdoor method of approval not only frustrates the plain language of the Municipal Land Use Law but also opens the process to municipal mischief and practically invites local governments to turn zig zag and other sorts of odd angles rather than square corners. This Board, therefore, does not believe it is compelled to use the littering Section to govern the definitions which apply to the properly adopted SED Zoning Ordinance.

The Applicant further argues that while, the littering section may not be a zoning or land use ordinance, this Board is still required to interpret the definition of “outdoor storage” so that it is not inconsistent with the definition in the littering section and that both sections can

be read in para materia. The Board's interpretation, however, is not inconsistent with Section 199-18. The 96 hour requirement addresses when an act of littering is deemed to occur. It is not a declaration that goods and products can be stored less than 96 hours without constituting outdoor storage. It certainly cannot be read to bar a zoning ordinance from containing its own temporal requirements or no time requirements at all. The Board's definition, therefore, is not inconsistent with the littering portion of the Code.

The Board finds that the proposed use fits within the regulation of "outdoor storage". The Board is guided by the plain language of the term in the absence of a specific definition. The Board notes that "storage" is defined in Merriam-Webster dictionary as: "the act of storing; the state of being stored *especially*: the safekeeping of goods in a depository (such as a warehouse)." (<https://www.merriam-webster.com/dictionary/storage>). The Applicant conversely cited to Mokowitz and Lindbloom The Latest Illustrated Book of Development Definitions: New Expanded Edition, Rutgers - The State University of New Jersey (2007) which defines "outdoor storage" as requiring the storage to extend more than 24 hours.

The definition contained in Merriam-Webster is instructive in the instant matter. The trucks in the subject area will not merely be parked for a short time. Rather, they are large trucks with attached trailers which may be full of products. The trailers serve as a depository of goods which cannot yet be stored in the warehouse building itself. The area is therefore used to store them for a time until the opportunity to move them to the warehouse arises. It is also possible that the moment one tractor trailer leaves the area to deposit its goods in the warehouse, another tractor trailer full of goods will take its exact place in the subject area. While the particular trucks may change, the occupancy of the

spot for the storage of goods may remain constant. This differs from a mere parking lot where the automobiles are not storing any goods and are rather used transport workers. The car has nothing to do with the storage, delivery or pick up of goods and materials. It simply is the means by which employees travel to their jobs and leaves when the employee leaves.

The Applicant's reliance on the Moskowitz book must also be placed in perspective. The authors specifically state: "[t]he original intent of the authors was to prepare a book of definitions that could be used directly or **with only slight modifications**, in any zoning, subdivision, or land development ordinance. This presented certain obvious problems, as attempting to write a single definition that would be appropriate in various kinds of municipalities in different states." (emphasis added) The Latest Illustrated Book of Development Definitions: New Expanded Edition, Preface at p. x. The book, therefore, is not intended to represent an exclusive definition of any term. Rather, it contemplates that its terms may be altered or modified by individual municipalities to suit local issues and challenges. The authors are further very clear in a section of the Preface entitled: "A Word of Caution". There, they state: "Neither of the authors is a lawyer; consequently, although we have relied on opinions from lawyers as well as published legal sources, the reader is urged to consult with local counsel on specific questions of law, and in particular, how state enabling acts or court decisions affect the application of specific definitions in a particular jurisdiction". Id. at p. xii. Once again, the authors take the time to emphasize that the book is to be used as a guide but is not dispositive on how a particular term must be defined.

The definition of “outdoor storage” in the book specifically states: “[t]he keeping in an unenclosed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than 24 hours.” Id. at 274. There is no dispute that the goods contained in the trailers are in an unenclosed area outside of the warehouse. The main issue is the 24 hour requirement in the definition. The Applicant’s reliance on this requirement fails for two reasons. The first is that the Applicant seeks to insert the 24 hour criteria where none exists in the Code. The canons of statutory interpretation do not permit the insertion of words and standards which do not exist. The Code specifically addresses the requirements for outdoor storage and does not state that such storage is exempt if it is less than 24 hours. Some flexibility is permitted in interpreting an ordinance where it is necessary to preserve its constitutionality. See Gallenthin v. Bor. of Paulsboro, 191 N.J. 344, 365-366 (2007). The 24 hour requirement is not necessary to preserve the constitutionality of the ordinance in the instant matter. Nothing in the ordinance evinces a legislative intent to create a 24 hour requirement. The Moskowitz book also does not require it and even contemplates that the definition may have variations from municipality to municipality.

The Applicant’s argument also fails because its interpretation of the 24-hour requirement is flawed. The definition does not require that the exact same product be stored in a particular spot for more than 24 hours. Rather, it is that the particular location is used for more than 24 hours no matter what particular product is there. For instance, the outdoor storage of potted plants at a supermarket would not be dependent on the exact same plant being in the exact same spot for 24 hours. The 24-hour period would be uninterrupted if a plant were sold and then the space it was stored in was replaced by another plant. In the instant matter, a tractor trailer full of product may stay in a space

overnight for 23 hours and then move and be replaced by another tractor trailer which similarly waits another 23 hours. This is not two separate 23 hour periods, it represents the continued use of the space for storage. The Board therefore finds the Applicant's arguments unavailing.

Based upon the foregoing, the Board finds that the portion of the subject Property reserved for the positioning of tractor trailers which may be filled with product to constitute outdoor storage.

2. The Applicant Failed to Meet Its Burden of Proof To Be Granted Variance Relief

Although the Applicant maintained that variance relief was not necessary, it proceeded to place testimony on the record in support of such relief. The Applicant, however, was quite clear that it was preserving its right to challenge the Board's decision. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the Applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the Applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. Applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the Applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the Applicant have the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation

from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, the Applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. It is only in those instances when the Applicant have satisfied both these tests that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the Applicant to establish these criteria.

The Board finds that the Applicant failed to satisfy the positive criteria in order to be granted a hardship variance pursuant to N.J.S.A. 40:55D-70c(1). The Board has carefully evaluated the testimony of the Applicant’s Planner. There is no dispute that the subject Property contains 99.5 acres. The Applicant did not present any expert testimony which identified any conditions peculiar to this particular parcel as distinguished from other properties in the SED Zone. The subject Property is also vacant and does not have any lawfully existing structures which create any exceptional situations. See Lang v. Zoning Bd. of Adj., 160 N.J. 41 (1999). The Applicant failed to identify any unique characteristic which would inhibit the extent to which the subject Property could be developed. There was no claim of unusual topography, narrowness or shallowness of the subject Property. As previously stated, the Applicant has the burden of demonstrating what is creating the hardship. The Board also takes note that “hardship” relates solely to the condition of a particular piece of property not to personal hardship, financial or otherwise.

The location of the storage area in the instant matter was a result of the Applicant designing this large tract with the understanding that the area was a parking lot and not subject to the outside storage requirements. This has nothing to do with the characteristics of the subject Property. It may be a costly inconvenience to redesign the project, but the hardship simply does not flow from any characteristic of the subject Property. The Board therefore concludes that the Applicant has failed to satisfy the positive criteria in order to be granted bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1).

The Board likewise finds that the Applicant has failed to satisfy its burden of proof necessary to be granted a “flexible” variance pursuant to N.J.S.A. 40:55D-70c(2). As previously stated, the grant of c(2) variance relief must be rooted in the purposes of zoning and planning itself and must also advance the purposes of the Municipal Land Use Law. The Board specifically recognizes the admonition by the New Jersey Supreme Court that: “[b]y definition, then, no c(2) variance should be granted when merely the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property.” Kaufmann v. Planning Bd. of Warren Tp., 110 N.J. 551, 563 (1988).

The Applicant was tasked with proving that the location of the outdoor storage area in between buildings and without screening was a superior zoning alternative than locating same in the rear yard with the required screening. The Board first finds that the Applicant’s arguments that the proposed project advances the goals and objectives of the Municipal Land Use Law because the project represents a high ratable for the Township as well as the creation of jobs is without merit. Pure financial gain for the Township is not a valid goal of planning. Further, the Applicant never demonstrated that this same goal could not be achieved in the

same manner while complying with the outdoor storage requirement. The Board also finds that the proposed location is not responsive to some environmental condition on the subject Property with the purpose of protecting such environmental feature. For instance, the location does not result in fewer trees being clear cut. The Board further cannot discern how the proposed location would result in a superior visual environment than if the outdoor storage area were compliant. The Applicant has argued that the area will not be seen from the road at the proposed location. This, however, does not address why it would be a superior planning alternative when it also would not be seen and would also be screened if it were compliant. Further, the proposed outdoor storage area would take up the same amount of space whether at the proposed location or if it complied with Ordinance requirements. The Board therefore does not find that it is promoting light, air or open space on the subject Property. Presumably, the proposed area could remain green and also allow for some distance between buildings if a compliant plan were created. A compliant plan would also not result in blocking the views of any neighbors. The plan similarly does not result in an enhanced ability to fight fires or provide for public safety. There is also nothing in the record as to why the general welfare is better satisfied by the proposed location rather than a compliant location. The Board further finds that there is nothing in the record demonstrating that the proposed development could not be constructed with a compliant outdoor storage area. The deviation, therefore, does not promote the creation of sufficient space for commercial or industrial uses according to its environmental requirements in order to meet the needs of New Jersey residents. There was also no testimony that the deviation would somehow result in improving the free flow of traffic.

Once again, the deviation is a result of the Applicant's interpretation of the Ordinance. The deviation has only a private benefit and does not advance any of the goals of planning so as to create a better or improved zoning alternative than that provided by a compliant outdoor storage location which is screened. The Board therefore finds that the Applicant has failed to satisfy the positive criteria required for the grant of variance relief pursuant to N.J.S.A. 40:55D-70c(2).

The Applicant's failure to satisfy its burden of proof with regard to the positive criteria results in denial of its request for variance relief. The Board, however, also finds that the Applicant failed to satisfy the negative criteria. One of the purposes of the outdoor storage requirements is to provide screening so that the area not only lacks visibility from the street, but that it also has limited visibility from any location. The proposed outdoor storage area lacks any screening whatsoever. It completely frustrates this fundamental purpose of the Ordinance. It is completely visible when traversing the site and results in a less attractive visual environment. The Board therefore finds that there is a substantial detriment to the zone plan and zoning ordinance and a further substantial detriment to the public welfare. The Applicant therefore also fails to satisfy the negative criteria.

The Board finds that the Applicant has failed to satisfy both the positive and the negative criteria and must be denied variance relief pursuant to N.J.S.A. 40:55D-70c(1) and (2).

B. Variance Relief From Section 188-63E

The Applicant has been denied the previously discussed variance relief. The Board therefore finds it unnecessary to evaluate the requested variance relief from Section 188-63E.

III. Requested Design Waiver Relief

Unlike the request for bulk variance relief pursuant to N.J.S.A. 40:55D-70c, the Board and the Applicant are not in disagreement concerning the required design waiver relief pursuant to N.J.S.A. 40:55D-51. Waivers (also known as exceptions) from site plan requirements are governed by N.J.S.A. 40:55D-51(b). That section provides:

The planning board when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for the site plan review and approval of an ordinance adopted pursuant to this article, ***if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.*** (emphasis added)

It has been held that “impracticability” is derived from the root word “impractical,” which is defined as “not wise to put into or keep in practice or effect;” an inability to deal “sensibly or prudently with practical matters.” White Castle Systems, Inc. v. Planning Board of the Township of Middletown, unpublished (App. Div. 2015), citing Merriam-Webster dictionary, <http://www.merriam-webster.com/dictionary/impractical> (last visited May 24, 2015).

A. Section 188-106I(1)- Off-Street Parking and Loading

Section 188-106I(1) provides: “No off-street loading and maneuvering area shall be located in any front yard nor require any part of a street.” One of the proposed buildings includes a loading space in the front yard. The Applicant’s Planner essentially argued that this was a de minimis deviation from the site plan requirements and was of very little consequence. She did not, however, testify that compliance was impracticable or resulted in a hardship due to a peculiar condition of the subject Property. The subject Property contains 99.5 acres. It is difficult to understand why the proposed building could not be moved or re-

oriented in order to comply with the design criteria. The purpose of the Ordinance requirement is to provide for a desirable visual environment which promotes the goals of planning enumerated at N.J.S.A. 40:55D-2. This results in a benefit to the entire community. The non-compliance appears to relate to convenience and perhaps cost rather than any peculiar condition on the subject Property. The Board therefore finds the Applicant has failed to meet the statutory burden of proof and relief pursuant to N.J.S.A. 40:55D-51 is therefore denied.

B. Section 188-32C(6)- Recyclable Material Storage

The specific requirements of Section 188-32C(6) were enumerated previously in this Resolution. The Applicant's Planner testified that relief was appropriate because the outdoor recycling storage areas were located near the loading areas and had limited visibility to the public. She further opined that such requirements were more appropriate for commercial and residential developments. The Board finds that it is without jurisdiction to accept the argument that this requirement is not appropriate for warehouse developments. That is not an argument which is specific to this particular piece of property. Rather, it applies to all warehouse development within the Township. The Board finds that accepting such an argument would amount to an unlawful usurping of the legislative power which is vested exclusively with the Township Council. The design of the site also has nothing to do with any peculiar conditions of the land. It simply represents a design which the Applicant would prefer to use. The purpose of this Ordinance requirement is to create a desirable visual environment whether it is from the street or from within the property. The Applicant's chosen design frustrates this goal. The Board finds the Applicant has failed to satisfy its burden of proof and the design waiver relief pursuant to N.J.S.A. 40:55D-51 must be denied.

C. Section 188-225G- Streetscape Design Principles- Sidewalks

The requirements of this section were previously enumerated in this Resolution. The Applicant's Planner testified that relief should be given because there are no sidewalks in the immediate area. The Applicant did not offer any testimony concerning how compliance would result in impracticability or hardship based upon the peculiar characteristics of the land. The Board finds that the lack of sidewalks in the area is also not a persuasive argument. There were no sidewalks in the area when the Ordinance was adopted. The Township Council anticipated that sidewalks would eventually come to the area. That process needs to begin somewhere. The Board finds that the Applicant failed to satisfy its burden of proof and that design waiver relief pursuant to N.J.S.A. 40:55D-51 must be denied.

D. Sections 188-22 and 188-231C

The Board has denied the previously discussed request for variance relief pursuant to N.J.S.A. 40:55D-70c as well as the requests for design waiver relief previously discussed in this section pursuant to N.J.S.A. 40:55D-51. The Board therefore need not address the requests for relief from Sections 188-22 and 188-231C.

IV. Section 188-195A- Waiver From Woodlands Management Ordinance Requirement

The Township's Woodlands management Ordinance is codified at Article XXII. Waiver relief from these requirements is codified in Section 188-195A. The Applicant would be required to replace approximately 40,000 trees pursuant to the requirements of the Woodlands Management Plan requirements. The Applicant is seeking to utilize the provisions of Section 188-195C. This Section provides:

Township Tree Fund. In the alternative, should the quantity of the trees to be removed be greater than the tree replacement/landscaping plan due to limited available planting area, the applicant may make contribution to be deposited in the Township Tree Fund as established by this article. The contribution, in lieu of planting of trees, shall be \$300 per tree. Contribution from the applicant shall not exceed the total sum of \$35,000 per developed acre.

Neither the Board nor the Applicant disagree that this provision includes a burden of proof. The provision is not available unless an applicant can demonstrate that its failure to provide the requisite number of replacement trees is due to a limited available planting area.

The Applicant's Planner as well as Counsel for the Applicant argued that this burden is automatically satisfied where an applicant has complied with all bulk standards. The Board does not share this interpretation. The Ordinance would have included such language if that were the case. The Board further finds that the Applicant has not demonstrated complete compliance with all bulk standards. As previously stated, it required variance relief from the outdoor storage requirements. Moving the outdoor storage at its current dimensions to the rear yard could create variance relief from setback requirements. The Applicant could alternatively redesign the project to achieve compliance. This might result in different sized buildings and perhaps the preservation or replanting of more trees. The fundamental premise of the Applicant's argument in support of this relief is therefore misplaced. The Applicant also fails to acknowledge that its plan is not as of right even if a variance for outdoor storage was not necessary at all. The previously discussed design waiver relief is also required. This includes relief from loading docks in the front yard. Compliance would likely involve the re-orientation, movement or elimination of buildings. Once again, this could impact the number of trees being clear cut and not replaced.

The Applicant has made a decision to maximize development on the subject Property which requires both variance relief pursuant to N.J.S.A. 40:55D-70c as well as design waiver relief pursuant to N.J.S.A. 40:55D-51. This means that the 99.5 acres cannot even accommodate the scope of development as of right. Compliance with Ordinance requirements would require a different Woodlands Management Plan. The Board has not seen a plan which complies with the Ordinance sections for which relief was denied. The Board wishes to be clear that it is not requiring the Applicant to maintain the subject Property as a park or impose unwanted open space preservation. Rather, it seeks compliance with those sections of the from which relief was denied. It also acknowledges that there is a world of options between clear cutting approximately 40,000 trees and requiring all replacement trees be planted on site without any waiver relief. Something between 40,000 trees and complete onsite replanting was never contemplated by the Applicant. The Board therefore finds that the Applicant has failed to satisfy its burden of proof and waiver relief from the Woodlands Management Ordinance must be denied.

V. Site Plan Review

The Board first takes the opportunity to discuss the role of any planning board in site plan review. The jurisdiction of a planning board in site plan review is tightly circumscribed. This jurisdiction is limited to determining whether the development plan complies with ordinance requirements and where it does not, if relief is appropriate. Pizzo Mantin Group v. Tp. of Randolph, 137 N.J. 216, 228-229 (1994). This standard first requires this Board to explicitly state some of the things that it will not consider in its analysis. There was a lot of testimony from interested parties concerning whether the subject Property was an appropriate location for this kind of use. The Board, however, recognizes that site plan review does not confer any

power to determine whether a particular permitted use is appropriate for a particular location. PRB Enterprises, Inc. v. South Brunswick, 105 N.J. 1, 7 (1987). Testimony was also provided which appeared to criticize or directly attack the character of the principals of the Applicant. The Board made clear during the hearings and it reiterates in this Resolution that evaluating a site plan application for ordinance compliance does not in any way involve also making findings concerning the content of any individual's character. Every interested party has the exact same rights and is held to the exact same standards regardless of whether they are virtuous or something less than likable. The Board therefore rejects these comments and finds them irrelevant.

The Board further recognizes that it lacks the jurisdiction to deny a site plan application based upon current off-site conditions. This specifically includes the prohibition on denying an application for a permitted use because it will increase the volume of off-site traffic and create congestion. Dunkin' Donuts of N.J. v. Tp. of North Brunswick, 193 N.J. Super. 513, 515 (App. Div. 1984). A planning board, however, does have jurisdiction to review site access issues. New Jersey courts have repeatedly held: "the planning board may deny a site plan application only if the ingress and egress proposed by the plan creates an unsafe and inefficient vehicular circulation." Lionel's Appliance Center, Inc. v. Citta, 156 N.J. Super. 257 (Law Div. 1978). The Board will therefore confine its analysis to this precise issue concerning traffic

Once again, the Board is compelled to explicitly articulate some of the issues and alleged facts which it declines to consider at all. During cross-examination, the Objector's counsel questioned Mr. Taylor as to whether he took into account the religious practices of the residents of the area when he performed his traffic analysis. The Board finds that such

considerations are beyond what a traffic engineer should consider. It is not possible, or appropriate, for him to determine or somehow assume the religious affiliation of nearby residents. Further, it appeared that the questioning was focused on a particular sub-group of a certain religion. The Board finds that such analysis was inappropriate for Mr. Taylor and is likely unconstitutional for the Board itself to consider. The Board will therefore not consider this issue at all. The Board also assigns no weight to the traffic video which was submitted to the Board by members of the public. These individuals would have no reason to be aware of the specific legal requirements of site plan review and the Board finds that the video was taken and submitted in good faith. The content, however, was of general traffic in the area which as previously stated, the Board cannot consider. The Applicant also testified on numerous occasions that it would be willing to finance the proposed traffic signal in its entirety. It is beyond this Board's jurisdiction to involve itself in how the signal will be financed. This representation is therefore irrelevant.

The Board now feels compelled to affirmatively state the nature of its review of traffic in this application. On multiple occasions, the Applicant attempted to characterize the Board's review as pertaining solely to whether there should be a traffic signal and the impact of the traffic signal on traffic volume. This is incorrect. The Board's sole focus is on the safety of ingress and egress to the subject Property. The sole relevance of the traffic signal for this site plan application is its impact on the safety of ingress and egress for the subject Property. The Board finds it wholly outside of its jurisdiction to evaluate overall off-site traffic volume for this permitted use nor approve or comment upon the design, necessity or financing of the signal. The Board, however, accepts the testimony of its Traffic Engineer that the design and operation of the signal at the intersection could have a direct impact on queuing, turning

movements and capacity at the ingress and egress for the proposed development. This is the Board's sole focus.

The Board now identifies an evidentiary issue concerning Mr. Taylor's traffic report. Mr. Taylor has honestly testified that neither he nor his office participated in collecting the data for a portion of his report. Mr. Taylor's report specifically relied upon traffic counts collected by John Rea, PE. Mr. Rea is a principal in a different engineering firm than Mr. Taylor. Mr. Taylor therefore had no ability to verify that proper protocol was followed when the counts were taken. Further, the accuracy of substantial data used to come to professional conclusions could not be included in cross-examination because Mr. Rea was not made available at the hearings. The Board finds that interested parties had the right under the Municipal Land Use Law to cross-examine Mr. Rea. The Board also should have been able to ask him questions. The Board finds that this was a fatal defect in the Taylor Report.

The Board's Traffic Engineer testified that his concern centered on the Randolph Road access points. He stated that the importance of the Randolph Road and Lakewood-Farmingdale Road intersection was its impact on the access points. This included queuing. Mr. Taylor was confident that ingress and egress would be safe with the traffic signal. This statement was made, however, without actually providing a concept plan to the Board and its professionals to review and ask questions about. A complete analysis was therefore not possible. The absence of any plan did not allow the Board's Traffic Engineer to evaluate the capacity of the intersection. The timing of the signal would also be relevant. The Board finds that Mr. Taylor's conclusions were therefore premature.

The Applicant attempted to obscure this point during cross-examination of Mr. Winckowski. Once again, the Applicant stated that it was beyond the Board's jurisdiction to

review and approve the traffic signal. Once again, this was not the focus of the inquiry. The sole relevance concerned the impact the traffic signal would have on ingress and egress. The Board was not attempting to approve or deny the traffic signal plan.

The Applicant then asserted that this was the first time that this issue had been raised. This, however, is simply not the case. During the November 7, 2019 hearing, Counsel for the Board directly questioned whether the Board would receive the concept plan which was being submitted to the County Planning Board. The Applicant clearly responded that it was not its intent to submit that plan. The July 20, 2019 CME Report (Item 6B(3)) also asked for the improvement intersection improvement plan to be submitted. The Applicant attempted to change its answer during the January 30, 2020 meeting and asserted that the concept plan was not submitted because it was not yet prepared. The Applicant then took the position that it assumed that providing the report would simply be a condition of approval.

The Board finds this unpersuasive. The Applicant declined to provide the report at the November 7, 2019 hearing. The Applicant's position would also deprive the Board members from actually seeing the concept plan and hearing from its own professional and being able to cross-examine Mr. Taylor. The public would similarly be deprived of this constitutional and statutory right. Once again, the issue is not about approving the traffic signal. The issue is what impact the signal will have on ingress and egress which is solely within the Board's jurisdiction. The Board also declines to delegate the decision on the safety of ingress and egress to its Traffic Engineer outside of the public hearing process. Granting preliminary and final site plan approval without even knowing if ingress and egress is safe is not proper.

The Applicant proceeded to take a legal position that egressing to the right onto a public street somehow took the safety issue out of the Board's jurisdiction. The Board finds

the fact that Randolph Road is a public street to be irrelevant to the safety of ingress and egress. The Board rejects this argument. The Board finds that the 5 ft. turning radius is not adequate to accommodate the turning radius of a tractor trailer. The Board agrees with the testimony of its Traffic Engineer that such a turn would require tractor trailers to turn into oncoming traffic.

The Board finds that this issue is similar to the one presented in Morris Cty. Fair Housing v. Boonton Tp., 228 N.J. Super. 635 (Law Div. 1988). There, the Applicant's stormwater management plan failed to adequately address the effect of the plan on a reservoir and dam which was in need of substantial repairs. The Board therefore denied the application seeking site plan approval. The Applicant challenged the denial arguing that the NJDEP had exclusive jurisdiction to determine the necessary repairs and modifications to the dam and that the planning board should have granted approval conditioned upon NJDEP approval. The denial was affirmed because a conditional approval was inappropriate where any required modifications to the dam directly related to the adequacy of the stormwater management plan which was absolutely within the planning board's site plan jurisdiction. Here, the traffic signal plan directly relates to the safety of ingress and egress which is directly within this Board's site plan jurisdiction. The Board's denial here is valid for the same reasons expressed in Fair Housing, *supra*.

The Board also wishes to make clear that the general comments concerning environmental issues related to the relief the Applicant was seeking from the Woodlands Management Plan Ordinance and not site plan issues.

For the foregoing reasons, the Board finds that denial of the request for preliminary site plan pursuant to N.J.S.A. 40:55D-46 and final site plan pursuant to N.J.S.A. 40:55D-50 are appropriate in this instance.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Howell on this 2nd day of April, 2020, that the action of the Planning Board taken on January 30, 2020, denying Application No. SP-1052 of Monmouth Commerce Center, LLC, for preliminary and final major site plan approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50, respectively, with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70c and design waiver relief pursuant to N.J.S.A. 40:55D-51 is hereby memorialized as follows:

The application is hereby denied.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to send a certified copy of this Resolution to the Applicant and to the Township Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.

Brian Tannenhaus, Chairman
Howell Township Planning Board

ON MOTION OF: Deputy Mayor O'Donnell

SECONDED BY: Mr. Nicastro

ROLL CALL:

YES: Mr. Dorato, Mr. Huszar, Chief Kudrick, Mr. Nicastro, Mr. Seaman, Deputy Mayor O'Donnell and Chairman Tannenhauus

NO:

ABSTAINED:

ABSENT: Mr. Leggio

DATED: April 2, 2020

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Howell Township Planning Board, Monmouth County, New Jersey, at a public meeting held on April 2, 2020.



Eileen Rubano, Secretary
Howell Township Planning Board

HOWELL TOWNSHIP PLANNING BOARD

EXHIBITS

Case No. SP-1052 / Monmouth Commerce Center LLC

Preliminary and Final Major Site Plan

April 4, 2019

May 9, 2019

June 6, 2019

June 20, 2019

July 29, 2019

September 19, 2019

October 10, 2019

November 7, 2019

December 5, 2019

January 16, 2020

January 30, 2020

- A-1 Development application
- A-2 Application Checklist
- A-3 Preliminary and Final Site Plans consisting of ninety-one (91) sheets prepared by Dynamic Engineering, dated 10/18/18, last revised 2/22/19
- A-4 Boundary and Topographic Survey consisting of five (5) sheets prepared by Dynamic Survey, LLC dated 5/19/17, last revised 8/24/18
- A-5 Architect Plans for Building “D” consisting of two (2) sheets prepared by Pratt Design Studio, LLC dated 2/22/19
- A-6 Stormwater Management, Ground Water Recharge and Water Quality Analysis Report prepared by Dynamic Engineering dated October 2018, last revised February 2019
- A-7 Traffic Impact Study prepared by Dynamic Traffic dated 3/8/19, last revised 4/26/19
- A-8 Environmental Impact Report prepared by Dynamic Engineering dated October 2018
- A-9 Natural Heritage Database Report prepared by Dynamic Engineering dated 8/1/18
- A-10 2,000 Ft Downstream Analysis prepared by Dynamic Engineering dated January 2019, last revised February 2019
- A-11 Architect Plans for Building “E” consisting of two (2) sheets prepared by Pratt Design Studio, LLC dated 2/29/19

- A-12 Stormwater Management Operation and Maintenance Report prepared by Dynamic Engineering dated February 2019.
- A-13 Flood Hazard Area Verification Approval letter from NJDEP dated 12/5/18
- A-14 Freshwater Wetlands Letter of Interpretation: Line Verification letter from NJDEP dated 12/5/18
- A-15 Colorized version of Sheet 2 from the plan set marked as exhibit A-3 prepared by Dynamic Engineering, dated 10/18/18, last revised 2/22/19
- A-16 Color rendering of sheet 8 overall site plan from exhibit A-3 prepared by Dynamic Engineering, dated 10/18/18, last revised 2/22/19
- A-17 Responses to Township Engineer's comments from 4/11/19 unsigned and undated.
- A-18 Refuse/Recycling statement from Dynamic Engineering dated 6/2019
- A-19 Snow Storage plans prepared by Dynamic Engineering dated 10/18/18 last revised 2/22/19
- A-20 Video of what the site will look like when traveling east on Randolph Road.
- A-21 Color Renderings of Buildings D and E prepared by Pratt Design Studio consisting of two sheets.
- A-22 Trip Generation Comparison
- A-23 Snow Storage Statement prepared by Dynamic Engineering Consultants, PC dated 7/18/19
- A-24 Traffic Study Supplement prepared by Dynamic Traffic, LLC dated 7/17/19
- A-25 Driveway Vehicle Circulation plan prepared by Dynamic Engineering dated 6/20/19
- A-26 Traffic Count Verification letter regarding the bridge closures as prepared by McDonough & Rea Associates, Inc. dated 2/19/19
- A-27 Driveway Vehicle Circulation plan prepared by Dynamic Engineering dated 6/20/19, last revised 8/26/19
- A-28 Traffic Study Supplement prepared by Dynamic Traffic, LLC dated 9/9/19

- A-29 Driveway Exhibit consisting of two (2) sheets prepared by Dynamic Engineering dated 6/20/19, last revised 8/26/19
- A-30 Traffic Study Supplement prepared by Dynamic Traffic, LLC dated 9/30/19
- A-31 Driveway Vehicle Circulation and Separation Exhibit prepared by Dynamic Engineering, consisting of two sheets dated 9/19/19, last revised 9/27/19
- A-32 Planning Documentation Presentation Flash Drive with series of images for approval of application and relief required.
- A-33 Limited Pesticide Site Investigation Letter Report prepared by ESA Environmental Consultants dated 11/22/19
- A-34 Limited Pesticide Site Investigation Letter Report Addendum prepared by ESA Environmental Consultants dated 12/3/19
- A-35 Page 28 of the Trip Generation Handbook
- A-36 Vehicle Driveway Circulation prepared by Dynamic Engineering dated 9/19/19, last revised 1/16/20

INTEROFFICE REPORTS

- B-1 Environmental Commission site plan review dated 11/14/18
- B-2 Fire Bureau site plan review dated 11/21/18
- B-3 Board Planner's review letter dated 12/12/18
- B-4 Board Engineer's review letter dated 12/14/18
- B-5 Monmouth County Board of Health memo dated 12/14/18
- B-6 NJDEP Flood Hazard Area Verification approval dated 12/5/18
- B-7 Board Engineer's completeness memo dated 1/7/19
- B-8 Fire Bureau site plan review dated 1/10/19
- B-9 Shade Tree Commission site plan review dated 1/22/19

- B-10 Shade Tree Commission site plan review dated 12/19/18
- B-11 Farmers Advisory Committee site plan review dated 1/24/19
- B-12 Environmental Commission site plan review dated 2/13/19
- B-13 Monmouth County Board of Health memo dated 2/21/19
- B-14 Environmental Commission site plan review dated 3/13/19
- B-15 Fire Bureau site plan review dated 3/14/19
- B-16 Monmouth County Board of Health memo dated 3/28/19
- B-17 Board Planner's review letter dated 4/1/19
- B-18 Farmers Advisory Committee site plan review dated 3/28/19
- B-19 Environmental Commission site visit report dated 4/3/19
- B-20 Township Engineer's Comments via email dated 4/11/19
- B-21 Board Engineer's review letter dated 3/29/19
- B-22 Board Traffic Engineer's review letter dated 5/7/19
- B-23 Monmouth County Board of Health comments via email dated 5/9/19
- B-24 Environmental Commission site plan review dated 5/8/19
- B-25 Monmouth County Board of Health site plan comments via memo dated 5/9/19
- B-26 Shade Tree Commission site plan review dated 5/15/19
- B-27 Farmers Advisory Committee site plan review dated 5/24/19
- B-28 Board Engineer's Supplemental Traffic Impact Review #2 dated 7/26/19
- B-29 Environmental Commission site plan review dated 8/14/19
- B-30 Farmers Advisory Committee site plan review dated 8/22/19
- B-31 Shade Tree Commission site plan review dated 8/21/19

- B-32 Monmouth County Planning Board request for information dated 9/9/19
- B-33 Shade Tree Commission site plan review dated 9/18/19
- B-34 Environmental Commission site plan review dated 9/11/19
- B-35 Farmers Advisory Committee site plan review dated 9/26/19
- B-36 Fire Bureau site plan review dated 9/30/19
- B-37 Shade Tree Commission site plan review dated 10/16/19
- B-38 Farmers Advisory site plan review dated 10/24/19
- B-39 Environmental Commission site plan review dated 10/23/19
- B-40 Monmouth County Planning Board request for information dated 10/28/19
- B-41 Shade Tree Commission site plan review dated 11/21/19
- B-42 Environmental Commission plat review dated 12/11/19
- B-43 Letter from Brick Utilities with their comments dated 12/4/19
- B-44 Farmers Advisory Committee site plan review dated 12/19/19
- B-45 Fire Bureau site plan review dated 12/23/19
- B-46 Environmental Commission site plan review dated 1/8/20
- B-47 Monmouth County Board of Health memo dated 1/6/20
- B-48 Shade Tree Commission site plan review dated 12/18/19
- B-49 Board Engineer's letter regarding the pesticide report dated 1/10/20

OBJECTOR'S DOCUMENTS

- O-1 List of residents who are represented by Objector's Counsel and members of HOPE as prepared by Craig Bossong, Esq. dated 6/4/19
- O-2 Revised list of clients from Craig Bossong, Esq. dated 6/19/19

- O-3 Updated list of clients from Craig Bossong, Esq. updated through 11/1/19
- O-4 ITE 10th Edition Trip Generation Rates prepared by NV5, Inc. consisting of five (5) sheets dated 10/9/19
- O-5 Colorized Trip Generation Comparison consisting of six (6) sheets with excerpts from the ITE Manual
- O-6 Peak Hour Traffic Volume Comparison for CR 547 and Randolph Road prepared by NV5, Inc. consisting of twelve (12) sheets dated 10/9/19
- O-7 Traffic Regulations for the State of New Jersey Department of Transportation consisting of seven (7) sheets dated December 16, 2011 as printed by NV5 Inc. on 10/9/19.
- O-8 Two printouts and an aerial from Syncro Models provided by the Applicant for existing traffic as of 4/26/19 and build out traffic for Phase 4 dated 9/30/19.
- O-9 Randolph Road Order of Magnitude Cost Estimates and Concept Plan for the Intersection Improvements at Lakewood Farmingdale Road (CR-547) and Randolph Road prepared by NV5, Inc. dated 10/10/19
- O-10 Marked up copy of the Driveway Vehicle Circulation Exhibit presented by Applicant dated 9/19/19 last revised 9/27/19
- O-11 Video made by three members of HOPE; Dawn Van Brunt, Susan Springer and Andre DeGarmeaux.

PUBLIC DOCUMENTS

- P-1 Photo exhibit of school bus accident taken from the Asbury Park Press Facebook Page and presented by Lima S.