

**Borough of Ho-Ho-Kus  
Bergen County, New Jersey  
Planning Board Minutes  
January 22, 2015  
Special Meeting**

**Meeting Called to Order at: 7:35PM**

**Open Public Meetings Statement: Read into the record by the Board Secretary.**

**Roll Call:** Messrs. Berardo (absent), Pierson, Reade (absent), Cirulli, Newman, Councilman Rorty, Chairman Hanlon, Mayor Randall

**Also in Attendance:** Gary J. Cucchiara, Esq., Board Attorney; Mr. David Hals, Borough/Board Engineer; Mr. Edward Snieckus, Borough Planner, Ms. JoAnn Carroll, Board Secretary.

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**Oath of Office administered to Councilman Rorty by Mr. Cucchiara; Class III; term expiring: 12/31/15.**

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**Ongoing Business:**

**Hollows at Ho-Ho-Kus, Chamberlain Developers, W. Saddle River Road/Van Dyke Drive, Block 802, Lots 1, 2, 3, 4 and 10:** major subdivision application; the applicant proposes to construct and market single family dwelling units on each of the properties; major soil movement application.

**Chairman Hanlon:** described the application and reviewed meeting procedures; stated the meeting this evening was a special meeting and had been noticed as such.

**Councilman Rorty stated he had listened to the audio tapes of the November 13, 2014, January 8, 2015 and January 15, 2015 meetings and a certification for each date stating this fact had been signed and submitted to the Board Secretary.**

**Mr. Inglima:** introduced himself; at the last meeting Mr. Inglima had asked for additional information from Mr. Hals; as of this evening, Mr. Inglima had not received any information.

**Mr. Cucchiara:** stated that at the last meeting he had asked Mr. Inglima if he wanted records or documents from Mr. Hals and Mr. Inglima indicated to him that what he needed from Mr. Hals was a review of his records or documents and then he could provide his comments; Mr. Cucchiara specifically asked Mr. Inglima this.

**Mr. Inglima:** asked if Mr. Hals was going to provide the information.

**Mr. Cucchiara:** stated Mr. Inglima needed to ask Mr. Hals directly.

**Mr. Inglima:** asked Mr. Hals if he had information with him this evening which is responsive to Mr. Inglima's questions or concerns at the last meeting.

**Mr. Hals:** stated he did; he looked through his files; Mr. Hals had done five applications for entities related to Chamberlain Developers/Mr. Frasco; of those five he or his company had done some type of land use application.

**Mr. Inglima:** asked if Mr. Hals had any additional information regarding the dates that the work was done or the amount of fees received.

**Mr. Hals:** stated he had all that information with him.

**Mr. Whitaker:** placed on the record his objection; the objection being irrelevant as far as any remunerations that have been made in the past; irrelevant as to where the applications were made, unless they were made in Ho-Ho-Kus; does not see any need for this information; it goes beyond the litmus test and parameters of what is required in regards to a conflict of interest.

**Mr. Hals:** stated there were 2 applications for Frasco Realty; one was in 2003; address 91 Carol Street, Ramsey, NJ; Block 4803, Lot 26; fees were \$2,000 for site plan for a driveway easement; second application for Frasco Realty was in 2007-2008; property 201 Park Avenue, Allendale, NJ; Block 1702, Lot 9.01; \$16,000; topographic survey, plot plan for a new house; variance application for the house and construction layout; work was about 50/50; engineering and surveying; Chamberlain Developers from 1999-2005; Chestnut Ridge Road in Montvale; Block 102, Lots 1, 2, 3 and 4; major subdivision for 18 new homes; total fees approximately \$100,000; 70% engineering/30% surveying; 168 Island Road, Mahwah in 2004; Block 63, Lot 17; fees were \$24,000; minor subdivision; 2 new houses; %60 engineering/%40 surveying; in 2007, property on Beveridge Road, Mahwah, Block 89, Lots 13-15, 66 & 72; fees were \$14,000; minor subdivision for one new house; %35 engineering/ %65 surveying.

**Mr. Inglima:** asked if those five items were the only matters in which Mr. Hals had done work for Mr. Frasco or any of his entities.

**Mr. Hals:** stated that was not what was asked for; further stated that Mr. Inglima asked specifically to give him any projects that went into land use reviews.

**Mr. Inglima:** stated he had clearly asked for anything that Mr. Hals had done for him in a business setting, regardless if it involved land use.

**Mr. Hals:** stated when he was present at the last meeting, Mr. Hals specifically asked what was to be supplied; supplied what was asked for; there are 3 or 4 other projects that involve just surveying which did not go to any review; they were all done prior to 2008.

**Mr. Inglima:** asked if the work done at Mr. Frasco's home in Allendale was included in any of the work mentioned.

**Mr. Hals:** stated yes; 201 Park Avenue in Allendale; he did not handle the project for his Board application and he didn't handle the project for his house; done by another engineer in his office; was only involved with the drainage problem towards the end of the application.

**Mr. Inglima:** asked if Mr. Hals would reject or accept a request by Mr. Frasco to do work for him.

**Mr. Hals:** stated he couldn't answer; doesn't know what it would pertain to.

**Mr. Inglima:** stated he had asked Mr. Hals at the last meeting if Boswell Engineering was the engineer in Mahwah; Mr. Hals had indicated he did not know.

**Mr. Hals:** stated Mr. Inglima had specifically asked if Mike Kelly was the reviewer who reviewed the applications and Mr. Hals stated he had no recollection of who the reviewer was.

**Mr. Inglima:** stated since the last hearing he checked the files in Mahwah and Mr. Hals is currently doing an application in Mahwah for Anthony Fasionato.

**Mr. Hals:** stated that what correct.

**Mr. Inglima:** stated Mr. Hals signed a plan that involves a subdivision of property located at Block 149 Lot 20; end of Monroe Drive.

**Mr. Hals:** stated that was correct.

**Mr. Inglima:** stated the records at the Mahwah Planning Board office indicate the application was filed on October 16, 2014.

**Mr. Hals:** stated he has been working on this project since 2004; the filing date could be correct; doesn't know.

**Mr. Inglima:** stated a plan Mr. Hals prepared in connection with this application had a revision date of 5/7/14 and an original date of 4/30/12; this project has been going on for a while.

**Mr. Hals:** stated since 2004.

**Mr. Inglima:** stated it had been withdrawn and then proceeded in October; stated this application was the subject of a review letter which was issued by Mr. Kelly of Boswell dated 11/18/14.

**Mr. Hals:** stated that was correct.

**Mr. Inglima:** asked why Mr. Hals did not know that Mr. Kelly was the reviewer in Mahwah.

**Mr. Hals:** stated Mr. Inglima had specifically asked if Mr. Kelly was the review engineer for the project on Island Road; Mr. Hals had no recollection who the reviewer of the project was.

**Mr. Inglima:** stated there was a hearing on 12/22/14 on this matter.

**Mr. Hals:** stated yes and Mr. Kelly was present at the meeting.

**Mr. Inglima:** stated Mr. Hals appeared and testified at the meeting and Mr. Kelly was present.

**Mr. Hals:** stated that was correct.

**Mr. Inglima:** asked if Mr. Hals had any question at the meeting that Mr. Kelly reviewed the application.

**Mr. Hals:** stated Mr. Inglima did not ask that question.

**Mr. Inglima:** asked if Mr. Hals knew that Mr. Kelly is the Administrative Officer for purposes of land use applications in Mahwah.

**Mr. Hals:** stated he was or is the acting Zoning Officer.

**Mr. Inglima:** asked for confirmation that application for a major subdivision in Mahwah involves significant drainage and wetland issues.

**Mr. Hals:** stated yes.

**Mr. Inglima:** stated that the same time Mr. Hals is reviewing the Hollows at Ho-Ho-Kus application Mr. Hals also has a plan on file with Mahwah that is being reviewed by Boswell that has significant drainage issues; asked if that was a fair statement.

**Mr. Hals:** stated it has drainage issues that they reviewed.

**Mr. Inglima:** stated it generated a 9 page review letter.

**Mr. Hals:** stated he believed 2 pages of the letter dealt with stormwater management.

**Mr. Inglima:** reviewed the contents of the letter; asked if it was possible for Mr. Hals to objectively review this application, in which Boswell has appeared as an expert with respect to drainage issues and other engineering issues, while at the same time Mr. Hals is applying, correction, serving as the engineer in Mahwah on behalf on the applicant where Boswell is doing the review.

**Mr. Whitaker:** objected to the question in reference to if Mr. Hals was applying; object overall to the non-relevancy of this connection with the issue before the Board; professionals work in various towns; deal with reviews in variance towns; that is not held as a conflict of interest; standard procedures that have been used; reviewed by the courts; does not fall in the parameters of any conflict laws; totally irrelevant; stated Mr. Hals is not applying himself; he is applying as a professional.

**Mr. Inglima:** stated he at first misspoke; Mr. Hals is the engineer for the applicant which is a more significant issue of this overlap; Dr. Pazwash's appearance in front of this Board was the first time Mr. Inglima was aware of him ever testifying on behalf of a private applicant on drainage issues.

**Mr. Whitaker:** stated, again, irrelevant.

**Mr. Inglima:** stated the question asked of Mr. Hals was if he believed he could be objective in his review of the application while at the same time he has an application pending before Boswell in Mahwah.

**Mr. Cucchiara:** stated the objection should be noted; not necessarily disagreeing with it or advising the Board to disagree with it; it is up to the Board to decide what weight to give to it; under the circumstances Mr. Hals, if he can, should be able to answer the question.

**Mr. Hals:** stated he doesn't see why he can't be objective in his duties as the Board Engineer in reviewing the application; the two are completely unrelated; no conflict in his mind; is acting as a professional to the Board and acting as a professional to his client in Mahwah.

**Mr. Inglima:** stated he is aware the Board wishes to move forward with this application; would like to make a brief statement with respect to the legal standards that must guide the Board's decision and then the Board can make a determination as to Mr. Hals' status.

**Mr. Cucchiara:** stated it would be appropriate to enable Mr. Whitaker and the public to ask questions of Mr. Hals.

**Mr. Whitaker:** stated he had no questions at this time.

**Chairman Hanlon:** opened the meeting to the public to ask questions on what had just been discussed between Mr. Hals and Mr. Inglima.

**Mr. Paul Lewis, 14 Brandywine Road:** asked questions of Mr. Hals.

**Public portion closed.**

**No Board questions at this time.**

**Mr. Inglima:** stated he wanted to address the legal standards which guide the Board's decision with respect to this issue.

**Mr. Whitaker:** objected to starting with this; the appropriate approach is for the Board Attorney to give the parameters of what the standards are that have to be applied; there is no need for a lecture from either the applicant's attorney or the objector's attorney; the hearing has been closed; it is a standard that is well known in law.

**Mr. Cucchiara:** asked Mr. Inglima if he had any objection.

**Mr. Inglima:** stated Mr. Whitaker has indicated on several occasions what he considers to be the applicable litmus test for this particular issue; believes the Board needs to be aware of the fact that their decision has to be guided by case law and not just the statute.

**Mr. Cucchiara:** stated, unless there is an objection, he will review and repeat some of the comments which were made last time with regard to the law; Mr. Inglima can make any statements or arguments which he would like after that; Mr. Whitaker and the public can make statements as well; what is before the Board is the question of whether or not the Borough Engineer, Mr. Hals, has a conflict of interest which would prevent him from participation in these proceedings; the central question is whether or not the circumstances have the likely capacity to tempt the official, in this case Mr. Hals, to depart from his sworn public duty as the Board Engineer; to put it another way, the question also is whether or not in providing his services to the Planning Board he can act in an independent, impartial and objective manner; he is a neutral participant in these proceedings; guided by the law in a few different aspects, let's start with the engineering profession itself; the professional engineers in the State of New Jersey are subject to their own regulations; that is the State Board of Land Engineers and Surveyors; those regulations are contained within the NJ State Administrative Codes, specifically Section 13:40-3.1; two sections relating to conflicts of interest for professional engineers in NJ; reviewed

sections and gave examples; with respect to the engineer's regulations, with regard to their professional conduct, those are the only sections that pertain to conflict of interest; there are other areas of the law that pertain to a conflict of interest; Local Government Ethics Law, N.J.S.A 40A:9-22.3; there is also case law; conflict of interest does not just pertain to a professional consultant; it could be a Board member or a member of the governing body; it relates to any government official; the leading case is Wyzykowski v. Rizas; it is a NJ Supreme Court case from 1993; found at 132 NJ Reports 509; this case indicates four circumstances under which a conflict could be present; the first is a direct financial benefit; there can be an indirect financial benefit; direct personal interest; indirect personal interest; the significant questions that have to be asked are whether or not the professional consultant in this case can be impartial, objective and independent with regard to his services; the appearance of some form of an impropriety is a concern but the conflict has to be actual; has to be present; if the Board finds there is an actual conflict and circumstances indicate that, under the circumstances the professional should step aside and/or the Board member should recuse themselves; if the circumstances which might suggest a personal or some type of financial interest is too remote or speculative, then a disqualification should not occur; believes the Board, under these circumstances, has to weigh the factors and decide whether there is an actual conflict under these circumstances; testimony and comments have been heard; asked for Mr. Inglima to address the doctrine of invited or waiver; obviously it is important for the Board to hear the circumstances; the question becomes when the objector became aware of the potential conflict; obviously the law does not favor an objector/person who might raise the objection very late in the proceedings if they knew about it earlier; believes Mr. Inglima did learn about it, advised Mr. Cucchiara about it in December, but it is a factor for the Board under these circumstances to consider; it is not something that should be withheld from them during the proceedings but should be raised as soon as they are known; that issue should be addressed.

**Mr. Inglima:** stated he became aware of the issue the weekend before the December 5, 2014 meeting which was subsequently cancelled due to illness; he found out about it because the land records website of the Bergen County Clerk became operational right before or during that weekend; it was possible to do extensive searches of recorded documents from that website from his home; was doing research regarding what types of developments the applicant had done in the past to be able to assess what was anticipated in respect to this project; came across a deed.

**Mr. Whitaker:** stated the question was when Mr. Inglima discovered the issue; not necessary to have a colloquially regarding the operational aspects of how it was discovered; it was the date which was requested.

**Mr. Inglima:** stated it has been asked of him and there are draconian implications of the invited error doctrine which was raised in several other land use matters; wanted to provide the actual information he received.

**Mr. Cucchiara:** stated Mr. Inglima is an Officer of the Court; believes the Board can accept his representation of statement as to when he learned of the issue; does not feel supporting documentation is necessary.

**Mr. Inglima:** stated he found out about a recorded document that was a minor subdivision plat for Block 63 Lots 10.01 and 17 from the website previously mentioned; subdivision plat that was signed by Mr. Hals; dated 11/4/02; final revision date of 5/27/03; it was recorded in the Bergen County Clerk's office as a filed map 9308 on July 16, 2003; after seeing the deed he went to the search vault and requested a copy of the filed map; at that point he saw that there had been work done by Mr. Hals and his firm for the applicant, Frasco Homes Inc.; there were other deeds that he came across that referred to surveys that had been performed by Mr. Hals for Mr. Frasco, him and his wife, or for Chamberlain Developers, etc.; immediately called Mr. Cucchiara on Tuesday and also called Mr. Whitaker at the same time; the date would have been 12/3/14; brought it to their attention and indicated that he would have to address the issue at the December 5, 2015 meeting at which Mr. Hals was expected to testify; that meeting was cancelled; carried to January; requested an opportunity to raise it then and he did.

**Mr. Cucchiara:** stated Mr. Inglima wanted to address the legal issues with respect to the alleged conflict.

**Mr. Inglima:** stated he had no prior knowledge of that relationship having taken place; the jobs Mr. Hals did describe involved approximately \$154 in total fees; not insubstantial; amount should be scrutiny; requires disclosure; his client's position that the disclosure should have come from Mr. Hals at the outset; Mr. Hals and the applicant knew of the relationship; Mr. Whitaker apparently knew about it also; should have been disclosed previously; Mr. Frasco is in the business of buying and developing properties; it is relevant to this Board's situation as to whether or not Mr. Hals suffers from any kind of an impairment of his objectivity.

**Mr. Whitaker:** stated his response is simple because it is a very simple issue; the Board's counsel has properly advised the Board as to the law; if you look at the engineering standards, there is no evidence that Mr. Hals was working for two people at the same time; which is the first part of N.J.A.C. 13:40-3 pertaining to the requirements of an engineering under professional conduct; there was no member of his firm accepting compensation at the same time for services rendered for the same work; the critical issues that are in the code that Mr. Hals has to abide by are the same time and the same work; the concept of working years ago on a different project has nothing to do with that

code; the concept of working years ago indicates that it was remote; it is nothing that is currently existing; nothing pending; that is the major aspect of what is being reviewed at this time; Mr. Cucchiara walked the Board through the four steps of the litmus test that is in case law; based upon the testimony from Mr. Hals started off by telling of his past relationship before he rendered any opinion; there is no financial interest; has not received any funds in connection with this application or any other application; in essence he is not working for Mr. Frasco, Chamberlain Developers or any of its entities; he has no indirect financial interest; no relative or anyone else that gains from the work that he is doing; he has no personal interest and he has no indirect personal interest; for all the reasons set forth in the New Jersey Ethics requirements, the case law, as well as, his own professional standards of conduct as an engineer, there is nothing here that is even remote to show that there is any possibility of a conflict.

**Mr. Paul Lewis, 14 Brandywine Road:** gave a statement.

**Mr. John Esterbrook, 27 Sleepy Hollow Drive:** gave a statement.

**Ms. Victoria Petrock, 6 Cleverdon Road:** gave a statement.

**Ms. Sharon Gomez, 37 Van Dyke Drive:** gave a statement.

**Ms. Wendy Lees, 617 Warren Avenue:** gave a statement.

**Ms. Theresa Portogallo, 962 Washington Avenue:** gave a statement.

**Mr. Stanley Kober, 919 Washington Avenue:** gave a statement.

**Mr. Cucchiara:** stated the standards are different for lawyers than for other types of professionals; stronger with regards to an attorney or a judge.

**Mr. Inglima:** stated it was his understanding that Mr. Palus left Mr. Hals' employ in 2000; all of the work which was described by Mr. Hals this evening took place after that date; any statement or idea that Mr. Palus had removed a client from Mr. Hals office is not consistent with those facts; stated he would never impute to Mr. Hals anything; he is asking him how he can review this matter; the fact is when you are an applicant you may do things differently than when you are an enforcement official for a municipality; Mr. Hals may view a situation here, as this Board's engineer differently than an applicant's engineer in another jurisdiction; stated he feels there is enough here that there are proximate relationships; they do not have to overlap with this application; issue was raised because the relationships are not remote; asked the Board to seek other advice.

**Mr. Whitaker:** stated in response to the last comment made, Mr. Hals is a professional; recognized by appointing him for a number of years; as a professional, he has the ability to proceed on the basis of being a professional; he can be a review engineer; he can be an advocate for an applicant; and the concept or thought process that there is a temptation to wash one with the other does not occur here and hasn't occurred in his experience with Mr. Hals.

**Chairman Hanlon:** (addressed the Board) stated the Board has heard the discussion this evening; now requires a motion as to how the Board would like to proceed; also open to having a discussion on the matter.

**Councilman Rorty:** stated he realizes all professionals present work in the same “pond”; that is a fact; if there was a conflict on every issue, no one would be able to work; with that being said, he feels that a disclosure earlier on would have been to everyone’s benefit.

**Mayor Randall:** stated he feels there were comments made earlier boding to carrying the meeting to this week; certainly continues to concur with Mr. Pierson’s comments, who, having heard the standards from the Board Attorney, agreed that there is no conflict; he has heard more testimony this evening; believes that if the only question to be answered is if Mr. Hals has a conflict of interest that would require him to be removed on that basis, he would say he does not have a conflict of interest; disappointed to a certain extent because he understands the passions of members, but he can only say, that he has had the pleasure of working in government with Mr. Hals in the Borough for 25 years; he has never been anything but professional; he has only given advice that has served one master; that was either the Borough itself or the Borough Board; disappointed because there is no reason to assume any or to imagine any type of untoward motive for Mr. Hals’ own benefit; with that said, his concern is not whether there is a conflict under the law, but a concern about the appearance; it has to be addressed when the vote comes; the concern he has is, notwithstanding all that he has said, that certainly he feels a mistake was made upfront; thinks a disclosure on the record should have been made upfront; that is what has caused him the largest problem with this; if this were to come out on the record on day one, he believed it would have been addressed and dispensed with; feels he has a problem with the perceptions that he can see the public has based on the manner and the timing which this has come out; understood; truly unfortunate; his problem is not with the law, but with the perception, which needs to remain transparent; this is an oversight due to the fact that there is no conflict; does not deny its impact on the public.

**Mr. Cirulli:** stated since he has been involved in government for the last 25 years, he has been involved with Zoning and Planning Boards, elective official and a Borough Administrator; he has seen literally dozens of attorneys and engineers working with each other, for each other, against each other and they are all professionals and things change from day to day; he does feel badly that this information was not brought up earlier; he has no doubt in his mind that Mr. Hals is a complete professional and can be absolutely objective; reminded everyone that the engineer and the planner do not make any decisions; they give their advice and the Board can take it or not; the Board makes the decisions.

**Mr. Pierson:** had no comment.

**Mr. Newman:** had no comment.

**Chairman Hanlon:** asked for a motion.

**Mayor Randall:** asked the Board Attorney for the formulation of the motion.

**Mr. Cucchiara:** stated the motion could take one of two forms; one form might be that Mr. Hals would be disqualified from participating in these proceedings because of the finding that there was a conflict of interest and then must step aside; the other form would be that there is no conflict of interest based upon the evidence and that he can continue to participate in these proceedings.

**Mayor Randall:** stated that he is of the mind, unfortunately, that he doesn't believe there is any conflict, but he thinks it may be in the best issue of the Board that Mr. Hals step aside.

**Councilman Rorty:** seconded the motion made by Mayor Randall.

**Mr. Pierson:** asked for the details of the motion made.

**Mayor Randall:** stated there was a motion of what to do about the situation; he indicated that he does not believe there is any conflict but he does believe it would be in the best interest that he step aside so we have an independent engineer handle the matter.

**Chairman Hanlon:** stated a motion has been made and seconded that the Board vote on asking Mr. Hals to step down.

**Mr. Cirulli:** asked, if the Board decides in this way, what is the next step; do we have to start at square one and have a new engineer review all the information.

**Mr. Cucchiara:** stated that should not be the issue; believes there are two alternatives; counsel can add their comments; the other alternative, and there is authority for it in the law, is to take remedial action; which means, under either circumstances, the engineer would be required to step aside; that is a new engineer would be engaged and be required to review the record; however, he would caution that a new engineer should not review the current engineer's reports or comments in order to be independent and objective but that person would have to be involved; this is not an application that has had two or three hearings; it has had some twenty plus hearings; it would be difficult but that is another approach to a situation where Mr. Hals in this instance would be required to step aside.

**Mr. Cirulli:** stated then we would have to find an engineer that was never involved with Chamberlain Developers.

**Mr. Cucchiara:** stated that was correct; it would have to be an engineer that has no conflict of interest of course and then certainly has engaged in the type of work that was described, specifically review the information that was supplied and going through the record, particularly the plans that have been submitted by the applicant and any other reports that have been issued except the current engineer's reports.

**Mr. Pierson:** asked if the Board voted "yes" to this motion, are we voting that Mr. Hals has a conflict of interest or is it more about the appearance of the conflict of interest; believes this is very important.

**Mayor Randall:** stated his motion was that there was no conflict of interest and that is his belief; however, due to the perception that was created by the late disclosure on the record when it became public knowledge, it would be best to go in that direction.

**Mr. Newman:** asked for clarification that a "yes" vote on this motion means the Board is asking Mr. Hals to step aside, but not a vote for whether or not there is a conflict of interest.

**Mr. Cucchiara:** stated that was correct.

**Ayes:** Pierson, Cirulli, Newman, Councilman Rorty, Mayor Randall

**Nays:** Chairman Hanlon

**Please Note: a 15 minute recess was taken at this time, 8:55PM.  
Meeting reconvened at 9:10PM**

**Roll Call:** Messrs. Pierson, Cirulli, Newman, Councilman Rorty, Chairman Hanlon, Mayor Randall

**Chairman Hanlon:** stated, based on the vote which was taken before the recess, additional business needs to be handled.

**Mr. Cucchiara:** stated a discussion took place in response to Mr. Cirulli's questions with what could possibly happen next depending on the action the Board took; before the Board at this time is whether all of these proceedings have been voided and therefore the application should be terminated and resume from the beginning or if remedial action can be taken in the form that a new engineer be engaged to perform the same functions, review of plans and application; believes the new engineer can start with the revised plans; should not review the reports of Mr. Hals; then make a presentation and issue a report in connection with those issues; the Board has found that there is no conflict

of interest but that Mr. Hals should step aside; under those circumstances, and it will be left up to the Board, it could be appropriate to take remedial action in engaging another engineer; the Board can also decide to void the proceedings; those are the issues that are before the Board at this time; a decision has to be made; a new engineer may be engaged if the Board decides to take remedial action, all parties would want this matter to move as quickly as possible.

**Mayor Randall:** stated the Board should move as expeditiously as possible to choose the option of remediation; does not see any damage as to what the motion was in terms of what the record has been so far; does not believe there was any conflict of interest; this application has gone on for a long time and should not be extended any longer than necessary; a new engineer should be selected and up to speed to pick up where we left off.

**Mr. Pierson:** stated what the Mayor suggested makes perfect sense; believes Mr. Cucchiara's suggestion that remedial action and the opportunity that entails to move forward with a new engineer makes much more sense than trying to rewind the clock.

**Councilman Rorty:** stated he agreed with remediation; the remedial action should take place from the revised plan forward.

**Mr. Cirulli:** agreed.

**Mr. Newman:** stated he sees no sense in voiding all that has been done so far; agrees with remediation.

**Motion for the Board to take remedial action as far as the engineer is concerned; engineer's engagement; the scope of the engagement will take place from the point that the revised plans were submitted and that the search for a new engineer start immediately; Mr. Cucchiara will be the point person and he will be able to ratify his being retained by offering the contract at the next meeting:** Councilman Rorty, Cirulli

**Ayes:** Pierson, Cirulli, Newman, Councilman Rorty, Chairman Hanlon, Mayor Randall

**Mr. Cucchiara:** stated he wanted to add an additional comment; based upon the action of the Board with regard to the Board's engineer this evening; although his reports have been entered into evidence, they should be given no weight by Board members going forward or consideration; although Mr. Hals' comments in connection with these proceedings were somewhat limited because he never made his presentation in connection with his reports, they should also be disregarded and the Board should consider only the reports,

comments, testimony of the new engineer who will be engaged by the Board; asked if counsel had any further comments on this specific issue.

**Mr. Whitaker:** stated he has no requests on this issue; after this issue is resolved, there are other issues that need to be discussed before the Board moves forward.

**Mr. Inglima:** stated he had no questions regarding this issue.

**Mr. Whitaker:** stated, the first aspect in order to move forward now that the Board has set aside Mr. Hals is to have a motion to instruct the financial secretary for the Borough to return all escrow fees that have been paid to Mr. Hals through the escrow funds which is required by law; the second aspect is that it has to be understood that if another engineer is to be hired, based on the law, that engineer is now paid for by the Borough of Ho-Ho-Kus and not through the escrow; that needs to be understood and acknowledged before we go any further.

**Mr. Whitaker:** stated the law is very clear; when you set aside something like this and you are not using the reports, the expertise, etc. and reviews, then the funds that the applicant has posted in escrow, payment for services that are basically now not rendered, those fees get returned; the hiring of the new expert is being done at the Board's reproach; the law is clear; the Borough will now pay for the new engineer's services.

**Chairman Hanlon:** asked the Board if this was understood.

**Councilman Rorty:** asked what the total was at this time.

**Mr. Whitaker:** stated the bills that he has seen have been over \$50,000 for all professionals and review; stated he did not know the specific amount for the engineer; there has been a problem with portioning some of the fees that have come in.

**Mr. Whitaker:** stated the next aspect will be with the new standards that are set as it pertains to the basis of public perception; when the new engineer is vetted it has to be understood that the engineer, based on the Board's perception, no affiliation with the applicant or any of the applicant's companies; no affiliation with Mr. Hals because that would be perception; no affiliation in any manner whatsoever with anyone that has appeared before this Board pertaining to this application; this includes Mr. Inglima, his client's, as well as a listing of the names and addresses of anyone else that has stood before the Board and has either raised a question or has testified; any engineer would have to go through that list and would have to make sure they have not done survey work or engineering work for any of those people; based upon the

fact that even though there is no conflict, we do not want a perception; it has to work both ways.

**Mayor Randall:** stated from his motion, the issue is not the association; the issue that caused the appearance was the inadvertent on the record of the relationship; the relationship itself, the Board found no issue; no conflict in that regard; the issue is the appearance based upon the sole issue of failing to disclose the relationship on the record from the beginning.

**Mr. Whitaker:** stated he is following through with that; he is stating not to hire an engineer and then it is found three meetings from now that the same issue arises; that air should be cleared at this time.

**Mr. Cucchiara:** stated, for the record, believed the Board did have the names and addresses of all of Mr. Inglima's clients.

**Mr. Inglima:** stated he doesn't have a problem with what Mr. Whitaker is asking for; as soon as the name of the proposed engineer becomes known to the Board, he will inquire of everyone in his group as to whether or not they ever had any work done by that engineer.

**Mr. Whitaker:** stated the Board Secretary has minutes showing every person that has stood before the Board; they have given their name and address; those names and addresses have to be provided to the engineer who will be interviewed.

**Mr. Cucchiara:** stated therefore the perspective engineer will be provided with those names; certainly of course, the relationship if any with Mr. Hals will be addressed and of course the applicant as was described, and the applicant's engineers.

**Mr. Whitaker:** stated the escrow has been posted by the applicant; the escrow has been replenished as required when requested by the Borough of Ho-Ho-Kus for professionals working on behalf of Ho-Ho-Kus; it is required under the MLUL that escrows be posted.

**Mr. Cucchiara:** described in detail the process of escrow submitted with a land use application; in addition, Mr. Cucchiara described in detail the process of returning escrow; stated in this matter the applicant has requested that the funds deposited for the Board Engineer be returned since the Board took the option to require the Board's Engineer to step aside and, under those circumstances can no longer consider the reports, etc. of the engineer; as such, the applicant should not then be required to pay for those services since there is no longer an engineer present in this case until a new engineer is engaged.

**Mayor Randall:** asked for clarification; asked if it true of any case, no matter how the engineer would leave; stated what if the professional had to leave because of illness.

**Mr. Cucchiara:** stated that would be different because a new engineer could use the reports and information obtained by the previous engineer and essentially carry the matter forward; in this case, the Board has asked the engineer to step aside and engage a new engineer to issue reports in connection with the application.

**Mr. Stanley Kober, 919 Washington Avenue:** asked a question.

**Mr. Ray Wierzbicki, 755 WSRR:** asked a question.

**Ms. Kim Mitchell, 934 Washington Avenue:** asked a question.

**Chairman Hanlon:** stated at this time the meeting would continue with the Board Planner's report.

**Mr. Ed Snieckus, Burgis Associates, Borough/Board Planner, was sworn in by the court reporter.**

**Mr. Snieckus:** gave his presentation; stated, for the record, he did a complete research of his records and has never had any dealings with Mr. Frasco, Chamberlain Developers, or any of its entities; to the best of his knowledge there is no conflict; gave overview of the MLUL as it relates to the Master Plan and zoning ordinances; planning standpoints and regulations.

**Mr. Pierson:** asked how the retaining wall would work with the berm.

**Mr. Snieckus:** stated the retaining wall would be placed on the Hollywood Avenue side; that would allow the berm to be moved closer to Hollywood Avenue; discussed 3:1 proportion; in this instance, stated the wall helps to attain a greater height out of the soil and then the planting on top of that attains a greater height at the time of planting; Mr. Snieckus continued his presentation.

**Mr. Snieckus:** discussed the following items with the Board: berm issue along Hollywood and the three scenarios given; increased grading percentage; landscape maintenance easement; lot size; lot line radial between lots 7 and 8; planning testimony by objector; cul-de-sac not desirable; positives and negatives to situation; not customary to provide architectural drawings of the homes; lots arranged so they are complimentary to the adjacent properties; style cannot be regulated; cannot regulate in zoning ordinances; can control setback requirements and building coverage requirements; streetlights; ADA compliancy of new proposed sidewalks; setback on Van Dyke; COAH; two year growth guarantee for new plantings; performance bond; shade tree planting

easement explained; underground utilities.

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**Motion to Adjourn:** Councilman Rorty, Pierson  
**All in Favor**

**Meeting adjourned at 10:45PM.**

Respectfully submitted by:

JoAnn Carroll  
Planning Board Secretary  
September 16, 2015