

**HOPEWELL TOWNSHIP  
SPECIAL PLANNING BOARD MINUTES  
APRIL 17, 2019**

A special meeting of the Hopewell Township Planning Board was held in the Hopewell Township Municipal Building Auditorium at 7:00 p.m. on Wednesday, April 17, 2019.

Ms. Murphy, Chairperson, called the meeting to order at 7:13 p.m. She stated that notice of the meeting was posted in the Municipal Building and had been forwarded to the Hopewell Valley News, The Times of Trenton, The Trentonian and the Hopewell Express in compliance with the Open Public Meetings Act.

Members present: Karen Murphy, Chairperson, Jack Belmont, Paul Kiss, Kevin Kuchinski, Rex Parker, Courtney Peters-Manning, Russell Swanson, Vanessa Sandom and Leigh Ann Peterson (excused 10:30 p.m.) Also present: Frank Banisch, Planner, Banisch Associates, Mark Kataryniak, PE, Community Development Director/Township Engineer, Frank Linnus, Esq. and Jaimie Williamson, Recording Secretary. Absent: Milind Khare and Kristin McLaughlin.

**Announcements**

Ms. Peters-Manning announced that the Open Space and Recreation Plan survey is still available on "Have Your Say Hopewell" ([www.haveyoursayhopewelltpw.org](http://www.haveyoursayhopewelltpw.org)) for the remainder of this month. The subcommittee reviewing the element would appreciate any additional comments before the survey is closed.

**Resolution Referred By Township Committee**

Resolution #19-96 Authorizing and Directing the Hopewell Township Planning Board to supplement the record with respect to the CF Hopewell Redevelopment Area and the Pennington Circle Redevelopment Area to determine whether those properties constitute redevelopment areas pursuant to the New Jersey Local Redevelopment and Housing Law

**Public Hearing - Review of Preliminary Investigation Report for Designation of a Non-Condemnation Area in Need of Redevelopment**

Block 91, Lots 3.11, 3.14, 3.161, 3.181, 3.191, 3.22, 3.95, 3.961 and Block 93, Lots 3.01, 5.01, 5.02 and 6.01  
(CF Hopewell Redevelopment Area)

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Mr. Linnus announced there has been a challenge by Deer Valley Realty, LLC, with whom the town is involved in litigation, with respect to the notice for this hearing; therefore, after conferring with the Township Attorney, it was decided to exercise caution and to hold the public hearing at a later date to be noticed.

The Board discussed possible dates for the public hearing. The majority of the Board was available for the date of Wednesday, June 12, 2019. Ms. Murphy announced that a Special meeting would be held on that date.

**Public Hearing - Review of Preliminary Investigation Report for Designation of a Non-Condensation Area in Need of Redevelopment**

Block 85, Lots 3, 4, 5.01, 7 and 24  
(Pennington Circle Redevelopment Area)

Mr. Linnus stated notice was in order and the Board has jurisdiction to take action this evening.

The Township designated the study area, including Block 85, Lots 3, 4, 5.01, 7 & 24, all within the sewer service area of the Ewing Lawrence Sewerage Authority (ELSA) now known as the Pennington Circle Redevelopment Area, to be a non-condemnation area in need of redevelopment pursuant to N.J.S.A. 40A:12A-1, et seq. (PB Resolution 17-014 adopted on September 7, 2017.)

Deer Valley Realty, LLC challenged that designation by way of complaint in lieu of prerogative writs, Docket No MER-L-2326-17 and by Order dated February 22, 2019, signed by the Honorable Mary C. Jacobson, AJSC, the Court remanded the aforesaid determination of the Hopewell Township Committee for further proceedings. The Hopewell Township Committee in Resolution #19-96 adopted on March 4, 2019, authorized and directed the Planning Board to conduct further proceedings to determine whether the property known as Block 85, Lots 3, 4, 5.01, 7 & 24, the Pennington Circle Redevelopment Area, should be designated as a non-condemnation area in need of redevelopment under N.J.S.A. 40A:12A-5 and N.J.S.A. 40A:12-3.

The following documents were submitted to the Board and were made part of the record:

- Exhibit PB-1 - *"Preliminary Investigation Report for Designation of a Non-Condensation Area in Need of Redevelopment, Block 85, Lots 3, 4, 5.01, 7 & 24, Hopewell*

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*Township, Mercer County, New Jersey,"* dated April 2019 and signed April 7, 2019, prepared by Banisch Associates, Inc. (a copy is hereby attached and made a part of these minutes);

- Exhibit O-1 - April 15, 2019 report prepared by Phillips Preiss, Planning & Real Estate Consultants, on behalf of Deer Valley Realty LLC;

- Exhibit P-1 - April 17, 2019 letter submitted by Dorina Frizzera, a member of the public who was present and made comments.

The following witnesses were sworn in by Mr. Linnus and provided their professional qualifications.

- Francis J. Banisch, III, AICP/PP, Township Planner;
- Mark Kataryniak, PE, Community Development Director/Township Engineer;
- Keenan Hughes, AICP/PP/LEED/AP/CRE, Phillips Preiss.

The following testimony, evidence and information was provided to the Board:

- **Francis J. Banisch, III, AICP/PP** - Mr. Banisch, the Township Planner, presented a Preliminary Investigation Report dated April 2019 (PB-1), which report and testimony included the following:

1. A Preliminary Investigation Report approved by the Planning Board on February 22, 2018 concluded that Block 85, Lot 30 and Block 86, Lots 32, 33, 34 and 130 should be designated as an area in need of redevelopment. This designation was recommended because of the role these properties fulfill in support of the mixed use redevelopment contemplated on the parcels that are subject to this review to abate the adverse impacts to public safety that all of these properties have upon traffic circulation at the Pennington Circle (which will be exacerbated upon development of high density housing on Block 85, Lot 3), and to abate the adverse impact that some of these properties have on public health and the environment by virtue of their utilization of septic systems for the disposal of solid waste, by creating a critical mass necessary to absorb the substantial cost (estimated to exceed \$20 Million) to extend and to connect to ELSA's public sanitary sewer facilities.

2. The development of high density housing on Block 85, Lot 3 has long been planned by Hopewell Township to address its

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constitutional obligation to provide a realistic opportunity for affordable housing and this property was acquired by the Township in 2012 specifically for such purposes. This housing is a key element of planned redevelopment at the Pennington Circle and is also a generator of additional traffic which, if not addressed in a comprehensive way as part of coordinated planning within the Pennington Circle Redevelopment Area, will exacerbate existing conditions at the Pennington Circle.

3. The 2006 Circulation Plan noted that the completion of Denow Road east of Route 31 had provided an important linkage in the southern portion of the Township and that the extension of Denow Road west of Route 31 would further improve connectivity and safety. The new traffic connections afforded across Lot 3 will help to fulfill this 2009 Master Plan concept and are necessary for the Township to accommodate the increased traffic from such development in tandem with redevelopment of Block 85, Lot 30 and Block 86, Lots 32, 33, 34 and 130 pursuant to prior redevelopment designation and a separate, existing redevelopment plan and in tandem with the redevelopment of the other parcels in the Pennington Circle Redevelopment Area to eliminate, re-engineer or move multiple existing driveways.

4. The entire study area is currently served by septic systems only, as public sewer infrastructure has not been extended to this area despite the fact that these properties are within ELSA's sewer service area. These on-site systems can pose hazards to the environment when overused or not properly maintained. The designation of these properties for redevelopment creates a critical mass necessary to absorb the significant cost (estimated to be in excess of \$20 Million) to extend and connect to ELSA's sanitary sewer facilities.

5. Lot 3 is Township owned farmland that extends from Washington Crossing-Pennington Road (CR 546) to the neighborhood along Diverty Road. It was purchased by the Township in 2012 specifically for production of affordable housing and is slated to become part of an inclusionary housing development to aid Hopewell Township in satisfying its constitutional Third Round Mount Laurel affordable housing obligations through July 2025.

6. The remainder of the study area parcels occupy the southwest corner of the intersection of Route 31 and CR 546 at the Pennington Circle where they include over 2,000 feet of frontage and eleven (11) driveway openings.

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7. Situated roughly one half mile south of Pennington Borough, the study area is situated at a busy intersection along Route 31. The Pennington Circle, while recently upgraded, is nonetheless still plagued with a multiplicity of driveways to adjoining land uses, including these eleven (11) driveways, as well as multiple driveways to and from the liquor store to the north and convenience gas station to the east.

8. Around the circle, the concentration of traffic-interrupting driveways is most densely clustered on the parcels in question, between Wells Fargo Bank and Shop Rite. The comprehensive redevelopment of these sites could reduce the number of driveways and move them away from the circle, and divert a substantial portion of the additional traffic from the inclusionary development of Lot 3 entering Route 31 farther away from the Circle via new traffic connections across Lot 3 - both key factors in improving traffic flow and safety.

9. In addition to the foregoing area-wide conditions and benefits to be achieved through redevelopment, the conditions of the individual parcels in the study area are as follows provided, however, that it is not necessary for each separate parcel to individually qualify under the redevelopment criteria in order for the Study Area to be designated as being in need of redevelopment:

a. Providing improved access and ingress/egress to the area and improving traffic flow in and around the Pennington Circle in the interest of public safety are key objectives of the Township. The diverse ownership of the properties comprising the Study Area have contributed to the unsafe traffic conditions at the Circle. Moreover, since these properties received development approvals permitting the multiplicity of driveways that contribute to the unsafe traffic conditions at the Circle, the condition of title to these properties is also a contributing factor to the conditions at the Circle.

b. **Lot 3** - a 44 acre Township parcel consisting of farm fields and woodlands; it was acquired by the Township in 2012 for the production of affordable housing. The parcel has long been zoned in the R-100 zone which permits single family homes on 80,000 square foot parcels with wells and septic systems. Despite this fairly attractive development yield from the R-100 zoning and the favorable condition of the land for

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development, no private investment was drawn to this parcel before the March 20, 2012 acquisition of the lot by the Township for affordable housing purposes. Lot 3 has thus remained vacant with R-100 zoning for more than ten years prior to the adoption of the resolution directing the Planning Board review. Although Lot 3 is within the ELSA sewer service area, it is remote from ELSA's existing sanitary sewer facilities and the cost to extend such facilities to Lot 3 are substantial (estimated to exceed \$20 Million). The location of Lot 3 in relation to existing public sewer facilities is believed to have been a factor why Lot 3 did not attract private investment for development prior to its acquisition by the Township.

c. **Lot 4** - a two-third acre parcel covered with building and pavement and is occupied by a 3-bay gas station with fueling service. The site has multiple driveways to CR 546 and Route 31, is served by a holding tank only and has no septic field. The service bays are not used to repair vehicles and have been occupied by a series of auto related uses which have generally been short-lived. It is in the public interest and enhances public safety and environmental safety to connect Lot 4 to public sewer. If not designated for redevelopment and included in the Pennington Circle Redevelopment Area, the cost of extending public sewer to Lot 4 alone is prohibitively expensive.

d. **Lot 5.01** - a 10.45 acre parcel developed with a Shop Rite supermarket that is served by a large on-site septic system. Situated at the southeast corner of the Route 31/CR 546 intersection, the access to Shop Rite is complicated by the irregular alignment of a series of driveways that are confusing to unfamiliar drivers and which encourage cross-movements into the Circle that are a public safety hazard. This is most evident when vehicles exiting Shop Rite attempt to enter the circle and cross southbound Route 31 traffic (drivers exiting the southern driveway actually travel north, against traffic in the southbound lane of Route 31, to enter the Circle in order to travel north on Route 31). Eliminating, moving or re-engineering these driveways alone, even if possible under NJDOT standards, will not abate the impact that the other properties in the study area have or will have on traffic in the Circle. Here too, the cost of extending public sanitary sewer facilities to Lot 5 alone is prohibitively expensive.

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e. **Lot 7** - a small (1/2 acre) triangular lot that adjoins Shop Rite along the Route 31 frontage and is not currently in use, but which may be useful in addressing the driveway issues on Lot 5.01 and/or Lot 4.

f. **Lot 24** - a 5.5 acre parcel occupied by Wells Fargo Bank which is served by a septic system. The bank building and its associated driveways and parking occupy a small portion of the lot in the northeast corner with most of the lot remaining as woodland. The cost of extending public sanitary sewer facilities to Lot 24 alone is prohibitively expensive.

10. Notwithstanding the 2015 Route 31 Pennington Circle project improvements conducted by NJDOT, heavy peak hour traffic volumes continue to plague the circle area and the poorly aligned driveway at Shop Rite poses continuing traffic hazards (cross-movements) for vehicles entering the circle. The location of these parcels with direct access to Route 31 and proximity to I-95 gives this potential redevelopment area advantageous regional accessibility that will benefit all proposed uses, but which have to be managed in a coordinated and comprehensive fashion as is possible through redevelopment rather than traditional zoning.

11. The new road connections that this redevelopment can engender, including a new connection to Route 31 at Denow Road from CR 546, will further extend connectivity in southern Hopewell Township, as noted in the 2009 Master Plan Reexamination, and will help keep unnecessary traffic out of the Pennington Circle. However, as growth occurs through redevelopment, there will be increasing pressure on the Circle despite the existence of alternate road improvements, as new residents travel to the supermarket, banks, fueling stations and retail facilities on and near the Circle.

12. The Preliminary Investigation Report for Designation of a Non-Condensation Area in Need of Redevelopment: Block 85, Lot 30 and Block 86, Lots 32, 33, 34 and 130 (February 2018) outlined the opportunity for new traffic improvement which would extend across Lot 3 and the parcels in Block 86 to Diverty Road. The Hopewell Township Planning Board in Resolution #18-10 recommended that this property be designated as a non-condensation area in need of redevelopment and the Hopewell Township Committee in Resolution #18-77 adopted on February 26, 2018 declared that property as a separately designated redevelopment area.

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13. Improved traffic safety and convenient traffic flow are advanced by the designation of a redevelopment area that includes Lot 3, since it is essential to the new road connections to Denow Road at Route 31 that will be needed to serve the redevelopment.

14. The extension of sewers will allow the elimination of an existing holding tank and septic systems, both within the potential redevelopment area and beyond. However, estimated sewer costs exceed \$20 Million not including connection fees.

15. The inclusion of Lot 3 in this redevelopment area provides the critical mass needed for development and cost sharing that will allow sewers to be extended. As a result, to achieve this important public health and safety objective, Lot 3 either in its own right or per N.J.S.A. 40A:12A-3, must be included in the potential redevelopment area.

16. Mixed use and high density redevelopment will also require sanitary sewer service, which is not currently available and which would not be attracted to this location except for the sewer loads that would result from development of Lot 3 as high density housing. Moreover, the extension of sanitary sewerage to Lot 3 will also benefit the remainder of the parcels under consideration as a non-condemnation area in need of redevelopment by making sewer service available for these parcels to connect to in the area. The designation of the study area also will make available certain financial benefits (e.g., long-term tax abatement pursuant to N.J.S.A. 40A:20-1, et seq.) which otherwise would not be available to help subsidize the extension of public sewer to the study area, making it more likely that this important public and environmental safety issue will be addressed.

17. N.J.S.A. 40A:12A-5 provides, in pertinent part, that "[a] delineated area may be determined to be in need of redevelopment if...within the delineated area any of the following conditions is found" Thus, it is not necessary that each parcel within the study area exhibit any or all of the specified conditions, but only that any of the specified conditions is present on any parcel within the study area or within the study area as a whole. Based on the characteristics of the Study Area, the Study Area qualifies as an area in need of redevelopment for the following reasons:

a. **Lot 3**, which is owned by Hopewell Township, continues to be farmed and has not been utilized for any

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improvements, can qualify as an area in need of redevelopment pursuant to the following criteria:

**N.J.S.A. 40A:12A-5c** - Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital.

- Hopewell Township purchased Lot 3 in 2012 to aid in addressing the Township's affordable housing obligation. Given its municipal ownership and intended use for low and moderate income housing - a use that needs subsidies of some sort as recognized by the New Jersey Supreme Court in the Mount Laurel decisions) - the property is not likely to be developed through the instrumentality of private capital absent the benefits that a redevelopment designation can convey.

- Lot 3 was not only vacant for a period of over ten years prior to the Township Committee resolution directing a redevelopment study, but it was vacant, failing to inspire any development or even approvals, for the entire time it was in private ownership prior to 2012 notwithstanding favorable R-100 zoning.

- While Lot 3 is in the ELSA sewer service area, and while ELSA's sanitary sewer facilities exist within certain developed areas of the Township, Lot 3 is remote from such existing infrastructure. It is reasonable to assume that due to such remote condition, the cost to extend existing sanitary sewer facilities (estimated to exceed \$20 Million) to Lot 3 alone played a factor in why Lot 3 did not attract private investment during the lengthy time it was zoned R-100, notwithstanding the economic benefits of such zoning to a private developer.

- Lot 3 is essential to providing the redevelopment area with a suitable area for high density market and affordable housing to partially satisfy the Township's Third Round Mount Laurel obligation and the major new roadway connection to Route 31 from western Hopewell. The location of these lands can accommodate substantial traffic improvements already planned by the Township (including by means of prior

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redevelopment designations of other Study Areas) that will improve accessibility, capacity and safety.

- The new road connections enabled by inclusion of Lot 3 will also permit a reduction in the number of driveways and optimize driveway locations near the Pennington Circle as well as providing for new collector road access to Route 31 at Denow Road - both key factors in improving traffic flow and safety.

- Development of high density housing, as contemplated on Lot 3, would require the extension of public sewers; such extension would allow the elimination of the existing septic systems on the other parcels in the study area, offering better protection of human health and the environment. The sharing of costs based on sewer flows make it economically feasible for the other parcels in the study area to connect to public sewer, but only if the Lot 3 flows are included.

**N.J.S.A. 40A:12A-5e** - A growing lack...of proper utilization...of areas caused by the condition of title, diverse ownership of the real properties therein or other similar conditions, which...discourage the undertaking of improvements, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare, which condition is presumed to be having negative social or economic impact or otherwise being detrimental to the safety, health, morals or welfare of the surrounding area or the community in general.

- Hopewell Township's ownership of Lot 3, intended to address its Third Round Mount Laurel affordable housing obligation, has not yet resulted in the production of affordable housing, leaving the site unproductive for its intended purpose.

- The absence of sewers and high cost of sewer extensions and the remoteness of Lot 3 from ELSA's existing sanitary sewer facilities in the Township is one of the "other conditions" resulting in the not fully productive condition of the land and discouraging the construction of improvements which can be overcome by including Lot 3 in the redevelopment area in order to connect all of the properties in the study area to public sanitary sewer to the benefit of public health and the environment.

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- Another such condition is the current traffic situation, where diverse ownership of the parcels and the condition of title (multiple approvals permitting multiple driveways created vested rights in such driveways which run with the land) are a contributing factor, where unsafe and confusing access around the circle can be abated in part by new road connections to be made possible by the inclusion of Lot 3.

- The inclusion of Lot 3 with the other parcels is key to creating a "critical mass" of redevelopable land and linking all these parcels with the potential for future road improvements that will reduce traffic into the circle and improve flow and safety.

**N.J.S.A. 40A:12A-5h** - Designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation. The State Development and Redevelopment Plan includes this parcel within PA-2, the Suburban Planning Area. The intent of the State Plan for PA 2 is to provide for much of the State's future development; promote growth in centers and other compact forms; protect the character of existing stable communities; protect natural resources; redesign areas of sprawl; reverse the current trend toward further sprawl; revitalize cities and towns. Policy objectives for Redevelopment in Planning Area 2 seek to encourage redevelopment efforts in existing centers and single use areas which can be redeveloped into mixed use areas and areas within walking distance of train stations or other major public transit facilities; redevelop at transit-supportive densities while creating pedestrian-oriented environments; take full advantage of the opportunities available under the state's redevelopment statutes to promote new centers and retrofit existing areas with mixed uses and higher densities.

- The State Plan encourages incentives for beneficial development in PA-2 that protects resources and community character while providing for growth in appropriate locations.

- Lot 3 offers an opportunity for high density inclusionary residential development that will avoid or lessen sprawl in other areas of the Township and can transform a single use commercial strip comprised of the other parcels in the Study Area into a multi-use walkable place. It also offers an opportunity to expand and improve the road network in the area and, in concert with a reduction in the number of driveways on the circle, to allow for traffic connections that will improve traffic safety and ease traffic flow in and around the circle.

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**Lot 3**, while qualifying for redevelopment in its own right, is also included recognizing that, pursuant to 40A:12A-3, a redevelopment area may include lands, buildings or improvements that are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary for the effective redevelopment of the area and the related transportation improvements. In particular, Lot 3 is necessary for the comprehensive and sound planning of a rational and safe roadway/driveway network which, in turn, is necessary to effectively redevelop the entire area that includes Lot 3 and the properties that front the Pennington Circle.

b. **Lot 4**, a two-third acre parcel occupied by a gas station with 3 service bays nearly covered by pavement and building with multiple Route 31 driveways within and in close proximity to the Circle, can qualify as an area in need of redevelopment pursuant to the following criteria:

**N.J.S.A. 40A:12A-5d** - ...Areas with buildings or improvement which, by reason of...obsolescence,...faulty arrangement or design, lack of...sanitary facilities [Lot 4 is served by a holding tank only with no septic field],...excessive land coverage,...or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals or welfare of the community.

**N.J.S.A. 40A:12A-5h** - designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation as outlined above.

c. **Lot 5.01**, over 10 acres improved with a small supermarket served by a large septic system, has complicated and confusing access to and from Route 31 within the Circle. With a sea of asphalt surrounding the building and a store that is undersigned for the market, Lot 5.01 can qualify as an area in need of redevelopment pursuant to the following criteria:

**N.J.S.A. 40A:12A-5d** - ...Areas with buildings or improvements which, by reason of...obsolescence,...faulty arrangement or design,...excessive land coverage...or obsolete layout or any combination of these or other factors, are detrimental to the safety, health, morals or welfare of the community

- Driveways serving Lot 5.01 allow uncontrolled movements of northbound exiting traffic to attempt to enter the Circle

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by crossing relatively high speed southbound traffic - a head on collision hazard. Moreover, addressing these driveways alone will not abate the issues caused by the other multiple driveways serving the other parcels in the study area.

**N.J.S.A. 40A:12A-5e** - A growing lack...of proper utilization...caused by other conditions, resulting in a stagnant or not fully productive condition of land potentially useful...

**N.J.S.A. 40A:12A-5h** - Designation of the delineated area is consistent with smart growth planning as discussed above.

d. **Lot 7** is a small vacant parcel with frontage on Route 31 adjoining the ShopRite. While the tract in and of itself satisfies some, but not all of the conditions of N.J.S.A. 40A:12A-5d and e, since N.J.S.A. 40A:12A-5d focuses on "areas" and not individual lots, inclusion of Lot 7 (and the other lots in the study area) is appropriate under N.J.S.A. 40A:12A-5d and, if not, then under N.J.S.A. 40A:12A-3 in light of the definition of redevelopment areas, which provides that "a redevelopment area may include lands, buildings or improvements, which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part." Lot 7 may play a role in addressing the driveway issue at the Circle.

e. **Lot 24** is 5.5 acres with only a small portion of the lot used for the bank building and parking. With a well maintained building and site improvements occupying less than 20% of the lot, most of this parcel is not in productive economic use at this time. Additionally, Wells Fargo Bank has three driveways that impact the Pennington Circle - two on Lot 24 on the eastbound approach from CR 546 and one on Lot 30 situated directly on the Circle. The CR 546 driveways are a one way system and the exiting driveway is within close proximity to the Exxon driveway on CR 546. Lot 24 is appropriate for inclusion in the redevelopment area for the same reasons that Lot 7 is appropriate for inclusion.

18. The Local Redevelopment and Housing Law focuses on redevelopment "areas" and not individual lots. The study area parcels may be considered as a "bundle" and, regardless of whether each and every parcel can be qualified for designation standing alone, this redevelopment area as a whole has the potential to alleviate certain traffic conditions (irregular

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alignment at Shop Rite, reduction of number of driveways entering the Pennington Circle, provision of alternative traffic routes) as well as to facilitate the extension and connection to public sewer in order to eliminate current use of holding tanks and septic systems, which expense can best be accommodated by combining the parcels and creating a development node west of the circle. Furthermore, the multiplicity of owners of these parcels meets the "diverse ownership" criteria pursuant to **N.J.S.A. 40A:12A-5e**.

- **Mark Kataryniak, PE, Community Development Director/Township Engineer**, testified as follows:

1. The proliferation of driveways on the study area parcels within a 950 foot length of roadway presents a serious conflict of traffic flows to and from the Pennington Circle.
2. The extension of Diverty Road across Lot 3 could provide potential north/south corridor access to and from the circle.
3. Further south of Diverty Road are two properties owned by the Township which could be utilized to further extend the Diverty Road extension roadway to Denow Road and would operate to reduce traffic at the circle.

- **Keenan Hughes, AICP/PP/LEED/AP/CRE**, testified as follows:

1. He is a principal of Phillips Preiss, Planning and Real Estate Consultants, whose firm was retained by Deer Valley Realty LLC to provide expert planning testimony regarding the issue of designation of the study area as an area in need of redevelopment.
2. The Board accepted Mr. Hughes as an expert planner.
3. The principal author of Exhibit O-1 was Paul Phillips; however, Mr. Hughes co-authored, reviewed and signed O-1.
4. Mr. Hughes reviewed Mr. Banisch's Preliminary Investigation Report (PB-1) and offered the following testimony and opinion to the Board:

- Since Lot 3 comprises 44 acres of the total 61 acres of the Study Area, it brings into question the legitimacy of the entire area qualifying for the redevelopment area status.

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- Due to the fact that Lot 3 comprises over 70% of the Study Area, this would be a case of the "tail wagging the dog" and would not qualify solely under N.J.S.A. 40A:12A-3 (i.e., being necessary for the effective redevelopment of the area.)

- Assuming Lot 3 did not by itself satisfy any of the applicable criteria under N.J.S.A. 40A:12A-5, the prevalent condition within the Study Area could not be one which is "in need of redevelopment."

- Mr. Hughes took the position that although non-blighted parcels may be included in the redevelopment plan if necessary for rehabilitation of a larger redevelopment area (Gallenthin, 191 N.J. at 372), the mere size of Lot 3 is a disqualifier and could not be considered part of a "larger redevelopment area." Mr. Hughes, however, could point to no case authority quantifying or establishing the relationship of one parcel as it relates to a "larger redevelopment area."

- Mr. Hughes challenged Mr. Banisch's position that Lot 3 qualifies under the criteria set forth in N.J.S.A. 40A:12A-5e and based his conclusion on his opinion that there is no indication as to how the "lack of proper utilization" of Lot 3 is related to any title defect or diverse ownership conditions which have impeded land assembly and development. He advocated the position that "title conditions" can only mean that there is no clear title to a particular property. He discounted the fact that the developed properties in the proposed area in need of redevelopment received separate development approvals which permitted the multiple driveways, which development approvals and conditions "run with the land" being other similar conditions of title that have contributed to the driveway access issues present in the proposed area in need of redevelopment.

- Regarding Mr. Banisch's opinion that Lot 3 qualifies under the criteria established in N.J.S.A. 40A:12A-5c, he opined that Lot 3 is not in a "remote location" or "lacking access to developed sections of the municipality". He could not however support his position by pointing to any definition of the word "remote" in the Local Housing and Redevelopment Law nor could he point to any case law that limits the word "remote" in the statute to "access to a structure" as opposed to infrastructure.

- With respect to the other lots in the Study Area, he offered a net opinion that the other lots did not qualify for redevelopment status by opining that the "d" and "e" criteria

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lacks adequate documentation and evidence to support an affirmative declaration. He opined that there is no factual record to support Mr. Banisch's conclusions with respect to those lots.

Ms. Murphy asked for questions from the public with respect to the professional's testimony. The public also had an opportunity to comment and ask questions other than those relating to the professional's testimony. The following individuals spoke:

- Melanie Phillips, Washington Crossing-Pennington Road
- Mike Pissauro, Policy Director, The Watershed Institute
- John Hart, 91 Titus Mill Road
- Jon Edwards, Pennington-Harbourton Road
- Victor Silvestrov, Diverty Road
- Dorina Frizzera, Aunt Molly Road
- Ray Nichols, Federal City Road
- Harvey Lester, Continental Lane
- Pat Silvestrov, Diverty Road
- Jim Burd, Nursery Road

The Board made the following ultimate findings of fact and conclusions:

1. The parcels in the Study Area occupy a strategic portion of the Township. Here Route 31, the principal north-south State highway serving this portion of the State, encounters one of the several confusing and complicated traffic circles (the Pennington Circle) that make safe and efficient travel through this area a challenge.

2. Additionally, development within the Study Area is limited by the lack of wastewater infrastructure, as septic systems serve the developed parcels.

3. Lot 3 is the cornerstone of this redevelopment since its inclusion will enable important new traffic connections and achieve the extension of public sanitary sewers to this area of high density redevelopment, thus providing important public health and safety benefits.

4. Inclusion of these parcels in a redevelopment area also enables the use of the "Long Term Tax Exemption Law" as provided in Title 40A Chapter 20, which can assist the owners of lands within a redevelopment area with the costs associated with redevelopment including redevelopment to address the

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important public safety issues involving traffic conditions at the Pennington Circle and the public and environmental safety issues related to the use of holding tanks and septic systems for disposal of solid waste.

5. Lot 3 does qualify as an area in need of redevelopment in and of itself pursuant to the criteria set forth in N.J.S.A. 40A:12A-5c since it is land owned by the municipality and is unimproved vacant land that has remained so for a period of ten years before the adoption of this resolution and, by reason of its remoteness to the existing sanitary sewer facilities of ELSA within the Township, has not been and is not likely to be developed through the instrumentality of private capital. The Planning Board specifically finds and concludes that Mr. Banisch's testimony regarding this designation is more credible than the testimony of Mr. Hughes who acknowledged there was no definition of the word "remoteness" in the statute, and limited the definition of remoteness to a "structure". In making this finding and conclusion, the Planning Board is persuaded that the fact that during the period when this lot was privately owned and available to be developed under the relatively favorable R-100 residential zoning, the parcel did not attract any private investment to secure vested rights or to subdivide and build homes.

6. Lot 3 does qualify as an area in need of redevelopment in and of itself pursuant to the criteria set forth in N.J.S.A. 40A:12A-5c since it is land owned by the municipality and is unimproved vacant land that has remained so for a period of ten years before the adoption of this resolution and, by reason of its location, i.e., its proximity to the confusing Pennington Circle roadway and driveway network, which make it unlikely that the property would be developed through the instrumentality of private capital. The Planning Board specifically finds and concludes this based, in part, on the lack of development of this site in spite of relatively favorable zoning.

7. Lot 3 is essential to providing the redevelopment area with a suitable area for high density market and affordable housing and the major new roadway connection to Route 31 from western Hopewell. The location of these lands between CR 546 and Denow Road can accommodate substantial traffic improvements already planned by the Township that will improve accessibility, capacity and safety. The new road connections enabled by inclusion of Lot 3 as seen on Figure 3 of PB-1 will also permit a reduction in the number of driveways and

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optimize driveway locations near the Pennington Circle, as well as providing for new collector road access to Route 31 at Denow Road, both key factors in improving traffic flow and safety.

8. The development of high density housing is contemplated on Lot 3 and requires the extension of public sewers. This extension would allow the elimination of the existing holding tanks and septic systems on the other parcels in the study area, offering better protection of human health and the environment.

9. The Planning Board finds and concludes that Lot 3 qualifies as an area in need of redevelopment in and of itself under the criteria set forth in N.J.S.A. 40A:12A-5e in that Lot 3 suffers from a growing lack of proper utilization caused by similar conditions of title resulting in a not fully productive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare. Hopewell Township's ownership of this land is intended to address its Third Round Mount Laurel affordable housing obligation, but has not yet resulted in the production of affordable housing, leaving the site unproductive for its intended purpose. The absence of sewers and the high cost of sewer extensions is a condition which is a condition similar to a title condition, resulting in the not fully productive condition of the land. Another condition, which is a similar condition to a title condition, is the fact that the developed portions of the area in need of redevelopment of which Lot 3 is a part, by virtue of their development approval conditions permitting multiple driveways within and proximate to the Pennington Circle which "run with the land," qualify as a "title issue." In addition, the study area includes five lots, some of which are in "diverse ownership," thereby providing additional statutory support for the designation.

10. Moreover, the Local Redevelopment and Housing Law focuses on "areas" and not individual lots. This is apparent from N.J.S.A. 40A:12A-5d and 5e, which use the word "areas" and also from prevailing case law. The inclusion of Lot 3 with the other parcels is key to creating a "critical mass" of redevelopable land and linking all these parcels with the potential for future road improvements that will reduce traffic into the circle and improve traffic flow and safety, and which will make the extension and connection to public sanitary sewer facilities (estimated to exceed \$20 Million without connection fees) cost effective, which goals are in

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the interests of public safety and public and environmental health and safety. The Board acknowledges that the Supreme Court has instructed that "non-blighted parcels may be included in a redevelopment plan if necessary for rehabilitation of a larger redevelopment area". Gallenthin, 191 N.J. at 372 (emphasis added). The Planning Board specifically finds and concludes that Lot 3 qualifies for inclusion based on the following:

- The Board rejects Mr. Hughes' contention that since Lot 3 accounts for approximately 70% of the total area of redevelopment, it cannot be part of a "larger redevelopment area".

- Mr. Hughes could not point to any case law supporting that proposition.

- The Board concludes that the size of the parcel to be included in the total area of redevelopment is of no legal consequence provided the parcel (in this case, Lot 3), as is the case here, is necessary to be included in the "larger redevelopment area".

- The Local Redevelopment and Housing Law is concerned with areas and not with individual properties. The fact that a single parcel in the area is useful and may not necessarily qualify independently under the statute considered in isolation is a basis neither for excluding such parcels (here, Lot 3) nor for invalidating a designation of an area in need of redevelopment. Lyons v Camden, 48 N.J. at 536.

- Even if Lot 3 is in good condition, its inclusion in the area should not be severable from the remainder of the area. Carroll v. Camden, 34 N.J. 575 (1961).

11. The Planning Board specifically finds and concludes that Lot 3 qualifies to be included in the Pennington Circle Redevelopment Area based on the criteria set forth in:

- N.J.S.A. 40A:12A-5c
- N.J.S.A. 40A:12A-e
- N.J.S.A. 40A:12A-5h
- N.J.S.A. 40A:12A-3

12. The Board accepts Mr. Banisch's findings and conclusions in PB-1 that with respect to the other lots in the Study Area, all of those lots meet the relevant statutory criteria for

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inclusion in the area in need of redevelopment. The Board is not persuaded by and it does reject the testimony of Mr. Hughes that these other lots do not qualify for redevelopment status based on the lack of adequate documentation and evidence to support the affirmative declaration.

13. The Planning Board concludes that Lot 4 meets the following statutory criteria to be included in the Pennington Circle Redevelopment Area:

- N.J.S.A. 40A:12A-5d
- N.J.S.A. 40A:12A-5h

14. The Planning Board concludes that Lot 5.01 meets the following statutory criteria to be included in the Pennington Circle Redevelopment Area:

- N.J.S.A. 40A:12A-5d
- N.J.S.A. 40A:12A-5e
- N.J.S.A. 40A:12A-5h

15. The Planning Board concludes that Lot 7, when considered as part of the larger study area, meets the following statutory criteria to be included in the Pennington Circle Redevelopment Area:

- N.J.S.A. 40A:12A-3
- N.J.S.A. 40A:12A-5d
- N.J.S.A. 40A:12A-5d

16. The Planning Board concludes that Lot 24, when considered as part of the larger study area, meets the following statutory criteria to be included in the Pennington Circle Redevelopment Area:

- N.J.S.A. 40A:12A-3
- N.J.S.A. 40A:12A-5d
- N.J.S.A. 40A:12A-5e

17. The Board finds and concludes that the interpretation of the statutory criteria applicable to this area in need of redevelopment offered by Mr. Banisch is more persuasive than the interpretation of the statutory criteria as applied to this area in need of redevelopment offered by Mr. Hughes and

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concludes that there is substantial evidence on the record to support this designation.

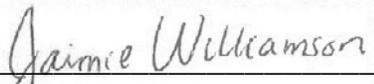
At the conclusion of the hearing, Mr. Swanson moved and Mr. Belmont seconded a motion recommending to the Township Committee that the sites commonly described as Block 85, Lots 3, 4, 5.01, 7 and 24 be included in the Pennington Circle area in need of redevelopment in accordance with the criteria set forth in N.J.S.A. 40A:12A-5 and 40A:12A-3 and directed the Board Attorney to prepare the resolution memorializing the action taken. It was voted on and passed.

Roll Call Vote:

Ayes: Belmont, Kiss, Kuchinski, Murphy, Parker,  
Peters-Manning, Swanson, Sandom  
Nays: None  
Abstain: None  
Absent: Khare, McLaughlin, Peterson  
Not Voting: None

Ms. Murphy offered the public an opportunity for questions or comments with respect to items not on the agenda. Seeing none, and there being no further business, the meeting was adjourned at 11:21 p.m.

Respectfully submitted,

  
\_\_\_\_\_  
Jaimie Williamson  
Recording Secretary

The audio recording of this meeting can be accessed here:  
<http://hopewelltp.org/DocumentCenter/View/3891/Special-Planning-Board-Meeting-April-17-2019-MP3>