

**BOROUGH OF RIVER EDGE  
LAND USE BOARD  
MEETING MINUTES  
ZOOM MEETING  
January 28, 2026**

**NOTE** – Public meetings of the Municipal Land Use Board of the Borough of River Edge will be held in person in the Council Chambers on the second floor of Borough Hall, 705 Kinderkamack Road, River Edge, NJ 07661 unless further notice is provided. Meetings will be held concurrently via ZOOM (Hybrid). Members of the public may attend meetings in person or via ZOOM. To join the ZOOM meeting via smart phone, computer or tablet. The log in information and a link to the meeting will be posted on the Borough’s website at <https://www.riveredgenj.org/landuse>.

Vice Chairman Krey calls the Meeting to order at 7:30 p.m.

Roll call:

Mayor Papaleo –	Excused	Chairman Caslin –	Excused
Ryan Gibbons –	Present	Councilman Glass –	Excused
Eileen Boland –	Absent	Mr. Chinigo –	Present
Mr. Gautier –	Present	Mr. Salva –	Present
Michael Krey –	Present	Ms. Levine –	Present

ALSO PRESENT: Marina Brown, Esq., Mr. Behrens, Robert Costa, Mr. Depken and Lisa Ciavarella and Marc Leibman, Esq. Special Counsel for the IAAT application.

**APPROVAL OF MINUTES** – Approval of 1/14/26 mins. Motion made by Mr. Gibbons and seconded by Mr. Chinigo. Voice vote - all members voted in favor; no member voted in opposition and no member abstained. Motion passed.

**MEMORIALIZATIONS**

Board Engineer for 2026. Motion made by Mr. Chinigo and seconded by Mr. Salva. Voice vote - all members voted in favor; no member voted in opposition and no member abstained. Motion passed.

Board Planner for 2026. Motion made by Mr. Chinigo and seconded by Mr. Gautier. Voice vote - all members voted in favor; no member voted in opposition and no member abstained. Motion passed.

Board Attorney for 2026. Motion made by Mr. Gautier and seconded by Mr. Salva. Voice vote - all members voted in favor; no member voted in opposition and no member abstained. Motion passed.

**COMPLETENESS REVIEW:** None

**NEW BUSINESS:** None

**OLD BUSINESS:**

IAAT Services (*Carried from 9/24/25. Re-noticed for Hybrid Meeting 11/3/25*)

41 Grand Avenue

Lot 1405, Block 4

Preliminary and Final Site Plan Approval with Use, Height and Bulk Variance relief to construct and operate a double-faced “static” Billboard sign on a Single Monopole.

Christopher Kinzel Esq., of Peckar & Abramson read a statement on behalf of Robert Peckar, Esq., this evening to be put on the record. They represent Grand Four Associates, 70 Grand Avenue, River Edge. The statement states that Mr. Peckar is a partner in Grand Four Associates, LLC and an owner of 70 Grand Avenue, River Edge, at which Peckar & Abramson occupy the second floor for the past 40 years. He states that he supports the position and opposition of the adjacent landowner Dark Star Development. He wishes to express this evening his opposition to the variance and building of the billboard. Their building is directly across from the proposed billboard site. He does not believe this serves a community interest as the applicant would like the Board to believe. His concern is the economic impact on their building. The western portion of their building will be facing the billboard. Their rental agent has advised that it will be more difficult to rent those spaces due to the billboard should it be erected. And renting commercial space in Bergen County is already very difficult. He asks the Board to address and be mindful of that situation. Finally, he asks the Board to consider what it would do if they were presented with the exact application for an identical billboard if it were to be placed adjacent to the municipal building. He doubts the Board would approve it and he asks that they do the same in this case.

Mr. Sarlo, Esq. attorney for Let It Grow begins his cross examination of Mr. McDonough. Mr. Sarlo states that Mr. McDonough testified previously that he reviewed the zoning ordinance and Master Plan as well as the application itself and the plans. To which Mr. McDonough responded yes. Mr. Sarlo stated that based on that testimony he stated there were two use variances that were required One, use variance being that no billboards were permitted in any district and two, there are two principle uses on the same site. Is that correct. To which Mr. McDonough stated yes. Mr. Sarlo refers to Section 416-45 of the zoning code which talks about locations of signs being prohibited and it states that the following types of locations are prohibited except otherwise provided – he asks Mr. McDonough if he agrees that a billboard is a sign to which Mr. McDonough responds yes. Mr. Sarlo continues reading the section stating that no signs may I and B projected into a required yard or beyond the lot or street line accept as permitted in Section 416-56. Mr. Sarlo asks if Mr. McDonough agrees that prohibit means its not permitted – to which Mr. McDonough responds correct. Mr. Sarlo continues and asks Mr. McDonough if he agrees that Section 416-45 is a standalone provision unrelated to the section where billboards are prohibited town wide, To which Mr. McDonough responds – yes. Mr. Sarlo continues to ask if this billboard projects into any required yard. To which Mr. McDonough states yes – the applicant has asked for setback relief. Mr. Sarlo states that is prohibited so he asks if Mr. McDonough would agree that, that is a use variance. Mr. McDonough states that he believes it is all related to the D1 that the applicant has sought here. Mr. Sarlo states that during Mr. McDonough’s direct testimony he called out and delineated two separate D1 variances – it may be his testimony and the expert testimony in support of two D1 variances but he did not say that they have a bunch of D1 variances rolled together, he states that Mr. McDonough made two distinct D1 variances is that correct. To which Mr. McDonough responds – correct. Mr. Sarlo states that his question is that prohibition under this section of a sign billboard in a required yard – would he agree that is a use variance requirement. Mr. McDonough responds that, that falls within the umbrella of a blanket prohibition of the use all together anywhere in the community not just any yard but within a building envelope as well. There is an overlap here between this section of the ordinance and the

overwriting prohibition against billboard on any patch of ground anywhere in the community. These are more specific locations that signs are prohibited. Mr. Sarlo asks Mr. McDonough if his testimony is that these are subsumed in a town wide (inaudible) to which Mr. McDonough states yes. Mr. Sarlo continues stating that they are talking about signs not billboards here. So, Mr. Sarlo asks if Mr. McDonough is stating that this swept up in an overall prohibition that a sign for a business that is on a particular piece of property advertising that business can get sucked up under the billboard prohibition. Mr. McDonough responds that Mr. Sarlo is referring to a Section 416-45 which talks about locations prohibited but right above that Section 416-44 it says prohibited signs/billboards – so he believes the two closely tie together. And the next Section 416-45n may actually be referring to accessory signs. The blanket prohibition is covered in Section 416-44 right above that. Mr. Sarlo asks then why is that listed. Mr. McDonough asks why is it listed A under 45 or 44. Mr. Sarlo says 44 prohibit signs/ signs and lighting – the following types of signs or artificial lighting are prohibited A1 (inaudible) and he continues stating that is a very distinct definitive statement – to which Mr. McDonough responds – yes. Mr. Sarlo states then it goes on to state everything that is prohibited is A1 through 10 – to which Mr. McDonough responds – yes. Mr. Sarlo states that they are the types of signs that are prohibited, isn't that correct. Mr. McDonough responds yes. Mr. Sarlo states that 416-45 is specific as to locations. Mr. McDonough responds again – that he thinks the greater location is covered in the town wide prohibition under 44A. He states that there is certainly an overlap there but the greater umbrella is the community wide prohibition which again he feels overrides or supersedes the need for the double relief. One covers the other. Mr. Sarlo states if this town wide prohibition was challenged on a constitutionality basis and the court decides to throw the town wide prohibition out, is Mr. McDonough saying the town should also throw out the location provision. (Mr. to giving a hypothetical answer) Mr. McDonough states the applicant is asking for relief for setbacks, front, side and rear so if 44 were thrown out could the community still enforce 45, Mr. McDonough stated that he did not know that answer. Mr. Sarlo states that in that same line of questioning 416-45 Item C, states signs cannot extend above the roof of any building, and he asks if Mr. McDonough agrees that this billboard extends the roof (inaudible) Mr. McDonough states it certainly is higher than the roof and extends above and he does not know if that means affixed to the rooftop if that's implied, but yes that would apply as well. Mr. Sarlo states that he raises some doubt, and he states that 416-C states signs placed or supported upon a roof, which is probably not the case here, or upon a structure which extends above the roof of any building. This could either be categorized both as it could either be supported by the roof its prohibited or if it extends over roof lines its prohibited. He asked Mr. McDonough of he agreed to which he responded – he would like to chew on that one a little longer and dive into the language a little more. Mr. McDonough states that he has actually seen signs where supports actually go through the building and or above the roof so he does not know how that would be interpreted. He has to think about that one. Mr. Sarlo states that Mr. McDonough also believes that this prohibition of signs over the roof line would be (inaudible) overall provision of the prohibition (inaudible). Mr. McDonough responds yes – that he thinks the town wide pretty much covers everything. Mr. Sarlo states – if he had a sign that extends to a setback or over the roof – what kind of damage would that be. Mr. McDonough states tht if he had an accessory sign for a business that was a flag that cantilevered over the roof – let's say it's a one story building, (he's reading the words which he states he's sure were carefully chosen) he states that he does not know if the language was there that would prohibit a flag sign over a roof top. To him the words be placed, supported by the roof for any structure is prohibition against being attached. It can be interpreted otherwise; he does not think its clear cut one way or the other. Mr. Sarlo states that what is being talked about here is the promotion of the general welfare (something particularly sign suited – inaudible). Mr. McDonough responds – yes. Mr. Sarlo states that for the particularly suited, Mr. McDonough's testimony was that this was a particularly suitable site based on the location and proximity and visibility on Rt 4 in relationship to other properties in River Edge. Mr. McDonough responded speaks regarding his understanding of the *Price v. Himeji* case that the Board should consider

physical characteristics of the land in the context in the terms of its suitability to accommodate the physical characteristics. Mr. Sarlo states the unique characteristics of this site. Mr. McDonough responded that he did not know suitability in fact, Cox speaks about it in his book to be particularly suitable to be unique or to be the only site but it has to have certain attributes and again this is his interpretation of *Price v. Himeji* physical attributes that accommodate and suitable for these. Mr. Sarlo continues to speak about this particular site for a bit. Mr. Sarlo states that it's Mr. McDonough's opinion that this site was suitable. Mr. McDonough stated yes – by virtue of context and condition. Mr. Sarlo continues stating that they just spoke about two prohibitions – outright prohibitions about signs encroaching into a yard setback and being over a roof. Two express prohibitions by the town's code and he states Mr. McDonough is saying the site is particularly suited notwithstanding it violates prohibitions. Mr. McDonough responds that land use is all about the balancing. Mr. Sarlo responds no that is the C variances and they are talking about a use variance particularly stability. They are not talking about balancing yet. Mr. McDonough states that he is talking about site suitability based upon the fact that you have a community that has one main road in the southern portion – this is the land use that follows a road pattern, the applicant didn't put the road there, the road was there, this is a land use that naturally follows – that goes towards the context. They start there. Then they look at a pocket of commercial non-residential uses which this is compared to the rest of Route 4 which is more residential uses – it's only about half mile here in the community so there are very limited options. He thinks the applicant has looked at a site that has suitable characteristics, particularly suitable characteristics based on that context, notwithstanding the fact that there is a violation of prohibition against certain height and location throughout the site. In his view that is looking at the full application. Then in terms of suitable condition – if this could retrofit on the property without having to move or alter anything else. Mr. Sarlo states that in *Price* it makes a statement that says it's an inquiry into whether the property is particularly suitable for the proposed purpose in the sense that it especially well-suited for the use in spite of the fact that it's not permitted. He states that that statement in *Price* is not talking about the one factor that Mr. McDonough is talking about the different properties along Route 4 and this one in Mr. McDonough's opinion is the only one that is suitable – that statement is talking about this site. He asked Mr. McDonough if he agreed with that. Mr. McDonough responded he did not understand the question. Mr. Sarlo again reads a statement from the *Price* case where it states fact specific and site (inaudible) it's an inquiry as to whether the property is particularly suited for the proposed purpose, in a sense that is especially well suited for its use in spite of the fact that it is not permitted. He asked Mr. McDonough if he agreed that *Price* is saying that you have to look at site specifics. (Mr. Falkenstern, Esq. objects as he is asking for his interpretation of the law) Mr. Sarlo states it's a direct quote and not his interpretation to which Mr. Falkenstern stated Mr. Sarlo is asking for Mr. McDonough's interpretation. Mr. Sarlo states that he is asking if Mr. McDonough agrees that, that is the standard. Special counsel Leibman speaks to the objections but (what he is saying cannot be understood – its inaudible). Mr. McDonough states that all he can say in response to that was that his understanding of the *Price v. Himeji* case is that site suitability is fact specific, it is site sensitive and he tried to give the Board the facts that he thinks are the reasons why the site is suitable – he tried to make it fact specific. Mr. Sarlo states the dimensions of the site. Mr. McDonough states that the site is slightly oversized for the zone, 18.5 thousand sf lot in a 15,000-sf zone, so its slightly above the minimum lot size requirement. Mr. Sarlo states so it's about 3,000 in change oversized to which Mr. McDonough stated that is correct. Mr. Sarlo states that could be a good argument that the site can accommodate two principle uses. Mr. McDonough states - it could, that the special capacity there will accommodate a second use especially one that is relatively small from a ground coverage standpoint. Mr. Sarlo states that if the site is oversized and could accommodate two principal uses, why does this site have to violate two prohibitions -encroaching on a setback and being over the roof. Mr. McDonough states that it relates to the shape of the property – it's an irregular -shaped property and also the condition of the property – it's a developed piece of property with a building already on it

and the applicant is asking the Board to move on a sign that's located away from the building and does not interfere with site circulation or site parking, Again, its in a yard but its out of the way in terms of circulation, parking and building. Mr. Sarlo asks Mr. McDonough if he agrees then in order to for the use variance, also the second prong he also has to prove the enhanced quality of proof, to which Mr. McDonough responded yes.

Mr. Sarlo continues that he has reviewed Mr. McDonough's testimony, and he did not see anywhere where Mr. McDonough spoke about enhanced quality of proof in terms of trying to reconcile the exclusion of billboards whether in this zone or town wide with the Master Plan, is that correct to which Mr. McDonough responded that he thought he did but maybe he did not. He thought he made reference to the 2020 Master Plan. Mr. Sarlo asked if he referenced the goals in support of the special reasons or did he reference the goals to reconcile with exclusion – there is a difference and he asked Mr. McDonough if he agreed. Mr. McDonough responded yes that he may have gone through the Master Plan objections but he may not have gone through the actual reconciliation of the fact that assuming all the things he said to the Board and the Board agrees with that – thinks it's a good fit they still have to reconcile the fact tht the governing body has said the use is not allowed here in the zone or anywhere. He tried to tie it back to the Master Plan but yes again, in his view it will relate to the distinct characteristics to the site, Its almost circular with the particular suitability. Mr. Sarlo states for the promotion of general welfare he believes Mr. McDonough's testimony was focused on communication aspect of the sign to which Mr. McDonough responded yes. Mr. Sarlo confirmed that it is a static sign. Mr. Sarlo asks/states that the sign will have one particular advertisement for one week, one month etc. to which Mr. McDonough states – yes. Mr. Sarlo states that it could be for a public benefit but it also could be to promote a business. Mr. McDonough responds – yes. Mr. Sarlo continues to state that if it is promoting a local business that is not promoting general welfare. Mr. McDonough responds that he doesn't think that s true at all that state regulations for outdoor advertising talks about the need for state wide regulations that govern the need to stimulate economic activity and how it's an important tool for business which is good for the state as a whole which is in his view includes the general welfare. Mr. Sarlo counters – with every business sign promotes the general welfare – is that your testimony, to which Mr. McDonough responds that his testimony is that this sign as a form of communication can provide messages that will certainly promote economic development and stimulate business, jobs and the like. Mr. Sarlo states that Mr. McDonough cited *Bell vs Stafford Township* to support his case.

Mr. Sarlo states that case was about the constitutionality of the (inaudible). Mr. McDonough testifies that his notes indicate that he testified that the use is a form of constitutional free speech and he referred to the *Bell vs Stafford Township* case. R. Sarlo counters that, that case doesn't talk about in any way, shape or form the promotion of general welfare. Mr. McDonough states that if it's not in there he'll accept that and that is probably a question of law - he doesn't know. Mr. Sarlo asks Mr. McDonough that the purpose of the Municipal Land Use Law are special reasons. He further asks if he agrees that the *Medici* case states that only special reasons that promote the general welfare can be considered. Mr. McDonough responds he thinks that it's anyone of those 18 or so purposes of zoning. One or more purposes of zoning have been found to promote the special reasons to satisfy the special reasons. Mr. Sarlo states that they are talking about a use variance, that the general welfare has to be promoted because the site is particularly suited. He asks Mr. McDonough if he is saying that any of the purposes of the municipal Land Use Law promote the general welfare, to which Mr. McDonough responded no that he agrees with what Mr. Sarlo just stated. They speak about purpose M promotion of the efficient use of the land with the goal of lessening the cost of construction (the rest of what he states is inaudible). (Very difficult to hear Mr. Sarlo. (He is speaking very quickly and it garbles the speech through the microphone). He is speaking regarding about item H being applicable and actually promoting the general welfare (the rest

of what he is saying is inaudible). Mr. McDonough stated he put that in there because it is providing for a communication device along a transportation route. There is a nexus between primary arterial roadways and this land use. It's a way to reach the greater good with messages. But he agrees it is probably the weaker of the special reasons. Mr. Sarlo stated that Mr. McDonough testified that he visited the site to which Mr. McDonough stated yes. Mr. Sarlo asked him if he walked the neighborhood to which Mr. McDonough stated he didn't walk around the neighborhood but he observed. Mr. Sarlo asked Mr. McDonough if he observed his client's property, to which Mr. McDonough testified yes. They talk about his client's concern regarding the sign. Mr. Sarlo clarifies that this application requires a height variance to which Mr. McDonough testified it does – sixty feet, 60 feet where 35 is the maximum allowed (Mr. Sarlo responds but it is inaudible). Mr. Sarlo also state that Mr. McDonough cited the *Grasso* case to which he responds – he did. Mr. Sarlo states that the *Grasso* case speaks to hardship to which Mr. McDonough agrees. It also states that in the alternative (special reasons) by demonstrating increased height of s building – talking about the increased height being 25 feet to which Mr. McDonough concurred.

Mr. Sarlo further addresses the *Grasso* case as it refers to light and air. He states that Mr. Donough's testimony to support the height variance was limited to the fact that anyone that is on the rooftop amenity will not be looking at the back of the structure. Mr. McDonough agrees that was his testimony. Mr. Sarlo states that Mr. McDonough did not address the impacts which the *Grasso* case says you need to support for height variance, he asks Mr. McDonough if that is correct to which he responds that he thinks he touched upon shadow effects, scenic views all of which he thinks are related to light, air and open space. Mr. Sarlo asks if Mr. McDonough did a shadow study to which he responded he did not do a shadow study. Mr. Sarlo asks how far is the billboard to the roof top amenity. Mr. McDonough states he doesn't know if the building is set back from the property line but he will say that the billboard is set back 17.8 feet from the common lot line with Mr. Sarlo's client. He does not know if the building set back or on the line. Mr. Sarlo states that there is no data to support the shadow effect. Mr. McDonough states that the reason he may have said that is again, it is not a boxy structure, it certainly does have mass up top, but it is a roofless structure it's not as bulky as the building. Mr. Sarlo continues with the shadow study questions and then asks Mr. McDonough if he agreed that his opinion is a net opinion, to which Mr. McDonough responds – that he thinks the facts will support the fact that this is a sign on a pole, this is not a building, therefore it is not going to cast the same type of shadows that may be associated with a boxer type structure. Mr. Sarlo continues with the shadows and the *Grasso* case. Mr. McDonough believes that he has comments in his report regarding the *Grasso* case.

Mr. Sarlo states that Mr. McDonough testified that he looked at the Master Plan and cited the goals and objectives of the town's Master Plan, to which Mr. McDonough responded – yes. Mr. Sarlo asks if he looked at the purposes of the zoning code also, to which Mr. McDonough responded - he usually does. Me. Salro continues – for the purposes of the Borough's zoning code – 416-3N is to promote the orderly development to protect and enhance the character of the borough of River Edge through regulations and uses of land. He asks Mr. McDonough if that is one of the purposes that he has cited, to which Mr. McDonough responds – no he did not cite any of those purposes. He further states that these purposes that are at the preamble to the zoning ordinance, many of them echo what you see in (inaudible), so he most likely hit some of them. This A is different than what is seen in the land use law. (Microphone issues again, Ms. Brown attempting to make the corrections) Mr. Sarlo asks Mr. McDonough if he provided any testimony as to whether the billboard will protect and enhance the character of the neighborhood. Mr. McDonough responds – he was not sure if he did on direct or someone asked him or not but he knows that somewhere along the way he mentioned that maybe the majority of the town, north of the site 98% is residential, this is a very small pocketed community along the commercial corridor where you invite

activity and signs and business so he does not substantially see this as eroding the character of the town which is predominantly residential to the north with this small commercial pocket.

Mr. Sarlo continues stating Item C under the purposes is to regulate the location of buildings and structures to designated districts designed for residential commercial public owned spaces or other specify standards to which such buildings' structures shall perform. He states that is verbatim and the purpose of the zoning code. Mr. Sarlo asks Mr. McDonough if he agrees that this application does not advance that purpose because it does not adhere to the standards of the structure, being a sign as it relates to encroaching on the setback and being over the roof line. Mr. McDonough responds that the intention of that statement is to establish standards to guide development, but it doesn't impose on a Board to deny a variance because it's a variance. There is a whole other layer of evaluation that goes into that. That is based on the facts, the evidence, the testimony that this applicant has attempted to give you to support the spirit of that regulation is not being violated here. Care and consideration have been given with respect to the location and placement of the Board on this site which is really the intent of those regulations. Mr. Sarlo states that D is to provide the purposes of the zoning codes to provide adequate light, air and open space which is the core of the *Grasso* case is that correct. Mr. McDonough responds – yes

Mr. Sarlo asks Mr. McDonough if he is familiar with the Appellate case, *Elco v R.C. Maxwell*, 292 N.J. Super. 118. (1996). Mr. McDonough states he needs a refresher on that case; the name is not ringing a bell. Mr. Sarlo states it's a common billboard case. He states that there are two strong statements in that case even though Mr. McDonough's testimony was about the DOT policy looking for billboards – this particular case at page 133 says “there is no strong state policy encouraging the development of billboards.” And the second one looks at the negative criteria being no substantial detriment to the character of the neighborhood or the zone plan and he states Mr. McDonough's testimony focused a lot on the highway aspect – is that correct. Mr. Sarlo continues that in this particular case it says that the highway aspect is not the sole focus of a case relating to billboards. Other characteristics related to the adjacent in the case an adjacent marine commercial zone was (inaudible). Mr. Sarlo rests his direct questioning of Mr. McDonough.

Jeffrey Cheney, Esq., Connell Foley attorneys representing objector Rt. 4 Main Street, LLC, (Estate of E. Tamburelli). He states that Mr. Sarlo has already hit a lot of issues so he will be brief. He asks Mr. McDonough if the height is necessary because of the billboard use Mr. McDonough responds – yes, the height is necessary to effectuate the use. Mr. Cheney asks if the height is necessary because of the site. Mr. McDonough responds - the site comes into play because there are other structures in the area, there are moving vehicles, utility poles, trees, all sorts of things that call out the need in the landscape that billboard be the height that it is. Mr. Cheney asked how that can be necessary because of the use. Mr. McDonough states that the whole purpose of the use is to be viewed by the motoring public. So, for the use to effectuate its purpose of being visible to the motoring public it needs to be at a certain line of site where the public can see it and there are other obstacles that are related to the site, the landscaping or related to the surroundings that are calling out why it needs to be at that height. Mr. Cheney asks – so a billboard standing alone doesn't need to be a proposed height but a billboard at the given site needs to be a proposed height. Mr. McDonough states yes that you can certainly point to the site and the area as to reasons for the height. They see billboards at ground level in many locations. Mr. Cheney responds – so the proposed height is not necessary for the billboard use then. Mr. McDonough responds that in his view it is because it's necessary to effectuate – the use would be rendered useless if it did not have the height because it would not be visible, drivers would not be able to see it. Mr. Cheney states – some drivers would be able to see it. Mr. McDonough responded it would not effectuate a purpose in his view to provide clear and safe visibility to the motoring public- there would be too many things in the way if

you go lower. Mr. Cheney asks Mr. McDonough if he is aware that the Board's attorney issued a July 7, 2025 guidance to the Board recommending to them to turn away from a D1 prohibition. Mr. McDonough questioned the engineer or the attorney. Mr. Cheney clarified that it was the Board attorney (Attorney Leibman, special counsel for this application). Mr. McDonough responded that he did not recall seeing that. Mr. Cheney states that the Board was encouraged to (understanding that Mr. McDonough did not see it) – Mr. Cheney stated that if it would be easier for the record he would be happy to read the portion that he is referring to (Mr. Leibman advises to be careful with that as he did a subsequent memo after doing more legal research and he somewhat changed his opinion). Mr. Cheney acknowledges Mr. Leibman's remarks. For the record Mr. Sarlo states he does not believe he saw that second letter, Mr. Cheney states he was not provided that second letter either. Mr. Leibman states that they will get that over to them. Mr. Leibman continues that there was a Supreme Court decision out of Austin, Texas that had a very similar sign ordinance to what they have in River Edge. If you look carefully at the definition of the billboard it is to him a bit peculiar, because when he thinks of a billboard - you're driving down a highway then you see it. It's not quite the definition of a billboard. It's not quite the definition of a billboard in River Edge. The definition of a billboard for River Edge is that it has to provide advertising for particular services not (inaudible) so you can have a sign, on this property advertising and it would not technically be a billboard under the definition. At the time he drafted his first memo he was unaware of this Supreme Court decision. He revised his opinion and he apologized. Mr. Cheney states that after what has been said here how can the Board in its provisions in 416-44 and 45 be subsumed if they were encouraged to turn away from the D1. Mr. McDonough states that he does not know the substance of that legal letter and he does not know what he means by turn away from the D1, how can they be subsumed – he doesn't understand the question. Mr. Cheney asks how can these reasons you encouraged to be subsumed into the broader prohibition be subsumed if the larger broad provision being argued is unlawful. Mr. Falkenstern objects (the rest of what he is saying is inaudible) but he states that Mr. McDonough can answer. Mr. McDonough states again he does not understand the question. Mr. Cheney asks if it's a predicate to the 416-44 and 45 subsuming into the product for prohibition that is predicated upon the product for prohibition being lawful – correct? Mr. McDonough states that he thinks what is being asked is if the greater prohibition goes away – which is what Mr. Sarlo asked – of these two sections would apply. Mr. Cheney thinks it still stands but he asks Mr. McDonough if he is changing his opinion based on the fact do, they still subsume. Mr. Cheney stated that was his prior testimony -that they subsumed. Mr. McDonough states that Mr. Sarlo asked him if the ordinance regulations against location 45-46 in the preamble – the purposes 45 and 46 were subsumed within the 45 he thought they were. They all got the blanket prohibition in the community, the prohibition against location and there was another prohibition, he thinks they all tie together. Mr. Cheney asks Mr. McDonough if he is aware of 416-44(4) which prohibits signs which compete for attention with traffic signals. Mr. Cheney asks Mr. McDonough if he aware of any traffic signals in the area. He responds that he is – he would have to look t a map to see where the closest one is. He continues – that said they have sworn testimony by an expert on the road that said that this sign would not cause a traffic safety issue. Mr. Cheney asks Mr. McDonough that he did testify that he did a site inspection – correct, to which Mr. McDonough responded yes. Mr. Cheney asked if he was aware that there are traffic signals at the intersection of Kinderkamack and Grand Avenue, to which Mr. McDonough responded he didn't really consider it because it is behind the sign. Mr. Cheney continues that there is a traffic signal at the intersection of Main Street and Kinderkamack. Mr. McDonough asks – on the other side of the pedestrian bridge – yes he knew there was a signal there. Mr. McDonough states that he has heard no testimony that this sign will conflict with visibility with that signal. Mr. Cheney asks how can the billboard (inaudible) municipal land use law sufficient space and appropriate locations if the ordinance outright prohibits billboards and then further prohibits billboards that extend above the roof of the subject building. Mr. McDonough states that the way that purpose is broken down is it's a variety of uses, in appropriate

locations, they are along a highway to get the message to the traveling public according to the needs of all New Jersey citizens and that is what these message boards do, they talk to people, they could be of medical use. It's a form of communication. Mt. Cheney states even when the ordinance says no that's not an appropriate location by specifically saying generally outright but also saying it's above a roof. Mr. McDonough states that again he thinks that is a part of the site-specific analysis that the Board needs to consider and the facts that the applicant has given the visuals, the evidence and the testimony and notwithstanding the fact that it's a variance that the relief is justifiable because it provides for use in an appropriate location according to the needs of citizens. Mr. Cheney is speaking but it is inaudible. Mr. McDonough responds it is a nexus between the motoring public and the fact that they are on a highway typically they would use that more for a digital billboard where they may be some form of real time messaging traffic problems ahead but conceivably there could be notices to the public as well. (Very difficult to hear Mr. Cheney) Mr. McDonough states that typically when they do negative and positive criteria absence of negative criteria would in and of itself be a positive in his opinion. Mr. Cheney asks how the purpose M of the municipal land use law is efficient use of land again where 416-44 and 416-45B&C prohibit the use outright. Mr. McDonough responds that he likes the fact that this does not require any alterations of access points into the site, drive aisles, it's a relatively open unpaved area of the site, which he states goes towards the efficient use of land. He states that they have run out of land, so they have to pick spots to repurpose and reuse. Mr. Cheney states that he has no further questions.

Mr. Behrens starts with the question that Mr. McDonough brought up regarding the blanket prohibition of billboards in River Edge. Mr. Behrens asked Mr. McDonough if it was his testimony that municipalities cannot prohibit billboards or off premise signs under any circumstances. Mr. Falkenberg objects. Mr. McDonough states that his understanding is because he has seen it done is flat out bans on billboards is certainly grounds for a challenge. Mr. Behrens states that the Austin case was raised where the United States Supreme Court sided with the municipality who had an off-premises sign prohibition similar to the Borough's. There is also the municipality of Mt. Laurel New Jersey as a similar off-premises sign prohibition that was upheld by the State Supreme Court. So, there is both the state and national level Supreme Court cases that have upheld similar prohibitions against off premises signs so, the ordinance calls it a billboard but really it can be characterized as a prohibition against off premises signs and he thinks those types of prohibitions can be distinguished between signs that regulate content and he would agree that signs that regulate content do violate the first amendment and he thinks that is a critical distinction where you can regulate all premises signs but you can't have signs that are not, not content neutral. It's been upheld numerous times that municipalities can have sign regulations that address time, place and matter and time pertaining to when signs can be illuminated or instance, location whether or not they are off premises and so forth. He further offers that even if it were held for some reason that this prohibition was deemed to be invalid, he asked Mr. McDonough if he agreed that, that does not automatically render the billboard a permitted use in this case. Mr. McDonough responds – if the prohibition was deemed to be invalid does that mean that this site is appropriate. As he understands the law no its not an automatic. Mr. Behrens states that Mr. McDonough correctly use the *Medici* law as it relates to its applicable for non-inherently beneficial use and the applicable site suitability criteria. Mr. Behrens states in closing while the borough has prohibition, it's also the case that towns do not have to permit every available use under the sun. He asks Mr. McDonough if that is accurate to which he responded – correct. Mr. Behrens asks that even if the town did not have a prohibition against billboards, the town would not have to allow them – that's not a requirement – correct. The town would not have necessarily say that billboards are necessarily allowed in any particular area (Mr. Falkenberg objects — stating this is this is a legal conclusion) Mr. Behrens then states – based on his familiarity of the municipal land use law or case law that planners regularly rely (Mr. McDonough ask that Mr. Behrens repeat the question one more time). Mr. Leibman interjects but (he is inaudible) something pertaining to case law.

Mr. Behrens then asks Mr. McDonough if he would agree that the billboard itself constitutes; one, a second principal use and two, a second principal structure on the property – is that clear? In addition, the existing office building, to which Mr. McDonough responds – yes, which is a permitted use in the zone.

Mr. McDonough testified that there is no D2 relief here as he understands it based on his review or a (inaudible) non-conforming use. Mr. Behrens speaks about the D6 height variance that was touched upon earlier. Mr. Behrens clarifies that the height is necessary at 60 feet for visibility. He wanted to know what testimony or documents have been provided to the board that indicate that the 60 feet is necessary. Mr. McDonough responds that he believes they were part of the application, he just didn't recall Exhibit numbers and the like. Mr. Behrens doesn't believe that there was testimony stated that the 60 feet is necessary. Mr. Behrens speaks about the road classification regarding particularly the frontage. Mr. McDonough responds that if that strip along the frontage of the property was not Rt 4, he does not believe that is not fatal to the application because that is not a requirement under the DOT standard. He does not know – it may or may not be Route 4. Mr. Behrens responds – not a requirement but their site suitability analysis is contingent upon the idea that the site is actually on the highway where it might not actually be on the highway. Mr. Behrens states that to him there seems to be a distinction there. Mr. McDonough states that to him it's not a great distinction. Mr. Behrens states that Mr. McDonough's testimony was that the site was on the highest order roadway in the borough and based on DOT classifications, Rt. 4 is labeled NJ 4 secondary and the road in question is labeled Johnson Street and labeled as a service road – from NJ 4 west to county road 68 which is Main Street. So, there is definitely a distinction between what is the three-lane portion of Route 4 at 50 mph versus the service road. Mr. McDonough states – again of the word on or along is misleading to the board he'll swap it out and use the word proximate or near. He does not believe that it has to be on. He believes it is evident by the visuals that this is a sign that is clearly going to be visible along Rt. 4. Mr. Behrens continues talking about the frontage issue. He states that there are standards. The 30 feet in this case doesn't meet the borough's lot width standard, it doesn't meet any standard that you would consider for a commercial property on a highway being that it is only 30 feet frontage on the service road. Mr. Behrens asked if Mr. McDonough would agree that there is a limited portion of the site that is actually on this service road – we're talking about site suitability – whether or not the site is on the highway. Mr. McDonough responds he would agree with the factual statement that the site had multiple frontages – two of which are on local roads, the third of which is a service road or part of the Rt. 4 right-of-way but it certainly immediately adjacent to Rt. 4.

Mr. Costa stated that at the first meeting the engineer was asked what was the frontage and he held up a piece of paper telling the board that they have permit from the NJDOT and Mr. Costa asked a question and then the applicant came back with a revised survey and still as of today they don't know if there is frontage or not. Mr. McDonough stated in his opinion it didn't matter if the frontage was on Rt. 4 or not. Mr. Costa then stated – so it doesn't matter. Then he asks if the plans are inaccurate does it matter, to which Mr. McDonough stated – yes. And it depends on the level of inaccuracy. Mr. Costa states that the plans are inaccurate. Mr. Costa speaks about a jurisdictional map which he states they never went back to. He continues to explain the essence of the jurisdictional map. He states the site is maintained by the Borough of River Edge. Mr. McDonough goes back to the fact that this site has been permitted by the NJDOT. Mr. Costa continues to speak regarding site suitability. He speaks about a shadow study that was not done. He asks about fall study and if that would impact anyone. Mr. McDonough states the fall study is a building code issue. Mr. Costa speaks further regarding a billboard that was done in Bogota. Mr. McDonough stated that they did that building. Mr. Costa continues speaking regarding obstructions, i.e. a telephone pole. Mr. Costa speaks about the pedestrian bridge which is public information he wanted to (put that on the record).

Mr. Behrens continues now speaking regarding aesthetics. He confirms with Mr. McDonough that there can only be a static sign on that site. He confirms that the NJDOT permit must also require the town's municipal approval, zoning, building etc. He further states that it would be reasonable for a town to increase setback requirements above and beyond what the DOT requires, to which Mr. McDonough stated correct. Mr. Behrens asks if the DOT permit takes into consideration surrounding land use as an impact. Mr. McDonough responds that the DOT regulations are that it be in a non-residential area within 600 feet of the highway. Mr. Behrens touches on the traffic expert's testimony. Mr. Behrens asks if there are other signs in the area that might compete for attention. Mr. McDonough testified that he did not do a detailed analysis of other signs in the area. He is looking at Google Street View. Mr. Behrens asks Mr. McDonough to acknowledge that there are two existing non-conforming signs, to which Mr. McDonough stated he did not know. Mr. Behrens asks if he would accept that at three stories based on the location criteria that they exist as non-conforming signs, to which Mr. McDonough responds – yes. Mr. Behrens speaks of signs that are in the area to which Mr. McDonough testifies that he does not know if separation from those types of signs is a requirement in the regulations. Mr. Behrens states his questions is more about the signs competing for attention while drivers are driving. Mr. Behrens asks if they prepared any traffic reports, to which Mr. McDonough responded they need to ask Mr. Simoff as it was part of his testimony. Mr. Behrens goes through all of the purposes Mr. McDonough went through all the way through purpose M. There are about 18 purposes. Mr. Behrens asks if an application might support some of the purposes but might be inconsistent with others can that happen - to which Mr. McDonough responded – yes, it is an applicant's obligation to show that it advances one or more. Mr. Behrens continues to speak with regard the purposes with Mr. McDonough. He cites a case *E&J Equities v. Board of Adjustment Franklin Township* which recognizes that aesthetics are of substantial governmental interest and in this case particularly in the context of a billboard so, his question is given that aesthetics are of substantial governmental interest whether or not purpose A is advanced by the introduction of a billboard whether or not permitted. Mr. Behrens asks Mr. McDonough if the billboard is an aesthetic enhancement to the community. Mr. McDonough states he does not see where it states a billboard is an unaesthetic or unattractive He states that he knows that there is one Scenic America that has prohibitions against billboards on “scenic highways” Rt. 4 has not been so designated. Mr. McDonough does not see this as having a materially adverse impact on the visual quality of Rt. 4 – that is his opinion. Mr. Behrens addresses the state of New Jersey's State Development and Redevelopment Plan after 24 years, to which Mr. McDonough responded yes. Mr. Behrens refers to page 74 of that document talks about reducing or eliminating signs of visual clutter inappropriate billboards. Mr. Behrens continues it would seem to be that there is a state policy that recognizes inappropriate billboards and whether or not that relates to the issue of the general welfare if it indicates in some cases that billboards might create visual clutter. Mr. McDonough stated that was not a recommendation to eliminate the outdoor advertising regulations which are still in full force and effect and allows both static and digital billboards as regulated by DOT as to highway safety appropriateness or inappropriateness or left to a forum such as this. Mr. Behrens asks if this billboard promotes light air and open space, to which Mr. McDonough responds it goes to the questions Mr. Sarlo previously asked. Mr. Behrens continues and asks if the billboard promotes purpose I, that being it promotes a desirable visual element. Mr. McDonough responds he thinks that's a subjective question. One might think they are ugly while someone might not. Mr. Behrens goes onto site suitability. Mr. Behrens asked if it was Mr. McDonough's testimony that all properties on or near highways are created equally as far as being suitable to accommodate a billboard. Mr. McDonough responds – no. Mr. Behrens states that there may be some differences where some sites are more suitable than others along or near a highway to which Mr. McDonough states yes. Mr. Behrens continues discussing different suitable/unsuitable sites. Mr. Behrens asks Mr. McDonough if it is his testimony that the Board should not consider impacts to the residential community of River Edge or to other adjacent communities, to which Mr. McDonough states its wide open what the Board can consider he would certainly not discount

the residential property, but he will say, that he back of the V is what will be facing those homes as they work their way away from the back it becomes further and further away. Mr. Behrens asks if there is a rendering of this V/the back, to which he responds – no. Mr. Behrens asks Mr. McDonough if he is aware that there are residential homes about 550 feet from the site to which he responds – yes. Those homes are 450 feet away from a highway. They continue discussing the visual impact of the billboard.

Mr. Behrens asks Mr. McDonough if he was familiar with the *Giacobbe vs. Englewood Cliffs Board of Adjustment Case*, to which Mr. McDonough responded – I lived it. Mr. Behrens stated that he believed one of the findings was that the visual impact of structures and buildings could have a negative impact which not only can but must be considered by a Board determining a D variance and, in this case, a D6 height variance. Mr. McDonough states that the threshold for that case (Mr. Leibman jumps in and states 142 feet, the zone is 35 feet – something about no impact (very hard to hear). Mr. Behrens clarifies with Mr. Leibman that the moral of the story is that Boards should consider visual impact to which Mr. Leibman responded yes exactly. Mr. McDonough countered stating that the main thing that came out of *Giacobbe* was that the visual was not only considered with respect to the properties within 200 feet but the Board can certainly (inaudible) about the homes. It doesn't have to stop at the 200-foot line. In his view of distance he calls is saturation, it's not a visual desert there where this object would stand along by itself, you can factor that not the *Giacobbe* question. They speak about other billboards in the area, one of which is another static billboard. All together there are nine existing billboards within one mile. This billboard would be ten. Discussion regarding the need for this billboard continues. Mr. McDonough states that this would most likely be the last billboard to get a DOT permit for River Edge. Mr. Behrens asks Mr. McDonough what the benefits of a tenth billboard would be and they discuss those benefits. They speak regarding whether or not a 60-foot billboard is necessary. They discuss factors that the Board may consider as a function of the use. Mr. Behrens continues speaking regarding all the other C variances. He asks Mr. McDonough if it is his testimony that it is impossible to place a billboard on any site anywhere to meet a required yard setback. He states Mr. McDonough's testimony is that the setbacks are a function of the use he asks if there are sites anywhere in New Jersey anywhere on Rt. 4 where billboards can meet the applicable municipal setback requirements Mr. McDonough responds he would imagine yes. Mr. Behrens states that the setback issue here is not necessarily a function of the use, it's a function of property and the property in its developed condition, to which Mr. McDonough states – yes. They continue speaking regarding the shape of the property and the setbacks.

Mr. Costa states that he sees no justification, He states Mr. McDonough stated on the record that there is no hardship, the building exists, the parking lot exists and they want to put an additional use on this particular piece of property. Mr. Costa doesn't see why they can't put it at 35 feet. He speaks of the two signs that are already there in that area and they are not at 60 feet. Mr. Costa talks about fall zones and safety issues. Mr. Behrens goes over the evening's testimony. He gives the closing arguments for and against the application.

#### Questions and Comments from the Board

Mr. Gautier states that there is currently 95.4% of the coverage right now where 80% is permitted. His first questions is – something about coverage on the lot – (difficult to hear) Mr. Gautier asks Mr. McDonough if he considered what type of impact the increased lot coverage would have on the surrounding properties considering that there is flooding on that end of town. Mr. McDonough responded that he is not an engineer and this is a developed piece of property and it is a landscaped island on the site without any trees, just an open area and it will be relatively small coverage in the context of the greater plan. The entire landscape island is not going away it's just a very small portion.

Mr. Chinigo asks why were the trees that were there at the site removed. Mr. McDonough responded that he did not know. Mr. Chinigo asked if the property owner got a permit to remove those trees. Again, Mr. McDonough did not know. Mr. Chinigo asked if the trees were replaced and Mr. McDonough stated that they are not there now. Mr. Chinigo stated that Mr. McDonough testified that the site was good for this in that nothing had to be altered. Mr. Chinigo further stated that at some point this site had been altered as there were trees there at one point. So, someone altered the site. Mr. Chinigo asked Mr. McDonough if he would agree after looking at the Borough's ordinances that River Edge doesn't want this type of sign in the town. Mr. McDonough responded that he thinks it's very clear. Mr. Chinigo continues regarding the sign falling. He further asks if that has been addressed should it happen. Mr. McDonough responds that he has not done an analysis. Mr. Chinigo asks that if the town were to grant the 60 feet would that not be a precedence set for the town. Mr. McDonough stated no that each application would have to be weighed on its own merit based on site specific conditions. It must be site specific and fact based. Mr. Chinigo asked what the age of the building was, to which Mr. McDonough stated he did not know. He asked about the parking lot, he asked about appropriate handicapped spots, all of which Mr. McDonough did not now. Mr. Chinigo continues regarding flooding being considered by this applicant, to which Mr. McDonough did not know. Mr. Chinigo asks that the nine signs already on the Rt. 4 corridor are so inadequate that they require a tenth sign, to which Mr. McDonough responded – yes. He further states that the applicant is ready willing and able to and is experienced in the field to put up a sign which they have to believe will support a larger demand. The other nine signs are booked. There are clearly no vacancies on the existing signs. Mr. Chinigo is now addressing the aesthetics. He states something regarding the aesthetic facts (he is speaking quickly hard to hear) Mr. McDonough responded that he could not agree with that statement. There is no correlation between billboards and property values. Mr. Chinigo asked if there was testimony regarding negative impact to which Mr. McDonough responded no, he has not heard testimony regarding negative impact. Mr. Chinigo corrects Mr. McDonough and reminds him of the statement read on behalf of Mr. Peckar which detailed the negative impact on his law firm. Mr. McDonough responded that was an opinion. Mr. Chinigo asks Mr. McDonough if this billboard can possibly be a nuisance, Mr. McDonough responds that he has heard no testimony that they should have concern in that regard. He states that there are all types of codes that protect against structures.

Mr. Gibbons states that he heard Mr. McDonough state that it is a benefit to the community as a message board an opportunity for messaging, he asks how that benefits the Borough of River Edge. Mr. McDonough states that it doesn't say it benefits River Edge, it benefits the public at large. Municipal planning does not end at Municipal boundaries, that is clear cut in the land use law. They continue to discuss the benefits of the billboard. Mr. Gibbons stated that they have heard testimony that there are nine other billboards that can take care of messaging. Mr. McDonough states that there has been no testimony stating there is a saturation issue. Mr. Gibbons continues speaking about the nine other billboards. Mr. Gibbons asks that with all the challenges with this property why was his site chosen as opposed to any other point along Rt. 4. Mr. McDonough does not know as he was not a part of the site selection process. His job is to evaluate this site and its suitability; availability of other sites is not a valid consideration in a variance application. Mr. Leibman states this line of question is really for the property owner.

Mr. Krey appears to be speaking about the variances. Is there anything in the code requirements that you've met on this site other than the lot size. Mr. McDonough stated that he did not do an analysis of zone conformance he just looked at the list of the existing uses there may have been a nonconformance there that coexisted. Mr. Krey states that they are asking for more and more with this application. Mr.

Krey is speaking about the height of the sign (very muffled hard to hear). Mr. Krey doesn't understand how adding another billboard to an already saturated area is not negative criteria. The conversation continues regarding the adverse impact. Mr. McDonough testifies that at the end of the day you don't deny an application solely based on the number of variances you look at the whole quality it can go either way. Mr. McDonough testifies that he understands that they are adding more to a full site, he gets that but he does not feel that they are at that tipping point. Mr. Krey continues with some questions (but very muffled hard to understand). The Board members continue heated discussion among themselves and Mr. McDonough.

Ms. Brown advises that IAAT Services, LLC, 41 Grand Avenue, Block 1405, Lot 4 will be carried without additional notice to the meeting of February 11, 2026. Meeting adjourned at 10:30 p.m.