

July 22, 2015

A regular meeting of the Allendale Board of Adjustment was held in the Municipal Building on July 22, 2015. The meeting was called to order at 8:05PM by Ms. Tenghi who announced that the requirements of the Open Public Meetings Act were met by the required posting and notice to publications.

The following members answered to roll call: Mr. Jones, Mr. Redling, Ms. Hart, Ms. Chamberlain, Ms. Tenghi, Mr. Manning, and Ms. Weidner.

On a motion from Mr. Redling, seconded by Ms. Hart, the minutes from June 24, 2015 were approved. Mr. Jones and Ms. Chamberlain abstained from voting as they were not present at that meeting.

On a motion from Ms. Tenghi, seconded by Ms. Hart, the Resolution of Memorialization for the Holdefehr variance application was approved. Mr. Jones, Mr. Redling, and Ms. Chamberlain abstained from voting.

The application to be heard that evening was for Michael Walters from 56 Cedar Drive for a Special Question and Interpretation of Zoning Ordinance Pursuant to N.J.S.A 40:55D-70b. Mr. Nestor, who is the Board Attorney, recused himself due to the fact that he lives within a 200 foot radius from the property. Mr. Robert Maloof presided as the Attorney for the evening. Mr. Robert Simon was the attorney representing the applicant. Mr. Simon said he had sent the Board members many documents in regards to the matter. Mr. Simon was on the Board of Adjustment in his hometown and knows that Boards don't usually hear 70b applications but that is what is before the Board tonight. Mr. Walters was bringing the matter before the Board but it was not about his own property but Northern Highlands High School. There was a gift of lights given to the School Board of Education by the Sports Association. But before they proceeded, Mr. Simon wanted to make sure that the Board members did not have any further conflicts. Mr. Jones and Ms. Hart stated they had children in school but didn't feel there were any conflicts that would make them have to recuse themselves.

Mr. Simon said that under the Municipal Land Use Law (MLUL) 40:55D-70b the Board of Adjustment has the power to interpret applications and answer special questions. According to Allendale's Ordinances under 40-20A2 and 40-16 it gives the Board of Adjustment broad powers under the MLUL. Mr. Maloof asked if there was anything in the Ordinances that he referred to that gives the Board more power than the statute that was just cited. Mr. Simon replied that the Board of Adjustment was given these rights to listen to the 70b applications. Mr. Maloof said the language from the Statute is being quoted in both Ordinances. Mr. Maloof said that the powers that the Board has can't be any greater than what the Statute provides and Mr. Simon agreed adding that unless under the Ordinance more power is provided. Mr. Simon told the Board that under the MLUL there are certain cases in which the public is to be noticed. Under 70b for special questions and interpretation the applicant doesn't necessarily have to be

noticed and it is up to the local Ordinance as to whether to notice or not. Mr. Simon stated that it is not written in the Ordinance for Allendale that 70b applications have to be noticed. However, Mr. Walters did notice for this application. Ms. Tengi added that the Board has the authority to require notice. Mr. Simon said the Board might want to review this Ordinance and add noticing the public at a later date. Ms. Tengi said that having noticed the public is better than not having noticed and Mr. Simon agreed. Mr. Simon said they noticed the Board of Education by hand delivery.

Mr. Simon wanted to be clear that the Board of Education has known about the application since the application was handed into the Borough. The application is not for development. It is a request for interpretation and the Statute is clear that anyone is allowed to make a request for interpretation. Mr. Walters lives directly behind the Northern Highlands property and would certainly have standing as an interested party in regards to this matter. Under NJSA 40:55D-18 any interested party who feel aggrieved by construction, use, etc. on a neighboring property has the right to bring the action or matter before the Board to enforce their rights. Mr. Maloof asked for Mr. Simon to define the parameters that his client had on the matter. Mr. Maloof said that Mr. Walters is a neighbor of Northern Highlands. Mr. Maloof questioned whether an application was pending by any of the Boards currently and Mr. Simon answered no. Mr. Simon asked if Mr. Maloof had read the materials submitted to the Board and Mr. Maloof said he had read all of the materials. Mr. Simon said that the Board of Education and the Sports Association has made it clear through a Resolution that they have ordered the lights that are the issue and that it is pending on their arrival at Northern Highlands. Mr. Simon said that under the law Mr. Walters has a right to bring this application to the Board. They did an OPRA request from the School and received documents stating about the lights. The Board of Education has made it clear that they did not intend to come to any Board for relief because of the nature of these lights. Mr. Simon asked if the Board had received a letter from Mr. Strasser from the Board of Education and Ms. Tengi said that she had received a copy that evening. Mr. Simon explained that in the letter the Board of Education has refused to participate or identify their plans or intentions in seeking any form of municipal approval. They have had plenty of opportunity to respond to the application but have chosen to remain silent. But the Board of Education did not deny the description of the proposed project or that the lights have been ordered or the intended use once they arrive. They have offered a legal position but are still refusing to participate in the process. They did however submit the letter which they wanted the Board to receive and consider. Mr. Simon felt that they submitted themselves to the jurisdiction of the Board. They sent the letter rather than choosing to participate but will have the right to appeal depending on how the matter goes. Mr. Simon said that Mr. Walters is doing this in good faith and is trying to stay ahead of the issue as any neighbor is entitled to do in hopes that they will not have to go to Court over this issue. However, Mr. Simon said he is not sure where this is going to go in the future. In ordering the lights the Board of Education doesn't think that res judicata and collateral estoppel apply to this matter. Mr. Simon said that for regular applications you don't order the supplies or large seventy-two foot lights on trailers if you think that something will be pending before a

Board or the Zoning Office or if it affects the res judicata. The Sports Association has publicly stated that they have ordered the lights and that the Board of Education has voted to accept the gift of lights. The Board of Education has decided not to go to any Board for site plan approval, variance approval, exceptions, waivers, etc. The lights are portable and are on trailers and therefore can be moved. They state in the letter that Mr. Walters doesn't have standing to be present here tonight. Standing is a legal principle that says that a person needs to be directly affected by a controversy in order to be heard. Mr. Simon said that according to the MLUL a person or party can be within or without the municipality whose property may be affected or rights are affected. There are cases where property owners have been affected by developments that are under MLUL Section 18. Mr. Walters clearly has an interest in this matter as he lives on a neighboring property. Under 70b anyone can bring a request for the Board of Adjustment to interpret or answer questions.

Mr. Maloof said the Statute says requests for interpretation are for the Zoning Map Ordinance or for decisions upon other special questions. Mr. Maloof questioned whether they were asking for a decision on a special question. Mr. Simon responded that they are asking for an interpretation and a request on a decision on other special questions. Mr. Simon stated they are requesting two things from the Board. One is to interpret the prior action of the Planning Board affirmed by the trial court on doctrines of res judicata and collateral estoppel to prevent the project from going forward as a matter of law. The second is a question for the Board to rule on as should the Board fail to make a decision on res judicata or collateral estoppel, can the Board confirm that if the Board of Education continues with the project that the Board of Education must seek relief from the appropriate Board for an application for development. Just because the lights were considered permanent in 1995 and now the lights are on wheels and can be moved and taken down that doesn't necessarily comply with MLUL.

Mr. Redling asked if the Board had jurisdiction on the matter and only then could the Board answer questions one and two. Mr. Maloof agreed with Mr. Redling and felt the jurisdiction of the Board is set forth in the Statute. Mr. Maloof said he had yet to hear where the Board has the authority to determine either one of the special questions presented by Counsel. The language of the Statute says that special questions upon which such Board is authorized to pass by any other Ordinance. There is no Ordinance saying what special questions the Board of Adjustment can make determinations on or not. Mr. Jones asked if the Board had jurisdiction to make the Board of Education make an application. Mr. Maloof said it is a unique situation but they can't compel someone to make an application. Mr. Jones said he was concerned because there was no application before the Board. Mr. Maloof agreed and added that there was nothing to compare it to what was before the Planning Board in 1996. Mr. Maloof wanted to know what allows the Board to have the jurisdiction to make the determination in res judicata and collateral estoppel.

Mr. Simon said they are here for interpretation of the Ordinance in regards to certain provisions that are applicable to a project that they have described in detail. Mr. Maloof said the project doesn't exist in terms of an application. Mr. Simon said that under 70b one doesn't need to have

a pending application in front of the Board. He gave the example of a McDonald's coming into a Residential Zone and a neighbor knows it is coming and does nothing. Mr. Maloof asked if there were any cases that shows a neighbor making a preemptive strike and Mr. Simon referred to a couple of cases including the Aurentz case and the Petro case. Mr. Simon said in each one of those cases the courts condoned the neighbor to go the Board of Adjustment for an interpretation of the Ordinance to find out what was needed to be done. It is permitted under the MLUL. Ms. Tengi said that they are assuming that the lights are coming in and Mr. Simon argued that it is happening. Ms. Tengi inquired whether they saw the lights as the lights are there but Mr. Simon said not yet but they have ordered the lights. Mr. Manning asked if there are lights currently on the field and Ms. Tengi said no. Mr. Manning asked if the lights will be removed when the sporting event is over and Mr. Simon said he didn't know but they are seventy-two foot high lights that are portable and are on trailers. Ms. Tengi asked if that wasn't the point that they don't know because there is no application before the Board. Mr. Simon replied that they have given the Board everything that they know so far. Mr. Manning asked Mr. Maloof about if the School falls under a different jurisdiction than a homeowner, then is the School required to ask for a use variance for portable lighting. Mr. Maloof wasn't sure whether it falls under the State Board of Education or the Board of Adjustment.

Mr. Don Maclachlan who is an attorney and a neighbor of Northern Highlands said that later in the evening he would testify that he has questioned the Board of Education extensively about what they are going to do. He asked the Board to allow Mr. Simon to continue as he will supplement it. He said that the Sports Association has said that they are going to put up the lights and use the lights for football, lacrosse, and soccer. Mr. Maclachlan said that the Board of Education has put an Allendale Ordinance at risk because of height limitations for structures. Mr. Maloof asked if Mr. Maclachlan could wait to testify so Mr. Simon could finish with his testimony.

Mr. Simon said the MLUL allows them to appear before the Board for an interpretation which they are permitted to do. This would determine whether the Board of Education would need to go to a Board. Mr. Maloof interrupted and asked how the decision would be binding on the Board of Education or the Sports Association if they are not parties to this application. Mr. Simon said the Board of Education chose not to participate. They were noticed from June 2<sup>nd</sup>. They are allowed to proceed under 70b and make a presentation and ask for a determination by the Board on the interpretations and issues. Mr. Maloof said if it involves height then the Zoning Board of Adjustment would have jurisdiction, but if no application is made and the lights are put in a without a permit, than it is up to the Mayor and Council and Code Enforcement Official to take what action is necessary. Mr. Maloof wanted to know what is being accomplished with this discussion if it serves no purpose. Mr. Simon said that with refusing to allow them to proceed under Allendale's Ordinance and the MLUL they need to wait for this to actually happen and that they can't do anything about it. On the other hand if the Board does hear the application it is trying not to make a lot more of something than it has to be by making an interpretation under

the MLUL like they are doing tonight. They are just trying to determine if this project requires relief from a Board and if so what kind of relief. Mr. Simon said they are entitled under the law to make that request. It would be unlawful and unfair not to hear the application. Ms. Tenghi asked what if the lights were under the height requirements but Mr. Simon remarked that they know the lights are seventy-two feet. Mr. Jones said that the Board is putting the cart before the horse or getting ahead of themselves because they have to interpret an Ordinance on an application that is not in front of them. He wasn't sure the application that might come from the Board of Education is the same as the 1995 application because he has nothing to compare it to in front of him. Mr. Simon argued that he provided cases as to where this happened but Mr. Jones disagreed saying that applications were before the Boards in those cases. Mr. Simon said that the law doesn't say that you need an application before you or that the development needs to be going on to proceed. He gave the example of beekeeping and going to the Board of Adjustment to find out if it is permitted in the Residential Zone or not or which Board to go to about the subject. It is no different with this case. This is a legal interpretation of an Ordinance. Ms. Tenghi said that they raise the issue of res judicata. Mr. Simon said that Planning Boards and Boards of Adjustments have the ability to make a determination whether res judicata and collateral estoppel apply to a particular project. That is one part and the second is the interpretation. At least listen to the interpretation issue.

Ms. Chamberlain said she wasn't sure about the collateral estoppel issue as there was no application before the Board but she felt that the Board might want to do the interpretation part. Ms. Chamberlain continued with the fact that she didn't think the Board needed an application to interpret. Mr. Manning said the whole thing seemed nebulous to him as there was no application and Ms. Chamberlain said the Board may not even be able to give an interpretation and Mr. Jones asked if they were empowered to give an interpretation. Ms. Chamberlain said she thought they could and Mr. Maloof said the Statute said they can interpret a Zoning Ordinance or Zoning Map. Mr. Manning referred to construction lights and that they are gone within a few days and Ms. Chamberlain said she felt that this was different. Mr. Manning asked what if the Sports Association didn't donate the lights and Mr. Simon responded that it didn't matter because the Board is supposed to hear the interpretation application. He gave an example of a soccer client that he had in Maplewood that wanted to know what it would take to put in a soccer club. They learned what variances were needed and the client decided not to proceed. The Board of Adjustment gives interpretations while the Planning Board allows for concepts reviews. As per what Mr. Manning stated about lights being portable Mr. Simon said they would like to present their testimony on that issue. Mr. Jones said that the property falls under the jurisdiction of the State Board of Education and if they make an application the State Board would review it to determine whether it has jurisdiction. Mr. Maloof said the State would preempt the local Board. Mr. Jones asked if that had been done and Mr. Maloof said he didn't know. Mr. Jones asked again about jurisdiction and Mr. Maloof said if it was about height the Zoning Board would have jurisdiction over that part. Mr. Jones asked if they are subject to the thirty-five feet and Mr. Maloof said that would be based on the local Ordinance. Mr. Simon stated that lighting projects

are not considered a school facility project but a capital project. Ms. Chamberlain said that in 1995 the Board of Education submitted the application because they decided to submit as opposed to being under our jurisdiction for this particular project. Mr. Simon said that the Court said that they would have to follow local regulations.

Ms. Hart said that they had been discussing this for awhile now and it still seemed unclear so couldn't that be the answer that the Board couldn't give an interpretation until there was an application in front of them. Mr. Simon said they were ready to present and Ms. Hart said it is still a matter of jurisdiction. Mr. Simon said that the Board of Education has never said anything to the contrary about it being a State Board of Education matter or Board of Adjustment matter. Mr. Simon said that they had a right to present their 70b application and whatever the Board does with it is what the Board does with it.

Ms. Tengi recognized Mr. Timothy Dunn who is the Allendale Planning Board Attorney. Mr. Dunn stated that the Planning Board was concerned about the issue of res judicata and the Resolution that was drafted by the Board and discussed in the higher Courts and sustained by the Courts and the Department of Education. The position of the Planning Board is that the Resolution is a binding document and it addresses the issues of lights at the field at Northern Highlands. The issue the Planning Board has with this application is the legal part and the Board of Adjustment deciding whether res judicata applies without an application having been made. Mr. Dunn said the question of interpretation on res judicata on what was decided does matter. In the absence of an application if the Board of Adjustment votes either way on res judicata, it can affect the decisions already made. The decisions should be considered binding. There is risk to the Borough without an application involved. Mr. Dunn suggested that the Board consider reviewing the differences between portable lights versus permanent lights or permanent use versus intermittent use.

Mr. Simon agreed with Mr. Dunn that the Resolution remains binding still. He continued with they respect what Mr. Dunn has to say but still ask for a determination in respect to that area. They separated the res judicata or collateral estoppel from the rest of the application so that if it was determined that res judicata did apply that more time and resources were not spent on that area. Everything presented will be in context of the Ordinance and the project. Ms. Chamberlain asked if Mr. Dunn was representing the Town and he said no he was just representing the Planning Board. Mr. Simon asked if they could present and Mr. Maloof said the Board would have to decide whether the Board felt it had jurisdiction on res judicata and collateral estoppel and then the interpretation of the Ordinance question. Ms. Tengi agreed with Mr. Maloof and Mr. Dunn on the res judicata and collateral estoppel without an application. Ms. Tengi thought they may have the authority to make an interpretation on the second part. Ms. Hart said while the Board hears applications they are trying to make determinations. But without an application she was concerned on how they would make an interpretation even with the documents and information that the applicant was providing. Mr. Maloof said that it is an interpretation that may not have any relevance. Mr. Jones said the risk to opening up discussion

that could put the Resolution at risk from 1995 concerned him. Mr. Maloof said he felt that they did not have the authority to give them advisory opinions on hypothetical situations. Ms. Tengri said that it subjects the Board to legal action in the future and since the members of the Board are tax payers too it would affect them as well. Mr. Simon said that they did have the jurisdiction to hear the interpretation. Mr. Simon said that what the Board of Education does is up to them but Ms. Tengri disagreed saying that they have to adhere to the Zoning Code. Mr. Simon said they are asking for an interpretation of certain aspects of their proposed plan that are allegedly different. He continued with they are not trying to disturb anything in the Resolution. Mr. Jones commented that he wanted to see an application. Mr. Jones started to make a motion saying that he did not believe based on the information received so far and with the absence of an application that the Board could make a determination that may or may not be applicable and that it was not a matter for the Board at this time. Mr. Manning seconded it. The secretary started to take roll call but was interrupted as there was some discussion on whether the meeting had to be opened to the public or not if it was a matter of jurisdiction. Mr. Simon disagreed saying that it is a public hearing. His applicant hadn't finished and now there is a motion being made and the Statute allows for this type of application. Mr. Maloof and Ms. Tengri agreed to open to the public on the jurisdiction aspect only. Ms. Tengri opened the meeting to the public.

Don Maclachlan from 72 Cedar Drive was sworn in to testify. He said the 1995 decision wasn't just about lights but was about noise and quality of life and other things. There is nothing different about what is being presented now. The Board of Education and the Sports Association issued a letter saying that it is not subject to the Ordinance which limits the heights of structures in the Triple A Zone. Northern Highlands is in the triple A Zone. After the 1995 Resolution was made Allendale purposely amended the Ordinance to include the word structure. A structure under the MLUL is defined as materials or equipment that are on, below, or above ground. Allendale amended the Ordinance to include light towers and they need to be no more than thirty-five feet. The Sports Association has ordered the lights that are stated in a letter from Mr. Strasser. Mr. Maloof asked how this went to the jurisdiction question and Mr. Maclachlan answered that the letter said these are not structures because they have wheels on them. We disagree with that because they are structures according to the Ordinance and he cited that the Board of Education said that the Ordinance is why they don't have to file an application with the Planning Board. The Statute that we are discussing is under 70b specifically allows the Board of Adjustment to interpret the Ordinance. The purpose for us to be in front of the Board is to determine whether this equipment is or is not a structure and it goes to the very heart as to why the Board of Education feels they don't have to file an application. This Board has the authority to declare what an Ordinance means. Mr. Walters can't go to the Planning Board because the law in New Jersey has them going to the Board of Adjustment. Mr. Maclachlan said his property is less than two hundred feet from Northern Highlands and that he felt the Board should be able to interpret the Ordinance so not only is the High School not able to do this but Verizon or other companies can't do this either. Mr. Maclachlan met with Board of Education and asked them extensively on this issue and what they planned to do and they said that they planned to put

the lights up unless someone stops us. He asked them about going to the State Board of Education and they responded with that they don't have to for this installation. Mr. Maclachlan asked the Board for its interpretation on what is a structure and what are the limits within the Ordinance.

Ms. Tengli closed the meeting to the public and brought the meeting back to the Board. Mr. Maloof asked if Mr. Simon had anything else to say and Mr. Simon said he felt they had the right to have their professional planner present his documentation and present testimony about various provisions of the Ordinance and ask for that interpretation based on the testimony. We believe you have the jurisdiction to listen to the testimony and make an interpretation. He felt it would be incorrect not to listen as a matter of law. Ms. Tengli commended Mr. Simon on the job he had done.

Mr. Redling asked what the motion was as he was concerned about res judicata without an application in front of the Board. He added that the second part with the request for interpretation did not seem unreasonable although he was not sure what they were interpreting. He said that interpretation was a duty of the Board. Ms. Chamberlain agreed with Mr. Redling in that the Board should not make any movement on the res judicata or the collateral estoppel but that the Board had a responsibility to listen to a request on interpretation based on the Ordinance. Mr. Simon said they would be raising specific issues based on the Ordinance. Ms. Chamberlain said the Board may not be able to answer the question or make an interpretation based on the question. Ms. Tengli suggested limiting the application to the interpretation and not the res judicata or collateral estoppel. Mr. Simon said they would proceed with the interpretation part only. Mr. Maloof said the Board should vote on this part.

On a motion from Ms. Tengli, seconded by Ms. Chamberlain, the Board denied making a determination on collateral estoppel or res judicata because there was no pending application before the Board to compare it to and because the Board lacks jurisdiction at this time to make a determination on that issue.

Mr. Simon introduced Mr. Peter Steck who is a professional planner. Mr. Steck is from Maplewood Avenue in Maplewood. He has a Bachelor's Degree in Civil Engineering and a Master's Degree in City Planning. He has been licensed in New Jersey since 1976. He has worked for two consulting firms in the past. He was the Planning Director for the city of Montclair for over nine years and also served as their Zoning Officer. He has been self-employed for the past twenty years as a community planning consultant. He has testified in approximately two hundred municipalities in New Jersey and in multiple Courts as an expert in his field. He has also drafted Ordinances as part of his job. He has also participated in 70b applications in the past. He right now has an application before the Bloomfield Board of Adjustment on behalf of a client who wants to know if the Redevelopment Zone permits a daycare center and can't file until he knows whether it is permitted or not. He is a tenant in a different zone who wants to move to this zone. He also participated in one case in Milburn that

was pending and he represented the property owner across the street. They filed an A and B application and asked the Board to interpret their Zoning Ordinance whether a use variance was needed in the Conservation Zone of the property. The Zoning Officer said no variance was needed but the owner thought that was wrong and they asked for an interpretation. The Board of Adjustment ruled in their favor. The applicant temporarily withdrew his application because of the results.

As part of this application, Mr. Steck reviewed the Zoning Ordinance, the site plan Ordinance, the Municipal Land Use Law, the application and all the documents that are part of the application, and he walked around the site to familiarize himself with the application. The four pages of schematic drawings of the light tower that have been ordered were marked A-1 July 22, 2015. The lights are able to be towed by a truck to the site. The lighting array was on the second page, the third page has what the capabilities are once it goes beyond a certain height and includes the wiring of cables used to wire the lights against high winds, and the fourth page shows the cables used when the lights are extended to the full seventy-two feet in height. Mr. Simon asked Mr. Steck to review his understanding of the documents when it came to the four light trailers each containing one light pole structure. Mr. Steck said the lights are rotatable so the lights can be positioned in any direction. The lights can range from thirty-five feet to seventy-two feet for game situations. To raise it to the highest position they will use a hand crank. The trailers are four tons and hefty pieces of equipment so they have to be moved by a truck. The overall dimensions of the trailer are twenty-four feet by nine feet wide and the concrete pad comes nine feet by twenty-feet wide. They are to be positioned on either side of the football field behind the fence positioned so there is as much spread of light as possible. To be effective they would want to cover most of the field. The lighting will be used for practices and for games. For games they would use the full extension of the lights to the seventy-two feet. There would be up to one thousand hours of usage for these four individual lights. These will be connected to fixed power lines that are not there now so the Board of Education will need to excavate from the snack shack on the home part of the field and run cables underground to some location above ground. On the other side of the field the Board of Education will have to put in electrical cables from the electrical power display from the score board underground to the location where these units could be plugged in to the power source. They wouldn't need the wires for structural safety reasons during practices when the lights are thirty-five feet high, but they would need them during games when they are put to the full height of seventy-two feet.

Mr. Redling asked what his expertise was when it came to these lights and Mr. Steck said he is just describing what is anticipated by the Board of Education based on the documents they received from the OPRA request to the Board of Education. Mr. Redling asked if he was just stating the facts and Mr. Steck said yes as he hadn't gotten to the conclusions yet. Mr. Maloof asked how the opinion part would come in and Mr. Steck replied that he would describe how he thought the Borough's Ordinance should be read in terms how it treats these units. He will also discuss the Site Plan Ordinance and the Zoning Ordinance to these units. He had a two-sided

four page exhibit marked A-2 July 22, 2015 that he gave to the Board. Mr. Steck said the first one is a map of where the High School is located. The second one is a Zoning Map showing that the property is split into two Zones with the football field being in the Triple A Zone. Both the Double A Zone where Northern Highlands is located and the Triple A Zone where the football field is located are in Residential Zones. The third map is the land use map. The next is a 2012 photograph from the DEP highlighting the boundaries of the main property where the lights are going to be placed. There are also some definitions of the Municipal Land Use Law. Mr. Maloof asked if on the back of panel four on the first page is the Walters' lot and Mr. Steck answered yes. Mr. Steck said one of the definitions was on development which is not just pouring concrete but about the use of property. The site plan definition included landscaping, structures, signs, and lighting. He went over the structure definition which means a combination of materials that form a construction for occupancy, use, or ornamentation on, above, or below the surface of a parcel of land. It is a broad definition but that structure means different things to different codes. Mr. Steck was asked about the definition of installed and he said that the dictionary definition is that it is something located in a place. One of the photos in A-2 was from 1995 and he pointed out that the area has not really changed from 1995 except that a new tennis court was added. Mr. Steck also pointed out where the football field was in relation to the applicant's dwelling.

Mr. Simon asked if there are certain provisions in the Ordinance to lighting and Mr. Steck said yes. Mr. Steck told the Board under the Municipal Land Use Law the Town is allowed to have standards on lighting and Allendale has elected to have standards. Height of structures, intensity, and where lights can and cannot be located are all listed in Allendale's Ordinance. Mr. Simon asked Mr. Steck to review in depth the definition of development and its applicability to this application. The definition includes things like a subdivision and enlargement of a building but also includes the use or change of a use, building, or other structure or land or extension of use of land for which permission may be required. Most of your applications are for people who want to pour concrete and build an addition on the house. Under the Municipal Land Use Law it said that a development application is also an issue of use even though there are no physical changes to the site. Mr. Steck said the Board of Education seems to think that because these things can be moved they are not subject to Planning Board or Board of Adjustment approval. As per State law this would come under other facilities. The New Jersey Department of Education does not have jurisdiction over lights and athletic fields. If the Board of Education says that the Boards have no jurisdiction and the State has no jurisdiction they are in a sense saying that they don't have to answer to anybody. Mr. Steck said that the Board needed to look at the intent of them wheeling these in where they wanted them. At one time they wanted to have fixed lighting and now they want to accomplish exactly the same thing and one might argue more intensely than back in 1995. It was limited back in 1995 to eighteen events. With this type of lighting being used in both practices and games these are going to be used more often than what was anticipated in 1995. There is the issue of safety and aesthetics of putting a big tower in the air. Once they get ready to use these lights they get plugged in to a source of power, guidelines and

outriggers are in place due to avoiding structural issues such as a wind storm knocking them down. The light will adversely affect surrounding areas and there are standards in the Ordinance that state about intensity and spillage. It also allows fields to be used at night when they wouldn't typically be used. It is an attempt to replace what other people would do when mounting fixed poles into the ground. It has a potentially negative effect of the throw of light which may be irritating not to mention the traffic and noise which are extended into the evening. If this is taken down at the end of an evening it is going to take time to do this. Either they will be left there or a truck will tow them away. Mr. Simon asked if they could be used at other fields too and Mr. Steck said they can be used on different fields at the site provided they have enough power cords. They will need to put in wires and cables underground. Ms. Tengi asked if they could be on generators and Mr. Steck said they could but based on the information the Board of Education provided the High School is not interested in doing it that way. Mr. Simon said that the Board of Education thinks of these units as temporary and Mr. Steck agreed because they are movable. Mr. Steck added that the Board should consider whether there is a difference between permanent poles and movable structures that are seventy-two feet as it will be exactly the same impact on the neighborhood. The lights are going to be there every time there is a game or a practice. Mr. Steck said that the Board has an Ordinance on temporary permits under 270.23 that has to do with construction trailers but you have a limit that they can't be there more than a year. They are accomplishing the same thing and maybe more often than what they wanted to do in 1995. During the game they will have the exact same Land Use impact as fixed lighting seventy-two feet tall. They want the right to install any time a game or practice occurs with no limit to years in the future and in his opinion that is not considered temporary. Every time there is going to be a game there will be lights there. This is going to be a continuing operation. All Tech Communications who the Board of Education will be receiving the lights from provided an estimate saying that they provide for wind loading and structural design. It has to meet certain structural requirements because of the height. He felt that from a land use point of view when these units are in place it is as if they were fixed. Just because they don't have a foundation doesn't mean they are exempt from Zoning Ordinances.

Mr. Simon asked Mr. Steck if he felt the use of the lights would be under the development section of the MLUL and Mr. Steck agreed. Mr. Steck also felt that the lights were considered structures under the MLUL. Mr. Steck told the Board that he did not feel that these structures were temporary based on how they were going to be used and gave some examples of cases he has had that went before Boards that considered lights to be structures and needed height variances and setbacks. The pole is part of the use of the facility that casts light and has negative impacts bringing the lights on into the night hours. The field is in the Triple A Residential Zone and under 270-49.D of the Ordinance, it states that applications for any such use shall be made to the appropriate Board. The Ordinance does talk about accessory uses. Mr. Steck said if something is done to the school building the State Board of Education takes over. If it has to do with a stadium or lights the State Board of Education would say that it is a local issue. The definition of an accessory use is that it is incidental to the customary use. He gave an example of

a swing set being placed in the back yard but because there is no adverse affect on the community nothing typically needs to be done. Under Tanis versus the Township of Hampton from 1997 it set up the rules for determining what is eligible as an accessory use. The frequency of the use and the impact of the use are used to determine if the use works in the area. How often have you seen seventy-two feet light poles on a Board of Education facility that backs up to houses this close. That is not customary in New Jersey. If it is a negative impact such as the lights it should not be viewed as an accessory component to schools. Mr. Steck said that your Ordinance was amended in 1995 to say that the Town did not want tall lighting fixtures in the Triple A Zone and it has standards about where lights are focused, what the intensity can be, the duration of the lights being on, etc. Mr. Steck felt that this use doesn't fit in the generic permissible accessory use to a permitted use in the Triple A Zone. Mr. Simon asked about the lights being moved around on the site and Mr. Steck said it opened the door to more negative consequences. He couldn't predict where they were going to be or how often they were going to be used. The Ordinance clearly regulates their positioning but since there are no controls that opens the door to greater adverse consequences. Mr. Simon asked if Mr. Steck was familiar with any other schools that would have heights above sixty feet in movable lights as proposed and he said no. He has seen them more for commercial purposes. Mr. Steck said because of the unusual nature of these units with wheels, the intent of use, and because they are movable and will give adverse consequences, they are not eligible to be permitted generically as a permitted accessory use. Mr. Simon said if they are not a permitted use than Northern Highlands would have to apply to the Board and Mr. Steck agreed. Mr. Steck said there is also the issue that the height which according to the Town Ordinance would be limited to thirty-five feet maximum which would require a variance. Mr. Simon said that if the use of the structures were prohibited it would require a D-1 or D-6 variance because they would not be considered an accessory use but a principal use and Mr. Steck agreed. If it was determined to be a different use it would be a C-1 or C-2 variance. Mr. Simon asked Mr. Steck if he felt that the lighting plan would require site plan review and Mr. Steck said yes as lighting is an issue and under Allendale's Ordinance. Mr. Steck said 147-32D says no lighting or free standing structures can exceed the height of the building on the site.

Mr. Simon said in summary the use of these lights at the High School would be subject to a development review approval by a Planning Board or a Board of Adjustment and in this case would probably go to a Board of Adjustment as these proposed lights are not under the accessory to the principal use and would require a use variance and Mr. Steck agreed. It would still require approval by a local Board for site plan approval and a height variance and Mr. Steck agreed. Mr. Simon said that other relief may be needed depending on what is done and Mr. Steck concurred.

Mr. Redling said that it was late and felt the Board needed to adjourn for the evening. The Board would need to ask questions of Mr. Steck and Ms. Tengi suggested they carry this to next month's meeting.

On a motion from Mr. Redling, seconded by Ms. Tengi, the meeting was adjourned at 11:05PM.

Respectfully submitted,

Diane Knispel