

**Borough of Ho-Ho-Kus  
Bergen County, New Jersey  
Planning Board Minutes  
January 15, 2015  
Public Session**

**Meeting Called to Order at: 7:33PM**

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

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

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

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**New Business:**

**Mind Body Health LLC, Mr. Don Kim, 18 Sycamore Avenue, Block 1010, Lot 13:** business located in Ho-Ho-Kus; change of address.

**Mr. Kim:** explained his business to the Board; acupuncture; currently has a business location in Ho-Ho-Kus; is moving his business to 18 Sycamore; is aware of parking available in the back of the business.

**Motion to approve:** Pierson, Cirulli

**Ayes:** Pierson, Reade, Cirulli, Newman, Chairman Hanlon, Mayor Randall

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**Approval of Minutes:**

August 7, 2014: Cirulli, Reade, **All in Favor**

October 9, 2014: Cirulli, Reade, **All in Favor**

December 4, 2014: Pierson, Reade, **All in Favor**

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**Ongoing Business:**

**Hollows at Ho-Ho-Kus, Chamberlain Developers, W. Saddle River**

**Road/Van Dyke Drive, Block 802, Lots 1, 2, 3, 4 and 10:** major subdivision application; the applicant proposes to construct and market single family dwelling units on each of the properties; major soil movement application.

**Chairman Hanlon:** reviewed meeting procedures; announced Mr. Snieckus was ill and not in attendance this evening.

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

**Mr. Palus and Mr. Inglima:** no additional information received by Mr. Palus since the last meeting date; technical data regarding the soil testing was provided at the last meeting; A20 is the extent of data; Mr. Palus did not recall seeing Mr. Fooder's report of 11/5/14; Mr. Palus did remember extending the water main Van Dyke Drive; negligible amount of soil movement involvement with this extension; plan would be amended if this was agreed upon; soil movement calculations based on current plans; did not review Dr. Pazwash's calculations.

**Mr. Whitaker:** had no redirect.

**No Board questions.**

**Mr. Whitaker:** spoke regarding questions asked of him at the last meeting; Mr. Inglima asked that Mr. Costanza's widow sign a document stating she is the beneficiary of the estate; attorney had signed; Dawn Costanza is the legal representative of her late husband's estate; spoke regarding the concept of subsurface investigations; not required under soil movement ordinance or part of a subdivision checklist; all oil tanks have been removed; submitting to appease resident's questions regarding an oil tank on the property.

**Mr. Inglima:** asked who was empowered to act on behalf of the trust.

**Mr. Whitaker:** stated the same person on A23 who are listed as the beneficiaries of the two trusts are the trustees.

**Mr. Inglima:** asked for exhibits marked to be moved into evidence.

**Chairman Hanlon:** no objection.

**Mr. Inglima:** stated a number of his clients had testified regarding their concerns over this application; changes to the plans have been made since his client's testimony; their positions have not changed; stipulation exactly what they would testify to at this point because of the fact the basic design of the subdivision has not changed; modify stipulation to the extent that the retaining wall system that was shown along the south side of proposed lots 5 and 6 have been eliminated and is not part of the application at this point; concerns regarding the retaining walls have been addressed by the modification.

**Mr. Whitaker:** acceptable to the applicant.

**Mr. Hals:** sworn in by the court reporter to give his presentation.

**Mr. Hals:** stated, for the record, he did have a financial, working relationship with Chamberlain Developers in the early 2000s; did engineering work for several of Chamberlain's properties from 1999-2005; worked on several

subdivisions for Chamberlain; Montvale and Mahwah; last work done for Mr. Frasco was when he looked at a drainage problem at Mr. Frasco's house in 2008.

**Mr. Cucchiara:** asked Mr. Hals if he had a personal relationship with Mr. Frasco or any of his staff.

**Mr. Hals:** stated no.

**Mr. Cucchiara:** asked if Mr. Hals had any close friends or family who were associated with Chamberlain Developers or Mr. Frasco.

**Mr. Hals:** stated no.

**Mr. Cucchiara:** asked if there was any work that Mr. Hals did for those entities, collectively, other than subdivisions and the drainage issue mentioned.

**Mr. Hals:** stated no.

**Mr. Cucchiara:** asked Mr. Hals if his previous relationship with the entities described would affect his ability to perform his services in an impartial and objective way.

**Mr. Hals:** stated no, it would not affect his opinions or how he services the Board.

**Mr. Cucchiara:** asked if Mr. Hals' last contact with the entities described was in 2008.

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

**Mr. Cucchiara:** stated the issue was discussed before the Board with regard to conflicts of interest; both statutory and case law identify four areas whether or not there is a direct or indirect financial interest that might affect a Board members' or consultants' impartiality; or whether or not there is a direct or indirect similar relationship which would have a similar affect; that is a determination the Board must make under circumstances like this but it has to be an actual conflict; it cannot be something that is remote and it is based upon the factual circumstances; it would be appropriate at this point for counsel for the applicant, counsel for the objectors, Board members and the public to ask questions of Mr. Hals in connection with the circumstances that he described prior to the determination of whether or not he should be able to proceed with his presentation, and of course, the determination would be whether or not there is an actual conflict present which would preclude him from participating in these proceedings any further or making his presentation.

**Mr. Pierson:** no questions of Mr. Hals.

**Mayor Randall:** asked what the circumstances were that he stopped working with the entities described in 2008.

**Mr. Hals:** stated they just went their separate ways; not acrimonious; just the end of the relationship.

**Mr. Cirulli:** no questions of Mr. Hals.

**Chairman Hanlon:** asked if the main reason he and Mr. Frasco parted ways was the downturn of the economy.

**Mr. Hals:** stated they did part ways the same time the economy went south; Mr. Hals stated he has done work for many other companies.

**Mr. Whitaker:** no questions of Mr. Hals.

**Mr. Inglima:** asked if Mr. Hals had obtained legal counsel regarding the conflict of interest based on his prior work with Mr. Frasco.

**Mr. Hals:** stated no, he had not obtained legal counsel.

**Mr. Inglima:** stated Mr. Frasco had purchased properties on Maple Avenue; asked if Mr. Hals had spoken with Mr. Frasco regarding that property.

**Mr. Hals:** stated no; he did not know Mr. Frasco owned property at that location.

**Mr. Inglima:** asked how many Mahwah projects Mr. Hals was involved in with Mr. Frasco's companies.

**Mr. Hals:** stated at least two, possibly 3.

**Mr. Inglima:** asked if Mr. Hals had worked on a drainage design for Mr. Frasco.

**Mr. Hals:** stated not in Mahwah.

**Mr. Inglima:** asked how many subdivisions Mr. Hals was involved in with Mr. Frasco.

**Mr. Hals:** stated he was involved with 2 minor subdivisions.

**Mr. Inglima:** asked if Mr. Hals did any work for Mr. Frasco in Allendale.

**Mr. Hals:** stated Mr. Frasco lives in Allendale and Mr. Frasco and a neighbor had a drainage problem behind Mr. Frasco's home; this happened in 2008.

**Mr. Inglima:** asked if Mr. Hals had billing records for the work done in connection with Mr. Frasco.

**Mr. Hals:** stated yes.

**Mr. Inglima:** asked the amount of payment received.

**Mr. Hals:** stated he couldn't even estimate; did not look at the numbers.

**Mr. Inglima:** asked if Mr. Hals had designed any subsurface drainage structures.

**Mr. Hals:** stated he had designed seepage pits; largest project in Montvale; detention system; underground and above ground; 2000-2003; 15 lots.

**Mr. Inglima:** asked if Mr. Hals had a personal relationship with Mr. Frasco or his family.

**Mr. Hals:** stated he has never met anyone in Mr. Frasco's family; doesn't know anyone else in his company; does not have a personal relationship with him; went on a golf outing once with Mr. Frasco.

**Mr. Inglima:** stated he had no further questions for Mr. Hals but asked that Mr. Hals provide some record of the work performed for Mr. Frasco or his companies in the past; asking for full disclosure; issue is if Mr. Hals would come to any different conclusions if he had not had a prior working relationship with Mr. Frasco; problematic situation.

**Mr. Cucchiara:** asked if Mr. Inglima was asking Mr. Hals to be specific about his records; Mr. Inglima mentioned them in general terms.

**Mr. Inglima:** stated he would like Mr. Hals to indicate the subject properties of the work performed for Mr. Frasco; the land use board reviews that were involved in the matters; street address; block and lot; work performed; total of payments received by Mr. Hals and his firm.

**Mr. Cucchiara:** stated invoices and the like would indicate what is being requested; suggested Mr. Hals review his records and provide a statement.

**Mr. Inglima:** stated a summary can be submitted for the benefit of the Board and participants.

**Mr. Cucchiara:** asked if Mr. Hals would be able to review his invoices and provide the information Mr. Inglima is seeking.

**Mr. Hals:** stated he can provide the information, though he is not sure it is necessarily appropriate.

**Mr. Cucchiara:** stated when Mr. Inglima had raised this issue with Mr. Cucchiara, he believed it would be appropriate for the Board to make a determination; if Mr. Inglima is seeking this information and Mr. Hals is more than willing to provide it, it would appear that it would be more appropriate, after questions from Mr. Whitaker and/or the public, to have the Board reserve decision on this issue; have Mr. Hals proceed with his testimony tonight and make a determination after that information is provided; obviously to make that determination tonight would not be appropriate if this information affected that determination; unfortunately it may cause an issue later, we do not know; Mr. Cucchiara does not believe the Board is in a position to make that decision tonight if Mr. Inglima is seeking information and Mr. Hals has yet to provide it to him; asked Mr. Hals if he had any sense as to how long it would take for the information requested to be provided, particularly in view of the fact that there is a hearing scheduled for next week; asked if that would be a sufficient amount of time.

**Mr. Hals:** stated he could not say only because his billing system has changed; does not know what it will take to gather the requested information.

**Chairman Hanlon:** stated the Board has a meeting scheduled for the 22<sup>nd</sup>; and the following regular meeting would be held on February 12, 2015 which is a work session, which could certainly be the continuation of the public hearing and February 19<sup>th</sup>; unless something is worked out between all members involved, we could schedule a different date; February 5 would be a Special Meeting.

**Mr. Cucchiara:** stated, that unless Mr. Whitaker had comments, it would be appropriate for the public to ask questions at this time; Mr. Whitaker can make comments after that; in view of the fact that there is other information to be provided on this issue, we may wish to reserve until that time, specifically a subsequent meeting, obviously that would be the case with Mr. Inglima as well.

**Mr. Inglima:** stated this has transcended into something akin to a *voire dire*.

**Mr. Cucchiara:** stated that is what this is.

**Mr. Inglima:** stated he wanted to place on the record more questions which do reflect upon the issues that would properly be the subject of the *voire dire* rather than wait for another time; would like to continue; it is on a different subject but it does affect Mr. Hals and his relationships with the applicant.

**Mr. Cucchiara:** asked if it was related to a conflict issue.

**Mr. Inglima:** stated it is related to something else.

**Mr. Cucchiara:** asked if Mr. Whitaker had any objection.

**Mr. Whitaker:** stated he wanted to comment on the request which was made for records; the testimony that has been elicited is that there is no ongoing relationship with the applicant which is the litmus test in connection with conflicts; places on the record his objection for billing to be supplied since, under oath, there is a statement from Mr. Hals stating that he has had no professional relationship since at least 2008; on the basis of that, financial records from before that time are irrelevant to the question is there an ongoing conflict based upon the timing of it now; it is not billing or billing records that occurred three or five months ago, or a year ago; it was six years ago; on that basis there is no serving of two masters issue here; on the basis of that, the Board should be able to rule now based upon the testimony that Mr. Hals has provided; there is no conflict of interest and we can proceed.

**Mr. Cucchiara:** asked if Mr. Inglima was raising a separate issue.

**Mr. Inglima:** stated it is related in terms of relationships with the applicant specifically with the applicant's team.

**Mr. Cucchiara:** stated Mr. Inglima should go ahead and ask his questions; stated he wants to give any members of the public who have questions the opportunity to come forward.

**Mr. Inglima:** asked if Mr. Palus was ever employed by Mr. Hals.

**Mr. Hals:** stated yes.

**Mr. Inglima:** asked when he was a member of his firm.

**Mr. Hals:** stated he would put it as follows, Mr. Hals did the subdivision in Montvale, where he got the approvals; Mr. Palus left his firm and started doing the work for Frasco Realty; Mr. Hals was no longer the engineer; that was around 2002.

**Mr. Inglima:** asked if it was during the 90s and early 2000s.

**Mr. Hals:** stated Mr. Palus was there until at least 2000.

**Mr. Inglima:** asked if there was an overlap between Mr. Palus' work for Mr. Hals' firm and the work Mr. Hals was doing for the Frasco entities.

**Mr. Hals:** stated Mr. Palus was doing the work for the subdivision along with Mr. Hals; then Mr. Palus left the firm and Mr. Hals was no longer doing the work on the subdivision.

**Mr. Inglima:** asked Mr. Hals to characterize his relationship with Mr. Palus.

**Mr. Hals:** stated, like all his relationships, very amicable.

**Mr. Inglima:** stated Mr. Hals was previously asked by counsel for the Board as to whether he could objectively and impartially review the application based upon the fact that he had previously done work for Mr. Frasco's companies; asked what Mr. Hals' answer would be to the same question but with respect to the fact that Mr. Hals had previously been professionally affiliated with Mr. Palus.

**Mr. Hals:** stated it would be the exact same answer; no impact at all.

**Mr. Whitaker:** stated on the basis of the testimony provided, the relationship with Mr. Palus is something of a distant past; we all recognize that people are employed by various firms as they go through their career; has had associates in his law firm that later have become adversaries in litigation; doesn't present a conflict; not on the same matter or the same case; similarly the economic situation of some six years ago or before, when there is no ongoing relationship, doesn't create a conflict in today's world; it is good that it has been placed on the record; at this point he believes the Board can make a ruling; the request being made by Mr. Inglima is totally irrelevant.

**Chairman Hanlon:** opened up the meeting at this time to the public specifically on this issue only.

**Ms. Suzanne Curtis, 11 Van Dyke Drive:** asked questions of Mr. Hals.

**Ms. Sharon Gomez, 37 Van Dyke Drive:** asked questions of Mr. Hals.

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

**Mr. Jim Albes, 31 Valley Forge Way:** asked questions of Mr. Hals.

**Chairman Hanlon:** stated the public portion was now closed.

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**Please Note: a 25 minute break is taken at this time, 8:45PM.  
Meeting reconvened at 9:10PM**

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

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**Mr. Cucchiara:** stated what he believes is before the Board now is to make a determination with respect to the issue of any conflict of interest involving the Board Engineer; contrary to his previous thoughts, he believes if the Board



makes a decision to reserve decision on the question, and allow the information that Mr. Inglima had requested to be provided by Mr. Hals's office, he feels it would be appropriate to adjourn the proceedings tonight; the Board can also make the determination that they are satisfied that they can address the conflict of interest issue without adjourning the matter and reserving decision as he indicated based upon the information provided, testimony in connection with the questions from both counsel and members of the public; believes it would be appropriate at this time to ask the Board for their comments and then a motion could be made on how the Board would like to proceed in this matter on that issue; although counsel can make any comments which they like based upon what Mr. Cucchiara stated or raise any other questions.

**Mr. Whitaker:** stated he had no further questions; at this point the Board has the ability to proceed; has an objection to Mr. Hals providing information from 6-8 years ago; on the basis of this, there should be a Board discussion and we should move forward; does agree that the testimony of Mr. Hals cannot be heard until this issue is resolved.

**Mr. Inglima:** stated he has asked for that information to be provided for his clients; not asking for copies of any documents or records; asking the items described previously; referring to estimates when asking for fees paid to Mr. Hals' firm from Mr. Frasco or his companies, as long as they are based on Mr. Hals' best available information; believes this information is relevant; helps the Board to understand the context in which the services were provided; discussed a recent case which he was involved in.

**Mr. Whitaker:** objected to Mr. Inglima's discussion of his recent case.; hearsay.

**Mr. Inglima:** stated he referred to his case briefly; stated if the Board knew about this situation previously, it should be placed on the record; Mr. Hals has been involved in the process previously, he hasn't done anything substantively, other than visit the site for soil testing since Mr. Inglima found out on either December 2<sup>nd</sup> or 3<sup>rd</sup>, 2014 about the previous involvement; since Mr. Hals would be acting further if he decided he doesn't have a disqualifying conflict of interest, it is important to know whether or not that information was known previously.

**Mr. Pierson:** stated he had a couple of observations; stated the optics aren't great on this; finding out late in the game through Mr. Hals' opening statement that he had a business relationship with Mr. Frasco; listening to the counsel describe what constitutes a conflict, as he understands it, it would be based on his prior business relationship with Mr. Frasco where Mr. Hals would have to feel that he had some sort of financial interest that might give rise to a conflict of interest; based on his description of that relationship, Mr. Pierson does not think it meets the bar; Mr. Pierson has been on the Board and observed Mr. Hals for close to 9 years; in every respect, his professionalism, his conduct and

his overall demeanor has been utterly above reproach; Mr. Pierson does not think Mr. Hals would render testimony that would anyway be influenced by what has been heard tonight.

**Mayor Randall:** stated in his profession of the law, it is often said you can't have two masters; stated he happens to concur as far as Mr. Hals' fidelity to the Board is firm and has never changed in over 30 years Mr. Hals' firm has represented the Borough; also agrees with Mr. Pierson that this news coming up at this time is something that causes a problem with the public/residents as far as they view things; his understanding is, there is a legal bar; it has to do with if there is any ongoing relationships; temporal nexus between prior representation that would make it appear that Mr. Hals did not give us his true and valid opinion; we pay Mr. Hals to give us the best advice he can to protect us as a Board and the Mayor feels he has done that; he doesn't know how comfortable the rest of the Board is with the items which have been brought up, in needing further information or any other further legal briefing or explanation of what the case was; Mr. Cucchiara has done a great job in explaining what the standard is, but it is now how comfortable the Board is in going forward without further information; the Mayor has no recollection of this situation until tonight; bit of a surprise to him; he can process that because of what he does; does not know if the Board members feel the same way.

**Chairman Hanlon:** asked if Mayor Randall felt the Board should wait until next week when the information Mr. Inglima has requested has been provided.

**Mr. Cucchiara:** stated he wanted to have the record clear; asked Mr. Inglima if he was just seeking the amount of the fees that Mr. Hals received from Mr. Frasco's entities.

**Mr. Inglima:** stated yes.

**Mr. Cucchiara:** clarified that no records or documents were being sought; just the amount.

**Mr. Inglima:** stated the description of the various engagements and the approximate amount that was received in fees; block and lot and street address and what the project involved; if it was municipal work or other type of work.

**Mr. Whitaker:** continued his objection due to irrelevancy.

**Mr. Inglima:** stated he would accept this information from memory if Mr. Hals could provide it; Mr. Hals had already indicated he could not.

**Mr. Cirulli:** stated, as the Mayor had stated, Mr. Hals' firm has been the engineering firm for the Borough for 30 years; Mr. Cirulli has been the Borough Administrator for 8 years and in that time he has worked with Mr. Hals many

times on many projects; this is the first time working on a major Planning Board application; there is no doubt in his mind that Mr. Hals is a professional, honest, reliable engineer and person; but from the public's point of view it would be better to wait until next week before a final decision is made.

**Mr. Newman:** stated he does not have legal experience; admits this is the first he is hearing of this issue; has a certain level of discomfort with proceeding until this has been resolved; no reflection on anyone's professionalism; legal issues have been brought up that is making him uncomfortable.

**Mr. Reade:** stated it is distressing that this is coming up in the 11<sup>th</sup> hour; he is conflicted by it at this time; believes a decision should be deferred; knows Mr. Hals is a very competent engineer and has offered a lot of wonderful insight and recommendations to the Borough on a number of different projects; in this instance, for the sake of perception, and the involvement of all, believes we should defer until we have more information.

**Chairman Hanlon:** stated, for the record, he did not know of this issue until Mr. Inglima supplied the information to counsel sometime in December 2014; Chairman Hanlon has worked with Mr. Hals on and off for numerous years; bumped heads, both positive in negative; Mr. Hals has always been there to provide information for the Board and has always provided information for the Borough; Chairman Hanlon has no conflict with Mr. Hals whatsoever on this issue; he is a professional engineer; doesn't see a conflict, but understands the public's point of view; would ask the Board members to take a vote at this time.

**Motion to postpone until further information is received from Mr. Hals by January 22, 2015:** Cirulli (see below for further voting)

**Mr. Hals:** asked about the information that is being requested; Mr. Inglima has asked for, in his view, an open ended request for information; Mr. Inglima may have parameters; Mr. Hals stated he has had a relationship since 1999; is Mr. Inglima looking for information from that point and time; Mr. Inglima is also asking for monetary information; most monetary information might have been back in 2000; trying to get parameters of what he is exactly supplying and what the Board is looking for.

**Mr. Cucchiara:** stated what has been requested is the nature of the work that was performed for Mr. Frasco and his entities; also requested is the estimate of the amount of the fees that have been received from Frasco's entities; location of properties involved.

**Mr. Hals:** asked if he was going back to the very beginning of his relationship with Mr. Frasco and his entities.

**Mr. Cucchiara:** asked if his relationship went back further than 1999.

**Mr. Hals:** stated he didn't know.

**Chairman Hanlon:** stated Mr. Inglema was also seeking if Mr. Hals was involved with a land use agency.

**Mr. Inglema:** stated that could be submitted as a very brief description.

**Mr. Hals:** stated he could answer that today; every application he has goes to a land use agency; building department, town engineer, etc.; all those people would fit the category of a land use review.

**Mr. Cucchiara:** asked if Mr. Inglema was referring to a municipality.

**Mr. Inglema:** stated Mr. Hals had indicated that some of his work may have been confined to doing a survey but not in connection that went to a land use agency.

**Mr. Whitaker:** stated Mr. Hals had testified that if he had done a land use application, he also did the survey work for it; he testified as to the towns that he has done work for; on the record already; there is no ongoing relationship; objects to the postponement or the carrying of this application based on the concept of the monetary amount, which is irrelevant; it is the timing; there has been no involvement for over 6 years; that is the key; nothing ongoing.

**Mr. Cucchiara:** stated he does not believe there is a limitation on the years; simply it is the request that the work had been done; if Mr. Hals and/or his firm is able to obtain this information; stated the request has been an estimate of the amount of fees received by Mr. Hals or his firm in connection with services performed for Mr. Frasco or his entities; the properties involved, including address and block and lot numbers, if that information is available; the nature of the services that were provided, specifically; asked Mr. Inglema if this was accurate and stated correctly.

**Mr. Inglema:** stated yes, that was fine.

**Motion to postpone until further information is received from Mr. Hals by January 22, 2015:** Cirulli, Pierson

**Ayes:** Reade, Cirulli, Newman, Mayor Randall

**Nays:** Pierson, Chairman Hanlon

**Chairman Hanlon:** stated the next meeting date is January 22, 2015, 7:30PM in the Council Chambers at Ho-Ho-Kus Borough Hall; next Thursday; the intention is that the Board will move forward; also wants to make sure that Mr. Snieckus is on Board to give his presentation to the Board.

**Brief discussion of meeting dates took place at this time.**

**Motion to adjourn:** Reade, Pierson  
**All in Favor**

**Meeting adjourned at 9:30PM.**

Respectfully submitted by:

JoAnn Carroll  
Planning Board Secretary  
August 27, 2015