

**Borough of Ho-Ho-Kus
Bergen County, New Jersey
Planning Board Minutes
May 22, 2014
Special Meeting**

Meeting Called to Order at: 7:30PM

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

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

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

Chairman Hanlon: there was an addition to the meeting this evening; correspondence; two documents were hand delivered to Borough Hall.

Mr. Cucchiara: two letters were delivered that were addressed to the Board Members; these letters have been circulated to the newspapers in one instance and to other elected officials; the first of which was not substantive in nature; the second letter was; for the members of the public that have been attending these meetings there is a portion of these hearings that will be devoted to testimony, comments, statements from members of the public; that would be the appropriate time for such correspondence to either be read into the record or used as notes for anyone who would want to speak and testify with regard to the issues presented in this matter; letters of this type, petitions or other types of statements are not evidence until someone presents them and testifies to them or, as earlier indicated, has the opportunity to read them into the record if they wish; Mr. Cucchiara will not comment on the nature of those letters at this time; the second of the letters was substantive in nature; except for the Chairman who happened to be at the Borough Hall when that letter was delivered and read, the other members of the Board have not read those letters; the appropriate time to consider the substance of those letters would be at the time that the person who submitted it comes before the Board, testifies to the facts or information contained in the letter or desires to read it into the record.

Mr. Steve Reilly, 26 Sleepy Hollows Drive: asked for instructions on when the public can speak; electronic communications.

Mr. Cucchiara: ordinarily an application for land use development does not take as much time as the one before the Board now; in most instances the application is presented at a meeting; it may be one of several applications heard that night; it is presented, testimony is
Planning Board Minutes, 5/22/14

presented and a decision is made that night; in connection with those proceedings there is always an opportunity for the public to speak; in this instance, because there are so many matters that have to be presented before the Board gets to that point, that portion has not yet occurred; is unusual only because there are expert witnesses to testify; if any member of the public has been in attendance before, they will know that the opportunity to ask questions has been given particularly in respect to the engineer for the applicant and the cross examination by an attorney representing several residents in the area and certainly the public has had the opportunity to ask questions of the engineer; assured the audience that there will be an opportunity for people to state any type of opinion or comment they have; testify as to factual issues if they desire or read something into the record if they desire; at this point, it is not known when this will happen.

Chairman Hanlon: there was a gentlemen who offered to put information on a website but unfortunately this person was being represented by an attorney in objection to this application; letter was written to this resident stating this would not be appropriate at this point and time; Chairman Hanlon instructed Mr. Reilly that he has explained the meeting process before each meeting and will do so once again this evening.

Mr. Cucchiara: spoke to a resident who wanted to read his letter into the record but who did not identify himself; (resident later identified as Mr. Stanley.) Mr. Cucchiara explained once again that this was not the appropriate time to read a letter into the record; record corrected that this resident's letter went to every Board member and to the two attorneys.

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; completeness review.

Chairman Hanlon: asked the Board to open up their plans at this time; discussed evacuation procedures in case of an emergency; named the Borough's employees and volunteers who were on hand this evening to help in that event; stated the Planning Board has a very strict set of guidelines which they work with through the courts and the State; the Planning Board members are made up of residents with the exception of Mr. David Hals who is the Borough Engineer, Mr. Ed Snieckus who is the Borough Planner; neither of which vote on the Board; the Borough Administrator, Mr. Don Cirulli, is on the Board and does vote; the rest of the members are fully employed; not retired and donate their time; the Board normally meets on the second and third Thursday of the month; the Board tries to protect the Borough the residents and Board; reviewed the meeting process for the audience; all cell phones should be shut off; Planning Board Minutes, 5/22/14

no video recording devices or recording devices are allowed; there is one stenographer taking notes and the Board Secretary makes an audio tape of the meeting as well as types minutes for the meeting; the Bergen County Bar Association states the Board can ask the audience to shut off all devices; this is a public meeting; meeting will end at 11PM tonight; will not go beyond this time regardless of where the testimony is at the time; all discussions take place in front of the microphone to keep a legal record of the proceedings; if someone is not able to approach the dais, arrangements will be made to have the microphone brought to their seat; 200' list residents are given first priority to speak; residents need to be truthful in their testimony; they will be sworn in; perjury if false information is given to the Board; there are special guidelines and rules that are followed by the Board; explained voting procedure and resolution.

Mr. Pierson stated he had listened to the audio tape of the May 15, 2014 meeting and a certification stating this fact had been signed.

Mr. Bruce Whitaker: his next witness is Mr. Doug Smith; Board was advised to Mr. Smith being a witness with the purpose of testifying as to the veracity of the survey itself.

Mr. Douglas Smith, DAB Surveying, 170 Kinnelon Road, Suite 25, Kinnelon, NJ was sworn in by Mr. Cucchiara.

Mr. Smith: stated his educational and professional background; Mr. Smith is a professional land surveyor licensed in the State of NJ; has been licensed since 2003; in the course of Mr. Smith's work and profession, Mr. Smith has prepared surveys and subdivisions; has been qualified as an expert in the field of surveying; has appeared before various land use boards for this purpose; has been qualified in the Superior Court in the field of surveying; has had other subdivisions approved by the Planning Board of Ho-Ho-Kus; license was in affect in November of 2013; ability to create and prepare a plan that is part of this application.

Mr. Iannelli: no questions of the witness.

Councilman Rorty: no questions of the witness.

Mr. Cirulli: no questions of the witness.

Mr. Pierson: no questions of the witness.

Mr. Reade: no questions of the witness.

No members of the public had any questions on the qualifications of the witness.

Chairman Hanlon: the applicant, Mr. Douglas Smith, was deemed qualified.

Mr. Whitaker/Mr. Smith: referred to Exhibit A1; specifically the 2nd page of the plans; Mr. Smith stated it is the preliminary filed map for the subdivision work; Mr. Smith's signature is above the wording

“subdivision layout”; he is familiar with this property; he prepared the subdivision plan Mr. Whitaker just referenced; in connection with preparing this plan Mr. Smith found who owns all the different properties in the particular block; once he has that list he goes to the courthouse and collects the deeds for all of the owners; reviews the deeds; the deeds refer to filed maps; he collects the filed maps; brings those to his office; creates a record plotting before he goes to the field; submits that map to his field crew; they go out and collect all the pieces of evidence that he has requested them to find; when his crew returns, he takes the field work and overlays it on top of his record map and he creates the map that is seen today; used this procedure in this particular instance; Mr. Smith has been to the site himself; the maps have been prepared using the data he described; which consisted of deeds which were recorded in Bergen County and filed maps recorded in Bergen County; Mr. Smith is familiar with the map at the hearing which provides the out boundary line with metes and bounds description of the entire tract; Mr. Smith incorporated this and put it on the plan; Mr. Smith is familiar with the interior lines shown and metes and bounds descriptions pertaining to each of the individual lots; stated the metes and bounds descriptions for each lot were created by Mr. Smith; as Mr. Smith’s capacity as a licensed surveyor, it is his opinion that the metes and bounds description that incorporates the outer boundaries of the tract are true and correct; as a licensed surveyor it is Mr. Smith’s opinion that all of the internal lines that he proposed are correct and accurate; Mr. Smith is familiar with the map filing law for purposes of a certification to perfect a subdivision; perfecting a subdivision is covered under the map filing law; a certification needs to be signed by a surveyor preparing a survey; if the Board were to approve this subdivision, Mr. Smith would have the ability to execute that certification; Mr. Whitaker had no further questions for Mr. Smith.

Mr. Iannelli: no questions of the witness

Councilman Rorty: no questions of the witness

Mr. Cirulli: no questions of the witness

Mr. Pierson: no questions of the witness

Mr. Reade: no questions of the witness.

Chairman Hanlon: asked if, on the survey, Mr. Smith looked at the three structures on the property.

Mr. Smith: “Yes.”

Chairman Hanlon: how many residential sites are on the existing property?

Mr. Smith: there is one large house and one smaller house.

Mr. Inglima, Objector’s Attorney: asked if Mr. Smith only prepared page 3 of 11 entitled “Subdivision Layout Plan.”

Mr. Smith: “Yes.”

Mr. Inglima: asked if Mr. Smith prepared any surveys.

Mr. Smith: “No.”

Mr. Inglima: Mr. Smith indicated he is testifying as a surveyor; wanted an explanation of a survey.

Mr. Smith: explained he collected the deeds, plotted the deeds, collected the filed maps, plotted the filed maps; created a record map; did field reconnaissance; use the data from the field in conjunction with the record of plottings to create what is seen in front of them today.

Mr. Inglima: confirmed that Mr. Smith stated the outer boundaries are correct.

Mr. Smith: “Yes.”

Mr. Inglima: asked what Mr. Smith based the outer boundaries on.

Mr. Smith: based on the deeds, filed maps and the field evidence.

Mr. Inglima: asked which deeds Mr. Smith reviewed; asked him to produce them.

Mr. Smith pulled the deeds from his file.

Mr. Inglima: asked if Mr. Smith obtained a title report from a licensed title search or agency.

Mr. Smith: “No.”

Mr. Inglima: asked if Mr. Smith performed all of the work he described in his direct testimony personally.

Mr. Smith: he has a title search for the PQ (property in question); he does not have a title search for each of the other lots.

Mr. Inglima: asked if Mr. Smith had a copy of the title search for the subject premises.

Mr. Smith: “Yes.”

Exhibit 06: Commitment #AT-14030 for Tracts I and II

Mr. Inglima: asked if Mr. Smith has represented the outer boundaries of the site.

Mr. Smith: “Yes.”

Mr. Inglima: asked if Mr. Smith based the outer boundaries of the site only on the last two deeds conveying title to the property to the Costanza estate or its direct predecessor Mr. and Mrs. Costanza.

Mr. Smith: “No.”

Mr. Inglima: asked what he based it on.

Mr. Smith: he based it on the collection of all the deeds within the block.

Mr. Inglima: located the deeds that were submitted to the Board as part of the application; located a deed that was supplied to Mr. Inglima by Mr. Whitaker that he described as a deed by which the public dedication of Van Dyke Drive was created and recorded in Book 2725 on page 595; located no other deeds; asked if Mr. Smith had any other deeds that he obtained from the search vault at the Bergen County Clerk’s office that form the basis for his determination of the boundaries of the site for Lots 1, 2, 3, 4 and 10.

Mr. Smith: the oldest deed he has is Book 2722 Page 394; tract represents what would be Block 802, Lots 1, 2, 3 and 4.

Mr. Inglima: deed 2722, page 394; asked if this is a deed to the Costanzas from Helen B. Stalter.

Mr. Smith: “Yes.”

Mr. Inglima: asked if Mr. Smith had copies of this document.

Mr. Smith: “Yes.”

Exhibit O7: Indenture; Book 2722, Pages 394, 395, 396; Statler to Costanza. (Copies distributed to the Board members)

Mr. Inglima: asked if Mr. Smith had any other deeds in his file in relation to the subject premises.

Mr. Smith: he has deeds for Lot 1 also; deed Book 8404 Page 297.

Chairman Hanlon: the Board already had a copy of this deed since it was attached to the original application.

Mr. Smith: he has Book 2493, Page 21.

Mr. Inglima: asked if this was also attached to the application package.

Chairman Hanlon: he remembered reading it; can’t confirm the number; did confirm having the deed.

Mr. Inglima: asked if there were any other deeds.

Mr. Smith: Book 1903, Page 33; James to Stalter.

Exhibit O8: Deed Book 1903, Pages 33, 34; James to Stalter.

Mr. Inglima: asked if there were any other deeds in Mr. Smith's file.

Mr. Smith: Book 1997, Page 399.

Exhibit O9: Deed Book 1997, Pages 399, 400, 401, 402; Baldwin to Statler.

Mr. Inglima: the witness verified what he just showed him is the same document that he just identified from his file with the exception of the footer notations similar to the one that was just marked as O8 which states "John A. Baldwin and Co. to Helen B. Stalter, Deed Book 1997, Page 399."; asked if Mr. Smith had any other deeds.

Mr. Smith: "No."

Mr. Inglima: asked if the search of title went back further than the deeds that were referenced in Mr. Smith's testimony.

Mr. Smith: he couldn't say.

Mr. Inglima: asked if Mr. Smith had pulled any earlier deeds.

Mr. Smith: those are the two earliest deeds that he used for the PQ.

Mr. Inglima: asked if the deed that was marked as O8 referred to the larger of the two parcels that were conveyed to Mr. & Mrs. Costanza.

Mr. Smith: "Yes."

Mr. Inglima: Deed from 1933 from James to Stalter that described that property which was the larger of the two tracts; it was bounded on the north by Hollywood Avenue and the east by WSRR.

Mr. Smith: "Yes."

Mr. Inglima: asked if Mr. Smith looked at the metes and bounds of the description contained in the James to Statler deed, O8; or the Statler to Costanza deed, to confirm the metes and bounds described therein comport with the plan and other observations Mr. Smith made in the field.

Mr. Smith: "Yes."

Mr. Inglima: there are several courses that are not reflected on Mr. Smith's plan that are on the deed; asked Mr. Smith to look at course labeled "4" on the front page of O8.

Mr. Smith: 78 degrees, 22 minutes NW; 400 ft.; showed on map where that course occurs.

Mr. Inglima: asked what the dimension of the southerly line was on Mr. Smith's plan.

Mr. Smith: 392.66 ft as surveyed.

Mr. Inglima: asked where the difference was indicated between the deed of conveyance to the current owner and the survey that Mr. Smith performed.

Mr. Smith: he did not list it.

Mr. Inglima: asked how Mr. Smith reconciled the fact there is an almost 8 ft. difference between two courses.

Mr. Smith: followed the bound; went from the right of way of WSRR to the corner of the filed map of 2913 and 2535.

Mr. Inglima: asked if Mr. Smith established the location of lots shown on the filed map.

Mr. Smith: followed the map; followed the land that had already been sold.

Mr. Inglima: asked if there is a difference in distances along the boundary line of the property, what is the normal protocol to follow to reconcile differences between a deed and what is observed in the field?

Mr. Smith: put both the survey and the deed on the map.

Mr. Inglima: asked if Mr. Smith did this.

Mr. Smith: "No."

Mr. Inglima: asked if it would be prudent under the circumstances where there is a 7.5 ft. overlap indicated on the deed, to establish the metes and bounds of the adjoining properties.

Mr. Smith: this is not their only adjective.

Mr. Inglima: if the subdivision was approved it would create new boundary lines for new lots that abut other lots; property lines on the south and the west, generally, that must be observed.

Mr. Smith: “Yes.”

Mr. Inglima: asked if there were deeds, surveys and other references that were created over a period of time that indicate the boundary lines of the adjoining properties.

Mr. Smith: he has the deed of all the owners to the south and filed maps from 1930; the line leaving WSRR follows the northerly line of the lot to the south.

Mr. Inglima: asked how Mr. Smith established the lots to the south; asked if there were any monuments shown on the plan.

Mr. Smith: there are a few.

Mr. Inglima: asked if monuments are set when a subdivision is approved.

Mr. Smith: they are supposed to be.

Mr. Inglima: pins and rods can be set by surveyors in the course of subsequent survey work; asked if Mr. Smith located monuments that were installed along either Van Dyke or any of the four roadways that bound these properties; asked if there were any monuments found on Hollywood Avenue.

Mr. Smith: “No.”

Mr. Inglima: asked if the State DOT has jurisdiction over a portion of this site.

Mr. Smith: it is a County road.

Mr. Whitaker: objected; this is beyond the expertise of the surveyor.

Mr. Inglima: asked if the DOT would be the source of a map that would show the metes and bounds of Hollywood Avenue, and did Mr. Smith ask for such a map.

Mr. Smith: “No.”

Mr. Inglima: asked if Mr. Smith obtained any map from the County of Bergen that indicates the location of the right of way line of Hollywood Avenue.

Mr. Smith: “No,” except for the filed maps from 1932.

Mr. Inglima: asked Mr. Smith to produce a copy of the filed maps from 1932.

Mr. Inglima: was handed filed map 2531; filed in the Office of the Bergen County Clerk on June 22 or 23, 1929; Mr. Smith confirmed this statement.

Mr. Inglima: asked if this was a true copy of the map Mr. Smith obtained from the County.

Mr. Smith: “Yes.”

Exhibit O10: Map of Saddle River Hills; Cleverdon Section; prepared by Myron Hendee, dated June 1929.

(Placed on easel)

Mr. Inglima: asked if the location of Hollywood Avenue is established on this map.

Mr. Smith: the right of way line is shown on the map.

Mr. Inglima: asked if it indicates metes and bounds for the right of way line in this location along the north side of the applicant’s site.

Mr. Smith: it has metes and bounds on the north westerly corner of the applicant’s block and is projected to the corner of Hollywood and WSRR.

Mr. Inglima: it indicates that WSRR ends at the intersection with Hollywood Avenue; asked if it indicates any location of the corner of WSRR and Hollywood Avenue.

Mr. Smith: it does not have a distance.

Mr. Inglima: asked if it indicates any metes and bounds along the easterly side of the applicant’s site.

Mr. Smith: no, except for the SE corner coming out of the lot in the lower right hand corner; what is shown as Lot 1 on the plan.

Mr. Inglima: it does indicate a boundary along the south side of the applicant’s site; and along the west side there is a lot line indicated along the north and east portions of Lots 11-6.

Mr. Smith: it is showing lot lines.

Mr. Inglima: asked if Mr. Smith reviewed the deeds that he described previously and reconciled them with that lot line.

Mr. Smith: “Yes.”

Mr. Inglima: asked if Mr. Smith found that they were the same.

Mr. Smith: “Yes.”

Mr. Inglima: in regards to the right of way lines of Hollywood Avenue and WSRR, other than to scale them off the map, did Mr. Smith have any other basis for knowing where those lines are.

Mr. Smith: it is actually described in the deed which was just referred to; James to Stalter.

Mr. Inglima: asked if Mr. Smith showed the same dimensions and metes and bounds on his map as what is shown as the course of Hollywood Avenue on that deed.

Mr. Smith: “No,” the distance was too long.

Mr. Inglima: asked if an adjustment was made.

Mr. Smith: “Yes.”

Mr. Inglima: asked how much of an adjustment did Mr. Smith make in the northern boundary of the site.

Mr. Smith: off hand he did not know the number.

Mr. Inglima: with respect to WSRR, asked if Mr. Smith reviewed any deeds that reflect the center line of WSRR or the easterly line of WSRR south of Hollywood Avenue.

Mr. Smith: RPQ; did not do the easterly side; only portions of the site done that touched the right of way line of WSRR.

Mr. Inglima: there is an indication on the plan marked as Exhibit O10; monumentation located along the east side of Van Dyke Drive and along the north side of Brandywine Road; asked if this monumentation was indicated on Mr. Smith’s plan.

Mr. Smith: “No,” he did not find it.

Mr. Inglima: asked if Mr. Smith was suggesting that the monuments described in other deeds have been removed.

Mr. Smith: can only say he did not find it.

Mr. Inglima: referred to page 3 of 11 of the applicant’s plans; asked if Mr. Smith indicated the dimensions of any other lots that were defined by the deeds that were described.

Mr. Smith: “No.”

Mr. Inglima: asked if Mr. Smith showed the original filed map lot lines that were shown on O10.

Mr. Smith: “No.”

Mr. Inglima: asked if Mr. Smith showed the tax map lines that are shown on the current tax map of Ho-Ho-Kus.

Mr. Smith: the lines shown on the map are deed lines/deed plottings.

Mr. Inglima: asked if Mr. Smith showed the location of any easements that affect the applicant’s property; any easements on any of the frontages of the property.

Mr. Smith: he did not find any; none that he is aware of.

Mr. Inglima: showed a document that was obtained from the Bergen County Clerk’s office; Deed 1696, Page 675; grant of easement from James to American Telephone and Telegraph Co. of NJ; bears the date of May 16, 1929; asked if Mr. Smith was familiar with it.

Exhibit O11: Deed Book 1696, Page 675, 676; James to American Telephone and Telegraph Co. of NJ.

Mr. Smith: “No.”

Mr. Inglima: asked Mr. Smith to read the description of the property that is the subject of this grant; asked if James was one of the grantors of the property to Stalter.

Mr. Smith: “Yes;” this is the first time Mr. Smith has seen this document.

Mr. Inglima: the deed that was previously identified in 1903 page 33 says it is between Mrs. James and her husband of the Borough of Ho-Ho-Kus and Stalter of the City of Paterson; apparently James granted, by this document, an easement to the American Telephone and Telegraph Co. of NJ; asked if this would be relevant for Mr. Smith to determine whether this creates any interest of the successors of the business interest of AT&T/Verizon of NJ with respect to any portion of the site.

Mr. Smith: there is no geometry on there for him to plot; this goes back earlier than he would do a search for; not part of the property search.

Mr. Inglima: if it is valid when created, it should exist unless it was released.

Mr. Smith: that would be true.

Mr. Inglima: starting on page 675 to 676, it is stated that it grants to the grantee the “right, privilege and authority to construct, operate and maintain an underground telephone and telegraph system consisting of such conduits and drains, pipes, manholes, wires, cables and other fixtures and appurtenances as the grantee may from time to time require upon, over, through and under the property” which the grantor owns; then it describes the property as being known as WSRR in Ho-Ho-Kus, County of Bergen, NJ; it includes “the further right to install and carry in such system the wires and cables of any other company”; obviously if there is any right that is created along the frontage of the site on WSRR, that would be an important fact to know for purposes of the subdivision.

Mr. Smith: it should be shown on the map.

Mr. Inglima: the applicant’s plans show improvement along the frontage of WSRR which includes a drainage system; it is within the applicant’s site and the right of way; appears that the right of way and the area adjoining it is affected by the easement granted to AT&T; based on this information, should this be investigated further in order to complete the survey.

Mr. Smith: typically, this was not part of his search; this is an ancient document; he would like to know if anything had been installed.

Mr. Inglima: asked if Mr. Smith had been out to the site and looked at any manhole covers that bear the old imprint of AT&T.

Mr. Smith: he has been out to the site but wasn’t looking for this imprint; doesn’t remember specifically seeing this.

Mr. Inglima: asked if it would make a difference to him if he had seen those conditions.

Mr. Smith: perhaps in light of what he has been shown.

Mr. Inglima: asked if Mr. Smith knew of any restrictions or other limitations that were imposed in the title record to either of the parcels that were conveyed to the Stalters in the prior deeds.

Mr. Smith: there were some items that stated you were not allowed to have hens or ducks; believes this has expired; the language in the deed mentioned it would only last for so long.

Mr. Inglima: asked which deed Mr. Smith was referring to.

Mr. Smith: can’t say which one; but remembers reading this during his research that when the lands were conveyed that they were subject to these items; at the same time those same rights, in the same deed, that they have expired.

Mr. Inglima: asked if Mr. Smith was referring to a deed that conveyed a very large tract from which the parcel was a subject of filed map 2531.

Mr. Smith: does not remember which one.

Mr. Inglima: asked if this was between the late 1800s and the early 1900s.

Mr. Smith: possibly.

Mr. Inglima: asked if Mr. Smith was familiar with any deed by which the James' acquired title to the parcel that they conveyed to Statler.

Mr. Smith: he stopped after he went to 60 years.

Mr. Inglima: if there were restrictions imposed more than 60 years ago, would those still be enforceable.

Mr. Smith: that is not a question for him.

Mr. Inglima: if there were persons for whom benefits were created through restrictions, he assumed they would have the right to enforce them.

Mr. Whitaker: objection to the form of the question; it is asking for a legal conclusion that the surveyor is not aware of.

Mr. Inglima: withdrew question.

Mr. Inglima: showed Mr. Smith a deed obtained from the Bergen County Clerk's office, marked O12; Deed Book 1284, Page 481; referred to bottom of the page 481 and top of 482; asked Mr. Smith to read aloud a portion of these pages.

Exhibit O12: Deed Book 1284; Pages 348, 349, 350; Saddle River Estates to James.

Mr. Smith: "subject however to the restriction and condition that said property shall be used for dwelling house purposes only and that any dwellings be erected on said property shall be a one family dwelling to cost not less than \$15,000."

Mr. Inglima: asked if Mr. Smith indicated anywhere on his plan the existence of a restriction of the use of the property as single family dwellings.

Mr. Smith: "No."

Mr. Inglima: if that restriction exists in the chain of title to the property is it something that should be reflected on the survey.

Mr. Smith: yes if it is still valid.

Mr. Inglima: was it produced as part of the application documents when this application was filed with the Board.

Mr. Smith: “No.”

Mr. Inglima: isn't it a requirement of this municipality's subdivision ordinance that copies of all covenants, restrictions, easements, etc. affecting the title of the property that is the subject of a subdivision be included in the application and the plan.

Mr. Whitaker: typically the application goes back for a 60 year search; this is what was submitted; this is a private right not a restriction running any municipality or any governmental entity.

Mr. Inglima: doesn't agree with counsel; contend there are persons that may be entitled to enforce the restriction that are set forth in this deed and that it should have been revealed to the Board and made part of the application.

Mr. Whitaker: in response, the property the applicant has is insurable against any such restriction; private right is well over 60 years old; by law, basically extinguished a run into Saddle River Estates; if they wish to try to enforce that, that is fine, but as a private right, it is not going to be enforceable by a public entity or other members of the public.

Mr. Inglima: respectfully disagrees; his client's position is that there are other parties who subsequently acquired title to the larger tract from which this parcel is carved out which was retained by Saddle River Estates and sold off; the persons who own those parcels which are in the vicinity of the applicant's site continue to have a right to enforce this restriction; the Board cannot resolve but it must be brought to the Board's attention; Exhibit O13 marked; on two occasions in 1923 and 1924, restrictions imposed by Saddle River Estates were recorded against the property of James; she is one of the predecessors entitled to the applicant's owner; asked if this was correct.

Exhibit O13: Deed Book 1244, pages 348,349, 350: Saddle River Estates to James.

Mr. Smith: “Yes.”

Mr. Inglima: asked if Mr. Smith relied upon the survey by Boswell Engineering.

Mr. Smith: he didn't rely upon it.

Mr. Inglima: read from the plan; Boswell survey is one of his references.
Planning Board Minutes, 5/22/14

Mr. Smith: it is one of many references listed; does not mean he relied upon it.

Mr. Inglima: stated references listed by Mr. Smith; asked if Mr. Smith had a copy of the Boswell survey with him.

Exhibit O14: Map of Birchwood Estates; prepared by Baldwin and Contant, Inc.; dated August, 1936.

Mr. Smith: has some of it; computer printout but not the official document.

Mr. Inglima: asked if Mr. Morris is in attendance this evening and would he be testifying and also if he had a copy of the map they were discussing.

Mr. Whitaker: it is to be determined if he will be called as a witness.

Mr. Inglima: asked if it was a true copy of the survey.

Mr. Smith: "Yes."

Exhibit O15: Boundary and Topographic Survey prepared by Boswell Engineering; Thomas F. Miller; dated 7/2/10.

(Placed on easel; O15)

Mr. Inglima: asked if this is the survey that is the source of the reference on Mr. Smith's sheet 3 of 11.

Mr. Smith: "Yes."

Mr. Inglima: asked if this indicates the location of existing structures on the site.

Mr. Smith: yes, but it is not his map.

Mr. Inglima: asked if Mr. Smith had familiarity with the structures that are shown on the site.

Mr. Smith: "Yes."

Mr. Inglima: asked if Mr. Smith was familiar with the topographic conditions that are shown on the map.

Mr. Smith: would not want to answer this question; he did not do a topography.

Mr. Whitaker: asked and answered; Mr. Smith referenced it; already testified he did not rely on it.

Mr. Inglima: there is topographic detail shown on the subdivision plat; Mr. Palus stated he didn't do the elevation; who did do the topography?

Mr. Smith: Mr. Boswell did; it is his map.

Mr. Inglima: does it then follow that if there is any existing topography on the subdivision set, A1, its source was Boswell Engineering.

Mr. Smith: he did not make this map so he couldn't say what value it had in regards to the set of plans.

Mr. Inglima: this plan doesn't show the width or center line of Hollywood Avenue.

Mr. Smith: does not believe so.

Mr. Inglima: familiar with subdivision work throughout Bergen County and other counties in NJ that requirements may be imposed for details to be added to the preliminary plat as well as to the final plat in respect to the location of existing streets.

Mr. Smith: "Yes."

Mr. Inglima: Mr. Smith is familiar with these requirements and that Hollywood Avenue is a County road; the County of Bergen has jurisdiction over this application as a result; the application contemplates the creation of four lots that will have frontage on Hollywood Avenue; why was the center line of Hollywood Avenue shown.

Mr. Smith: at the particular time the filed maps only show the southerly right of way line; very old road so the center line would be surveyed at best.

Mr. Inglima: Mr. Smith knows he would have to provide this information to the County.

Mr. Smith: when they request it.

Mr. Inglima: it was requested in a letter from Mr. Timsak.

Mr. Smith: that would go on the existing conditions map.

Mr. Inglima: asked if Mr. Smith had been in attendance for this application before this Board.

Mr. Smith: was in attendance for the first meeting and then this evening's meeting.

Mr. Inglima: was not present on May 8th or May 15th.

Mr. Smith: “No.”

Mr. Inglima: on May 8th a letter from Mr. Timsak dated 2/19/14 was introduced into the record into the hearing; had Mr. Smith reviewed this letter.

Mr. Smith: “No.”

Mr. Inglima: gave a copy of the letter to Mr. Smith; read first two enumerated paragraphs.

Mr. Inglima: are these the typical requirements for the County.

Mr. Smith: “Yes.”

Mr. Inglima: the County typically requests there be road widening easements granted under circumstances where an application is a major subdivision.

Mr. Smith: “Yes.”

Mr. Inglima: the County is requiring this in Mr. Timsak’s letter.

Mr. Whitaker: that is what they are requesting.

Mr. Smith: “Yes.”

Mr. Inglima: was it being suggested that this request by the County is an improper request.

Mr. Whitaker: Objection; not for this witness to decide.

Mr. Inglima: he is a surveyor and has experience with respect to applications for subdivisions and familiarity with the practices and procedures of the County of Bergen.

Mr. Smith: “No,” he did not have an opinion.

Mr. Inglima: asked if Mr. Smith had an opinion or that it wouldn’t be improper.

Mr. Whitaker: the witness stated he did not have an opinion.

Mr. Inglima: would it involve an undue hardship upon the applicant if Mr. Smith would have to provide the center line of Hollywood Avenue as part of the submission to the County or to the municipality.

Mr. Whitaker: Objection; does not know what “undue hardship” means; why it is necessary to go into it; the letter that is being used as an exhibit has not been directed to Mr. Smith; it has been directed to the applicant; the Board has already had a discussion with the applicant and the information they have provided that there is a number of items to be worked out with the County; the Board has already requested there be a meeting with the County where all of these things would be explored.

Mr. Inglima: asked if there is a scheduled date for a meeting.

Mr. Whitaker: not at this point.

Mr. Inglima: asked if Mr. Smith had any contact with any officials of the County of Bergen with respect to this subdivision application.

Mr. Smith: “No.”

Mr. Inglima: asked if Mr. Smith had obtained maps from any other municipal, county or State agency with respect to the location of Hollywood Avenue.

Mr. Smith: “No.”

Mr. Inglima: asked if Mr. Smith had reviewed an official street map of the Borough of Ho-Ho-Kus with respect to the location of Hollywood Avenue.

Mr. Smith: “No.”

Mr. Inglima: asked the same question in respect to WSRR.

Mr. Smith: “No.”

Mr. Inglima: confirmed that Mr. Smith did not review any deeds, filed maps or any other information that would indicate the location of the boundary lines of properties on the east side of WSRR directly across from the site.

Mr. Smith: “Yes.”

Mr. Inglima: asked if Mr. Smith had any familiarity with conditions of title affecting those properties.

Mr. Smith: “No.”

Mr. Inglima: Mr. Smith indicated he did get deeds for the properties that directly abut the property but he did not get deeds for any properties across WSRR or across Van Dyke from the site.

Mr. Smith: agreed.

Mr. Inglima: Mr. Smith had previously prepared a map that was marked as O3; showed it to Mr. Smith; asked what Mr. Smith meant by a “control survey.”

Mr. Smith: he did not locate the existing conditions.

Mr. Inglima: asked if it shows any existing conditions of the property with the possible exception of outer boundary lines.

Mr. Smith: just the trees and some drainage.

Mr. Inglima: referred to O3 and asked what the source of information was in respect to the trees.

Mr. Smith: the location of trees; Mr. Smith located all of the trees; measured the width of the tree within three inch increments.

Mr. Inglima: asked if Mr. Smith created a boundary line and then measured the distance from the boundary line or did he estimate.

Mr. Smith: went out with a total station; located each of the trees; record of the tree locations made.

Mr. Inglima: asked if Mr. Smith indicated any where on his plan the root systems of any of those trees.

Mr. Smith: “No.”

Mr. Inglima: in regards to the canopies of the trees, did Mr. Smith make any measurements or calculations.

Mr. Smith: “No.”

Mr. Inglima: asked if the species of the trees were indicated.

Mr. Smith: just whether it is deciduous or evergreen.

Mr. Inglima: based on visual recognition.

Mr. Smith: yes, needles or leaves.

Mr. Inglima: are these the proposed lot lines.

Mr. Smith: “Yes.”

Mr. Inglima: asked if it shows the existing lot lines or just the proposed boundary lines.

Mr. Smith: just the proposed.

Mr. Inglima: asked if any information contained in O3 was derived from other sources.

Mr. Smith: from original record map and field work.

Mr. Inglima: asked if there were other engineers, or surveyors or consultants used in the course of preparing O3.

Mr. Smith: no, other than getting the line work of knowing where they wanted to build and construct.

Mr. Inglima: there are existing drainage structures on O3.

Mr. Smith: "Yes."

Mr. Inglima: what was the source of the information on O3 in regards to drainage structures?

Mr. Smith: found them himself.

Mr. Inglima: field inspection and measurements taken and depicted the results on his plan.

Mr. Smith: "Yes."

Mr. Inglima: asked if Mr. Smith went down to the end of the pipe that is indicated as broken and clogged.

Mr. Smith: "Yes."

Mr. Inglima: asked how far back Mr. Smith went in the drainage system from Brandywine.

Mr. Smith: only to where Brandywine Road is.

Mr. Inglima: those conditions ended with the right of way of Brandywine Road.

Mr. Smith: only asked to locate these items; request on the drainage calculations; asked to start at the 2 B inlets on Brandywine to the pipe that goes out to the river.

Mr. Inglima: asked if Mr. Smith did any examination of the inside of any of the catch basins, manholes or pipes that are indicated on the plan.

Mr. Smith: "Yes."

Mr. Inglima: asked what type of inspection was done.

Mr. Smith: visual.

Mr. Inglima: asked if Mr. Smith physically went inside the structures.

Mr. Smith: no, you are not allowed to.

Mr. Inglima: asked if any manholes were lifted.

Mr. Smith: manholes were lifted.

Mr. Inglima: asked how the inverts of pipes were measured.

Mr. Smith: a tape is dropped to the bottom.

Mr. Inglima: asked if the grade was established at the top and at the bottom by a tape measure distance.

Mr. Smith: "Yes."

Mr. Inglima: asked if there were any other means by which he made those measurements.

Mr. Smith: "No."

Mr. Inglima: asked if Mr. Smith observed any water in any of the pipes.

Mr. Smith: "No."

Mr. Inglima: in respect to the pipe that extends generally south from Brandywine; how was the size of the pipe established.

Mr. Smith: used a stick tape; it is a wood tape that unfolds; opens up in 6 inch sections; reach down the best you can and hold it in front of the pipe.

Mr. Inglima: referred to the plan; referred to a pipe that extends to the south from the area depicted on the plan; indicated as a 24 inch reinforced concrete pipe that extends to a storm manhole that has a rim at 103.89 and an invert at 97.29; as to the 24 inch pipe that extends off the plan to the south and west, did Mr. Smith determine the size of this pipe at the manhole.

Mr. Smith: "Yes."

Mr. Inlgima: physically went into the manhole to get the stick tape measurement.

Mr. Smith: not allowed to put your head below the manhole; done from the top of the manhole.

Mr. Inglima: asked what the distance was from the rim to the invert of the pipe.

Mr. Smith: in this particular case, 7 ft.

Mr. Inglima: asked if Mr. Smith believed this to be a reliable indication of the size of the pipe.

Mr. Smith: stated it is his best opinion of the size of the pipe; these particular concrete pipes actually had male and female pipe sections; they had an interior pipe and a sleeve; the first time the crew went to the site they measured and did come back with varied heights/widths; made a second attempt; double checked them and could see the actual pipe was within the sleeve of the pipe and they were able to adjust; this, in his opinion, is the correct size of the pipes.

Mr. Inglima: did Mr. Smith go to the catch basins at the intersection of Valley Forge and Sleepy Hollow to determine the source of this pipe.

Mr. Smith: he wasn't asked to go any further; no.

Mr. Inglima: speaking of various deeds of the properties; noted a couple of differences between the deed descriptions and what was reflected on the plan; asked Mr. Smith if he had satisfied himself that there are no gaps or gores between any parcels that were conveyed to Stalter and subsequently conveyed to Costanza.

Mr. Smith: "Yes."

Mr. Inglima: asked how he did that.

Mr. Smith: plotted all the record deeds; referred to the layout map.

Mr. Inglima: asked if Mr. Smith had a map or drawing that indicates the metes and bounds reflected in the two deeds by which the Stalters took title to the property.

Mr. Smith: "No."; has an earlier version of the record map; this map is not technically for distribution; it is for Mr. Smith to build and verify the outbound survey and then he keeps his own record; then the information is provided to the engineer.

Mr. Inglima: asked if Mr. Smith had any map that indicates the metes and bounds of the properties that are the subject of the two Stalter deeds.

Mr. Smith: does not have the deed plottings.

Mr. Inglima: asked if Mr. Smith determined if those properties that were described in the two deeds to Stalter, created any overlaps between the two tracts that were described in those properties.

Mr. Smith: did not find any overlaps or gaps.

Mr. Inglima: asked if Mr. Smith found any overlaps between the deed descriptions that were contained in the Stalter deeds and any other abutting properties to the south or west.

Mr. Smith: “No.”

Mr. Inglima: not withstanding the fact that he has identified to Mr. Smith at least several metes and bounds descriptions that are discordant with the dimensions that are shown on the plan.

Mr. Smith: old deeds regularly had bad distances and bearings.

Mr. Inglima: referred to filed map; O10; shows the same metes and bounds along the common boundary with the applicant’s site for lots 1-11 as map 2917.

Mr. Smith: “Yes.”

Mr. Inglima: the lot numbers have changed.

Mr. Smith: they have reversed.

Mr. Inglima: asked if Mr. Smith accounted for the differences between the lot lines that are indicated on this map for different lots and the lot lines that are now shown on the tax map of the Borough of Ho-Ho-Kus for lots 1, 2, 3 and 4 which are the subject of this application.

Mr. Smith: the deed plottings from lots 1, 2, 3 and 4 and then of lot 10 actually are represented correctly on the tax map.

Mr. Inglima: asked what he is comparing them to when he says they are correct.

Mr. Smith: he plotted the deeds and made a map; already stated this.

Mr. Inglima: asked if the tax map lots for the Borough of Ho-Ho-Kus were amended at some point to reflect the lots that were conveyed by deed to Stalter or to Costanza.

Mr. Smith: the Statler to Costanza, Deed Book 2722, page 394 shows lots 1, 2, 3 and 4 as per the tax map.

Mr. Inglima: asked if there were portions of what were originally shown on the filed map as lots 1-5 or 7-11 that were subsequently changed; did Mr. Smith track the changes that were made to those lots.

Mr. Smith: “Yes.”

Mr. Inglima: is it fair to say that at one point someone conveyed a portion of one of the lots that are shown on the filed map and left the remainder in the hands of the grantor.

Mr. Smith: “Yes.”

Mr. Inglima: that basically shaved off 75 feet or 50 feet of the width of the lot.

Mr. Smith: doesn't know the width but yes.

Mr. Inglima: asked if Mr. Smith determined to his satisfaction that after the work was done and the deeds were exchanged the deeds matched the new tax lots.

Mr. Smith: “Yes.” In the Stalter to the Costanza deed it says it is intended to be all the available land they have left.

Mr. Inglima: asked if Mr. Smith was familiar with the zoning ordinance of the Borough of Ho-Ho-Kus as it applies to lot dimensions and required lot sizes.

Mr. Smith: not as familiar as a design engineer.

Mr. Inglima: referred to the sheet Mr. Smith indicated was his work file; sheet 3; indicated the dimensions, the frontage.

Mr. Smith: he was showing the proposed lot lines with geometry.

Mr. Inglima: setbacks?

Mr. Smith: setbacks are done by design; by Mr. Palus the engineer.

Mr. Inglima: Mr. Palus superimposed building envelopes?

Mr. Smith: “Yes.”

Mr. Inglima: none of that is Mr. Smith's work product.

Mr. Smith: “No.”

Mr. Inglima: asked if Mr. Smith was familiar with the existing conditions of the tax lots.

Mr. Smith: “Yes.”

Mr. Inglima: there are four tax lots along Van Dyke Drive that are part of the applicant’s site.

Mr. Smith: “Yes.”

Mr. Inglima: there were various times that the applicant’s engineer has referred to the fact that they are four lots that can be built upon.

Mr. Whitaker: asked what Mr. Inglima’s question was.

Mr. Inglima: asked if Mr. Smith was familiar with that testimony.

Mr. Smith: stated no because he wasn’t in attendance for that.

Mr. Inglima: asked if the existing tax lots all conform with the zoning ordinance of the Borough of Ho-Ho-Kus.

Mr. Whitaker: only if Mr. Smith is aware.

Mr. Smith: as much as he is aware, yes.

Mr. Inglima: asked if Mr. Smith was saying that the lot that is on the corner of Van Dyke and Hollywood, existing Lot 1, is 12,000 sq. ft. which is the required area for a corner lot.

Mr. Smith: if that is the square footage that is on the map, then that is what he calculated.

Mr. Inglima: existing Lot 1 is what he is referring to.

Mr. Whitaker: believes there is some confusion; Mr. Inglima spoke regarding the lots before, Mr. Smith is now talking about the lots being created by the subdivision.

Mr. Inglima: he is talking about the existing Lots 1, 2, 3, 4 in Block 802.

Mr. Smith: he is familiar with these lots.

Mr. Inglima: is it still Mr. Smith’s opinion that these lots conform with the zoning ordinance of Ho-Ho-Kus.

Mr. Smith: he does not know.

Mr. Inglima: read provision of the zoning ordinance 85-33 aloud.

Mr. Smith: familiar with lots being merged; described the doctrine of merger.

Mr. Inglima: previously, as well as today, Lots 1, 2, 3 and 4 are shown on the tax map as being owned by the same person.

Mr. Smith: yes, by deed.

Mr. Inglima: if any of those lots are undersized, they merge with their adjoining lot under common ownership.

Mr. Whitaker: objected; calls for a legal conclusion and is basically irrelevant to what the surveyor came here for which was to testify as to the veracity of a survey prepared.

Mr. Cucchiara: could we have an offer here.

Mr. Inglima: asked if Mr. Smith had depicted existing lots on the plan based on the operation of section 85-33 or based upon the strict reading of the tax map.

Mr. Cucchiara: what is the relevance of these questions?

Mr. Whitaker: there is no relevancy to it.

Mr. Inglima: Mr. Smith is depicting existing conditions on a subdivision map.

Mr. Cucchiara: relevance in respect to the application.

Mr. Inglima: they are lots under common ownership which are undersized; asking if Mr. Smith has depicted them or considered depicting them based on that ordinance.

Mr. Smith: actually created an outbound and combined the two; the purpose of the project was to create a subdivision map; could have shown the deeds that combined the two; did not show; his was a work product for interior use; it was not meant to be distributed.

**Please Note: a 10 minute break is taken at this time, 9:10PM.
Meeting reconvened at 9:20PM**

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

Mr. Inglima: one of the deeds that Mr. Smith described as being in his file was the deed that was issued from Stalter to Costanza and recorded in Book 2493 of Page 21; the deed by which the current owners took title to tract 1.

Mr. Smith: "Yes."

Exhibit O16: Indenture, Book 2493, Book 21, 22, 23; Stalter to Costanza.

Mr. Inglima: this is one of the deed descriptions Mr. Smith said he reconciled with the existing conditions of the property that are reflected on the survey.

Mr. Smith: “Yes.”

Mr. Inglima: the deed indicates a metes and bounds description that starts where the southerly line of Hollywood Avenue meets the westerly line of WSRR.

Mr. Smith: “Yes.”

Mr. Inglima: it doesn't define anything other than that reference.

Mr. Smith: “Correct.”

Mr. Inglima: it proceeds on courses along the east side of the site.

Mr. Smith: “Yes.”

Mr. Inglima: it proceeds along the south side of the site; this is the course that is similar to the one that was described before with the 400 ft. distance.

Mr. Smith: “Yes.”

Mr. Inglima: it goes up from there; if you read the fourth course, after it says you go 400 ft. along the southerly line, it says “then returning to the point or place of beginning”; then it proceeds to describe five more courses from the point of beginning; starts in the NE corner of the site; proceeds along the eastern boundary; proceeds along the southern boundary; and then from that point it jumps back to the starting point; then it proceeds along the north boundary and the west boundary; why would a deed description employ that type of methodology.

Mr. Smith: that is speculative; he reads this type of deed all the time; especially late deeds; sometimes courses aren't given because it is not valuable; very common way to write deeds; doesn't know why this particular person would have done this.

Mr. Inglima: he is asking because if you look at the deed by which Stalter took title from James to the same tract, it doesn't have that description; referred to O8; gives a complete clockwise rotation description.

Mr. Smith: “Yes it does.”

Mr. Inglima: does this raise a question for Mr. Smith as a surveyor.

Mr. Smith: “No.”

Mr. Inglima: does Mr. Smith know why it was done.

Mr. Smith: “No”; it is not uncommon to go and start and return to the beginning.

Mr. Inglima: if someone was to define two boundary lines of a site and then go back to the beginning point and define the other two; wouldn't you be checking to make sure those points close.

Mr. Smith: you do want the property to close.

Mr. Inglima: did Mr. Smith confirm that the deed that was marked as O16 describes a tract that closes.

Mr. Smith: it is a trick question, but it does close.

Mr. Inglima: did Mr. Smith use any type of computerized assistance, programs, CAD, etc. to determine that the tract closes.

Mr. Smith: he plotted the deed on CAD; AutoCAD is used.

Mr. Inglima: using metes and bounds descriptions this creates an envelope which would determine whether or not the two points that are defined in any particular deed description come together.

Mr. Smith: yes, you can plot lines, bearings and distances and draw a curve.

Mr. Inglima: were there any adjustments necessary similar to what was described earlier with respect to the dimension along the south property line or the dimension along the north property line that had to be made by Mr. Smith in order to force it to close.

Mr. Smith: “Yes.” It does close by the description; the bearings and distances are adjectives.

Mr. Inglima: he asked Mr. Smith about a deed by which the right of way was conveyed to the municipality for Van Dyke Drive.

Exhibit O17: Indenture; Book 2725, Page 595, 596, 597, 598, 599, 600, 601.

Mr. Inglima: asked if O17 is a true copy of an indenture deed by which the right of way of Van Dyke Drive was created and recorded.

Mr. Smith: “Yes.”

Mr. Inglima: asked if Mr. Smith recognized this as one of the documents he reviewed in the course of doing his work.

Mr. Smith: he did not believe he had this deed.

Mr. Inglima: represented to the Board that this deed was provided to him by Mr. Whitaker in response to his request; asked Mr. Whitaker if there is any question that what is marked as O17 is one of the documents in the search.

Mr. Whitaker: it is part of the search.

Mr. Smith: perhaps but doesn't remember.

Mr. Inglima: no further questions of this witness; reserves the right to ask questions regarding the production of the survey by representative of Boswell Engineering at a later date.

Mr. Whitaker: referred to the document that was referred to earlier pertaining to the descriptions that Mr. Smith used when he testified; Mr. Smith stated he reviewed the deeds for all of the properties that surround the PQ.

Mr. Smith: "Yes."

Mr. Whitaker: he plotted all of them.

Mr. Smith: "Yes."

Mr. Whitaker: he looked at filed maps.

Mr. Smith: "Yes."

Mr. Whitaker: on the basis of the descriptions he had testified that the property on this boundary line, lot line 416.84, was longer in one description and shorter in another.

Mr. Smith: "Yes."

Mr. Whitaker: based on this, did Mr. Smith use the longer measurement or the shorter measurement in creating this document.

Mr. Smith: the shorter.

Mr. Whitaker: Mr. Smith testified earlier that the deeds reflected that the owner of the PQ was retaining all of the property that was "left over."

Mr. Smith: "Yes."

Mr. Whitaker: is that what is depicted on the survey that Mr. Smith created.

Mr. Smith: “Yes.”

Mr. Whitaker: if there was, as a surveyor, hypothetically, if you have a issue/discrepancy in which one document says there is “x” and another says there is something less than “x”, as a surveyor doing the PQ, do you use the lesser amount.

Mr. Smith: “Yes.”

Mr. Whitaker: Mr. Inglima referred to a deed marked O12 in which he talked about a restriction that says “subject however to the restrictions and conditions that said property shall be used for dwelling house purposes”; what is the date of this deed?

Mr. Smith: November 24, 1923.

Mr. Whitaker: since the date of this deed, in his review, has there been any division of the property that is the subject of that deed.

Mr. Smith: “Yes.”

Mr. Whitaker: when did that occur?

Mr. Smith: the first time on filed map 2531; 1929.

Mr. Whitaker: were there any other maps thereafter.

Mr. Smith: 2917 dated 1933/34.

Mr. Whitaker: on the basis of that search and review, although that deed has that reflection of a house being built on the lot, that lot was subdivided after that.

Mr. Smith: into all of the adjoining lots; 5 lots out of the master deed marked in 1929.

Mr. Whitaker: no further questions.

Mr. Inglima: referred to O12; is a deed from Saddle River Estates to James; this is the deed Mr. Smith was referring to when he was responding to Mr. Whitaker’s last several questions.

Mr. Smith: believes so; these are new to him.

Mr. Inglima: then how was he able to answer the questions; Mr. Whitaker said that the property that is the subject of the deed recorded in Book 1284 Page 481; that was later turned into 5 lots.

Mr. Smith: read one of the deeds that was presented to him; it was the entire area.

Mr. Inglima: asked Mr. Smith earlier if the description in O12 was the same description used in the deed from James to Stalter and Mr. Smith said “yes.”; when Statler took title to that, it had those metes and bounds that are shown on O12; handed the two documents to Mr. Smith; Mr. Smith said the parcel that is described identically in both deeds was later turned into 5 lots.

Mr. Smith: the deeds are the same; yes; it is most of what is now Lot 10.

Mr. Inglima: Lot 10 is actually bigger than that; the parcel that is described in those two deeds is actually a little smaller than Lot 10.

Mr. Smith: believes so.

Mr. Inglima: where is the division into 5 lots?

Mr. Smith: believes he is missing a deed; wants to find the deed he had read.

Mr. Inglima: one of the deeds marked earlier as O9 from Baldwin to Stalter has the lots that were described in filed map 2532 or 2917; O9 conveys Lots 11, 10, 9, 8 and a portion of Lot 7 to Stalter; it is really parts of those lots that were taken and tacked onto the parcel that came from James to create Lot 10.

Mr. Smith: “Yes.”

Mr. Inglima: tract one was augmented, not divided; it got larger over time; asked if Mr. Smith still had the same opinion with respect to the deed restriction.

Mr. Smith: “No.”

Mr. Inglima: no further questions.

No questions from the Board at this time.

Chairman Hanlon: Mr. Smith stated he was on the stormwater line down to the Saddle River.

Mr. Smith: “Yes.”

Chairman Hanlon: stated that line was clogged; did that have to do with debris in the Saddle River or the line itself was clogged.

Mr. Smith: his crew member had trouble getting the invert because there was material at the end of the pipe.

Chairman Hanlon: it was the debris in the Saddle River from Hurricane Sandy that was blocking the pipe.

Mr. Smith: the pipe itself is not letting the outflow come out; there is material sitting at the end of the pipe that is preventing his crew from actually measuring the invert easily.

Chairman Hanlon: that would be the logs; Chairman Hanlon has been on the property and made the walk through and that is how he viewed it; wanted to make sure Mr. Smith's crew saw the same thing; the line does dump into the Saddle River and down at that section there is a large amount of trees down in the Saddle River; requested permission from the Feds but they have not gotten the money yet.; is there water flow out of that line?

Mr. Smith: "Yes."

Meeting opened to the public at this time; Chairman Hanlon explained what could be asked of the witness.

Mr. Stanley Kober, 919 Washington Avenue: referred to A1 Sheet 3; lot lines laid out by Mr. Smith; original lots as well; spoke regarding the width of proposed lots 3 and 4; referred to Borough Code; proposed lot 3 not a conforming lot.

Mr. Whitaker: that is an opinion, not a question.

Mr. Smith: created geometry; doesn't know the lot width.

Mr. Jim Albes, 31 Valley Forge Way: spoke regarding the current lots, pavings and structures; estimate of square footage and building area.

Mr. Whitaker: objected; this is beyond the expertise of what Mr. Smith testified to; he has been out at the site and Mr. Smith created the survey based on doing the field work; Mr. Smith testified he did not do those existing conditions; irrelevant.

Chairman Hanlon: counsel has stated it is not in his area of knowledge.

Mr. Albes: spoke regarding trees marked on plan; trees smaller than 12 inches in diameter; coordination of tree location with the existing grading plan; preserving trees; tree identification background; 3 inch variance; tree value.

Mr. Whitaker: objection; beyond the expertise of what the witness knows or testified to; dealing with a surveyor; not an arborist; showed the location.

Mr. Chairman Hanlon: the tree report has not been presented yet.

Mr. Albes: asked if Mr. Smith's surveys in the past have been a part of any litigation.

Mr. Whitaker: overly broad question and irrelevant.

Mr. Cucchiara: the surveyor may not even know if his survey was the subject of any litigation; not helpful to the Board in making its decision.

No further questions from the public. Public portion closed.

Mr. Inglima: neglected to ask a question in response to Mr. Whitaker's redirect; Mr. Smith indicated in a response to a question by Mr. Whitaker that he used the smaller dimensions.

Mr. Smith: "Yes."

Mr. Inglima: his client is a contract purchaser of the property.

Mr. Smith: "Yes."

Mr. Inglima: has Mr. Smith or his client obtained from the current owner of the property an agreement that they will not assert any claims with respect to the areas that were defined in their deeds that are being excluded from the survey.

Mr. Whitaker: objected; beyond the expertise of this witness; irrelevant; and beyond the one question Mr. Inglima said he had.

Chairman Hanlon: not relevant.

Mr. Inglima: objected to the characterization but deferred to the Board.

Mr. Jeffrey Morris, Boswell Engineering sworn in by Mr. Cucchiara.

Mr. Morris: gave his educational and professional background; has been affiliated with Boswell Engineering for 34 years; Professional Engineer in NJ, Professional Surveyor in NJ and Professional Planner in NJ; offered as expert witness as an engineer and surveyor; not as a planner.

No Board questions.

Mr. Inglima: no objections to Mr. Morris' qualifications as an engineer or surveyor, with the understanding that Mr. Whitaker is not going to direct questions to him nor would the Board which would call upon Mr. Morris to provide an opinion in the area of professional planning.

Mr. Whitaker/Mr. Morris: Mr. Morris is familiar with this property; Boswell Engineering under Mr. Morris' authority prepared maps for this property; four years ago a boundary and topographic survey were prepared; in attendance this evening and listened to the testimony of Mr. Smith; heard how he explained how he prepared his survey map; Mr. Morris asked to explain how he prepared a survey map for this property; in a similar matter as Mr. Smith; Mr. Smith's survey supersedes his at this time; Mr. Morris obtained title reports for both Lots 1-4 and Lot 10; utilizing those title reports and earliest deeds that were in those title reports he prepared the boundary; also obtained the latest surveys from the adjoining lots and lastly they utilized two file maps regarding the entire block; they were both referred to by Mr. Smith; one is the Saddle River Hills/Cleverdon section map and the other is the Birchwood Estates map; field work done by crews; investigated the surrounding properties for any evidence of any boundary control; after that analysis and the boundary was prepared, his crew went out and did a complete topographic survey; work done has been incorporated into a map which was released to the applicant and gave him full permission to utilize their topographic information on it; referred to Exhibit O15; Mr. Morris has the document; has not had a chance to review Mr. Smith's document in a detailed way; after hearing his testimony, his boundary survey is consistent with Mr. Morris'; Mr. Morris did not come up with any gaps, gores or any problems with the outbound survey portion; in connection with the survey that is O15; in Mr. Morris' survey it accurately depicts the property that exists for the subdivision; the actual subdivision lines, etc. that are on Mr. Smith's map is not what Mr. Morris created, but Mr. Morris created an existing condition map that showed things beyond boundary lines; Mr. Morris showed the existing topography on the property and the lot lines as they existed on prior maps and tax maps; that is all depicted in O15; explained the topographic aspect of the map; established a couple of global positioning system points on the site; since it is a treed lot and global positioning does not work as well, they used a total station transit and reflectors which typically serve areas used these days to establish a topo on the lot; this is the type of system and procedure that is common in creating a survey like this; the existing conditions on the survey beyond topographic information also provides other information; where structures are, where utilities may be located, etc.; did their best to locate the utilities in the street; some where marked recently; those shown; also pulled manhole covers to determine the direction of flow of any sanitary or drainage line that were adjacent to their property; referred to American Telephone and Telegraph easement that was placed in the record by one of the predecessor owners; Mr. Morris heard this testimony; this was depicted on Mr. Morris' existing condition map; he was actually lucky enough that someone had marked out the underground telephone lines in WSRR; where they are shown as well as a couple of manholes used by AT&T which are now currently Verizon to augment those underground telephone wires; that location is depicted on the O15 exhibit; runs basically back and forth a little; it runs along the westerly edge of the pavement of WSRR inside the pavement itself; reviewed subdivision map provided; looked at where the proposed

drainage system is on the map; the location of the AT&T/Verizon line does not interfere with the drainage facility; Mr. Palus shows the AT&T line on his map with the drainage system to show that they do not interfere with each other.

No Board questions at this time.

Chairman Hanlon: asked if Mr. Morris had looked at Exhibit O11.

Mr. Morris: he had not seen that document; just what was read and the testimony that was given.

Chairman Hanlon: confused about where the line is.

Mr. Morris: what Mr. Morris heard him say was there was a requested easement along WSRR; at the time various owners owned to the center line of WSRR and some owned to the boundary line; if it says within WSRR, then that is exactly where the telephone line is now; within the boundary that is known as WSRR.

No Board questions at this time.

Mr. Inglima: referred to O11; it says “upon, over, through and under the property which I own for in which I have any interest situated within the boundaries of the present highway known as WSRR.”; aren’t those two things?

Mr. Morris: “No.”

Mr. Inglima: is that a legal opinion.

Mr. Whitaker: asked and answered.

Mr. Inglima: what is the basis for Mr. Morris’ decision that they are not two separate things?

Mr. Morris: the basis of his decision is at that time many properties owned and or claimed to the center line of roads; when the County or town took easements back from those property owners, but they still had rights in those roads; as a matter of fact, people still have rights to the center line of the road; if the town wishes to vacate said road, it reverts to the property owners.

Mr. Inglima: but you didn’t look at the deed that ran from Saddle River Estate to James to determine whether or not that deed provided any rights of James in, or to the right of way of WSRR.

Mr. Morris: agreed, he did not.

Mr. Inglima: he had asked Mr. Smith whether the description of the parcel in the deed from Saddle River Estates to James was the same as the deed from James to Stalter and he said yes; he also asked Mr. Smith if those two deeds defined the tract based on the west side line of WSRR and he said yes; so the deed by which James took title doesn't provide rights on WSRR.

Mr. Morris: the deed itself does not specifically give rights to WSRR but every property owner has rights to the road in front of their house.

Mr. Inglima: does the James to AT&T deed say that AT&T or their successor in interest, their rights end where they install their facilities in whatever year the document was created or do those rights extend throughout perpetuity.

Mr. Morris: doesn't understand the question.

Mr. Inglima: it provides a grant of rights.

Mr. Morris: "Yes."

Mr. Inglima: from the predecessor entitled to Costanza to AT&T.

Mr. Morris: correct.

Mr. Inglima: those rights persist.

Mr. Morris: "Yes."

Mr. Inglima: does that document limit itself to any way what AT&T installed in 1929 or 1949 or 1999.

Mr. Whitaker: objected; looking for a legal conclusion which is beyond the expertise of the witness.

Mr. Cucchiara: it has been asked and answered; asked if it would persist and the answer was "yes."

Mr. Inglima: a comment was made about rights being created in abutting property owners to the center line of the road.

Mr. Morris: correct.

Mr. Inglima: the area that would be affected by the easement certainly could include anything from the center line of the road to the applicant's property line.

Mr. Morris: which property line.

Mr. Inglima: the easterly boundary of the site or the westerly side line of WSRR.

Mr. Morris: “Yes.”

Mr. Inglima: if there are any improvements extended from the site below the surface of WSRR in an area where AT&T might want to exercise their rights, someone would have to get AT&T’s consent

Mr. Whitaker: objection; calls for a legal conclusion.

Mr. Inglima: indicated on O15 that he marked the location of the easement; did Mr. Morris show the easement based on a metes and bounds description.

Mr. Morris: he never indicated he mapped the easement; he indicated he mapped the location of the lines.

Mr. Inglima: he thought Mr. Morris had stated he showed the easement.

Mr. Whitaker: no he did not; it was a very specific question; Mr. Morris depicted where it was and described it.

Mr. Inglima: Mr. Morris only indicated the improvements that were found in the field.

Mr. Morris: “Yes.”

Mr. Inglima: if he found manholes, indications of underground utilities, overhead wires, and telephone poles; these are the type of things he marks on the survey.

Mr. Morris: “Yes.”

Mr. Inglima: is that the limit of what he marked on the survey.

Mr. Morris: yes it is.

Mr. Inglima: Mr. Morris indicated on the plan a number of other improvements; is he confident that the locations of improvements shown on this plan, O15, are accurate as of the date of this hearing?

Mr. Morris: “No.”

Mr. Inglima: was it accurate as of the date of his survey.

Mr. Morris: “Yes.”

Mr. Inglima: in 2010, these were the conditions of the property.

Mr. Morris: correct.

Mr. Inglima: had Mr. Morris' firm made any further inspections of the property after 2010.

Mr. Morris: "No."

Mr. Inglima: did Mr. Morris make any further inspection of the site prior to his testimony this evening.

Mr. Morris: yes; when the survey was done and he drives by the site at least once a day but he has not done a detailed inspection of it.

Mr. Inglima: there is a one story frame shed indicated on what is shown as Lot 3 on the westerly edge of the property on O15.

Mr. Morris: "Yes."

Mr. Inglima: asked if Mr. Morris knew what that shed is used for.

Mr. Morris: "No."

Mr. Inglima: the Chairman of the Board had indicated earlier in the proceedings and at prior occasions that there was a second residence on the property; did Mr. Morris know which of the different structures shown on O15 is used as a second residence.

Mr. Whitaker: objected; absolutely irrelevant; beyond the expertise of the witness; this witness had to prepare, and did prepare a plan showing existing conditions; did not have to show a plan that showed uses.

Mr. Cucchiara: asked what the relevance of the question is to the application.

Mr. Inglima: he is indicating structures and indicating their use with his language.

Mr. Cucchiara: does not know that, but what purpose or relevance does the use have to this application.

Mr. Inglima: that is a very good question; what relevance does the use have to this application; the Chairman has mentioned it several times and wanted to know why; is it the position of this Board that the use or the possibility of a second residential use of the applicant's site is relevant or irrelevant to this application.

Mr. Cucchiara: he doesn't see how it could possibly be relevant; advising the Board; cannot rule for the Board.

Mr. Inglima: asked the Board if it is relevant.

Chairman Hanlon: stated not at this time.

Mr. Inglima: the location of various streets have been indicated that are abutting the applicant's site; from just north of the Hollywood Avenue intersection down to the SE corner of the site.

Mr. Morris: "Yes."

Mr. Inglima: Mr. Morris has indicated from Van Dyke Drive from just north of Hollywood Avenue down to the south corner of Lot 4.

Mr. Morris: "Yes."

Mr. Inglima: asked if Mr. Morris had surveyed any other streets in addition to those streets on Hollywood Avenue.

Mr. Morris: didn't provide a detailed topographic survey of those streets; what they did do to those streets to the south of the property was they located evidence so they could make sure the excluded lots fit properly on the block.

Mr. Inglima: indicated a number of structures, utility lines, poles, curbs, etc. all on the north side of Hollywood Avenue.

Mr. Morris: "Yes."

Mr. Inglima: you did not indicate the right of way line of the lot that is directly across the street from Lot 10 in Block 802 and Lot 1 in Block 802.

Mr. Morris: that is correct.

Mr. Inglima: why?

Mr. Morris: as part of the developing the boundary and topographic survey it was not required.

Mr. Inglima: not required by your client?

Mr. Morris: their client at the time did not require that; it was not part of their scope.

Mr. Inglima: who was your client at the time?

Mr. Morris: the owner of the property.

Mr. Inglima: do you have a different client at this time.

Mr. Morris: just recently the developer has hired his firm to represent him.

Mr. Inglima: it was indicated that Hollywood Avenue is aka Bergen County Route 502 and that it has a variable width.

Mr. Morris: correct.

Mr. Inglima: how did he determine that Hollywood Avenue has a variable width?

Mr. Morris: from the tax maps and the knowledge that various takings of the opposite side were accomplished during the re-routing of Hollywood Avenue.

Mr. Inglima: have you located the north boundary or right of way line of Hollywood Avenue.

Mr. Morris: “No.”

Mr. Inglima: have you located the center line of Hollywood Avenue.

Mr. Morris: “No.”

Mr. Inglima: have you obtained any information from third parties or from his own investigations that would indicate the location of the right of way lines or the center line of Hollywood Avenue.

Mr. Morris: “No.”

Mr. Inglima: you indicate the geometry of the intersection of Hollywood Avenue and WSRR; how was this established?

Mr. Morris: by physical geometry of the existing conditions; topography.

Mr. Inglima: did you go out to the site and determine the location of crosswalks or are they shown for informational purposes.

Mr. Morris: they were located.

Mr. Inglima: the stripes are right where they are shown.

Mr. Morris: “Yes.”

Mr. Inglima: a boundary line is indicated along the north side of the lot that is at the SE corner of the intersection of WSRR and Hollywood Avenue; at least a portion of the north boundary line of Lot 2 of Block 809.

Mr. Morris: “Yes.”

Mr. Inglima: asked how those lines were determined.

Mr. Morris: it was graphically shown from the Birchwood Estates subdivision plan and they also located a couple of pipes on the east side of WSRR to establish it; iron pipes.

Mr. Inglima: referring to property markers located in the field.

Mr. Morris: "Yes."

Mr. Inglima: it is indicated, under the word "Saddle", where it says "WSRR along the east side of the roadway", one of the pipes is indicated.

Mr. Morris: "Yes."

Mr. Inglima: what does that refer to?

Mr. Morris: it refers to an iron pipe set by Dunn Surveyors.

Mr. Inglima: is that an iron pipe that is not on the easterly side line of WSRR.

Mr. Morris: they considered it to be slightly off that; purposely showed it exaggerated being off of that line.

Mr. Inglima: did you mark on any plans or notes the dimension between the side line of WSRR and that pin/marker?

Mr. Morris: stated yes but he did not have it with him; it is on his computer.

Mr. Inglima: asked for it to be produced at a future hearing; asked the same question to any other differences that Mr. Morris noted between any of the markers that were observed in the field and a boundary line to which it refers; asked for this information to be provided as well.

Mr. Morris: that is the only one that does not show what the actual difference is; all the other ones do show the difference.

Mr. Inglima: so the only one is under the word "Road" that says iron pipe 0.16 ft. SW.

Mr. Morris: "Correct."

Mr. Inglima: that indicates the difference between the dimension of the line that was determined and the location of the iron pipe.

Mr. Morris: "Yes."

Mr. Inglima: Mr. Morris indicated a 12 inch RCPST crossing WSRR near the SE corner of the site.

Mr. Morris: correct; that was the best he could determine by looking in that inlet.

Mr. Inglima: a discussion was had during the testimony of Mr. Palus about the origin of that information and he stated it was supplied by Mr. Morris' office.

Mr. Morris: stated it is on his plan.

Mr. Inglima: was that determined by your office or was the information obtained from a third party.

Mr. Morris: it was determined by his office.

Mr. Inglima: what does the ST refer to?

Mr. Morris: "Storm."

Mr. Inglima: Mr. Morris observed that there was a single 12 inch pipe entering the catch basin that is located along the generally northeasterly sideline of WSRR in that location.

Mr. Morris: "Yes."

Mr. Inglima: did Mr. Morris do that inspection or did a member of his crew do the inspection.

Mr. Morris: his party crew did that.

Mr. Inglima: do you typically take photographs of the conditions or simply make notations.

Mr. Morris: both and he doesn't recall any photographs being taken of that particular location.

Mr. Inglima: do his notes from that inspection indicate that there was any water being served by that pipe.

Mr. Morris: asked for clarification.

Mr. Inglima: extend the pipe to the west; indicate it going to the SW to the sideline abutting the property of the applicant.

Mr. Morris: "Correct."

Mr. Inglima: was the SW terminus of that line found?

Mr. Morris: no; that is why it says “not visible”; terminus pipe was not visible.

Mr. Inglima: no storm drain, catch basin, storm grade or anything along those lines were found.

Mr. Morris: “No.”

Mr. Inglima: did he do a further examination of the property to determine the location of drainage structures serving the property.

Mr. Morris: no, what is shown on the plan is what was found.

Mr. Inglima: the reference to a 12 inch RCPST is the only item he determined was a drainage structure serving the property.

Mr. Morris: that could serve the property, yes.

Mr. Inglima: did he indicate the location of asphalt on the plan.

Mr. Morris: “Yes.”

Mr. Inglima: did he inspect the site recently.

Mr. Morris: “No.”

Mr. Inglima: there is a rolled asphalt curb along the west side of WSRR where it abuts the portion of the property north of the existing driveway; is that indicated on Mr. Morris’ plan.

Mr. Morris: he doesn’t see it.

Mr. Inglima: would it be fair to say that if that condition was not marked on his plan it was added after July 2, 2010.

Mr. Morris: not a fair statement.

Mr. Inglima: he would have noted a rolled asphalt curb if he had seen one there.

Mr. Morris: he typically would.

Mr. Inglima: crosswalk striping’s and stop bars are located; very detailed; he would have shown it if it was visible.

Mr. Morris: he would have hoped they would have showed it.

Mr. Inglima: curbing is shown on the north side of the property where it abuts Hollywood Avenue.

Mr. Morris: “Yes.”

Mr. Inglima: did he indicate curbing along the applicant’s driveway.

Mr. Morris: he indicates curbing along both driveways along Hollywood Avenue and WSRR.

Mr. Inglima: what type of curb is that; can it be determined from looking at the plan.

Mr. Morris: “No.”

Mr. Inglima: an edge of pavement is shown along the west side of WSRR and then curbing on the applicant’s driveway.

Mr. Morris: “Yes.”

Mr. Inglima: higher topography is shown at the driveway portion that is along the south side of the curb triangle that has the chestnut tree within it; shows a higher topography there than he shows in areas to the west of that location.

Mr. Morris: in the center triangle, yes.

Mr. Inglima: also on the south side of the driveway where the curbing frames the outbound lane from the driveway.

Mr. Morris: “Yes.”

Mr. Inglima: would it be fair to say that the topography on WSRR in the area of the applicant’s driveway is higher than the area that is directly to the west and entering the site.

Mr. Morris: yes, generally.

Mr. Inglima: based on the topography that is indicated on O15, would water that flows across the surface of WSRR would enter the site at the applicant’s driveway.

Mr. Morris: based on this plan, and not being out there recently, he couldn’t say if it actually happens, but based on this plan that is what he would say; it also hits a low point about 40 ft. west when you leave the driveway.

Mr. Inglima: did he locate any monuments along the right of way lines of Hollywood Avenue on either side of the street.

Mr. Morris: “No.”

Mr. Inglima: did he locate any monuments on WSRR on either side of the street.

Mr. Morris: “No.”

Mr. Inglima: same question as to Van Dyke Drive.

Mr. Morris: “No.”

Mr. Inglima: although not shown on plan, will ask the same question as to Brandywine Road.

Mr. Morris: after he had looked for them, they did not find any.

Mr. Inglima: you looked for monuments on Brandywine.

Mr. Morris: yes, did find two iron pipes but did not find a monument.

Mr. Inglima: no further questions.

Mr. Whitaker: no redirect.

Councilman Rorty: could the rolled asphalt curbing been a repaving job.

Mr. Morris: absolutely.

Mr. Hals: stated HHK put it in; it was done last year.

No further questions from the Board.

Public portion open.

No questions from the public.

Public portion closed.

Discussion followed regarding meeting schedule and witnesses' availability.

Mr. Whitaker: the applicant has presented their case and will have no further witnesses.

Chairman Hanlon: the applicant's engineer will need to return for public questions; the public did not have enough time to ask questions.

Mr. Whitaker: in response, two meetings ago it was agreed that public questioning of Mr. Palus was concluded and it was only Mr. Inglima asking questions; last meeting, two members of the public got up even though questioning had been completed; comes as a surprise that they are going to reintroduce the public for additional questions.

Chairman Hanlon: only the public; not Mr. Inglima.

Mr. Whitaker: respects his concern; members of the public have the ability to ask questions so there is no loss of questioning as long as it is not redundant; as long as Mr. Palus is available because he did not contemplate him to come on May 29, 2014; will let the Board Secretary know his availability when he checks with Mr. Palus the following day; will provide him for that limited purpose; it doesn't permit members of the public that previously asked him questions and concluded to come back; two members of the public that got up at the last meeting and one wanted more time; after that members of the public would have the right to bring forth their witnesses or make their comments; can be done next week.

Discussion followed regarding public comments/questions; witnesses; presentations.

Mr. Snieckus: he has not finalized his review of the tree preservation limits; having to do with the limits relative to the proposed grading plan that needs to be submitted; tied to the soil movement aspect of the application; did not know if the applicant was going to render that for this meeting.

Mr. Whitaker: no; the soil movement application will be separate and distinct; the applicant has rested as far as their application for the subdivision is concerned; at this point, the issues pertaining to the trees and soil movement would be something that would come at a later date; would respectfully suggest that that issue be set aside.

Chairman Hanlon: asked for Mr. Hals to give an explanation of a soil movement application.

Mr. Hals: the Borough has an ordinance covering soil moving; believes it is anything over 30 cubic yards of soil being moved on a site; three different levels; this application will be a major soil movement application; constitutes a public hearing, notice to public, application filed; only ordinance in the Borough that has anything to do with trees on private property; they would have to show every tree on the property greater than 4 inches in diameter and also there is concern with how they stage the project; where the soil movement operations will take place, etc.

Mr. Inglima: with all due respect, it is his client's contention that this application cannot proceed with the absence of a soil movement application; design criteria is needed; embankment being created on the west side of WSRR within the right of way to cover pipes that are being installed in the SE corner of the property; the soil movement should be considered at this time and not at a later date; the applicant does not want to address soil movement at this time because it will bring up other issues.

Mr. Whitaker: objected to Mr. Inglima's comments as to what the applicant's procedure is; it is an assumption on Mr. Inglima's part; asked for the lecture to cease; counsel can review and raise a legal question; Board Attorney can advise the Board of this; does not have to be determined at the end of this meeting; started out scheduling and being productive; it is agreed that if Mr. Palus is available he will be before the Board; after than there can be an examination of the Borough professionals.

Mr. Inglima: remind everyone that Mr. Palus and Mr. Whitaker indicated in prior testimony that they would address a number of reports that were issued after the commencement of the proceedings; Mr. Inglima wants Mr. Palus to address issues in person not in writing.

Mr. Whitaker: so the record is straight, Mr. Inglima has misquoted Mr. Whitaker; what he stated was he would be referring letters back to various departments that sent letters to the applicant making a request; the Board would be copied on that correspondence; it would be a response to a department that has not testified in front of the Board; obviously permitted by letter; that is not trying a case by letter; soil movement application is a separate and distinct application that still must be noticed and presented before the Board.

Chairman Hanlon: a meeting will be held on the 29th; hopefully the applicant's engineer will be in attendance; the Board's consultants will be asked to make presentations; ask counsel to have a discussion regarding the soil moving based on the consultant's reports.

Motion to Adjourn: Cirulli, Rorty

**All Board Members present approve Motion to Adjourn
Meeting adjourned at 10:45PM**

Respectfully submitted by:

JoAnn Carroll
Planning Board Secretary
July 10, 2014