

**Borough of Ho-Ho-Kus
Bergen County, New Jersey
Planning Board Minutes
July 24, 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, Corrison (absent), Pierson (absent), Reade, Cirulli, Newman (absent), Iannelli, Councilman Rorty, Chairman Hanlon, Mayor Randall

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

Discussion:

Miller Subdivision, 118 Blauvelt Avenue, Block 601, Lots 4 & 5: discussion regarding a deed filing extension until August 31, 2014.

Chairman Hanlon: stated counsel has had some problems with the registration of the deed even though it has been signed; asked Mr. Cucchiara to explain the situation.

Mr. Cucchiara: stated a vote should be taken; after the extension was granted, the principal of the applicant was not available, then became available and signed the documents that he needed to sign but the applicant is now requesting a short extension in order to properly record the deed within the extended time frame.

Motion to extend the deed filing until August 31, 2014 on 118 Blauvelt Avenue: Berardo, Mayor Randall

Ayes: Berardo, Reade, Cirulli, Iannelli, Councilman Rorty, Chairman Hanlon, Mayor Randall

Approval of Minutes: Councilman Rorty, Iannelli
May 22, 2014

Ayes: Berardo, Reade, Cirulli, Iannelli, Councilman Rorty, Chairman Hanlon, Mayor Randall

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: stated the meeting would continue with the ongoing business of the Hollows at Ho-Ho-Kus application; overview of application and procedures stated.

Councilman Rorty has listened to the disc of June 26, 2014 and has signed an absent member certification stating this and has submitted the certification to the Board Secretary.

(At this time the new business applicant, Mr. Kim, has arrived.)

New Business:

Mr. Paul (S.K.) Kim, Ho-Ho-Kus United, Inc., 1 Sheridan Avenue, Block 1007, Lot 8: Tae Kwon Do center.

Chairman Hanlon: asked the applicant to come forward; asked for him to identify himself.

Mr. Kim: stated his name as “Paul Kim” which is his English name.

Chairman Hanlon: asked Mr. Kim to explain his application; the property Mr. Kim is renting is at the corner of Sheridan Avenue and Franklin Turnpike.

Mr. Kim: stated he wants to open a Tae Kwon Do Center for children and adults; he already has 24 locations; classes for 3 years old and up; will also have self defense classes; holds a State National Championship; three employees; hours of operation will be 3PM-8:30PM/9PM.

Mr. Berardo: stated Mr. Kim will need to submit a sign application.

Mr. Reade: asked about the class size and the frequency of the classes.

Mr. Kim: stated the class size will be approximately 10 students; classes will take place after school; there will be a changing room on the premises; many students arrive with their uniform already on; students will wait inside the building for class to start.

Mr. Iannelli: asked what days of the week will the business be open.

Mr. Kim: stated Monday through Saturday; no hours on Sunday; Saturday hours will be from 10AM-3PM.

Mayor Randall: asked how many sessions would be held each day.

Mr. Kim: stated it would depend on the size of the class; more than likely 45 minutes and about 5 classes per day; 10-15 minutes between classes.

Mr. Cirulli: asked about parking for his clients and his staff.

Mr. Kim: stated there is no parking for his business on the Upper East Side; the students are dropped off; Mr. Kim believes there is enough street parking in Ho-Ho-Kus; will confer with other businesses.

Chairman Hanlon: stated the applicant did not mention parking on his application; the pharmacy was at that particular location for 70 years; previous tenants rented three parking places from the Borough parking lot; Mr. Kim should make arrangements with the Borough for 3 parking spots for his employees.

Mr. Berardo: asked if Mr. Kim wanted to have advertising in the windows; there is a limitation to what can be displayed.

Board Secretary: stated she will email a sign application to the applicant the following day.

Motion to Approve Application, Mr. Paul Kim, Ho-Ho-Kus United, with three parking spaces: Rorty, Cirulli

Ayes: Berardo, Reade, Cirulli, Iannelli, Councilman Rorty, Chairman Hanlon, Mayor Randall

Chairman Hanlon: thanked both attorneys for their time to allow the hearing of the new business application; Mr. Inglima is to continue his presentation with Mr. Peter Steck, Planner.

Mr. Inglima: stated he has completed his direct testimony.

Chairman Hanlon: stated at this time the testimony by Mr. Steck is complete over a month ago as a planner.

Mr. Whitaker: stated so the record is clear, Mr. Steck was before the Board on June 19, 2014; Mr. Steck was sworn in then and is still under oath.

Mr. Steck: stated he understood that he was still under oath.

Mr. Whitaker: asked who retained him.

Mr. Steck: stated through Mr. Inglima by a number of households in the neighborhood.

Mr. Whitaker: asked if Mr. Steck recalled who they were.

Mr. Steck: stated no.

Mr. Whitaker: asked if they were all the same clients that Mr. Inglima is representing or is it a portion.

Mr. Steck: stated he didn't know; his employment was secured by Mr. Inglima; he doesn't know the exact arrangement of which members of the organization hired him.

Mr. Whitaker: asked which organization Mr. Steck was referring to.

Mr. Steck: stated he doesn't know the name, but there are a number of neighbors that have assembled for the purpose of having him review this application.

Mr. Whitaker: asked if Mr. Steck has met with all of the neighbors and discussed this matter with them.

Mr. Steck: stated he has not.

Mr. Whitaker: asked when he was retained.

Mr. Steck: stated approximately 1.5-2 months ago; possibly longer.

Mr. Whitaker: stated approximately 1.5 months ago from tonight, July 24, 2014.

Mr. Steck: stated yes.

Mr. Whitaker: asked if on that basis Mr. Steck was employed sometime in June, 2014.

Mr. Steck: stated that was correct.

Mr. Whitaker: asked, other than the meeting of June 19th, is it correct to say that he never attended any of the other public hearings before this Planning Board.

Mr. Steck: stated that was correct.

Mr. Whitaker: asked if Mr. Steck had attended the completeness hearing for this application before this Board before public notice was sent out.

Mr. Steck: stated no.

Mr. Whitaker: asked if Mr. Steck had reviewed transcripts of the various meetings from March forward.

Mr. Steck: stated no.

Mr. Whitaker: asked if Mr. Steck had a chance to review any of the recordings of the testimony and the discussions that have been held at the public forums.

Mr. Steck: stated he did not.

Mr. Whitaker: asked if Mr. Steck recognized that he had the opportunity as it is public information to do that.

Mr. Steck: stated he assumed the municipality records the meetings and those recordings are available but he didn't know the mechanism for obtaining them.

Mr. Whitaker: asked in his professional background as a planner, if he had had the ability in connection with other applications to actually review transcripts or listen to recordings at meetings that he was not present for.

Mr. Steck: stated in some instances he felt it important to listen to recordings in other instances he did not believe it was necessary.

Mr. Whitaker: asked in this instance if he did not feel it necessary to listen to or be involved with reading transcripts of any of the meetings that predated the June 19th meeting that he attended.

Mr. Steck: stated that is correct.

Mr. Whitaker: asked, on the basis of that, has Mr. Steck had any independent contact with any of the Board professionals.

Mr. Steck: stated no.

Mr. Whitaker: asked if it was correct that other than the document that he submitted that was marked O21, that he has not prepared any other type of documentation for his presentation.

Mr. Steck: stated that is the only documentation that he elected to present to the Board.

Mr. Whitaker: asked, in the course of his career, are there times where he has prepared actual planning reports as a licensed planner in NJ in connection with an application.

Mr. Steck: stated sometimes yes and sometimes no.

Mr. Whitaker: asked if in this instance Mr. Steck did not prepare any type of a report.

Mr. Steck: stated that was correct.

Mr. Whitaker: asked if Mr. Steck had an opportunity to review the various reports of the professionals of the Board.

Mr. Steck: stated yes.

Mr. Whitaker: asked if he had reviewed Mr. David Hals' reports.

Mr. Steck: stated yes.

Mr. Whitaker: asked if he reviewed the reports from Burgis Associates.

Mr. Steck: stated yes.

Mr. Whitaker: asked if he reviewed the particular portions of those reports in which they both indicated that the lots all met the bulk requirements under the pertinent ordinances of the Borough of Ho-Ho-Kus.

Mr. Steck: stated yes.

Mr. Whitaker: asked if Mr. Steck was familiar with that.

Mr. Steck: stated yes.

Mr. Whitaker: stated Mr. Steck made references during his testimony to opinions provided by Clay Emerson; asked if Mr. Steck was in attendance for Mr. Emerson's testimony.

Mr. Steck: stated he was not but believes Mr. Emerson made comments on June 19th; but he is not certain.

Mr. Whitaker: asked if the basic review of Mr. Emerson's work pertained to the exhibits which were entered into evidence.

Mr. Steck: stated that was correct.

Mr. Whitaker: asked if Mr. Steck had any discussions with Mr. Emerson outside of the realms of the public hearings.

Mr. Steck: stated no.

Mr. Whitaker: asked, other than the exhibits, had Mr. Steck obtained other information from any of his clients.

Mr. Steck: stated yes; subsequent to the last meeting he saw an architectural rendering of the retaining walls which was provided by Mr. Inglima.

Mr. Whitaker: asked what the purpose was to review that information.

Mr. Steck: stated the purpose was so he would be aware of a potential exhibit that might be presented in the future.

Mr. Whitaker: stated Mr. Steck testified on June 19th that he toured the area.

Mr. Steck: stated that was correct; he toured the area before the 19th; toured with Mr. Inglima and on his own.

Mr. Whitaker: asked if Mr. Steck recalled the day and/or the time.

Mr. Steck: stated he didn't recall without looking at his calendar but it was prior to the June 19th meeting.

Mr. Whitaker: stated it would be appropriate to tour the site before he gave any testimony.

Mr. Steck: stated yes.

Mr. Whitaker: asked if Mr. Steck recalled the weather conditions on that day and the time of day of his tour.

Mr. Steck: stated it was good weather; could not recall the time of day.

Mr. Whitaker: asked if he was with anyone else when he was there.

Mr. Steck: stated he was there only with Mr. Inglima.

Mr. Whitaker: asked how long the tour took.

Mr. Steck: stated it was about an hour.

Mr. Whitaker: asked, if in the course of that time, Mr. Inglima was with him the entire time.

Mr. Steck: stated yes.

Mr. Whitaker: asked if Mr. Steck took any notes during the tour.

Mr. Steck: stated he was there in advance of Mr. Inglima; for the bulk of the time he was accompanied by Mr. Inglima.

Mr. Whitaker: asked if Mr. Steck took any notes during his tour.

Mr. Steck: stated no.

Mr. Whitaker: asked if the tour was taken by car or did he walk.

Mr. Steck: stated it was a combination of the two; on his own he drove and walked around for 15 minutes; Mr. Inglima drove and Mr. Steck toured through the windshield; he saw the surrounding properties as Mr. Inglima was driving.

Mr. Whitaker: asked if Mr. Steck had ever walked the property.

Mr. Steck: stated no; he walked the perimeter completely but not on the subject property.

Mr. Whitaker: stated, in the course of his exhibit O21, Mr. Steck showed an aerial photo from 2007.

Mr. Steck: stated that was correct.

Mr. Whitaker: asked if Mr. Steck had any more recent aerial photos of the site.

Mr. Steck: stated he did not secure more recent photos.

Mr. Whitaker: asked if the only photo Mr. Steck relied upon was the 2007 aerial photo.

Mr. Steck: stated no; the only photo that he elected to make an exhibit was the 2007 photo.

Mr. Whitaker: asked what other photos he looked at.

Mr. Steck: stated there are also Bing maps and Google photos that in his experience are typically 1-2 years old.

Mr. Whitaker: asked if Mr. Steck used them in this instance.

Mr. Steck: stated he consulted them but he chose not to make them an exhibit.

Mr. Whitaker: asked if Mr. Steck met with any of his clients during his tour.

Mr. Steck: stated no.

Mr. Whitaker: asked if Mr. Steck discussed this with any of his clients on site.

Mr. Steck: stated no.

Mr. Whitaker: asked if it was correct to say that Mr. Steck saw sandbags during his tour.

Mr. Steck: stated that was correct.

Mr. Whitaker: stated that Mr. Steck opined that the sandbags sitting there were indicative of a water situation.

Mr. Steck: stated yes.

Mr. Whitaker: asked if Mr. Steck had the ability to take the opportunity to inquire of that person of why there were sandbags.

Mr. Steck: stated no.

Mr. Whitaker: asked if it would be correct to say that the opinion Mr. Steck rendered was an assumption on his part; no verification.

Mr. Steck: stated it was an assumption; only logical purpose; not verified.

Mr. Whitaker: stated Mr. Steck had rendered an opinion as it pertained to the subdivision plan and his analysis of the houses on the plan; stated Mr. Steck had testified in front of a number of Boards, and has testified as a planner for a number of years, and Mr. Steck stated he has been involved in subdivision plans both in opposition as well as with developers; Mr. Whitaker asked if this was correct.

Mr. Steck: stated yes.

Mr. Whitaker: asked if Mr. Steck recognized that a common practice that houses shown on a plan are merely for conceptual purposes.

Mr. Steck: stated yes.

Mr. Whitaker: asked, in connection with that, under MLUL when creating a subdivision plan that the actual house location does not need to be shown for the purposes of the Board considering the approval of a preliminary subdivision.

Mr. Steck: stated it depends on the municipality; have to look at the completeness requirements for a subdivision to determine if sample house locations are required or not.

Mr. Whitaker: asked if it is a requirement under the MLUL.

Mr. Steck: stated it is not.

Mr. Whitaker: asked if it is a requirement under the Ho-Ho-Kus ordinance.

Mr. Steck: stated he doesn't believe it is a requirement.

Mr. Whitaker: stated Mr. Steck had testified that certain lots being proposed by the applicant are through lots; asked if that was correct.

Mr. Steck: stated yes.

Mr. Whitaker: asked if it would be correct to say that Mr. Steck's concept of a through lot is a lot in which it fronts on two different roadways.

Mr. Steck: stated yes.

Mr. Whitaker: stated Mr. Steck had testified that he had done a thorough review of the Ho-Ho-Kus ordinances as it pertains to its subdivision requirements and its zoning requirements; asked if that was correct.

Mr. Steck: stated yes.

Mr. Whitaker: asked if Mr. Steck recalled, when he was doing that review, if conceptual houses needed to be shown or not.

Mr. Steck: stated he didn't recall at the moment.

Mr. Whitaker: asked, in connection with his review of the zoning ordinance, did Mr. Steck find any prohibition as it pertains to a through lot being established in Ho-Ho-Kus.

Mr. Steck: stated there was no prohibition.

Mr. Whitaker: asked if Mr. Steck was familiar with ordinances in certain towns that do prohibit through lots.

Mr. Steck: stated there are some municipalities that discourage them in subdivision design standards and there are other municipalities that discourage them in zoning ordinances.

Mr. Whitaker: asked, if in Mr. Steck's career, if he was involved as a proponent in bringing a subdivision that contained a through lot.

Mr. Steck: stated he could not recall being involved with a subdivision that produced a through lot.

Mr. Whitaker: asked, in Mr. Steck's capacity as a developer/planner, has he seen creative ways in which through lots have been developed.

Mr. Steck: stated he did not understand the question.

Mr. Whitaker: withdrew the question.

Mr. Whitaker: stated that Mr. Steck did not evaluate any testimony from any of the prior hearings; asked if it was correct that he had no information/knowledge as to certain suggestions being made by the Borough Planner pertaining to these two lots.

Mr. Steck: stated the knowledge he has is through the review memos that were presented as well as his discussions with Mr. Inglima about the prior proceedings; he has not had any direct contact with the Board's professionals.

Mr. Whitaker: asked if Mr. Inglima described to him some of the suggestions made by Mr. Snieckus in connection with the development of a buffer along Hollywood Avenue.

Mr. Steck: stated he believed that was in his memo because he talked about the removal of trees and the issue of fencing.

Mr. Whitaker: asked if he was aware of a colloquially that went on between Board members and Mr. Snieckus at a prior meeting.

Mr. Steck: stated he is only aware of it to the degree that Mr. Inglima relayed it to him; he is not directly aware of it; he was not present during that conversation.

Mr. Whitaker: asked if it was correct to say that any information he has, pertaining to that, other than the report, is something that has been fed to him by counsel.

Mr. Steck: stated it was relayed to him by counsel, yes.

Mr. Whitaker: stated Mr. Steck had opined in connection with the through lot situation, that he had a concern about an owner of that property seeking variance relief.

Mr. Steck: stated that was correct.

Mr. Whitaker: asked if it would be correct to say that there is no variance relief being sought for those lots at this time.

Mr. Steck: stated that was his understanding.

Mr. Whitaker: asked, as a licensed planner, would it be Mr. Steck's opinion that a property owner has a right to seek a variance on any particular piece of property that he owns as long as the land owner follows the mandates of the municipal land use law.

Mr. Steck: stated that is correct.

Mr. Whitaker: asked if it would be correct in saying that making a consideration when dealing with any type of a land use application that a planner doing the review and Board members reviewing it, that they review the facts that are before them at the time.

Mr. Steck: stated that was part of what a planner does.

Mr. Whitaker: asked if it was correct that a planner would not speculate about a land owner that doesn't own the land yet, seeking a variance in the future; asked if that is speculative.

Mr. Steck: stated no, because homeowners typically install accessory structures in their rear yards.

Mr. Whitaker: asked if an applicant always has the right to seek a variance whether they are on a through lot or an interior lot.

Mr. Steck: stated an applicant can seek a variance anytime they like.

Mr. Whitaker: stated for example if Mr. Whitaker owned two lots subdivided and they were interior lots; Mr. Whitaker would have the same rights to seek variance relief if he needed it as someone that has a through lot.

Mr. Steck: stated he wouldn't need a variance if it was an interior lot to put something behind his house.

Mr. Whitaker: stated he might need a variance if he had to infringe on a side yard setback.

Mr. Steck: stated yes; typically when a lot is approved there is a judgment that can accommodate a single family house and the traditional accouterments.

Mr. Whitaker: asked if it was Mr. Steck's opinion that if a subdivision is granted, the concept is the owners of the lots would never be seeking variance relief.

Mr. Steck: stated he can't predict whether they are or not; certain situations lead to more frequent requests for variances.

Mr. Whitaker: asked if there was anything wrong with the concept of seeking variances.

Mr. Steck: stated there is nothing in the law that prohibits someone from requesting a variance, but, in his opinion, it is poor planning to create lots that engender variances.

Mr. Whitaker: stated the engender is purely speculative by Mr. Steck; it is not anything Mr. Steck could confirm; for instance, no one needs to have a swimming pool in their backyard, etc.

Mr. Steck: stated while one doesn't have a constitutional right to put in a pool, in his opinion there are some situations that are created by poor design that lead to more frequent variance requests.

Mr. Whitaker: asked if it was Mr. Steck's opinion as a planner that the speculative idea that a property owner may have more propensity in one lot than another to seek variance relief would be a reason for a denial of a lot that is a conforming lot based on the requirements of the Borough code.

Mr. Steck: stated in his opinion you have to look at the entire situation.

Mr. Inglima: stated when Mr. Whitaker structures his questions on the hypothetical then the witness has greater latitude in responding to it; he cannot construct a hypothetical and then hem in the witness on how it will be answered; objects to any attempt to limit the witness' answers to the hypothetical questions.

Mr. Cucchiara: stated he agrees but he still is required to respond or answer the question.

Mr. Whitaker: stated he is requesting that he responds to the question as it pertains to the through lot and not try to piggy back that with consideration of any of the other lots in the proposed subdivision.

Mr. Steck: stated this is not a singular lot subdivision; number of defects that relate to a number of issues with respect to this lot; the review by the Planning Board is not to conclude that this doesn't require any variances; there are some designs such as the creation of lots on steep slopes; orientation of the lots that

represent poor planning because they engender the need for relief that would not be present if the subdivision were more appropriately designed for the neighborhood.

Mr. Whitaker: stated if he was to present a subdivision on behalf of a developer and Mr. Steck is the planner, and the subdivision meets the statutory requirements under MLUL and it meets the bulk requirements under the Borough ordinance, asked if Mr. Steck was aware of what the mandates are under MLUL for the approval process.

Mr. Steck: stated he is aware of the MLUL.

Mr. Whitaker: asked if Mr. Steck was familiar with NJS 40:55D-48.

Mr. Steck: stated he would have to look at it; stated it is the procedure for preliminary major subdivision approval.

Mr. Whitaker: stated that was correct; referred to paragraph B; asked if Mr. Steck had seen this before.

Mr. Steck: stated yes.

Mr. Whitaker: asked if Mr. Steck dealt with this as a planner.

Mr. Steck: stated yes.

Mr. Whitaker: asked what it provided.

Mr. Steck: stated if the Planning Board required any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing an amended application shall be submitted and proceeded upon in the case of the original application for development. The Planning Board shall, if the proposed subdivision complies with the ordinance of this act, grant preliminary approval to the subdivision.

Mr. Whitaker: stated from a planning perspective, the mandate is two fold; the meeting of the borough ordinances and the meeting of the requirements of the MLUL.

Mr. Steck: stated that was correct.

Mr. Whitaker: stated that Mr. Steck emphasized the word "shall."

Mr. Steck: stated he did.

Mr. Whitaker: stated Mr. Steck rendered an opinion pertaining to the Bergen County Planning Board review; that opinion is based upon a February 19th Bergen County Planning Board record; asked if that was correct.

Mr. Steck: stated yes.

Mr. Whitaker: asked if Mr. Steck had attended any of the Bergen County Planning Board meetings.

Mr. Steck: stated no.

Mr. Whitaker: asked if Mr. Steck was familiar with the personnel at the Bergen County Planning Board.

Mr. Steck: stated he knows the name of "Timsak", but he did not participate in any meetings with respect to this application.

Mr. Whitaker: asked if Mr. Steck had reviewed or made any contact with anyone at the Bergen County Planning Board level.

Mr. Steck: stated not in regards to this application.

Mr. Whitaker: asked, in connection with this application, if Mr. Steck was concerned about a 35 ft. wide roadway being required by the Bergen County Planning Board, 35 ft. width from center line.

Mr. Steck: stated the Ho-Ho-Kus ordinance requires a right of way measured from the center line of a roadway; the plans that the applicant has are imprecise to what the right of way width is and it would appear to him that if he went from the center line of the paved section of Hollywood Avenue it would require the dedication of additional lands affecting lots 9, 10 and 11.

Mr. Whitaker: asked why it would require additional dedication.

Mr. Steck: stated because that is what the local ordinance requires.

Mr. Whitaker: asked if that is what the Bergen County Planning Board is requiring.

Mr. Steck: stated that was not in their letter.

Mr. Whitaker: asked if he had the letter with him.

(Mr. Inglima provided a copy of the letter to Mr. Steck.)

Mr. Steck: read aloud from the letter; “right of way shall be established at 35 ft. from the center line of Hollywood Avenue”; now recalls that.

Mr. Whitaker: stated Mr. Steck also gave an opinion that he thought is was appropriate that lots could be established with ingress and egress on Hollywood Avenue.

Mr. Steck: stated yes.

Mr. Whitaker: stated that Mr. Steck had also testified that he reviewed the Master Plan of Ho-Ho-Kus; asked if he reviewed the goals of the Master Plan.

Mr. Steck: stated he did review the Master Plan and its goals.

Mr. Whitaker: asked if Mr. Steck was familiar, or was told any information from the prior meetings, by counsel or clients, as to the Board’s position to the request for a road widening.

Mr. Steck: stated no.

Mr. Whitaker: asked if he was concerned that the road widening was not shown on the plan at 35 ft. as required by the County.

Mr. Steck: stated yes.

Mr. Whitaker: stated if the applicant is not going to consent in doing that, it wouldn’t be appropriate for the applicant to put that on the plan.

Mr. Steck: stated his understanding is the applicant on the plans should either reference what is proposed or reference relief that is being sought where the regulations are not being adhered to.

Mr. Whitaker: stated he was going to show Mr. Steck, the section of the Master Plan that pertained to goals and policies; directed Mr. Steck’s attention to Goal #10.

Mr. Steck: read aloud; “to promote a safe and efficient traffic circulation system that serves the community while retaining the community’s suburban setting within the overall framework of a local circulation system”.

Mr. Whitaker: asked Mr. Steck to refer to the Policy Statement.

Mr. Steck: read aloud; “the Borough recognizes that the existing circulation system incorporates some deficiencies that serve to impede traffic flow; these include the limitations imposed by the fact that there is only one east/west road serving the community and the consequential large volumes of traffic that

occur on Hollywood Avenue; the intent of the plans to improve the effectiveness and safety of certain intersections and improved roadway alignments as is necessary; however the Borough also notes that substantive road widening that would create additional travel lanes along entire length of the roadway would have a negative impact on the community suburban setting and established character and is therefore neither desirable nor to be encouraged”.

Mr. Whitaker: asked if Mr. Steck was familiar with that in his testimony on June 19th.

Mr. Steck: stated yes.

Mr. Whitaker: asked if it would be correct to say that the applicant is appealing to a standard that they are not going to propose a road widening; that would be in conformity with the Policy Statement of the Master Plan.

Mr. Steck: stated the road widening is a right of way widening; it is not necessarily a widening of the cartway and the applicant is proposing drainage improvements within that right of way which clearly impedes traffic safety.

Mr. Whitaker: stated, from the standpoint of not putting it on the plan, that is truly indicated that the applicant is not proposing to pave or widen the roadway in those instances; asked if this was correct.

Mr. Inglima: stated he doesn't know how the witness can answer what the applicant intends to do.

Mr. Cucchiara: stated it calls for speculation.

Mr. Steck: stated his only observation was that the portion of the plan that depicts Hollywood Avenue near its intersection with WSRR is being precise; it does not show the actual right of way width which he believes is a requirement.

Mr. Whitaker: asked if Mr. Steck thought this was a requirement of the Borough of Ho-Ho-Kus ordinance.

Mr. Steck: stated it is a completeness requirement.

Mr. Whitaker: stated Mr. Steck had raised an issue regarding the applicant's request for a waiver from a certain RSIS requirement.

Mr. Steck: stated yes; the code requires sidewalks when you are approximate to a school and in this instance the code requires sidewalks because of the proximity to a school; the applicant is proposing some sidewalks but not to the extent required by the RSIS.

Mr. Whitaker: asked if Mr. Steck was ever made aware of a representation made by the applicant's representatives that if Board requested sidewalks at this particular location that the plans would be revised to accommodate that request.

Mr. Steck: stated he doesn't recall if Mr. Inglima told him that.

Mr. Whitaker: asked if Mr. Steck recalled or knew the location of where sidewalks on the plan are not shown to be installed.

Mr. Steck: stated they are not shown to be installed on WSRR running south of the proposed new road, and they are not being proposed on Van Dyke Drive and in the cul-de-sac.

Mr. Whitaker: asked if it was a typical provision in Mr. Steck's experience as a planner to eliminate the sidewalk in cul-de-sacs.

Mr. Steck: stated in his experience it is not typical.

Mr. Whitaker: asked if Mr. Steck, as a proponent for developers, proposes sidewalks in a cul-de-sac.

Mr. Steck: stated there are standards in the RSIS for exceptions or waivers and if the applicant can demonstrate satisfaction of that then the applicant warrants relief.

Mr. Whitaker: asked, in connection with the area not proposed for sidewalks on the outside roadway, did Mr. Steck recall any trees in that location.

Mr. Inglima: asked for clarification of "outside."

Mr. Whitaker: stated Hollywood Avenue.

Mr. Steck: stated there are trees near the property line on Hollywood Avenue.

Mr. Whitaker: asked if those trees would have to be removed if sidewalks were installed.

Mr. Inglima: objected; the question is an attempt to trap the witness into misunderstanding where the sidewalks are today; there is a sidewalk on Hollywood Avenue; it covers the entire frontage of the applicant's site; if that is going to be removed as part of the application, Mr. Whitaker should present his question with that information.

Mr. Whitaker: stated Mr. Steck took an hour tour of the property and he would believe that he became more familiar where the sidewalks are going, where they are not going and what is in the location where the sidewalks are not proposed.

Mr. Steck: stated the plans show existing sidewalks on Hollywood Avenue; presumably no trees have to be removed unless the applicant needs to rework the sidewalks because of the drainage system.

Mr. Whitaker: stated in connection with areas that are on the roadway where sidewalks are not proposed, asked if Mr. Steck observed any trees in that location.

Mr. Steck: stated along Van Dyke there are trees that are approximated in the right of way that may be affected if a sidewalk is installed.

Mr. Whitaker: asked if sidewalks were installed there, would it connect to any other sidewalk.

Mr. Steck: stated no.

Mr. Whitaker: asked if trees would have to be removed in any other location where sidewalks are not proposed.

Mr. Steck: stated he took back his statement; he saw there are proposed street trees; on Van Dyke there are three trees that are over 12 inches in diameter that may or may not be affected; sidewalk may be able to be snaked around some of the trees; infield judgment; on WSRR between the proposed road and Hollywood, there are no existing trees in the right of way; moving south to where the cul-de-sac meets WSRR, there are 3 trees that are 12 inches or greater in diameter and it appears that a sidewalk could be installed without harming those trees; stated this requires an in the field judgment.

Mr. Whitaker: stated the drainage system was discussed during direct testimony; location and type of drainage system proposed; Mr. Steck rendered an opinion and considered the drainage system to be an accessory structure.

Mr. Steck: stated yes.

Mr. Whitaker: stated he would like to explore the definition Mr. Steck used to get to that aspect; asked for Mr. Steck to describe the ordinance section or the section of the MLUL that he used.

Mr. Steck: stated the zoning ordinance has a definition of accessory structure; read aloud by Mr. Steck.

Mr. Whitaker: stated the word "structure" is used throughout.

Mr. Steck: stated yes.

Mr. Whitaker: asked if Mr. Steck was familiar with the definition of “structure.”

Mr. Steck: stated the local ordinance has a definition of “structure” which differs from the MLUL.

Mr. Whitaker: asked which one would usurp the other.

Mr. Steck: stated one doesn’t usurp the other; the local municipality is allowed to have its own definitions that provide to its own ordinances.

Mr. Whitaker: asked for the definition of a “structure.”

Mr. Steck: read aloud the following: “anything constructed or erected whether portable, prefabricated, sectional otherwise, which is permanent or temporary located on, above and/or under the ground or attached to something so located including, but not limited to, private tennis courts, paddle ball courts, platform tennis courts, swimming pools and similar recreational facilities designed to serve the residents on the premises.”

Mr. Whitaker: asked if it was correct to say that Mr. Steck’s definition of an accessory structure is anything that is constructed or erected; first aspect.

Mr. Steck: stated yes.

Mr. Whitaker: asked if the second aspect what that it doesn’t have to be permanent, it can be portable.

Mr. Steck: stated yes.

Mr. Whitaker: asked if it could be based on the definition, on, above or under the ground.

Mr. Steck: stated that is the way it reads.

Mr. Whitaker: stated, on that basis, any type of drainage structure to facilitate any house, such as a drywell, in his definition, is an accessory structure.

Mr. Steck: stated that would appear to be the case.

Mr. Whitaker: stated that pipes going into the house would fall under that literal definition.

Mr. Steck: stated if you went to that extreme, yes.

Mr. Whitaker: stated there is nothing to distinguish it from the two definitions that were read; the difference between a dry well, a small drainage basin, a large drainage basin or in fact anything else that is erected in a front yard, side yard or rear yard, temporary or permanent; asked if that was correct.

Mr. Steck: stated correct; he has gone with his common sense judgment with this definition.

Mr. Whitaker: stated that Mr. Steck has made a judgment, not found either in the MLUL definition or the ordinance itself; it is something that he has decided to distinguish himself.

Mr. Steck: stated it is his professional opinion that the drainage systems and the retaining walls that are proposed are structures that are not permitted in the front yard.

Mr. Whitaker: asked that if Mr. Steck looked at this as a literal interpretation of any structure, temporary or permanent, it could include a plethora of things.

Mr. Steck: stated it could but he made the judgment as to the specifics of this project.

Mr. Whitaker: stated Mr. Steck made it as a judgment call; asked if that would be correct.

Mr. Steck: stated he made it as a professional planning judgment.

Mr. Whitaker: stated that if he took this definition that Mr. Steck has and extrapolated it that way, almost anything put out there could be looked upon as an accessory structure; literal definition.

Mr. Steck: stated the character and the scale of these improvements clearly render it a structure under the local ordinance.

Mr. Whitaker: asked if Mr. Steck was familiar with any other structures of this character, any underground drainage structures, within the Borough of Ho-Ho-Kus.

Mr. Steck: stated he was aware that Ho-Ho-Kus has a drainage system with catch basins and pipes.

Mr. Whitaker: asked about underground drainage systems similar to this one that had been recently installed.

Mr. Steck: stated he is only familiar with what the applicant is proposing and what is in the surrounding neighborhood.

Mr. Whitaker: stated the Master Plan references the Arbor Drive installation in 2006; asked if Mr. Steck was familiar with that.

Mr. Steck: stated he would have to re-read the Master Plan; does not recall the specifics.

Mr. Whitaker: asked if Mr. Steck recalled seeing the Arbor Drive installation when he read the Master Plan.

Mr. Steck: stated he didn't recall; he read the Master Plan and concentrated on its impact on this project.

Mr. Whitaker: stated that Mr. Steck classified walls as accessory structures; asked if Mr. Steck had done any investigations to determine how walls are looked upon in Ho-Ho-Kus and their installations.

Mr. Steck: stated he believed they are clearly classified as a structure in the subdivision and site plan ordinance.

Mr. Whitaker: asked if it was called an accessory structure.

Mr. Steck: stated it is called a structure.

Mr. Whitaker: stated the code talks in term of an "accessory" structure, not in terms of certain bulk standard setbacks; asked if that was correct.

Mr. Steck: stated it does; when you put a retaining wall on a piece of property it is an accessory structure; the only other situation would be a principal structure which wouldn't be permitted.

Mr. Whitaker: stated there are three definitions; principal structure, accessory structure and structure.

Mr. Steck: stated yes.

Mr. Whitaker: stated in this ordinance the word "accessory" structure is not used in connection with the description of a wall; asked if that was correct.

Mr. Steck: stated that is correct.

Mr. Whitaker: asked if there is any prohibition in the ordinance, in his review, that does not permit tiered walls.

Mr. Steck: stated if tiered walls are outside of the front setback, they would be permitted.

Mr. Whitaker: stated Mr. Steck had opined that there was a problem with two walls in and of themselves; there is no prohibition against them in the ordinance.

Mr. Steck: stated that is correct, but a tiered wall is an accessory structure to a single family dwelling and it is his opinion it is prohibited in the front yard.

Mr. Whitaker: asked if Mr. Steck had looked to see if there were any other walls in this particular neighborhood.

Mr. Steck: stated there are some architectural walls on some properties; this is the largest wall he has seen in the entire neighborhood/the one that is proposed.

Mr. Whitaker: asked if the walls that are currently in place are in a rear or side yard setback existing now, would it be Mr. Steck's opinion that those would constitute accessory structures and would violate the ordinances.

Mr. Steck: stated the violation would be that they are in the front yard.

Mr. Whitaker: asked if there is a wall that is located in another property's side yard or rear yard setback, would that constitute the same thing.

Mr. Steck: stated no in his opinion.

Mr. Whitaker: asked if there is no prohibition for an accessory structure location in side yards or rear yards; certain setbacks respected.

Mr. Steck: stated he would have to look it up to answer the question; stated he knows if it is attached to the principal dwelling it has to meet those setbacks; he doesn't recall if there is a separate set of regulations if it is detached from the principal structure.

Mr. Whitaker: asked Mr. Steck to look at the R2's front section.

Mr. Steck: read aloud from the R2 section.

Mr. Whitaker: stated Mr. Steck also rendered an opinion as it pertains to this development, "would disrupt characteristics of the property"; asked if Mr. Steck recalled testifying in this way.

Mr. Steck: stated he did not recall those exact words.

Mr. Whitaker: stated that one of the concerns Mr. Steck raised pertained to the disruption of this property; asked if this was correct.

Mr. Steck: stated he didn't understand; the applicant is going to build something on the property so there is a disruption.

Mr. Whitaker: asked if it was correct to say that Mr. Steck recognizes, from a planning perspective, that when land is being developed there is going to be a change in the characteristics of the property.

Mr. Steck: stated yes.

Mr. Whitaker: asked if those changes and characteristics could include changes in grade, drainage patterns, all for purposes of meeting the RSIS.

Mr. Steck: stated they have to meet more than the RSIS, but that is correct.

Mr. Whitaker: stated they would have to meeting engineering practices as well.

Mr. Steck: stated zoning and the local subdivision standards also.

Mr. Whitaker: asked if a development meets those standards, then under MLUL, the Board is obligated to approve a subdivision if it meets both the municipal land use standards as well as the local ordinances.

Mr. Steck: stated not totally as in there are design principles and standards in the ordinance that are not necessarily zoning standards; stated Mr. Whitaker was suggesting that once this application is characterized as variance or design waiver free, that there is no review process; there is a design process; in his opinion that is part of the responsibility of the Board.

Mr. Whitaker: stated the design process is within the parameters of the ordinance; whether it be the subdivision ordinance or the design ordinance or the zoning ordinance; asked if this was correct.

Mr. Steck: stated that was correct.

No further questions from Mr. Whitaker.

Mr. Snieckus: stated he was not present during his testimony but his associate was who took detailed notes for him; the testimony provided by Mr. Steck was that he felt the set back along Van Dyke Drive should be closer to 43 ft. based upon the adjacent property.

Mr. Steck: stated yes; his reading of the ordinance is that it is required to be 43 ft.

Mr. Snieckus: asked what standard of the ordinance he was referring to; asked if it was under the R2 District.

Mr. Steck: stated under “E” is the standard.

Mr. Snieckus: stated under “E” it speaks about front yard depth 30 ft. except where building fronts on the same side of the street and within 200’ of either side line on the subject property from the existing setback.

Mr. Steck: read aloud the ordinance referenced.

Mr. Snieckus: stated in Mr. Steck’s analysis, he testified to the fact that the adjacent lot on Lot 5 Block 802 was a lot which had 43 ft.

Mr. Steck: stated yes; scaled from the applicant’s plans.

Mr. Snieckus: asked if Mr. Steck opined on why the property at 35 Brandywine identified in his exhibit, was not included in his analysis.

Mr. Steck: stated it has a frontage and street address of 35 Brandywine; not Van Dyke; and the requirement is that the averaging principle applies where the existing properties form an existing setback line; that house is clearly canted 45 degrees different from the other houses; it has a different street address so in his opinion it is not the basis for the front set back determination on Van Dyke.

Mr. Snieckus: asked why that is the basis if in fact that lot has frontage on Van Dyke; asked if it technically has frontage.

Mr. Steck: stated it has frontage on both but the street address and the orientation of the house is on Brandywine.

Mr. Snieckus: stated that nothing in the ordinance discusses the street address.

Mr. Steck: stated the ordinance does say whether the buildings within 200’ form an existing set back line; that building is oriented so, in his opinion, it doesn’t form an existing set back line.

Mr. Snieckus: asked if that is why it gets exempted from that calculation.

Mr. Steck: stated yes.

Mr. Snieckus: stated that no where in that section does it say that; that the building would be exempt if its orientation was to an adjacent property.

Mr. Steck: stated it says where it forms an existing setback line; in his opinion, that building does not form the existing set back line.

Mr. Snieckus: asked if he was drawing an opinion from his review of that information, not from the technical language within the section of the ordinance.

Mr. Steck: stated he is reading the ordinance and in his opinion that is a reasonable read of the ordinance.

Mr. Snieckus: asked if Mr. Steck had done any analysis of Hollywood Avenue; properties within 200 feet.

Mr. Steck: stated no.

Mr. Snieckus: asked if Mr. Steck had any opinion as to whether or not there is a pre existing established set back from those properties.

Mr. Steck: stated the applicant did not provide any information on its plans about the set back of those properties; could not determine what the established set back was.

Mr. Snieckus: asked if Mr. Steck had looked at any aerial surveys or aerial photographs to try to estimate the setback.

Mr. Steck: stated that would be inaccurate; this applicant shows the outlines of buildings so it is relatively easy to calculate that; in his experience, just measuring an aerial photograph you wouldn't know where the right of way line is, etc.

Mr. Snieckus: stated that you can measure to the curb line.

Mr. Steck: stated Hollywood Avenue does not have a consistent width of right of way.

Mr. Snieckus: asked if Mr. Steck used any type of GIS program that gives parcel data.

Mr. Steck: stated that is the applicant's responsibility; measuring in the field does not tell you where the property line is.

Mr. Snieckus: stated it may give you an idea if you have a property point.

Mr. Steck: stated it might give you an idea; the applicant has provided that information for other streets but not for Hollywood Avenue.

Mr. Snieckus: stated Mr. Steck had identified a specific section under the design standards for set backs to property lines when in fact there is a roadway dedication; that is in fact a design standard of the regulation.

Mr. Steck: stated he did not understand.

Mr. Snieckus: stated the citation that Mr. Steck referred to with regard to any dedication of the roadway width widening, asked what section that occurred under.

Mr. Steck: stated it is a RSIS; not a local zoning standard.

Mr. Snieckus: asked, that in fact, there is a zoning standard, or a design standard within the existing ordinance; Mr. Snieckus is looking for clarification; stated he is trying to define what section of the ordinance Mr. Steck was drawing his conclusion from about the set backs and the design criteria or the bulk criteria being taken from a specific adjustment as the result of road widening; Hollywood Avenue.

Mr. Steck: stated there is a section of the land subdivision ordinance.

Mr. Snieckus: asked if it fell under the design standards or the zoning standards.

Mr. Steck: stated by definition anything in the site plan subdivision ordinance is a waiver.

Mr. Snieckus: stated he wanted clarification on that for the Board.

Mr. Steck: stated he was referring to Section 32b-10 A(5)(c); read aloud.

Mr. Snieckus: asked if it would be a different situation if it were an easement.

Mr. Steck: stated, in his opinion, it is a reservation strip, it should be looked at as if it is a property line.

Chairman Hanlon: stated Mr. Steck had mentioned that he had toured the property and he found sandbags in front of a house; asked if he could identify the street and address.

Mr. Steck: stated he couldn't but he took a photograph.

Chairman Hanlon: stated he is curious because he has been traveling that area for months in all types of weather and he has not personally seen any sandbags.

Mr. Steck: stated he cannot recall the street address but he can say that he believes the property is within 500 ft. of the property; stated Mr. Inglima might know the address.

Mr. Inglima: stated the address was 956 Washington Avenue.

Mr. Iannelli: asked for clarification; during the cross examination there was a discussion about a front yard retaining wall; asked which lot he was discussing.

Mr. Steck: referred to his exhibit; P3 of Exhibit O21; on lot 5 there is a cross hatched area which is a proposed easement area; adjacent to the property lines of DiGiacomo and Dabbagh there is a red rectangle; portion of the red shape closest to WSRR is in the front yard; foot elevation difference between retaining walls and a lower wall to those two property lines, there is a gravel bed of 5 ft.; that whole structure is all within the front yard; furthest corner to the right is the front yard.

Mayor Randall: asked for clarification regarding the configuration of why this is not an appropriate layout or planning; Mr. Steck was speaking last time about what might be preferable; asked Mr. Steck to discuss lots that front on Hollywood having driveways exiting onto Hollywood.

Mr. Steck: stated there is currently a driveway on Hollywood; as you get closer to the old section of Hollywood Avenue, there are houses that front on Hollywood Avenue; there are a number of houses that have driveways on these busier streets; Mr. Steck doesn't find it offensive.

Mayor Randall: stated he wanted to clarify, because he knew that Mr. Steck was familiar with the characteristics, etc. as you head south of Van Dyke, that Mr. Steck felt it was preferable having more driveways exiting onto Hollywood as opposed to exiting on WSRR.

Mr. Steck: stated if you were to look at planning as 100% and nothing else, you would say there shouldn't be any driveways on Hollywood Avenue; Hollywood Avenue still has a residential character; provided driveways are spaced and there is a proper sight distance; in his opinion, you have to balance the 100% traffic issue with issues of aesthetics and usability of property; Mr. Steck would expect house owners to construct items like swing sets, etc. to the rear of their houses; between houses and Hollywood Avenue; or put up a solid fence; planning is a balance of a number of considerations; if you just looked at traffic and nothing else, the Mayor is right there shouldn't be another driveway on Hollywood Avenue; doesn't think that rises to such a degree that it should determine the configuration of this subdivision; doesn't mandate a cul-de-sac.

Mr. Berardo: referred to O21; asked why the sidewalks are required in the cul-de-sac.

Mr. Steck: stated the RSIS require sidewalks in proximity to schools; it is his understanding that the applicant is asking relief for that; Statewide standards have certain criteria that it is the responsibility of the applicant to demonstrate that such sidewalks would constitute a hardship.

Mr. Berardo: stated there is another cul-de-sac on Dogwood and that has no sidewalks.

Mr. Steck: stated he didn't know when that was approved; beyond the radius needed that triggers the need for sidewalks.

Mr. Berardo: referred to the setback on Van Dyke; Mr. Berardo did not recall when Mr. Steck was reading the ordinance if it includes the opposite side of the street.

Mr. Steck: stated it only requires it on the same side of the street.

Mr. Reade and Councilman Rorty had no questions.

Chairman Hanlon: stated he wanted to follow up on the Mayor's question regarding driveways on Hollywood Avenue; referred to O21; stated on both the 200 ft. list and the 500 ft. list there are only 4 driveways exiting out onto Hollywood Avenue, of which two properties have driveways on the side street.

Mr. Steck: stated that was correct; as you move further west, which is off the page, there are other lots that do front on the old section of Hollywood Avenue.

Chairman Hanlon: stated three of them; the rest of them were removed with the other subdivision.

Mr. Steck: stated he doesn't know; there isn't a prohibition in the Borough's ordinance or in his understanding; there is no prohibition in the RSIS or in the ordinance.

Chairman Hanlon: asked how many sidewalks were on this side of the Borough; on the east side of town.

Mr. Steck: stated he would suspect relatively few.

Chairman Hanlon: referred to the discussion on Van Dyke; Mr. Steck is claiming that sidewalks should be put in on proposed lots 1, 2, 3 and 4; asked if this was correct.

Mr. Steck: stated the RSIS require sidewalks; it is the applicant's burden to demonstrate that an exception is required; the applicant would only have the responsibility for the frontage on its property; wouldn't have to extend them.

Chairman Hanlon: asked if Mr. Steck was aware that there are several empty lots in the area; Van Dyke and Cleverdon.

Mr. Steck: stated he didn't know if they were empty lots but possibly double lots.

Chairman Hanlon: stated there are several empty buildable lots.

Mr. Inglima: asked for Chairman Hanlon to present more information as part of his statement; if the lots are owned in common with abutting lots and they are continuous, and one of them has a principal structure on it that is occupied as a dwelling, that is one lot under the Borough's ordinance; doesn't want Mr. Steck to be under another impression.

Chairman Hanlon: stated he is asking about properties in that area that have empty buildable lots.

Mr. Steck: stated he would not conclude that they are buildable lots; if they are under common ownership and, as shown on the tax maps, are not fully conforming, they would be considered to have merged; the owner would have to apply for a subdivision to build on that lot.

Chairman Hanlon: stated this has happened in the last couple of years; an applicant has subdivided; Council did not know that previously; it was on Cleverdon Road and that lot was subdivided and a new home was placed there; asked if another lot down the street became available, buildable lot, is Mr. Steck indicating that a sidewalk should be installed.

Mr. Steck: stated if there is a free standing tax map lot that is fully conforming, and there is no subdivision, then there is no requirement for a sidewalk; once subdivision approval is required from the Planning Board, then RSIS kicks in.

Chairman Hanlon: asked, as a planner, looking at the first four lots, does Mr. Steck really think it makes sense that it would need sidewalks in this area.

Mr. Steck: stated he believes there needs to be a 43 ft. front setback; he would invite the applicant to consider not putting in sidewalks, but believe the 43 ft. setback is required and would be appropriate for the neighborhood.

Chairman Hanlon: asked if Mr. Steck was stating that he would still like to keep the neighborhood as it was established back in the 30s.

Mr. Steck: stated aesthetics are important that is why he is concerned about the functional rear yards along Hollywood Avenue.

Chairman Hanlon: stated he was not speaking regarding Hollywood Avenue but Van Dyke.

Mr. Steck: stated the State law requires sidewalks unless the applicant can provide some rationale that they be waived; if the applicant justifies it, then the Board is free to waive the sidewalks.

Chairman Hanlon: stated Mr. Steck made a suggestion on Hollywood Avenue; lots 9, 10, 11; the front yards should be on Hollywood Avenue and the ingress and egress should be on Hollywood Avenue.

Mr. Steck: stated he is suggesting that this property can be reasonably developed without a cul-de-sac which would considerably lessen the amount of impervious coverage and would be considerably more in character with the area and would not require a contorted drainage system.

Chairman Hanlon: asked if Mr. Steck had previously stated that the home should be facing Hollywood Avenue with an ingress and egress on Hollywood Avenue.

Mr. Steck: stated he thinks a reasonable subdivision could have two homes facing Hollywood Avenue with access to Hollywood Avenue that would be a corner lot that could be accessed from WSRR and then there could be other lots on WSRR.

Chairman Hanlon: stated in regards to what Mr. Steck stated about drainage, the County would require that they have at least a K form or U shaped driveway in front of the home based on what the County has said today that these homeowners would have to have large driveways or paved roads in front of their homes.

Mr. Steck: stated the County doesn't want anyone backing out onto Hollywood Avenue; there are many ways to do that; in a front lawn, it is his experience there are very well landscaped front lawns that are not the same as a tree house in the front lawn.

Chairman Hanlon: asked about the safety aspect.

Mr. Steck: stated, in his opinion, having two driveways on Hollywood Avenue where there is one today would not present a safety issue because that is a straight section of the street; good sight distance at that location.

Chairman Hanlon: asked if Mr. Steck was aware that the applicant has agreed that he would work with the Borough if they received approval to address the problem on Hollywood Avenue and Van Dyke to close it off and change the intersection around and to have the road error corrected.

Mr. Inglima: objected; stated there has been no plan presented; no details; no information at all; other than conjecture as to the design of a new intersection; Mr. Inglima has no idea how this applicant would be able to create control over other areas of the intersection that would be necessary in order to form a change; asked for specifics.

Chairman Hanlon: stated the latest Police report stated the intersection be looked at; Council at the first meeting with the Engineer indicated that they would support the Borough going forward to possibly make a correction on the Van Dyke/Route 17/Hollywood Avenue intersection.

Mr. Inglima: asked what the correction would be.

Chairman Hanlon: stated he recalled a discussion to rearrange traffic so that it would not be running straight from 17 down Hollywood; the interchange would be changed so that all the traffic would flow straight into Hollywood Avenue at a stop street, then a right or a left hand turn would be made; concept only.

Mr. Inglima: stated these areas being discussed are within a public right of way and within the State DOT jurisdiction.

Chairman Hanlon: stated it has been determined that it is County.

Mr. Inglima: asked how this applicant has anything to do with that.

Chairman Hanlon: stated the applicant was asked to help.

Chairman Hanlon: asked where the steep slopes on the property were located.

Mr. Steck: stated the Borough's ordinance describes steep slopes as anything over 15%; near the road frontage on WSRR there are steep slopes; this is where the applicant's detention system will be constructed above ground and extended into the public right of way; will look at other parts.

**Please note: a recess of 20 minutes was taken at this time: 9:22PM.
Meeting called to order at 9:42PM.**

Roll Call taken:

Messrs. Berardo, Reade, Cirulli, Iannelli, Councilman Rorty, Chairman Hanlon, Mayor Randall

A brief discussion regarding meeting dates took place at this time.

Councilman Rorty: spoke regarding the Hollywood Avenue frontage issue; asked if construction of a berm or wall would alleviate the frontage issue.

Mr. Steck: stated a berm is an artificial construct; trees would need to be moved; something that would be seen in an area where all of the trees had already been removed; retaining the existing vegetation is the best solution.

Councilman Rorty: asked if Mr. Steck had done projects where similar systems had been in play; if yes, asked if other alternatives had been offered.

Mr. Steck: stated there are always other alternatives; this is the first application where he has seen plans where someone is filling the land and then putting the drainage pipes on top of the fill.

Meeting opened to the public to ask questions of the engineer, Mr. Steck.

Ms. Susan Curtis, 11 Van Dyke Drive: directed questions to the engineer regarding the proposed application.

Ms. Bridget Brownell, 12 Van Dyke Drive: directed questions to the engineer regarding the proposed application.

Mr. Paul Lewis, 14 Brandywine Road: directed questions to the engineer regarding the proposed application.

Ms. Sharon Gomez, 37 Van Dyke Drive: directions questions to the engineer regarding the proposed application; spoke regarding the elevations of the heights of the proposed houses.

Mr. Whitaker: objected; no design of any building structure; pure conjecture.

Mr. Cucchiara: stated the houses shown are conceptual; it is not even known where anything will be located at this point; does not know what the structure will look like; stated the height issues can be addressed, but in terms of what the structure will look like; someone looking into the window of another home, is not relevant at this point; there is nothing in the record in regard to the structures, design or the nature of them, or as he just mentioned, where the windows might be.

Mr. Steck: stated if it is a one story building, it will start 10 ft. above the existing grade which gives an orientation of where someone will be looking out of their window.

Mr. Stanley Kober, 919 Washington Avenue: directed questions to the engineer regarding the proposed application; started to discuss the heavy traffic on Van Dyke Drive and emergency vehicles being present.

Mr. Whitaker: objected; Mr. Steck testified he was only on the site for a one hour visitation.

Mr. Steck: stated he only had an hour with Mr. Inglima but he had been at the site on his own more than that; did not witness emergency vehicles when he was present.

Mr. Kober: continued to ask questions of the engineer; started to discuss parking of vehicles.

Mr. Whitaker: objected; outside the purview of the witness; requirements are for subdivision approval.

Mr. Cucchiara: stated unless Mr. Inglima objects, it appears to Mr. Cucchiara that it would be speculation on the part of the witness.

Mr. Inglima: stated he did not know if this witness could answer this type of question.

Mr. Kober: continued to ask questions of the engineer; referred to Ordinance 85-20.

Mr. Steck: stated he was not aware of this ordinance.

Mr. Inglima: read Ordinance 85-20 aloud; stated the ordinance speaks for itself.

Mr. Whitaker: objected to the form of the question; irrelevant to the application pending before the Board; this is a subdivision application not an application pertaining to construction.

Mr. Cucchiara: asked Mr. Kober to refer to the Ordinance 85-20; the article generally refers to building permits; it would not appear to be relevant to this particular proceeding; this is a subdivision application and does not refer to the structure itself.

Mr. Kober: asked if a variance would be required.

Mr. Cucchiara: stated this is a different matter; the construction official would have to consider this section when an application for a building permit is presented to him/her.

Mr. Kober: spoke regarding the removal of trees; referred to Ordinance 85-25.

Mr. Whitaker: objected as it pertains to a construction issue.

Mr. Cucchiara: stated it is not pertaining to this particular issue at this point; Mr. Kober can ask questions about it at a subsequent part of the proceeding; not relevant at this time.

Mr. Inglima: stated if Mr. Kober is asking a question that is relevant in some respect to a subdivision application the witness can answer that; if Mr. Kober is asking about some other aspect, post approval construction, that doesn't involve structures shown on the plan, then it shouldn't be answered.

Mr. Cucchiara: stated there was testimony in regards to the sidewalk; if that is what Mr. Kober is referring to then he can proceed; if it is something more significant it will be addressed during the soil movement application; believes that would be the appropriate time to ask his questions; stated he doesn't disagree with Mr. Inglima if it has something to do with subdivision issues and Mr. Steck's specific testimony prior to the questions; Mr. Cucchiara has the impression that Mr. Kober is going in a different direction.

Mr. Kober: stated he will wait and ask his questions at a later time; spoke regarding a proposal he made at the last meeting.

Mr. Jim Albes, 31 Valley Forge Way: directed questions to the engineer regarding the proposed application; began to speak regarding maximizing the number of lots.

Mr. Whitaker: objected; purely speculative.

Mr. Cucchiara: stated it is not relevant.

Mr. Albes: started to discuss cost associated with structural solutions.

Mr. Whitaker: objected; irrelevant to the subdivision application.

Mr. Cucchiara: stated cost is not within the scope of his expertise; stated it calls for speculation and reiterated that it is beyond the scope of the witnesses' expertise.

Chairman Hanlon: stated, per the guidelines, the Board cannot take that under consideration under any condition; it is not before the Board and the Board cannot rule on that part of the question; not what the Board does.

No further questions from the public at this time; public portion of the meeting closed.

Mr. Iannelli: spoke regarding the retention system on lot 5 and the retaining wall; asked if Mr. Steck had an opinion as to what a natural detention system might create in that area to reduce or eliminate the retaining wall and perhaps let the drainage drain naturally in that area.

Mr. Whitaker: objected; beyond the expertise of the witness; engineering conclusion.

Mr. Iannelli: asked whether or not the retaining wall can be eliminated or reduced.

Mr. Steck: stated there are multiple ways to design a development; principals in design standards; there are steep slopes close to 30% next to WSRR just east of the existing house on the property; a road inserted there is restrictive; working against topography; causing certain features such as the retaining walls and the drainage system which is above grade; more flexibility without the cul-de-sac.

Mr. Inglima: stated Mr. Whitaker asked questions regarding items that Mr. Steck should have reviewed; asked if anyone appearing at this hearing raised any issues that relate to his preparation for testimony that would alter in any way the statements, findings, conclusions or opinions that he has expressed at these hearings.

Mr. Whitaker: objected to the form of the question; the witness can not answer as to whether testimony that he didn't hear would be relevant to the opinions that he provided to the Board.

Mr. Cucchiara: asked Mr. Inglima to please restate the question.

Mr. Inglima: asked Mr. Steck if he felt there was any information that he requires regarding the drainage design for the site in order to opine in respect to planning considerations that form the basis of his testimony.

Mr. Steck: stated he believed he had sufficient information and had done sufficient investigations to render the opinions that he gave.

Mr. Inglima: asked if there is anything in respect to the design of the cul-de-sac, roadway, the intersection of the new roadway with WSRR or the proposed

location of sidewalks or other street improvements that Mr. Steck needed to review in addition to the items previously reviewed in order to opine on this matter.

Mr. Steck: stated he would like to have had the applicant show what the right of way was on Hollywood Avenue; would have helped to determine the magnitude of relief that might be needed.

Mr. Inglima: asked if there is anything regarding the setback of structures along Van Dyke Drive or WSRR that he feels he should have had provided to him before he could opine with respect to those issues.

Mr. Steck: stated the plans by themselves clearly indicate the setback required minimum should be 43 ft.

Mr. Inglima: stated Mr. Steck physically inspected the improvements on lot 5 on Van Dyke Drive; asked if he found that consistent with the depiction of the house on the applicant's plan.

Mr. Steck: stated yes.

Mr. Inglima: asked, in regards to access to the site from Hollywood Avenue, did Mr. Steck visually inspect the existing conditions of access, driveway location and sidewalks along Hollywood Avenue along the frontage of the applicant's site.

Mr. Steck: stated yes; he walked completely around the block.

Mr. Inglima: asked if Mr. Steck familiarized himself with the physical conditions of the applicant's site by viewing it from the perimeter.

Mr. Steck: stated yes; he looked in on both driveways from WSRR and Hollywood Avenue; viewed several aerial photographs.

Mr. Inglima: stated that Mr. Steck could not tell Mr. Whitaker the exact hour of his visit to the site; asked if any visits to the site that he conducted were done during daylight hours under conditions of good visibility.

Mr. Steck: stated they were all in daylight hours and in conditions of good visibility.

Mr. Inglima: stated Mr. Steck had stated that he would have benefited in his review from knowing where the right of way width of Hollywood Avenue was; asked if this is a minimal requirement that should be imposed upon any subdivider of property along the County road.

Mr. Steck: stated yes.

Mr. Inglima: asked if Mr. Steck felt that it is incumbent upon a Planning Board to know where the right of way lines are along the applicant's frontage but also on the opposite side of the street along the County road.

Mr. Steck: stated that this is information necessary to determine the location of potential dedications that are needed.

Mr. Inglima: referred to the applicant's checklist; Exhibit A1; the last item on the checklist, #26.

Mr. Steck: stated it is checked as "yes" but he doesn't know how the applicant could answer this way because he feels the information, like that of the right of way, is required.

Mr. Inglima: stated Mr. Steck reviewed the letter from the County; Exhibit C1; this letter indicates that one of the requirements of the County is to show the right of way line as well as the center line of Hollywood Avenue.

Mr. Steck: stated that is item #2.

Mr. Inglima: stated item #1 states the center line must be shown and item #2 states the right of way line has to be established at 35 ft. from the center line.

Mr. Steck: stated the center line must be shown and it also states what the consequences of showing the center line are.

Mr. Inglima: asked if this requirement was imposed before or after the application was submitted, and the checklist was checked as "yes" to indicate conformity by the applicant with the requirements of the checklist, is it Mr. Steck's opinion that this information is still a requirement of this application.

Mr. Whitaker: objected; calls for a legal conclusion, not a planning conclusion.

Mr. Inglima: asked Mr. Steck, in his experience as a planner in reviewing and counseling Planning Boards and Zoning Boards with respect to their interpretations of their own ordinances including but not limited to requirements related to checklist compliance by applicants as a requirement to submit a complete application, is it his opinion in review of the checklist submitted that the information that he just referred to should be included on the plan.

Mr. Whitaker: objected; presupposed that Mr. Steck has the expertise and has been engaged to do checklist reviews; irrelevant.

Mr. Cucchiara: asked for a foundation for the question.

Mr. Inglima: asked Mr. Steck if he had ever given advice to a Planning or Zoning Board in NJ with respect to zoning ordinance requirements, particularly those that apply to the submission of a complete application.

Mr. Steck: stated yes.

Mr. Inglima: asked if it was Mr. Steck's understanding that County requirements such as those indicated in items 1 and 2 of the February 19, 2014 letter marked as Exhibit C1, are customarily required by municipalities as a requirement of a complete application.

Mr. Steck: stated there is a requirement in the local ordinance that relates to the width of the right of way that abuts the property; irrespective of what the County wants, it is his opinion a requirement of the local HHK ordinance.

Mr. Inglima: asked if Mr. Steck felt that it is incumbent upon the Planning Board to obtain that type of information.

Mr. Steck: stated it is necessary information.

Mr. Inglima: asked, in respect to WSRR and its intersection with Hollywood Avenue, did Mr. Steck have an opinion as to whether or not information regarding the alignment, geometry and physical features of that intersection are also important elements that should be included in the plans submitted.

Mr. Steck: stated yes.

Mr. Inglima: stated that Planning Board members indicated today that there is heavy traffic on Hollywood Avenue and that there are statements in the municipal Master Plan that required certain things with respect to Hollywood Avenue; asked if Mr. Steck felt the Board should have this information.

Mr. Steck: stated he believes it is required in order to determine whether the subdivision conforms to the standards of the ordinance.

Mr. Inglima: asked if Mr. Steck felt that any of those requirements and the required elements of a complete application, and information required for the Planning Board to reach a conclusion with respect to whether or not it should grant approval for the proposed subdivision, should be provided to the Board regardless of whether the applicant wants to comply with those requirements.

Mr. Steck: stated he believes it is essential to have an evaluation of the application and what items of relief are needed.

Mr. Inglima: spoke regarding the proximity of structures to the adjacent properties along the south side of the applicant's site; retaining walls and the DiGiacomo and Dabbagh residences; stated those structures would not be allowed under the current zoning ordinance within the required setback distances from that common boundary; asked if there is anything that he has heard tonight that would change his opinion.

Mr. Steck: stated, in his opinion, he still believes variances are needed for both the violation of the front yard setback and the side yard setback of lot 5.

Mr. Inglima: stated Mr. Steck had stated earlier that most of the difficulties in designing this site, and the problems identified in his testimony, arise from the new roadway to serve interior portions of the site.

Mr. Steck: stated that was correct.

Mr. Inglima: asked if it was true that the problems identified regarding the retaining walls is a result of the roadway system and the detention system that will serve that roadway.

Mr. Steck: stated that was correct; there is a preference in the RSIS for a non structural approach.

Mr. Inglima: stated Mr. Steck spoke regarding additional structures that were placed within the front yard of proposed lot 5 and WSRR; they encroach upon the right of way of WSRR.

Mr. Steck: stated yes; there are concrete improvements; the pipes that store the drainage encroach onto the right of way; there is a concrete structure associated with them that also encroaches onto the WSRR right of way.

Mr. Inglima: asked if Mr. Steck found, with review of the plans and information received in respect to the design of the structures from other exhibits prepared by Mr. Emerson, particularly Exhibit O19, that the structures actually extend into the right of way above grade.

Mr. Steck: stated yes, that is clear from the plans.

Mr. Inglima: asked if it was Mr. Steck's opinion that those structures also violate the required setbacks of the ordinance.

Mr. Steck: stated the setbacks don't apply in the public right of way but they clearly would impede what is supposed to be there.

Mr. Inglima: asked, in regards to the extent those structures are exposed above grade on the applicant's site, they are not the types of structures that

Mr. Whitaker referred earlier; he was speaking of pipes buried underground; asked if this was correct.

Mr. Steck: stated this is an above ground structure that presents a hazard to pedestrians and to vehicles.

Mr. Inglima: asked if it was correct that he could not build a garage in his front yard in an R2 zone without a variance.

Mr. Steck: stated that was correct.

Mr. Inglima: asked if he was to put a garage in his front yard and bury it by putting dirt around it; asked if it would become invisible.

Mr. Steck: stated no; it would still be a violation in his opinion.

Mr. Inglima: asked if this is what the applicant is doing.

Mr. Steck: stated it is the same effect.

Mr. Inglima: asked, if this was approved in its current condition, anyone could come in with a garage that is built in a front yard with a berm.

Mr. Steck: stated they could try but doesn't know if it would be approved.

Mr. Inglima: asked if this should be approved.

Mr. Steck: stated he doesn't feel it meets the statutory criteria.

Mr. Inglima: asked Mr. Steck's opinion as to the impact on public safety, as a planner, that would arise from the creation of one driveway.

Mr. Steck: stated he doesn't know of any prohibitions in the ordinance for such a feature; in his opinion, he didn't feel there was a safety issue if the driveways were properly placed and had appropriate site distances.

Mr. Inglima: asked if Mr. Steck knew of any prohibition imposed by Bergen County on the creation of residential driveways on Hollywood Avenue.

Mr. Steck: stated he doesn't know of any.

Mr. Inglima: spoke regarding the Master Plan and Hollywood Avenue; asked if Mr. Steck had visited the entire length of the roadway from ESRR to the east and Franklin Turnpike at the very top of the hill to the west; asked Mr. Steck's observation in respect to residential driveways in single family homes located along the frontage along the right of way of Hollywood Avenue.

Mr. Steck: stated he had; there are homes that have driveways; some access from a side street but face Hollywood Avenue; he did not see any homes that had their rear yards abutting Hollywood Avenue.

Mr. Inglima: clarified that there was a rear yard that was perceptible and a house facing in the opposite direction from Hollywood Avenue.

Mr. Steck: stated that was correct.

Mr. Inglima: asked if Mr. Steck's only observations were houses that had their front doors facing Hollywood Avenue, or the sides of their homes facing Hollywood Avenue where they were at an intersection.

Mr. Steck: stated yes; in some cases the house might have faced Hollywood Avenue and had a driveway to a side street but the architectural front of the house was facing Hollywood Avenue.

Mr. Inglima: asked if he finds any harm from a planning standpoint from either public safety or from design standards that would be applicable to creating a harmonious residential environment in having two building lots from this property face out onto Hollywood Avenue and have their frontage in access from Hollywood Avenue.

Mr. Steck: stated, in his opinion, that would be a comfortable and expected subdivision layout and compared to a development that produced a cul de sac, it is vastly superior.

Mr. Snieckus: stated, for the record, he did not ask a question regarding a driveway from Hollywood Avenue; he did not bring up the issue of safety.

Mr. Inglima: stated he misunderstood and was mistaken; thanked Mr. Snieckus for the clarification.

Chairman Hanlon: stated there will be a meeting next Thursday; discussed attendance; witnesses of Mr. Inglima to be present.

Mr. Inglima: asked for confirmation that the next meeting will be Thursday, July 31, 2014 at 7:30PM in the courtroom of the Municipal Building; asked if the applicant had extended any applicable time periods for the decision of the Board on the application.

Mr. Whitaker: stated the time frame runs through July 31, 2014.

Mr. Cucchiara: stated that was stipulated at a prior meeting.

Mr. Whitaker: stated it was stipulated this evening; asked if the procedure anticipated for the next meeting is that Mr. Inglema's witnesses will be testifying, then other members of the public will testify; Mr. Whitaker will not commence rebuttal until the meeting thereafter.

Mr. Inglema: stated he is not sure where the public fits in; none of his witnesses will be back again after Mr. Whitaker has presented rebuttal witnesses; the Board may be obligated to allow the public to comment at the end of the whole process just before it deliberates and votes.

Mr. Cucchiara: stated it will proceed that way.

Mr. Snieckus: stated for the purposes of the record and maybe the public, there was discussion of the soil movement application possibly on the 31st; supposed this would be carried to a future meeting.

Mr. Whitaker: stated the subdivision is first.

Ms. Susan Curtis (did not provide address): asked when the public will be making statements.

Mr. Cucchiara: stated it will most likely be at the next meeting; it all depends on how long Mr. Inglema takes.

Mr. Steve Reilly, 26 Sleepy Hollow Drive: asked when the public would have a chance to make comments; asked when the final public comment period would be; was confused about procedure.

Chairman Hanlon: stated Mr. Inglema has indicated that he has between 4 and 6 witnesses; does not know at this time what the time frame will be.

Mr. Whitaker: stated the comment period would be for the subdivision.

Mr. Cucchiara: stated there will be another opportunity for public comment in regards to the soil movement application; stated he didn't recall exactly what the understanding was in regards to the soil movement application; asked for it to be addressed; believed it was going to be part of these proceedings; raised the issue.

Mr. Whitaker: stated the subdivision application would be completed in it's entirety before he would move on to the soil movement application.

Mr. Inglema: stated he had asked for both applications to be heard at the same time but it was objected to.

Ms. Phoebe Fleming, 84 Fairlawn Street: asked about the next meeting.

Ms. Bridget Brownell, 12 Van Dyke Drive: asked about procedure.
Mr. Paul Lewis, 14 Brandywine: asked about procedure.

Motion to Adjourn: Mayor Randall, Berardo
All Board Members present approve motion to adjourn.

Meeting adjourned at 11:00PM

Respectfully submitted by:
JoAnn Carroll
Planning Board Secretary
October 17, 2014