

**HAMILTON TOWNSHIP PLANNING BOARD
RESOLUTION 2004-11**

**In the Matter of Levin Properties, L.P., for
Preliminary and Final Site Plan Approval
with Variance and Waiver Relief**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

**Map 85, Section 1589, Lot 65
Hamilton Township, Mercer County
Zone: HC – Highway Commercial**

**Application No. 03-12-128
Date of Denial: May 6, 2004**

BE IT RESOLVED, by the Planning Board of the Township of Hamilton (Board) that the action of this Board on May 6, 2004, in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

RELIEF SOUGHT AND JURISDICTION

1. The applicant, Levin Properties, L.P., seeks preliminary and final site plan approval, variance relief from the setback requirement for a freestanding sign and façade signage for the purpose of constructing a 201,612 square foot shopping center.
2. The subject of this application is within the jurisdiction of this Board and the Board has acted within the time required by law.
3. The property is located in the northwest corner of the intersection of Nottingham Way/Route 38 and Klockner Road, Hamilton Township, Mercer County, State of New Jersey. The site is approximately 29.90 acres and is partially wooded.
4. Map 85, Section 1589, Lot 165 is located in the HC – Highway Commercial zone as designated on the Hamilton Township Zoning Map.

THE APPLICANT

5. The applicant/owner of the property is Levin Properties, L.P., with a mailing address of P.O. Box 326, Plainfield, New Jersey 07061.
6. The applicant/owner has certified that all property taxes have been paid and that all escrow fees required under the applicable ordinance(s) for such an application have been paid. This certification includes an agreement to pay all future monies due under the escrow ordinance for consultants and other professional work on the property.

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7. The applicants/owners have submitted an Affidavit of Proof of Service of Notice published in the Trenton Times. The Proof of Service comports with the notice before the Board that this matter is of the character that the applicant has presented to the Board.

THE HEARINGS

8. Two public hearing took place with regard to this application.
- a. The first hearing took place on March 25, 2004, before the Hamilton Township Planning Board, at Steinert High School, located at Klockner Road and Yardville – Hamilton Square Road, Hamilton Township, Mercer County, New Jersey.
 - b. The second hearing was held on May 6, 2004, before the Hamilton Township Planning Board, at Steinert High School, located at Klockner Road and Yardville – Hamilton Square Road, Hamilton Township, Mercer County, New Jersey.

PLANS AND DOCUMENTS PRESENTED

9. The Board has reviewed the following documents:
- a. Application of Levin Properties, L.P.
 - b. Plans prepared by Bohler Engineering, P.C., dated 11/25/03, revised 1/27/04
 - c. Architectural plans prepared by Ignarri-Lummis, dated 11/24/03, last revised 2/10/04
 - d. Traffic report prepared by Atlantic Traffic, dated November 2003, revised through 2/4/04
 - e. Geotechnical Report prepared by Whitestone Associates, dated 11/25/2003
 - f. Environmental Impact Statement, prepared by Bohler Engineering, dated November 2003
 - g. Acoustical Study prepared by Norman Dotti, dated 3/19/2004

EXHIBITS PRESENTED

10. The following exhibits were presented to the Board:
- a. Applicant's exhibits:
 - A1 Proposed Development Exhibit, Date 2/10/04
 - A2 A4.2P – Exterior Elevations, dated 11/24/03 and revised 2/10/04 (rendered and lists materials and signs for the Supermarket)
 - A3 Preliminary Store Fixture Plan of ShopRite, by ShopRite, dated 12/5/03 labeled "Sheet No. 1"
 - A4 Detail of Rooftop Screens proposed for ShopRite at Mercer Mall (Lawrenceville, NJ)
 - A5 Combined Board of Front Elevations of ShopRite at Hamilton Marketplace with photographs of current as-built signage, dated 2/10/04
 - A6 A4.3P – Partial Exterior Elevation and Elevations of Free-Standing Signs, dated 2/10/04 (Enlarged rendered elevations of Retail A through C and rendered elevations of free-standing signs)

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- A7 Analysis of Building Signage, dated 2/10/04 (Simple spread sheet on 8.5" x 11" page listing tenant, allowable area, proposed area)
- A8 Klockner Road Blvd/Sign Exhibit, dated 3/19/04
- A9 Klockner Road Blvd/Sign Exhibit, dated 3/19/04 (Plan illustrates revised median in accordance with fire official comments)
- A10 Existing Conditions Exhibit, dated 2/10/04
- A11 Cross-easement connection
- A12 Proposed Drainage Area Map, dated 11/25/03
- A13 Line of site Exhibit #1
- A14 Zoning Map (showing NC and residential along Rt. #33)
- A15 Summary of Municipal and School Fiscal Impact
- A16 Policy Map of NJ State Plan
- b. Public's exhibits:
 - P1-P7 Photographs of flooding on the Levin Property and in the surrounding area.
 - P8 Rendering of an alternative plan for the site.
 - P9 Petition

TOWNSHIP EXPERT REPORTS

- 11. At the hearing, the Board considered the following reports presented by Township officials:
 - a. Memorandum from the Division of Planning to Michael Guhanick, Land Use Coordinator, dated January 8, 2004, revised March 24, 2004.
 - b. Memorandum from the Division of Engineering to Michael Guhanick, Land Use Coordinator, dated January 2, 2004, revised March 24, 2004.
 - c. Letter from Maurice Rached, Township Traffic Consultant, to Lloyd Jacobs, Director, Hamilton Township Department of Engineering, Planning & Inspections, dated January 21, 2004, revised March 25, 2004.

TESTIMONY AND PUBLIC INPUT

- 12. The testimony given by and on behalf of the applicant and by Township officials was given by the following persons:

The applicant was represented by **Richard Hamilton, Esq.** of Stark and Stark, who testified that property consists of 29.90 acres and encompasses the entire corner of Nottingham Way/Route 33 and Klockner Road, except for a small portion, which consists of a gas station. The applicant proposes a 201,612 square foot retail shopping center with 931 parking spaces. The shopping center will consist of 82,955 square foot ShopRite supermarket, 6,200 square foot restaurant, and 112,457 square feet of various stores. The site has 469.85 feet of frontage on Nottingham Way/Route 33 and 1,199 feet of frontage along Klockner Road. The applicant seeks a variance from the Hamilton Township ordinance, which permits one freestanding sign for the shopping center; the applicant proposes three freestanding signs. Also, the applicant seeks a variance from the ordinance provision that prohibits signs within 300 feet of a residential district.

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Additionally, the applicant seeks a variance from the ordinance provision that permits one façade sign, with a maximum size of 10 percent of the façade; the ShopRite supermarket will have nine separate façade signs. Finally, the applicant also seeks a waiver from providing checklist item #24, utility profiles, and the restaurant elevations.

Testifying on the applicant's behalf at the March 25, 2004, Public Hearing were:

- a. **Matthew Harding**, President of Levin Management Corporation, testified that the anchor store in this shopping center would be the ShopRite Supermarket. The remaining stores would be a mixture of fashion and shoe stores, service retail stores, card store, etc.
- b. **Robert Ignarri**, of Ignarri-Lummis Architects, L.P., testified that the shopping center will have a uniform façade across the entire center. The main façade will be along Klockner Road, with the secondary façade along Nottingham Way/Route 33. The building will be a mixture of brick masonry with glass and aluminum storefronts. The proposed ShopRite will have several subtenants consisting of a Dunkin Donuts, a bank, a cleaner and another retail store. The remaining retail areas will only be completed on the exterior; the interior will only be completed after the specific tenants are known. With respect to the ShopRite façade signs, the applicant proposed nine individual signs as follows:

- (1) ShopRite Logo Roundel
- (2) Standard ShopRite type face sign
- (3) ShopRite World Class sign
- (4) Pharmacy Department sign
- (5) Garden Center sign
- (6) Four (4) separate signs for each of the proposed subtenants

Additionally, the applicant proposes three (3) freestanding monument signs. One at the Klockner Road entrance, which will be ten-feet high by twelve-feet wide. One at the corner of Klockner Road and Nottingham Way/Route 33, which would be six-feet high by nine-feet wide. One on Nottingham Way/Route 33, which would be twenty-feet high by twenty-feet wide. The Klockner Road sign will violate the Township ordinance that prohibits signage within 300 feet of a residential area.

- c. **Elizabeth Dolan** of Atlantic Traffic and Design Engineers, Inc., a licensed professional engineer testified that there is a controlled traffic intersection at the corner of Klockner Road and Nottingham Way/Route 33. Access to the shopping center is proposed through a driveway along Nottingham Way/Route 33 opposite Chewalla Blvd. The driveway will have one inbound lane, which will accommodate right hand and left hand turns in. The driveway is designed so as to prohibit left turns onto Nottingham Way/Route 33 when exiting. On the western frontage of the site, there will be a full movement driveway, intended for truck activity only. There is a proposed right in and right out only for Klockner Road to the north of the gas station. A full access driveway is proposed for Armor Avenue to accommodate left turn and right turn, in-bound and out-bound movements.

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There is a traffic signal proposed for this intersection; however, there is no proposal to add a traffic signal at the intersection of Klockner and Nottingham/Route 33 because of the NJDOT regulations; the applicant has not requested a waiver of the regulations. All of driveways will measure 30 feet paved in width. There will be a series of two-way circulation aisles, travel aisles through the parking lot measuring 24 feet in paved width.

The parking spaces located at the ShopRite will have a width of 10 feet and will be 20 feet deep where the meet head to head or 18 feet where there is an overhang. The remaining spaces in the shopping center will be 9 feet wide. With respect to the deliveries there would be approximately 8-10 tractor-trailer deliveries per day for ShopRite as well as panel vans and vendor trucks. The proposed restaurant would receive one tractor-trailer delivery per week. There will also be garbage and recycling pick-up located at the rear of the shopping center. In conducting the traffic impact analysis, the applicant's traffic engineer focused on the peak traffic hours in the area including weekday evenings between four and six p.m., and the Saturday shopping hours. The study concluded that 34% of the traffic entering and existing the shopping center was due to vehicles that would already have been in the area for other reasons, therefore that percentage was taken as a credit against the newly generated traffic. In order to decrease speed and allow for emergency vehicles to pass through, the applicant proposes stamped concrete treatments along the road rather than wider lanes and shoulders. Over all the applicant's traffic expert testified that the traffic safety would be enhanced after the completion of the shopping center. The traffic expert had not done an accident analysis on the pertinent intersections.

Testifying on the applicant's behalf at the May 6, 2004 Public Hearing were:

- d. Craig McAteer, Director of Grocery Merchandising for Foodarama Supermarkets. Foodarama owns 25 ShopRite stores located in the four states. In this area it operates a store at the Hamilton Marketplace and at the Mercer Mall. The request for the signage variance is to accommodate the needs of the four subtenants and the sign for the pharmacy, which is required by law. The remaining signs would be used for the ShopRite signage. The hours of operation would be 7:00 a.m. to 1:00 a.m. 7 days per week. The store would have approximately 350 employees, with approximately 125 employees at the store at any given time. For comparison, in the Hamilton Marketplace store, there are 304 deliveries per week, with 75 of them coming by tractor-trailer, the remaining deliveries are made by box truck or van. The only deliveries that would be made after 10:00 p.m. would be for produce. The garbage is contained in a self-contained, fully-enclosed compactor which is picked up and replaced once per week. Finally, in some stores, there is a police sub-

station in addition to the stores loss prevention personnel, and if needed there is security located in the parking lots.

- e. **Eric Steinfeldt**, co-owner and vice-president of Bohler Engineering, testified that the site is currently undeveloped, treed and encompasses a wetlands area. It has frontage on Klockner Road and Nottingham Way/Route 33, and is located in the HC zone. The site shares property line with Suburban Plaza, and a residential area. The site proposes a 201,612 square foot retail center inclusive of a 83,000 square foot supermarket and a 6,200 square foot, 300 seat restaurant. The application proposes the development of a 29.9 acres parcel, with a 650-foot lot frontage and width, a lot depth of 1480 feet, and lot setbacks of a minimum of 100 feet. There will a 12-15 foot berm along the rear portion of the ShopRite, adjacent to the residential community. Lighting will be through recessed fixtures on 25-foot poles, along with separate security lighting. With respect to drainage, the applicant proposes to create a positive drainage condition along the northerly side of the site by providing some grading to allow flow onto Klockner Avenue. The applicant however recognizes that there are still specific design elements that may need modification. Mr. Steinfeldt testified that there may be a benefit to connecting the applicant's site with the Suburban Plaza Site. The applicant testified that approximately 85% of the square footage would be facing Klockner Road.
- f. **Norman Dotti**, Acoustical Engineer, testified that specifically for the ShopRite there would be 57 different sound sources from HVAC equipment to refrigeration equipment to bathroom vents. This could potentially create 400 different sound combinations, which could result is 55 dBa of sound to the adjacent properties. During the day, the regulations permit 65 dBa, however at night, the regulations only permit 50 dBa of noise. Currently, the berm would screen from noise emanating from ground level, but would not shield or screen rooftop generated noise. With respect to the truck traffic, the current regulations would not apply those trucks making deliveries to the ShopRite and various stores. Moreover, Mr. Dotti testified however that a tractor-trailer was the equivalent of 10 motor vehicles on a sounds basis; and that a 25% increase in traffic would only create 1-decibel change in noise production, which would not be noticeable. With respect to the vibrations, the only regulations are for blasting, there are no applicable regulations for vibrations produced by traffic. Any additional vibrations created by an increase in traffic would not be noticeable over what currently exists in the area.
- g. **Elizabeth Dolan**, Traffic Engineer, testified in response to several questions raised during the March 25, 2004, public hearing. In response to the possibility of obtaining an NJDOT waiver in order install a signal on Route 33, she testified that she had received a letter from the NJDOT stating that they would not permit any additional traffic signals for this location because there were already four signals within 0.7 of mile. With

respect to the number of accidents in the area of Klockner Road and Route 33, the police department provided information that there were 59 accidents occurring between 1998 to the present. Additionally, a new level of service analysis was conducted for the school peak activity hours between 2:30 and 3:30 p.m. Ms. Dolan stated that there was no appreciable change in the operations, and that there would be a maximum of an additional 3 seconds of delay. Furthermore, with respect to median improvements, the applicant has met with the fire department regarding their concerns on road obstructions and the fire department is 100% against any median improvements. With respect to the truck activity, it is expected that there will be approximately 10-12 tractor-trailers per day on the site, and that there will be minimal impact to the site. Ms. Dolan additionally stated that with the construction of the shopping center safety of the intersection would be improved. If there were a connection between the applicant's site and the Suburban Plaza, there would be a benefit from a traffic engineering perspective.

- h. **Charles Guttenplan**, vice-president of Waetzman Planning Group, testified that the applicant's site has remained zoned as highway commercial since 1978 and is intended for commercial development along the Township's arterial roadways. The surrounding areas are zoned either highway commercial or residential. Mr. Guttenplan testified that within the Township there are several areas where residential zones and highway commercial zones are adjacent and the Township's zoning ordinances address this issue by requiring buffer areas between the zones. Mr. Guttenplan also testified regarding the requested sign variances. Furthermore, with respect to revenue to the Township, Mr. Guttenplan stated that the Township would received approximately \$84,211 in tax revenue if the site were developed as planned as opposed to the current tax revenue of \$8,476 for the undeveloped site. Furthermore, there would be \$367,832 in school tax revenue gained by the Board of Education if this site were developed as opposed to the current revenue of \$20,192 for the undeveloped site. With respect to the New Jersey State Planning, the applicant's site is located in an area designated as a metropolitan area, as associated with the Trenton metropolitan area. In his opinion, this application represented smart growth for this area because it represents mixed use in that it creates a walkable community for the school, shopping center and surrounding residences. Furthermore, Mr. Guttenplan testified that it would be an example of smart planning to integrate the applicant's site with the adjacent Suburban Plaza, however, after two years of planning the applicant was not prepared to do that.

- 13. The following Township staff gave advice to the Board during the May 6, 2004 Public Hearing:
 - a. **Robert C. Poppert**, Principal Planner, in summary of his March 24, 2004, report, testified that the applicant seeks preliminary and final site plan approval to construct a 201,612 square foot shopping center fronting on

Klockner Road. The applicant requests variances for the number of signs on the ShopRite building and waiver of an ordinance that prohibits signs within 300 feet of a residential area, that applicant proposes a sign within 50 feet of the residential area. The applicant also seeks a setback variance for the restaurant sign, which requires 50 feet, the applicant proposes 25 feet. Parking on the site is satisfactory. The number of detention basins on the site has been reduced from seven to three. The applicant needs to provide information on whether the decibel limitations have been met. The main identification sign for the shopping center should accommodate all of the tenants to avoid a situation where lawn signs pop up along the road. The applicant has not proposed any directional signage.

The Township ordinances promote uniformity in the signage, therefore the applicant needs to provide a comprehensive sign package including details of the colors and dimensions. With respect to landscaping, the applicant is required to provide basic landscaping on the property including parking lot trees, buffers and street trees. Replacement trees, for those taken down on the property are above and beyond the basic requirement. In an area like this one, with a densely populated residential area adjacent to the site, more attention needs to be paid to the buffer area. Furthermore, the applicant should provide house shields for two lights that are adjacent to the residential house on Lot 167. The applicant should eliminate all spillover lighting in the residential properties where applicable. An actual night lighting survey will be required. The side of the Retail A building should be finished as if it were a building front. The four-foot chain link fence around the basins should be removed. The emergency spillway on basin 1, fronting on Klockner Road should be revised. The crosswalks should be constructed using red brick with concrete borders, and handicap ramps should be provided. No outdoor storage should be permitted. A cross access easement should be provided between the applicant's lot and the Suburban Plaza Lot.

- b. **Thomas E. Dunn**, Township Engineer, testified first with respect to the storm water management. Currently the site is undeveloped, heavily wooded and contains both wetlands and uplands. A freshwater letter of interpretation is required, and the property is subject to the new Phase II regulations. The recharge rate on the property is between 14 and 15 inches per year. The applicant proposes that the storm water generated on the site be trapped within the site and recharged into the groundwater or evaporated. The drainage plan includes an extensive system of underground pipes, which connect four basins on the property. The proposed development will transform the site from zero percent impervious coverage to almost 60%. The detention basins have no outlets, and all of the connecting pipes are flat. Because the pipes have no grade, they will have minimal water carrying capacity. There is also a problem that debris and trash will build up within the pipes because there is insufficient velocity to carry the silt and debris throughout the system. The proposed system will require routine maintenance. As the Phase II regulations

apply to this site, the applicant must obtain DEP approval for the storm water plan. Construction and maintenance operations may compact the soil thereby reducing the ability of the basin to absorb the groundwater. [REDACTED]

All parking aisles should be 25 feet-wide as prescribed in the Township ordinance, and the curbing within the parking area should be Belgian block. All work must be done in conformance with DOT standard specifications for bridge and highway design. Finally, the following approvals are required: DEP approval of conformance with Phase II regulations, a storm water plan, a wetlands permit, approval of the Mercer County Soil Conservation District, and approval of the NJDOT for all work to be done on State Highway Route 33.

- c. **Maurice Rached**, Township Traffic Consultant, testified that currently the intersection of Route 33 and Klockner Road operates with some delay, approximately 43 seconds per vehicle, the applicant's project will increase the delay to 47 seconds, which will result in some impact to the roadway. The applicant has been asked to comply with the Township Master Plan and widen the roadway so that 70 feet of right of way is achieved. The applicant was also asked to install an island opposite to Chewalla Blvd. The applicant has stated that this is an NJDOT matter, and that it would be difficult for them to comply with the Township's request. However, the NJDOT needs are different from the Township's particularly with respect to pedestrian crossings. Therefore, Township staff should be involved with any NJDOT discussions. Finally, he recommended that if the application were approved that as a condition of approval the Board require that the applicant install signs directing delivery trucks to remain on Nottingham Way/Route 33 so as to avoid any additional truck traffic on Klockner Road.

14. Members of the public who testified with regard to the application:

March 25, 2004 Public Hearing:

- a. Hamilton Mayor Glen Gilmore urged the Board to deny the application because the application shows a "callous disregard" for the safety of the children at the Klockner Road elementary school, the needs of the Klockner Road Fire Department, the already existing speed concerns and flooding in the area. The Mayor testified that there was no effort made by the applicant to reach out to Suburban Plaza in order to create a connection, which would avoid a Klockner Road exit and would also help to revitalize the Suburban Plaza. Moreover the fact that the applicant's expert testified that the shopping center would add over 2,000 cars to the area but would not increase traffic congestion was incorrect.
- b. Brian Brown of 109 Jencohallo Avenue, questioned whether the Shopping center would have any impact on property values.
- c. John Hutman of 810 Klockner Road, questioned the safety of the children who would be walking to the school, why the applicant was not using the

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- Suburban Plaza where you can already make a left and right turn because of the signalized intersection, and what the impact of the trucks would be on the surrounding old houses.
- d. Assemblywoman Linda Greenstein of the 14th District, stated that the type of project being presented by the applicant was inappropriate for the neighborhood in terms of the amount of traffic and the proximity to a school. Furthermore, the Board needed to pay attention to the tremendous outpouring of the neighborhood with respect to this application.
 - e. Susan Daly-Rouse, 22 Hamilton Lakes Drive, urged the Board to deny the application because of the negative impact that the shopping center would have on the area. The exit across from the elementary school would endanger the children, the intersection of Klockner and Nottingham Way/Route 33 is already extremely congested which will only be increased with the construction of the transit village at the Hamilton train station. Finally the applicant's statement that there will be minimal impact to the wildlife, which can be absorbed by the surrounding neighborhoods, was wrong.
 - f. Charles Rouse of 22 Hamilton Lakes Drive, stated that the applicant's traffic analysis was inaccurate because the data was collected during a time when the Suburban Plaza's main tenants, Caldor's, Eckerd's and ShopRite were all vacant. Therefore, if the Suburban Plaza were to remain vacant and derelict the study would be correct. However once the Plaza is fully or almost fully occupied there will be additional traffic in the area. Furthermore, it was difficult to accept that the mitigation of traffic only through the use of signage, and the increased traffic on Route 33 and Klockner Road would not degrade the intersections. Finally, if this ShopRite is built, it would be the only, and the closest grocery store to a large area of Trenton; therefore, there would be a greater influx of traffic from Trenton than any of the trip generation calculations estimate.
 - g. Laura Lynch of 11 Blewmar Road in Lawrenceville, appeared on behalf of the New Jersey Chapter of the Sierra Club, and stated that with respect to the traffic generation, you need to consider not only to the present application, but also the surrounding shopping centers, neighborhoods and transit village. Levin Properties has failed to respond to letters from the public. Finally, the applicant is only concerned with developing the property and not with what is best for the surrounding area.
 - h. Ames Hoyt of 29 County Lane, stated that the Klockner Road community is plagued by flooding, storm water issues, and hydrological problems that the infrastructure is unable to handle. The resident's basements flood and their sump pumps run continuously in rainy periods. The applicant proposes to add a large detention basin next to residential homes, which are already plagued by hydrological concerns. Accordingly, a hydrological and storm water study is critically needed.
 - i. Joe Di Memmo of 585 Klockner Avenue, testified that consideration needed to be given to the residents in the area who will have the tractors-trailers going past their homes and the Klockner and Nottingham Schools.

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- j. Denise Ronca of 90 Hamilton Lakes Drive, stated that no one has addressed the noise pollution that will be generated by the tractor trailers, and that Klockner Road cannot handle the additional traffic.
- k. Dana Miles of 408 Klockner Road, stated that this section of Klockner Road is a densely populated residential street, some of the houses are less than 15 feet from the street, in some areas there are only six inches of curb separating the traffic and the pedestrians. Furthermore, the increased pollution generated by trucks and cars will jeopardize the resident's health.
- l. Kevin Varanyak of 78 Hamilton Lakes Drive, stated that he understands that the property is zoned highway commercial, however, it is zoned that way because of Nottingham Way/Route 33, which is a highway, not Klockner Road. Therefore the shopping center should be oriented to face the highway and not Klockner Road. Furthermore, no one has addressed the amount of pollution and garbage that will be generated by the shopping center. Finally, if the applicant wants to develop the property, he has a right to, however it should take into consideration the needs of the community and do what's right for it.
- m. Arthur Sypek, Esq., of Teich Groh, appeared on behalf of Kramont Realty, owner of the adjacent Suburban Plaza. He stated that the applicant has failed to address regional planning and that there has been no contact between the applicant and Kramont Realty.
- n. Ed Pfeiffer of 4 Halley Drive, appeared representing the Central Jersey Chapter of the Sierra Club who considers this a prime example of "dumb growth" in that it is "residentially unfriendly and environmentally unfriendly".
- o. Geraldine Tucker of 6 Chinnick Avenue, stated that her house is on the northern perimeter of the site and that she has well water. No one from Levin has addressed the effect this development will have on the well water, and the volatile organics that leak out of cars and leach into the well water. Furthermore, in support of this application, the applicant touts that they manage Capital Plaza, which is a "c**p hole", and has been vacant more times than Suburban Plaza.
- p. Carla Veronica Scott of 122 Dickinson Avenue, stated that she did not approve of all of the cars that would be coming by the school which could injure or kill the children.
- q. Christine Whitaker of 810 Klockner Road and Christine Avenue, adjacent to the school, was concerned with the effects of air pollution on the school because the windows are open all year round. Furthermore, the community doesn't want and doesn't need a shopping center in this location.
- r. Edith Rommell of 868 Klockner Avenue, stated that a lot of traffic is generated by people coming in from Trenton to shop because they don't have their own supermarket. She lives directly across from the proposed entrance to the restaurant and is concerned about the children that walk in

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- the area, and get on and off the school busses in the area because of the increased traffic that will be generated.
- s. Rocky Swingle of 102 Armour Avenue, stated that he wanted to echo the earlier comments regarding school safety, traffic, flooding open space, wild life and the degradation of the quality of life and the neighborhood. Mr. Swingle presented a rendering of an alternate plan for the site, which proposed a nine store commercial development for the site with a public square. There would be minimal parking on the site, with the majority of the parking being at the Suburban Plaza where the ShopRite would be located.
 - t. Kathleen McGowan of 1915 Nottingham Way, expressed concern over issues that were raised during a February 20, 2004, meeting with Levin Properties regarding the proposed development, including property values, security, water issues, accidents and the need for a shopping center.
 - u. Nelson Moran of 1518 Cornell Avenue, stated he was concerned about and has not heard any proposals from Levin Property regarding security in the parking lot and community safety. Many business have failed at the Suburban Plaza, and the applicant intends to build a Shopping Center adjacent to that property. The applicant also intends to have a Dunkin Donuts move into the ShopRite even though one already exists adjacent to the property. Finally Mr. Moran commented on the fact that the garbage was going to be located at the rear of the shopping center, adjacent to the residential area, and the fact that no one has commented on the maggots and smell that would be emanating from the garbage.
 - v. Sidney Maffei of 506 Klockner Road, commented on the increased traffic in the area that already exists due to the rail road station and the AMC movie theatre. Furthermore, he commented on the number of accidents along Nottingham Way and Klockner Road, the safety of children, and the ability of the Enterprise Firehouse to navigate through the gridlock. Finally he suggested that Levin Enterprise take over the Suburban Plaza just as they had with Capital Plaza in Ewing Township.
 - w. Ronald Bearce of 200 Armor Avenue, questioned whether the applicant was receiving a tax break for the development of this property. He also stated that the traffic study should be conducted at additional times of the year, particularly during baseball season, when the surrounding fields are open. Finally, when the school buses are picking up and dropping off children there is gridlock on the side streets, which currently makes it impossible to use two the streets adjacent to the school.
 - x. Karen Gorla of 73 Albemarle Road, a teacher at the Klockner School stated that the noise from the traffic passing by the school is currently unbearable and educationally unsound. She urges the Board to make the right choice between the children, the school and money.
 - y. Jake Genovay of 11 Chinnick Avenue, spoke on behalf of the Enterprise Fire Company. He stated that 60% of the calls, or over 400 calls require the fire reponse to travel south to the corner of Klockner and Nottingham. He stated that he did meet with the applicant, to create an alternate plan.

The application however needed to indicate which plan they would be moving forward with, the original plan or the alternate plan. The alternate plan would give the fire company control of the traffic signal at Klockner and Armour, and would install the drive-over curbing, there was also a tentative agreement for no truck traffic on the Armour Avenue extension because a truck turning in or out of the Armour Avenue exit could create a traffic hazard.

- z. Karen Wilson of 541 Klockner Road, commented on the traffic, safety of children and increased crime.
- aa. Laurie Gordon of 1523 Cornell Avenue, stated that she was concerned about the effects the increased traffic would have on the children in the neighborhood who have basketball hoops in the street, and the baseball, softball and track teams from the schools that run through the neighborhoods. She also expressed concern over the inexperienced high school drivers having to deal with the trucks in the area. Finally, she commented on the fact that the traffic study did not take into account New Jersey Transit buses bringing people from different areas into the shopping center.
- bb. Reverend Jeff Ugoretz of 726 Klockner Road, stated that his primary concern was for the quality of life for the neighbors and children and then with the churches ability to offer services to the community. The increased traffic will cause the buildings to deteriorate faster and divert money that could be spent to help people in the community. The developer's plan is merely adequate at best and the community deserves more.
- cc. Evelyn Breece of 804 Klockner Road, stated that in the 50 years that she has lived in the neighborhood she has seen a great increase in traffic. She stated that the proposed raised concrete strip median would make it difficult to get in and out of her driveway.
- dd. Donna Sutton of 798 Klockner Avenue, stated that she was concerned about the raised median, currently she has to make traffic stop so that she can back into her driveway for her own safety. She also stated that she was concerned about property deterioration from the tractor-trailers traveling down the streets.
- ee. Blanca Batista-Perez of 326 Montana Avenue, stated that she did not believe that traffic study was properly conducted because she has difficulty getting to Klockner Road at 7:00 a.m. She was concerned that the full information about the hours of operation were not presented, and urged the Board to review the plan, consider the issues presented in the hopes that amendments could be made.
- ff. Dale Henry of 124 Chinnick Avenue, who drives a school bus, was concerned about the raised median. He felt that the entrance/exit areas should be amended. Furthermore, he was concerned that the applicant believed that 33% of the shoppers would be impulse purchasers, he believed that was too high a number.

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- gg. Bonnie Tillery of 389 Sawmill Road questioned the applicant about the waiver of the utility profiles, and any potential widening of the street to create the boulevard concept.
- hh. Dennis Martin of 20 Morgan Avenue, the president of Enterprise Fire Company, expressed concern that nothing had been mentioned about the trees in the middle of the street.
- ii. Councilman Wayne DeAngelo of 105 Linwood Drive, stated that he did not support the application because it would be detrimental to the surrounding area because of the sheer magnitude of the complex and the traffic flow impact to the surrounding community. He noted that the residents are willing to work with the developer to create a more neighborhood-friendly shopping center. Finally, if no one present at the meeting supported the application, then who would support the stores.

May 6, 2004 Public Hearing:

- jj. Rocky Swingle, President of Save Hamilton Open space, of 102 Armour Drive, questioned whether the applicant was using any non-structural techniques for storm water management. He questioned the applicant's assessment of truck noise at 50 decibels. Mr. Swingle then presented his own planning expert, Dennis Hudacsko.

Dennis Hudacsko, professional licensed planner in the State of New Jersey, formerly the Director of Planning for the City of Elizabeth and the head of Candeub, Fleissig & Associates, testified as an expert on behalf of Rocky Swingle.

Mr. Hudacsko testified that the application represents a retail infill project, with which he has substantial experience. He stated that this project represents a blind following of the law without concern for the intent of zoning. Highway commercial districts follow arterial roadways, they are "intended to provide locations in the Township where highway oriented businesses servicing the needs of highway users and encompassing a broader service area than GC zones." Klockner Avenue is not designated as an arterial roadway, rather it is designated as a collector road.

Furthermore, the Township Code specifically states that there are not to be commercial signs within 300 feet of a residential area because it is intrusive. Under the Township ordinances, "buffering shall be located around the perimeter of the site and/or in groupings at strategic locations in order to minimize the glare of headlights from vehicles, lights from structures, noise and the movement of people and vehicles and the shield activities from adjacent properties..."

The "design and layout of buildings and parking areas shall be reviewed so as to provide an aesthetically pleasing design and

efficient arrangement. Particular attention shall be given to safety and fire developments and contiguous and adjacent buildings and lands." To be consistent with the zone plan, this project should be oriented toward the highway, Nottingham Way/Route 33. With respect to smart growth, the idea calls for the wise use of resources, in terms of thought, about how to make the design fit into the community, the applicant's design fails in that respect.

With respect to the traffic issues, Mr. Hudacsko testified that he was able to stand in the middle of the Klockner Road to take pictures and do a couple of U-turns on the Road because it was so quite. If a shopping center were to open, there would a huge increase in the amount of traffic volume. He recommends the elimination of the entrances on Klockner Road. The only reason he has heard expressed as to why the design could not be reoriented to face the highway, Nottingham Way, was because two years had already been spent designing this site. Finally, he commented that the entire frontage of the property is designated as wetlands.

- kk. John Pizarick of 251 Jencohallo Avenue, was concerned about the increased number of accidents that may result, the detriment to the quality of life and the possibility that people will use the neighborhoods to "zip-through" the traffic.
- ll. John Hutman of 810 Klockner Road, commented that over the prior two rainfalls he has had to vacuum out water from his basement. He was told that it was because of the degraded underground pipes, and that with the construction of the shopping center he would end up with a lot of stuff being backed up into his basement. He questioned where all of the waste from the shopping center was going to end up.
- mm. Jake Freihaut of 119 Jencohallo Avenue, commented on the fact that there were two schools in the surrounding neighborhood, both located on Klockner Avenue/Road.
- nn. Ames Hoyt of 29 Country Lane, stated that the remaining stores in the shopping center could be anything from a nail salon to a hoagie place. He wanted to know how far away the restaurant was from the school. He also stated that any smells emanating from the restaurant would be a distraction for the students. Finally that this type of development was clearly inappropriate for a neighborhood.
- oo. Charles Rouse of 22 Hamilton Lakes Drive, suggested that to prevent trucks from using Klockner Road, that PVC pipes be put up that the fire trucks could run over in the event of an emergency. He commented that there has been no resolution regarding the how buses and cars will be able to turn left off of Klockner into the school. Additionally, he questioned whether there was sufficient parking to accommodate all of the workers for the ShopRite and the remaining stores in the shopping center as well as the patrons after the aisles are expanded to 25 feet. Finally, the trees

- placed in the berm would block the sound for the first floor residents of Hamilton Lakes, but nothing was being done about the second floor residents. He asked that the berm be moved so that it go along the perimeter of the site and that all of the water from the basin be directed toward Route 33 or Klockner Road.
- pp. Laura Lynch of 11 Lumar Road, questioned how the construction noise would be mitigated with respect to the residents and the school. She questioned whether a passing truck or the continuous noise would be more disturbing, and why wasn't 10 accidents per year significant, and isn't the number likely to increase after the development. Moreover, the token driveway connection to the Suburban Plaza is irrelevant, the residents want the entire parking lot connected and they want the orientation of the shopping center changed. She questioned why the Suburban Plaza ShopRite failed and what the effect would the shopping center have on property values.
- qq. Ed Pfeiffer of 4 Halley Drive, commented that the applicant's plan only represented dumb growth.
- rr. Gerri Tucker of 6 Chinnick Avenue, was offended that the applicant's attorney stated that they spent a lot of money on the plan so that they should be able to do what they want. She stated that no one has addressed the issues related to the use of well water. Finally, she commented that she and others went to the ShopRite at the Hamilton Marketplace and counted 150 trucks delivering to ShopRite in a four-hour period; and that they talked to the truck drivers who stated that there would be at least 900 to 1000 trucks delivering to ShopRite.
- ss. Nelson Moran of 1518 Cornell Avenue, stated that he has heard nothing about emergency routes in the event of a fire, or how the modifications are going to affect the fire department. There was no information on the effects the vibrations would have on the homes, foundations, and properties, on what percentage of the noise would be blocked by the berm, and what the noise level would be during and after the construction.
- tt. Councilman Dan Benson, 81 Hempstead Road, stated that no one has addressed the concerns raised by the residents at the last meeting including the safety of the children, specifically, the fact that an attractive nuisance will be located across from the school, and that children will cross outside of the crosswalks, or the vibrations from the trucks. He urged the planning board to reject the application if there was no amelioration of the negative concerns regarding traffic, safety and flooding.
- uu. Lisa Brown of 109 Jencohallo Avenue, raised concerns regarding the reforestation, and the fact that many of the trees planted at the Hamilton Marketplace are dying, therefore the reforestation is unsuccessful. She also wanted to urge the board to consider the Chewalla neighborhood that is already plagued by cut through traffic.
- vv. Steve Eckel of 1621 Cornell Avenue, disputed that there were only 10 accidents in the area per year. He believes that may only be the reported

- ones. From the neighborhood crime watch, he found that there were 28 accidents in a six-month period.
- ww. Dale Henry of 124 Chinnick Avenue, commented that if cars can't make a left turn out to Nottingham Way, why would a truck want to? Why wouldn't it just go out the controlled traffic light instead?
- xx. Kathy McGowan of 1915 Nottingham Way, commented that she had lived in the area for 22 years, and she has to keep her doors and windows shut all the time because of the noise.
- yy. Donna Sutton, 798 Klockner Avenue, stated that she has lived there for 23 years, and had concerns about the deterioration of her home and the school, and whether or not a liquor license would be issued to a restaurant located so close to a school.

**BOARD CONCERNS AND
THE APPLICANT'S RESPONSES**

15. The members of the Hamilton Township Planning Board expressed the following concerns with respect to the application before it:

a. Traffic

The Board questioned the applicant's statements that the traffic situation in the surrounding intersections would not be detrimentally effected by the construction of a 200,000 plus square foot shopping center, and increase of motor vehicle traffic of 500-700 cars during peak time. The Board questioned the applicant's analysis of the traffic increase, and the applicant's proposed increase included a 34% credit for "passby" customers. Additionally the applicant's analysis was conducted during a time when the adjacent suburban plaza was substantially empty, and the analysis made no mention of the proximity of the store to surrounding communities who do not have a grocery store. Finally, the Board questioned the applicant's traffic circulation plan which provided for multiple entrances and exits along Klockner Road, two (2) separate access points for truck deliveries on Klockner Road and Nottingham Way. The applicant reasoned that the traffic situation would be improved by the construction of the shopping center because of the increased signage and the installation of a traffic signal at Klockner Avenue and Armour Blvd.

b. Noise

The Board expressed concern over the increase in noise and vibration throughout the day and night hour, as the ShopRite would be open from 7:00 a.m. to 1:00a.m seven days per week, due to the increase in motor vehicle traffic not only from those persons utilizing the shopping center but also the numerous tractor-trailers, trucks and vans that would be making deliveries to the shopping center. Additionally the noise generated by the construction, and the post construction HVAC, refrigeration equipment and other vents located in and on the building that would not be shielded from the residential area.

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The applicant stated that the increase in noise and vibration would not be noticeable.

c. Water and Drainage

The applicant failed to address the concerns of the residents regarding their use of well water. The applicant failed to address the Hamilton Township's Engineering Department's comments regarding the under ground pipes which connect the drainage basins and their need for continued maintenance.

d. Impact on Community

The Board was concerned that the that this application did not represent good planning or design, that the applicant did not address the needs of the school and the community, and that the impact on traffic, the school and the residents would be very significant. The Board was concerned that this application was contrary to the intent of the Township's zoning purposes and that the plan did not represent smart growth for the community. Specifically, the application creates a new Shopping Center on currently wooded lot, adjacent to a shopping center, Suburban Plaza, which is currently substantially unoccupied. Furthermore, the applicant failed to address the Board's concerns that the main tenant of the new shopping center, ShopRite, was previously located at Suburban Plaza, and failed. Furthermore, the applicant failed to meaningfully consider a connection with the adjacent Suburban Plaza, which would revitalize the area. The applicant claimed that the current design was an example of smart growth because it created a walkable community for school and residents.

e. Signage

The Board expressed concern over the significant number of signs requested by the applicant, solely in connection with one of the retail facilities to be located in the Shopping Center. Furthermore the Board was concerned with the applicant's placement of large monument signs within the buffered area adjacent to the residential area.

f. Frontage

The Board questioned the applicant's design, which positioned the building front along Klockner Avenue, the residential Road, rather than on Nottingham Way/Route 33, the state highway, upon which the highway commercial zone is based. The applicant refused to consider the Board's recommendation of reorienting the design because too much time had already been invested in this design.

**FINDINGS AND CONCLUSIONS REGARDING APPLICATION
FOR PRELIMINARY AND FINAL SITE PLAN APPROVAL,
VARIANCE AND WAIVER RELIEF**

16. Nature of the application:

- a. The applicant, Levin Properties, L.P., seeks preliminary and final site plan approval, variance relief from the setback requirement for a freestanding sign and façade signage and waiver of checklist item #24 – utility profiles, for the purpose of constructing a 201,612 square foot shopping center.
- b. For the following reasons, the Board voted to deny Levin Properties, L.P. application for preliminary and final site plan approval with variance and waiver relief:
 - i. The applicant has yet to satisfy to the Board whether proper drainage can be achieved given the high water table and the inadequacy of the proper drainage.
 - ii. The application fails to meet the ordinance requirements because the vast majority, approximately 85% of the building fronts on Klockner Road. The zone requires that the building should front on Nottingham as all of the commercial businesses in the area do.
 - iii. The applicant failed to address the Board's concerns regarding the increased traffic and the proposed traffic both within the site and in the surround streets as a result of the shopping center.
 - iv. The applicant failed to address the Board's concerns regarding the impact of a shopping center on the surrounding neighborhood, Presbyterian Church, Nottingham High School and the Klockner elementary School.
 - v. The applicant failed to address the Board's concerns regarding the increase in noise after the construction of the shopping center.
 - vi. The applicant failed to show that the requested variances will not have a negative impact on the surrounding community and that they will have a positive impact on the community and township.
 - vii. This application is not a sound development for the site, and goes against everything both the local and state governments are working for to promote enlightened development in the state.

CONCLUSION

Based upon the foregoing, the Hamilton Township Planning Board, at its May 6, 2004, meeting, voted to deny the application.

This Resolution of Memorialization was adopted on June 10, 2004, by a vote of the majority of the members present, who voted to deny the relief sought by the applicant.

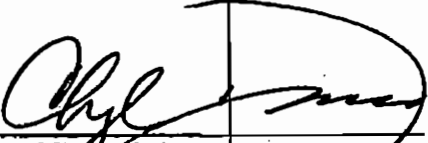
The date of decision shall be May 6, 2004, except that the date of the adoption of this memorializing resolution is the date of decision for the purpose of (1) mailing a copy of the decision to the applicant within ten (10) days of the date of this decision; (2) filing a copy of the

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decision with the administrative officer; and, (3) publication of a notice of decision. The date of the publication of the notice of decision shall be the date for the commencement of the vesting protection.

We do hereby certify that the foregoing resolution was adopted by the Hamilton Township Planning Board at its regular meeting held on June 10, 2004. This resolution memorializes formal action taken by the Board at its regular meeting held on May 6, 2004.


Cheryl Dugelli, Secretary
Hamilton Township Planning Board

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