

**Borough of Ho-Ho-Kus
Bergen County, New Jersey
Planning Board Minutes
June 19, 2014
Public Session**

Meeting Called to Order at: 7:30PM

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

Roll Call: Messrs. Berardo, Corriston (absent), Pierson, Reade (absent), Cirulli, Newman (absent), Iannelli (absent), Councilman Rorty, Chairman Hanlon, Mayor Randall (absent/arrived at 9:25PM)

Also in Attendance: Mr. Richard Allen, Board Attorney (stand in for Mr. Cucchiara); Mr. David Hals, Borough/ Board Engineer; Mr. Steve Lieder, associate of Mr. Ed Snieckus, Borough Planner; Ms. JoAnn Carroll, Board Secretary.

Chairman Hanlon: informed the Board and the public that Mr. Cucchiara was injured and would not be able to attend the meeting this evening; Mr. Richard Allen would be assisting the Board this evening.

Approval of Minutes: Cirulli Rorty
May 8, 2014

Ayes: Berardo, Pierson, Cirulli, Councilman Rorty, Chairman Hanlon

Chairman Hanlon: stated the minutes from the May 15, 2014 meeting were still being reviewed by the Board and would not be voted up on at this evening's meeting.

Ongoing Business:

Mr. Vincent Torre, Beautiful Bodies Boot Camp, 217 First Street, Block 1016, Lot 5: new business application; fitness boot camp/ personal training business.

Chairman Hanlon: stated the applicant appeared before the Board at last week's meeting; the applicant's application contained a letter from the landlord; has a significant amount of parking; asked Mr. Berardo if he had spoken to the applicant regarding signage.

Mr. Berardo: stated he had spoken to the applicant on Tuesday; the applicant gave him an indication that he currently will be putting up a sign in the slot that is on the side of the building; at a later date he may

contemplate putting a banner up, at which point, Mr. Berardo instructed the applicant that he will have to submit a sign application.

Councilman Rorty: asked about an adjoining business; Mr. Steve Shell received an email regarding parking issues; he could not attend tonight's meeting.

Mr. Cirulli: stated parking had been discussed.

Chairman Hanlon: reiterated that parking had been discussed; parking is down First Street; there is a significant parking lot; there are 10 slots on the property and 10-12 on Barnett Place; additional street parking; parking down in parking lot.

Councilman Rorty: stated it sounded like parking would not be a problem.

Chairman Hanlon: reviewed the application and asked for a motion to approve.

Motion to Approve: Mr. Vincent Torre, Beautiful Bodies Boot Camp, 217 First Street, Block 1016, Lot 5: Pierson, Berardo

Ayes: Berardo, Pierson, Cirulli, Councilman Rorty, Chairman Hanlon

Discussion:

Miller Subdivision, 118 Blauvelt Avenue, Block 601, Lots 4 & 5:

Grant of Conservation Restriction/Easement filing; deeds.

Chairman Hanlon: reviewed the details of the application; the applicant had a number of problems getting started in order to comply with the requests of the Board; property has been cleaned up; Mr. Hals had reviewed the subdivision and they are acceptable for filing the deed; the deed will be signed by Chairman Hanlon and the Board Secretary.

Mr. Allen: stated the Board does not need to vote because the Board has already approved the subdivision.

Chairman Hanlon: stated, for the record, he and the Board Secretary will sign the deeds the following day.

Mr. Hals: agreed to provide the Board with a note.

New 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 soil movement application.

Chairman Hanlon: stated the applicant has submitted a soil movement application; it has been sent to the DPW, Water Department, Shade Tree Commission, Mr. Inglema, Borough Planner and a copy to the public file for review; at this point and time the date has been set for June 26, 2014 for a public hearing; asked if the Board Members had any questions at this point.

Councilman Rorty: asked if the soil movement application would be combined with the subdivision application.

Mr. Whitaker: stated a letter was delivered this same evening that the Board Secretary has copies of and it can be distributed; in essence the letter prepared (a copy was also provided to Mr. Inglema) confirms in the last paragraph that the application, although it is his position that the applicant can proceed with the subdivision application unilaterally without the necessity of the soil movement at this time, the applicant has voluntarily consented to proceeding with the soil movement application as part of the subdivision application and will submit the testimony and exhibits and conduct that hearing before the Board renders their decision on the subdivision.

Chairman Hanlon: asked if there would be a public hearing on June 26, 2014 for the public.

Mr. Whitaker: stated he put in his letter that recognizing how the meetings have fallen back a bit; meetings not occurred that were expected to occur, it is prudent in order to make it orderly that they continue; on the 26th, Mr. Inglema's expert is to come back with his testimony; feels it is appropriate for that to take place that evening; that is why his letter also states that the 45 day time constraint for the soil movement application be extended.

Chairman Hanlon: stated the calendar will be reviewed later in the meeting.

Mr. Whitaker: stated he has provided his availability for July and August already.

Mr. Inglema: asked for clarification that the soil movement application will be combined with the subdivision application.

Mr. Whitaker: stated it will be presented before the Board will render its decision on the subdivision.

Mr. Inglima: asked for clarification of where he stands in regards to the submission of testimony from witnesses; spoke regarding Mr. Steck testifying.

Mr. Whitaker: stated Mr. Steck will have the opportunity to testify after the applicant presented their information regarding soil movement; since the applicant has concluded their subdivision aspect, all testimony or concern by other interested parties concerning the subdivision, should be concluded before the soil movement application begins.

Mr. Inglima: stated it sounds as if both applications will be sequential; stated he expects that he would be able to provide testimony as to all attributes of the application including soil movement at the same time; as long as it is after the date that the notice occurred and the public was advised, Mr. Emerson or any other witness should be able to address the issues relating to soil movement.

Mr. Allen: stated, for clarification, it appears the letters that the Board has received, indicate that this meeting and the next meeting are already spoken for by Mr. Inglima's witnesses; asked if that was the plan as Mr. Inglima understood it; asked if the soil movement application was complete as an administrative matter so that they can move forward.

Chairman Hanlon: stated the engineer has already provided that information; given to all parties involved last week; it is complete; going to change next week's meeting process; will have to do that when the meeting is having its public hearing portion, not this session; Mr. Inglima has indicated he is changing his procedures, they will have to be addressed during the open public hearing session.

Ms. Kim Vardiman, 825 West Saddle River Road: stated she is within 200' of the subject property; asked when the last time would be when she can make a statement.

Chairman Hanlon: stated she is ahead of the game; will review the procedure again for the public.

Ongoing Business:

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

Chairman Hanlon: stated there is no further business before the Board and no comments from the Board so the meeting will go into the public hearing process of the Hollows at Ho-Ho-Kus subdivision application; described the application and procedures in detail.

Councilman Rorty stated he had listened to the audio disc of the June 12, 2014 meeting and has signed an absentee member certification stating this; certification has been submitted to the Board Secretary.

Chairman Hanlon: stated that Mr. Inglima is introducing his witness this evening, Mr. Peter Steck, Planner.

Mr. Inglima: introduced himself and listed his clients:
Clifford and Silvia Bone, 49 Brandywine Road, Block 802, Lot 7
Mark and Neyda Dabbagh, 55 Brandywine Road, Block 802, Lot 8
Anthony and Laurie DiGiacomo, 65 Brandywine Road, Block 802, Lot 9
John and Mary Hayes, 35 Brandywine Road, Block 802, Lot 6
Matthew and Allison Westfall, 789 W. Saddle River Road, Block 809, Lot 4
Russell and Emmy Lou Borgman, 752 W. Saddle River Road, Block 805, Lot 21
Edward and Randi DeBruyn, 801 W. Saddle River Road, Block 809, Lot 3
Paul and Robyn Erickson, 815 W. Saddle River Road, Block 809, Lot 2
Kenneth and Leah Malley, 764 W. Saddle River Road, Block 805, Lot 22

No new clients have been added; the testimony of Mr. Clay Emerson has not been completed; he is unavailable for this evening's meeting; he is resorting to a procedure that he would prefer not to have which is to bring Mr. Steck forward as an expert planner to testify as to the subdivision application before Mr. Emerson has completed his direct testimony; Mr. Steck may be relying upon information that will be the subject of Mr. Emerson's testimony; he would request the Board grant him latitude in that regard.

Mr. Whitaker: stated the rule is very simple; if Mr. Steck testifies to something that Mr. Emerson has already testified to, then he is permitted to comment about that testimony; if it is something that has not yet either been entered into evidence or its testimony that Mr. Steck anticipates Mr. Emerson telling the Board at a later date, then that he will object to; there is no ability for Mr. Steck to testify being the Board has not yet heard it; if that requires Mr. Steck to come back to comment again on something Mr. Emerson has said at a subsequent meeting, then that is the procedure that can be used.

Mr. Allen: stated the Board is trying to make the hearings as orderly and cooperative for everyone as possible; asked if Mr. Steck will be qualified as an expert.

Mr. Inglima: stated absolutely.

Mr. Allen: stated that he presumed there is no dispute that experts rely upon statements that are not in evidence on a frequent basis as long as there is testimony that that is a common practice within the field of that expert; asked if there is a dispute regarding this.

Mr. Whitaker: asked for clarification.

Mr. Allen: stated if an expert witness testifies on information he believes to be true, and that information is typically relied upon by that expert in his field, that expert does not have to have solid admissible evidence created in that underlying fact in order to make that opinion.

Mr. Whitaker: stated, with all due respect, that is not the issue.

Mr. Allen: stated he is suggesting the hearing move along; how could anyone here deny due process if Mr. Steck testifies to something based upon a fact that is not yet in evidence because of everyone's cooperation; otherwise it becomes a "who's on first" scenario; doesn't see where the applicant or the objectors or the public would be prejudice if it is clearly identified that this is a fact that is relied upon; if an objection is made and the Board overrules it, the objection has been made for the record; there is a record that there is a fact not yet in evidence; in his experience this has been a matter of cooperation; this is his advice to the Board; if the expert testifies on facts that are not in evidence yet but are typically relied upon experts in his field in this type of endeavor and will be part of the testimony, there is usually leeway.

Mr. Whitaker: stated it is presupposed that the expert in the middle of their testimony has submitted their report, that doesn't exist here; all Mr. Steck can rely on is testimony that the Board has heard; if Mr. Steck is going to rely upon an opinion by an expert for something the Board is yet to hear, then that wouldn't be permitted.

Mr. Allen: stated we will see as it happens; everyone's opinion has been rendered; it is hard to rule on an issue that has not had happened; it is his suggestion that the Board ask Mr. Inglima to proceed with his witness; Mr. Whitaker will interpose appropriate objections; and the Board will deal with them when they happen.

Mr. Peter Steck, sworn in by Mr. Allen; 80 Maplewood Avenue, Maplewood, NJ: stated his business and educational background; resume submitted to Board; **Exhibit O20.**

Mr. Inglima: stated Mr. Steck is offered as an expert, professional planner and for testimony with respect to all related disciplines that arise from his work as a professional planner.

No Board questions.

Mr. Whitaker: asked if it correct to say that Mr. Steck is not retained as a municipal planner with any municipality.

Mr. Steck: stated he is currently defending Sayreville in litigation; does not have a continuing relationship at this time with any municipality.

Mr. Whitaker: stated he has no objection to Mr. Steck as an expert witness in the field of planning.

Mr. Inglima and Mr. Steck discussed: Mr. Steck has been engaged by the resident's named earlier by Mr. Inglima; he has reviewed the application and plans for the Hollows application; has reviewed the latest set of plans; toured the area; reviewed zoning ordinance; map; toured the area with Mr. Inglima; is generally familiar with the area; Mr. Steck has worked in a number of Bergen County municipalities; familiar with the lot sizes; familiar with certain elements of this procedure; reviewed the subdivision ordinance, map and underlying documents; familiar with the soil movement and stormwater management ordinances of Ho-Ho-Kus; this application is subject to the RSIS; Mr. Steck is familiar with the RSIS; has sought subdivision approval while relying upon and interpreting those provisions; familiar with the statutory and planning standards that are applied through the MLUL and RSIS; has had interaction with the representatives of the Planning and Economic Development agency of the Bergen County Planning Board only in the application process; no presentations before the Bergen County Planning Board; familiar with the subdivision ordinance of Bergen County; there are certain policies and practices that the County Planning Board routinely imposes upon major subdivisions; they have jurisdiction based on traffic effects on County roads and drainage effects on County facilities; has reviewed the items marked into evidence during the hearings; reviewed exhibit O19; prepared a 3-page exhibit; **Exhibit O21, marked;** (distributed to Board and Mr. Whitaker); O21 was prepared by Mr. Steck in connection with his review of the application; the exhibit contains notations that indicate dimensional radii from the site at 200' and 500'; reproduction from one of the sheets on the applicant's plans; notes on the third sheet which refer to Mr. Steck's observations of the site.

Mr. Whitaker: asked if the notations in red on pages 1 and 3 are notations that Mr. Steck made.

Mr. Steck: stated that was correct.

Mr. Whitaker: stated he had no objection to this document as an exhibit.

Mr. Inglima and Mr. Steck discussed: Mr. Steck gave a “talking tour” of the exhibit and explained what was contained in the exhibit; the first page of the exhibit is a portion of the tax map that was reproduced from the applicant’s major subdivision submission; he has superimposed, approximately where the lots are in red; Lot 11 is slightly wider than it appears; the subdivision plan did not line up with the tax maps; highlighted part of the 500’ radius; the Borough’s submission requirements regarding stormwater studies requires the applicant to survey the stormwater facilities within 500’ of the property; the red is the portion that is generally upstream to the subject property; Saddle River is to the upper right which is generally to the north and NE and is where the drainage tends to go; the second page is a photograph from NJDEP IMap which is a 2007 aerial photograph where Mr. Steck approximated the limits of the property in yellow and highlighted the street names; the third page is a reproduction of the applicant’s proposed subdivision where he has emphasized the lot numbers and added certain notations in red; regarding page one of O21, this is in a well established, residential area in the R2 zone; most of the streets in the area are curvilinear streets; the Board is familiar with them; Hollywood Avenue is a County road; the other streets that abut the property are local streets; not low traveled streets; WSRR is a fairly active street; non-County streets typically have pavement surfaces without curbs; many have evidence that here has been erosion on the side of the pavement; house in that area that has sandbags in front of the garage; sign of stormwater entering the garage; some evidence of drainage issues in the area; the plans rely on existing drainage system of 24 inch pipe that crosses WSRR which is a focal point for a lot of the drainage lines in the area; that eventually has an outfall to the east to the Saddle River; the reason he emphasized the area is there is an area that drains to the pair of catch basins on Saddle River Road on front of the property from a much larger area than the subject property.

Mr. Whitaker: objected as it pertains to drainage testimony; Mr. Steck is qualified in the field of planning; if he wants to make an observation regarding topographic conditions from what he has seen, or read on a map, that is fine; the concept of the amount of drainage that is running to any given facility is beyond this witnesses expertise.

Mr. Inglima: stated Mr. Steck is making a common observation; most people could make with or without any particular education or

background in engineering, they should not be precluded from making it; it might assist the Board and remove the objection if he (Mr. Inglima) directed questions to Mr. Steck and he could respond; then they could develop whatever factual information that he is relying upon so that everyone can understand what he used as the basis of his conclusions.

Mr. Allen: stated that the objected question will be withdrawn and Mr. Inglima will proceed along the lines Mr. Inglima just explained.

Mr. Inglima: stated the portion of Mr. Steck's statement that deals with drainage will be withdrawn and will simply supply testimony in a question and answer form.

Mr. Inglima and Mr. Steck discussed: Mr. Steck noted topographic conditions that indicated where low lying areas were near the site; the area which is designated as lot 5 on the proposed subdivision, tends to be one of the lower elevations on the property; the central focus essentially is what the ordinance requires.

Mr. Whitaker: objected; beyond what the question asked.

Mr. Inglima and Mr. Steck discussed: there are a number of low areas that appear low and it appears that most of the area does topographically slope to the east towards the Saddle River but that is by an underground detention system; there is evidence on the edge of the roads where there was ponding and some scouring; roads are relatively narrow; do not have sidewalks or curbs.

Mr. Inglima: asked if based on Mr. Steck's observations that Van Dyke Drive and Brandywine Road do not have curbs and that water simply flows over the surface of the pavement and to the adjoining properties down to the low point.

Mr. Whitaker: objected; no foundation.

Mr. Inglima: asked if Mr. Steck had made observations that led him to conclude anything about the drainage conditions on those streets.

Mr. Steck: stated from his inspection the local streets do not have curbs; there is evidence of scouring on the side of the pavement and so there is evidence of stormwater that is unregulated and it would not be confined to the right of way.

Mr. Inglima and Mr. Steck discussed: Mr. Steck has observed the absence of curbs on the majority of WSRR on portions that are shown on exhibit O21; the streets that are located to the south of Brandywine and

WSRR have curbs and catch basins; somewhat different situation but the streets closest to the subject property that don't have curbs; there are other areas that he has observed farther south from the areas depicted on the map that also have curbs and catch basins and water is collected in those areas; all the areas have catch basins periodically; the stormwater from the road near the subject property is not confined to the right of way; Mr. Steck has reviewed O3, control survey; shows some of the streets that Mr. Steck previously described; shows catch basins on Brandywine Road and on WSRR; shows pipes that were established in terms of their location and their invert and rim; there are notations where there are junction points; Mr. Steck was aware of the information contained in O3 when he reviewed the application and subdivision plan; 24 inch pipe that extends through the SE portion of the plan area and enters Brandywine Road and then crosses WSRR; there is a junction with another catch basin on WSRR which extends east; the pipe of undetermined origin goes in a northeasterly direction just south of the site; water is collected in a separate catch basin on the east side of WSRR being fed into it by a separate 18 inch pipe; O3 does identify two trees on lot 9 in Block 802 which are fairly close to the subject property; substantial trees.

Mr. Whitaker: objected; stated he knows there is a lot of latitude but the leading of the witness at this point is beyond what is allowed under MLUL; ask questions and receive the answers; moving forward with questions; if Mr. Inglima wants the witness to testify to what he observed, ask that question, don't point it out; the witness is being led.

Mr. Inglima and Mr. Steck discussed: spoke regarding the aerial photo on page 2 of O21; the photo shows the area as heavily vegetated; there are no sidewalks in the immediate area; the street pattern is a curvilinear; rural; there are established areas with fairly significantly sized houses; one of the streets is Brandywine to the south and there are a series of houses that front Brandywine Road; the corner house is at a 45 degree angle; its address is on Brandywine Road; the other homes on Brandywine from west to east are the homes of the client's that have engaged his services; some significance is there are two properties, Lot 7 and 8, that appear to have been combined; apparent there are a number of houses that are on lots that are significantly more than the minimum lot size; there are other trees on the applicant's site and they are shown on the second page of O21; the applicant has a tree plan which was submitted; the site is fairly wooded; there are some lawn areas; referred to sheet 3 of O21; it is indicated "sidewalks required;" when there is residential land use, the improvements are regulated by the RSIS; they trump local standards; where there is a convenient walking distance to a school, sidewalks are required; while there is a sidewalk on Hollywood Avenue, the applicant is proposing a sidewalk on part of WSRR; items of

relief is to not install sidewalks on the remaining frontage of WSRR on one side of the new proposed new cul-de-sac and on Van Dyke Drive; it is noted the site has frontage on three streets; how does this effect his planning analysis; there are a number of ordinance considerations and practical considerations that come into play; the applicant has opportunities to subdivide the property without a cul-de-sac; elected to have a cul-de-sac in the interior of the property; this produces lots that have multiple road frontages; lots 9 and 10 are through lots; they have exposure to both the new cul-de-sac and Hollywood Avenue; lot 11 has three road frontages; lot 5 has two road frontages; can't avoid corner lots; planners discourage through lots because you don't have the normal configuration of a front yard, house and a functional rear yard; the houses are conceptual on the plan; the applicant is facing them towards the cul-de-sac; on the third page of O21, Mr. Steck has indicated areas that are also front yards; if the house does face the cul-de-sac, most people would anticipate having a rear yard that is used for typical rear yard activities; any house that is placed on lot 9 or 10, is likely to treat the northern portion as a functional rear yard; toys, tree house, pool, etc, would be located there; this means someone on the other side of Hollywood Avenue that fronts on that will look across the street and see the architectural back end of the house and they will see the accoutrements that people expect to be in the rear yard; Ho-Ho-Kus ordinance states in this configuration there are two front yards; this design essentially opens the door to variance requests; element of stress in this design; a homeowner, in his opinion, will typically ask for some type of relief in this situation; the situation is set up by the nature of the design that the applicant has proposed to implement; lots 6, 7, 8 are typical configurations; the opposite is shown on lots 9, 10, 11; it forces what is normally the "back office" of a home into public view; unaesthetic; faces the rear portion of the house; a variance would be needed to install a swimming pool on lot 9.

Mr. Inglima: stated the approval of those lots with frontages on two streets that are parallel is going to foster future variance applications.

Mr. Whitaker: objected.

Mr. Allen: stated Mr. Inglima is asking the witness to predict what the homeowners that own lots 9, 10 and 11 might do.

Mr. Inglima: stated, should they wish to have an accessory structure.

Mr. Allen: stated he can understand the question if it was "if an owner of 9, 10 and 11 would like a pool to be built in what they would consider their rear yard, would they need a variance:" doesn't think it is

appropriate to ask if they would be “fostering” a variance; you don’t know what they would do.

Mr. Whitaker: stated the creation of any lot could permit any homeowner to request a variance; this is not what this application is about.

Mr. Allen: stated the point that Mr. Inglima is trying to convey, is that these lots may or may not be creating situations that are contrary to the zoning ordinance and thereby requiring potential future land use relief by someone down the road; point has been made; now Mr. Inglima is asking the witness to predict the behavior of the owners of the property.

Mr. Inglima: asked if the lots are created as configured on the applicant’s plan, in Mr. Steck’s opinion, would any attempt to construct or install an accessory structure between a dwelling on those lots and Hollywood Avenue require variance relief.

Mr. Steck: stated it would require variance relief; in his opinion, he would not be surprised if the purchaser of a house would make that request; knowing this, it would seem wise to have restrictions so that the owner of the lot knows when they purchase the lot, they will not be able to put up a 6’ fence along Hollywood Avenue or a pool; because of the applicant’s design, there is a level of stress with these properties.

Mr. Inglima and Mr. Steck discussed: spoke in regards to Hollywood Avenue; Mr. Steck is familiar with the review letter by Eric Timsak which has been previously marked as exhibit C1; letter dated 2/19/14; indicates a requirement that the Bergen County site plan review team has recommended; Mr. Steck read paragraphs 1 and 2 from Mr. Timsak’s letter which discussed the right of way line; plans show the right of way to the west of the property, once you get towards the intersection of WSRR, the far side of the right of way is not shown; there are two implications; County needs to see the right of way line and the Borough’s ordinance asks for the right of way line; the right of way is to be established 35 ft. from the center line of Hollywood Avenue; once the center line is established, the County would like to ultimately end up with a 70 ft. wide right of way; a 25 ft. distance is marked on Mr. Steck’s exhibit from the center line of the road; the applicant’s plan does show where the pavement is; Mr. Steck took the center of the pavement and pulled over 25 ft. because that is what the local ordinance says, and that encroaches on the subject property; this is important because, as per the ordinance and calculating lot area, you are not supposed to use the square footage that is in the street right of way as part of the lot area; if the road improvements are symmetrical, the Borough’s ordinance states that the setback measurements are started 25 ft. from the center line;

that is a couple of feet into the property; that area is the start of a setback and it should not be included in the square footage of the lot; trigger point for the County; Mr. Steck is referring to the widening easement that the County is seeking when he states 35 ft.; this is consistent with their requirements.

Mr. Inglima: asked if this is a reasonable requirement of the County.

Mr. Whitaker: objected as to Mr. Steck being able to render an opinion about the reasonableness of the County's request.

Mr. Inglima: stated a lot of testimony has already been heard about what the County intends to do in respect to this application.

Mr. Whitaker: asked what foundation does the witness have with this particular application; he has already testified that he has not been at the Bergen County Planning Board and has not participated in any review and probably has not heard the prior testimony at these hearings pertaining to the County Planning Board issues.

Mr. Allen: stated the reasonableness of the County Planning Board determinations are not at issue; they are what they are; the question is if Mr. Inglima is asking the witness what impact a 35 ft. setback might have, that is a relevant question; asking the witness if the 35 ft. setback is reasonable in this situation, Mr. Allen is not sure what materiality that has because it is what it is; asked how it would help the Board.

Mr. Whitaker: stated it has no relevancy.

Mr. Inglima: stated the question is reasonable and should be answered; there is no basis for an objection; asked if there would be a ruling from the Board.

Chairman Hanlon: stated, as Council has said, the County is out of it at this time; more information to get from the County.

Mr. Inglima and Mr. Steck discussed: referred to Section 32B-9, plat details, subsection B of the subdivision site plan ordinance of the Borough; referring only to the portions that deal with a subdivision; referred to sub-paragraph u which are all required elements of a preliminary plat; applies to a preliminary major subdivision; Mr. Steck read subsection u into the record; the municipal subdivision ordinance specifically requires a preliminary plat for a major subdivision to include information that is sought by the County Planning Board; in regards to the requirements of the County Planning Board through its Department of Planning and Economic Development, the proposed easement has not

been shown and the right of way width of Hollywood Avenue has not been shown, at least on the easterly portion of the property has not been shown and the center line of Hollywood Avenue has not been shown; under the subdivision ordinances of the municipality areas that are located within a road widening easement do not count as part of the lot area; County at one time may want to widen the right of way; there was no drainage area plan showing the conditions of topography within 500' from the site; this is also a requirement of a major subdivision application review by the Board; in accordance with the subdivision ordinance; set forth in the checklist; Mr. Steck read item 19 into the record; the applicant checked a box and wrote in "waiver requested from 500' requirement;" the applicant has not provided a map or other data with respect to the topography, the conditions of the properties located within 500' as those conditions bear upon the determination by the Board as to drainage conditions; Mr. Steck described O21 with respect to his observations to the indication on the subdivision plan of the lot building envelopes for proposed lots 1,2,3,4; the Borough's zoning ordinance in determining front yards, looks to create a pattern where the houses are generally in align with one another; formula used; applicant is proposing the minimum, absent any other development in the area, the adjacent lot, lot 5 in block 802, has a front setback that is scaled from the applicant's plan of 43'; the applicant didn't survey that figure as far as he is aware; the next house over is at a 45 degree angle, so it is not in the line that he would consider applicable to Van Dyke; Mr. Steck is referring to the Hayes house on Lot 6; its street address is on Brandywine; it is functionally around the corner; has frontage on both Van Dyke and Brandywine; its address is Brandywine; he is suggesting, by the Borough's ordinance, that the interest of the municipality in having houses line up is set in this instance by the house on Lot 5; that is a 43' set back; in his opinion, that 43' setback is the one that applies to lots 1-4; if the applicant is going to stick with the 30' minimum setback requirement, that requires 4 variances; one for each lot; if the applicant is going to push the houses back to 43', then no variance is needed; as the plan is at this time, he believes 4 variances are needed; the building envelope should be adjusted on lots 1-4; a similar method would be used regarding setbacks for lots that would front on WSRR; this is somewhat of a different situation because the next house over is an irregular shaped lot; but the same formula applies in both instances; his initial determination is that it is clear that 4 variances are needed on Van Dyke Drive; the similar standard applies to WSRR; the R2 zone can have a setback of 50'; if the setback of proposed lot 11 is required at a distance of more than 30' the impact of the developable area would make the building envelope even narrower than it currently is; it is the most narrow lot at this time; the applicant has not elected to address this issue; normally the setbacks would be provided from the survey and you would be able to calculate it; the applicant has ignored this information;

in order for the Board to fully consider this issue and the possible impact of a greater setback distance on these lots, the information that would be necessary for determining the prevailing setback should be provided at this time; Mr. Steck has indicated in his testimony that he feels the creation of lots would lead to future variances; there are a number of drainage improvements that are unusual; in his opinion they constitute structures that are not permitted within the front yard area or within 10' of the side yard; this opinion was based on the information contained in O19; there was a cross section of the retaining walls that are proposed on lot 5, as well as, a cross section showing the applicant's proposal to actually construct a structural stormwater detention system above the existing grade; applicant is mounding up soil; placing underground pipes; cover over; essentially creating an artificial elevation that doesn't exist at this time; the structures being visible had a bearing on Mr. Steck's opinion; normally when a stormwater detention system is put in, its on the private property and it is protected by an easement; if it is not maintained, the municipality has the right to go and maintain it; it is a system that is elevated over the existing grade; system that is partly in the proposed new cul-de-sac right of way, but it also extends into WSRR; part of the facility is not underground; it restricts the pedestrian area on WSRR; visual impact; this area will be stripped clean; it will have an artificial mound that will have a secondary effect of having the applicant push the house up at a higher elevation; a similar feature is going on the southern side of lot 5; adjacent to two of the lots, 8 and 9, the applicant will dig a trench, excavate that area, fill with gravel and then put additional stones on top of it; artificial channel; then the applicant, moving to the north, has two sets of rubble retaining walls in order to elevate the stormwater detention system; major construction; major visual impact; impact of trees on lot 9; unusually visible as you go on WSRR; construction of a structure that is in the front yard of WSRR; it is constructing the trench and retaining walls; structures in the side and front yard; because of their character they require variances; 20 ft. side yard requirement and a 30 ft. rear yard requirement; it is prohibited from the set back area and that is what the applicant is proposing; parts of that are going to extend into the public right of way; that would be an area where there would normally be a sidewalk; these structures will be visible, obtrusive and will obstruct the passage of pedestrians; these are structural solutions to stormwater control; the RSIS have a clear preference for non structural approaches; Mr. Steck read into the record the RSIS section 5:21-7.1, sub-chapter 7; it emphasizes the use of non structural approaches in regards to stormwater management; Mr. Steck read into the record the first 6 items of subsection d; discusses principles of design; with respect to planning a subdivision, all the objectives of the RSIS with respect to stormwater management advance the interest of land use planning and zoning; zoning is to be drawn with consideration to the character of a district; this district is more rural than urban; there

is an encouragement to preserve natural features; referred to Mr. Emerson's testimony when he spoke of a closed depression in the SE area of the site; Mr. Steck observed this area; this is an area where stormwater ponds and it doesn't run off site; the conclusions of the effect of the soil moving activities and the construction of the proposed detention system on that low lying area is that it will eliminate the low lying area; it will be 10' higher than it is today; it will have the effect of squeezing the low lying area into a narrow band that abuts the Dabbagh and DiGiacomo properties; it will force the applicant to produce another structural solution which is the trench drain.

Mr. Inglima: asked if it was Mr. Steck's view as a planner, that non structural solutions that would not incorporate the use of these pipes, would possibly eliminate the need for all the fill along the right of way line of WSRR.

Mr. Whitaker: objected; calls for engineering detail and review; this question goes beyond the scope of the planning concept.

Mr. Inglima: stated Mr. Steck is skilled in the reading of plans; understands engineering plans to the extent they reflect upon his discipline as a planner.

Mr. Allen: asked if Mr. Inglima was asking the witness to provide an alternative design, or was he asking him to provide alternatives.

Mr. Inglima: stated if Mr. Steck is to construe the provisions of the RSIS and the objectives of creating non structural solutions for stormwater management, he believes Mr. Steck is in the position to answer as to how that would impact on the subdivision.

Mr. Allen: stated, as a planner, if we could find out if a planner considers those things in the course of his everyday practice.

Mr. Steck: stated, as a planner, he not only looks at zoning ordinances and local subdivision ordinances, he looks at the RSIS; he doesn't design improvements, but in his experience he sees a variety of subdivision designs.

Mr. Inglima and Mr. Steck discussed: spoke regarding the use of non structural solutions also being encouraged by the municipal ordinances being a recollection of Mr. Steck; showed Chapter 66, stormwater management of the Borough of Ho-Ho-Kus code; Mr. Steck read into the record Section 66.8 standards; section A, general standards and subsections 2 and 3; there is an existing recharge area; the closed depression described by Mr. Emerson during his testimony, is being

eliminated; it is being replaced by a strictly structural system; the applicant will fill on top of the ground, then install pipes on top of that, then fill on top of that to an elevation of approximately 10' over what exists today and also the applicant is constructing retaining walls and the gravel trench immediately abutting two adjacent property owners; it is Mr. Steck's understanding that the proposed detention system is a closed system; will not recharge to groundwater.

A 25 minute break has been taken at this time: 9:15PM
Please note: Mayor Randall has arrived at the meeting during the break: 9:25PM.

Meeting called to order at 9:40PM.

Messrs. Berardo, Pierson, Cirulli, Councilman Rorty, Chairman Hanlon, Mayor Randall (arrived at 9:25PM)

Mr. Allen: stated counsel for the applicant and the objector and he had a conversation regarding scheduling of the various witnesses that are expected to testify during the break; it appears that Mr. Steck will testify for the remainder of the meeting tonight; on the 26th, it is proposed, that Mr. Emerson, will be back for a continuation of his testimony and hopefully completion of his testimony; in addition, on the 26th it is anticipated that the residents would be able to cross examine Mr. Emerson next week and following that, Mr. Inglema has other witnesses to present to the Board; in the event those witnesses are completed next week, that is fine; if they are not fully completed in their testimony, then there is major scheduling problems for July 10th and July 17th based on a number of Board members and counsel; the following meeting from the 26th of June would be the 24th of July; at that point, Mr. Steck will be back to complete his cross examination and in the event Mr. Inglema's other witnesses are completed next week, they will be back to complete their examination; at that point, there is a meeting tentatively viewed for July 31 which would possibly pick up the beginning testimony of the applicant's soil movement permit; that is an area that will be further discussed.

Mr. Whitaker: stated there will be his rebuttal on the subdivision which would probably happen on the 31st.

Chairman Hanlon: stated the soil movement application hearing will not take place next week; it will be tentatively set for July 31st; the attorneys have agreed the soil movement application will be on the 31st even though it was published in the paper.

Mr. Inglima: stated his clients obviously reserve the right to call other witnesses to respond to anything that may occur during the remaining proceedings on the subdivision; playing it be ear; with respect to the soil movement application, he has previously discussed with the Board and counsel during the break the fact that it is still his client's position that the soil movement application should have been part of the subdivision application and heard at the same time; the procedure that is being outlined is that the subdivision application and hearing would be completed and then the soil movement hearing would start after that; he asked if that would mean the Board would go to a vote on the subdivision application before anything happens on the soil movement application; believes the response from Mr. Whitaker is that would not happen; everything should be heard at the same time.

Mr. Allen: stated, as a matter of Law, the Board will vote when someone makes a motion; if there is no motion on the 24th, then it is likely the motion would be made the following night; it is conceivable that the Board could determine, obviously subject to hearing the arguments, that it will vote on both applications together; is what Mr. Inglima is arguing that the decision should be made as one item.

Mr. Inglima: stated if it is to be voted on as one application it should be one hearing record.

Mr. Allen: stated he did not want to argue nits; not sure if it matters if you put two pages together or two books together, it comes out as the same hearing record; a debate on this point will not be fruitful; unnecessary decision to make this evening; he was hoping the consultations could take place over the next week before the vacations and conflicts start to tear everyone apart; Mr. Cucchiara, through both counsel, could arrange for a more orderly schedule of that question; he was hoping this could be referred to conferences following tonight and perhaps be resolved between tonight and next week.

Mr. Whitaker: stated he stands by the position he put in his letter; he will entertain a conversation.

Ms. Suzanne Curtis, 11 Van Dyke Drive: asked about scheduling and the public comment period.

Mr. Inglima and Mr. Steck discussed: the impact of the use of a structural solution by which to control stormwater runoff from the applicant's site and the advantages that would be created by having non-structural methods employed; soil moved from SE corner of the site and its relationship to the structural method that is shown on the plans; approximately where lot 5 is, is the low point of the site; natural

detention area; the applicant is filling that with approximately 10 ft. high of soil; the purpose is to orchestrate these structural stormwater solutions which are not favored by the RSIS; they also have a secondary consequence in that the first floor of the house will now be elevated 10 ft. over the existing grade; neighbors in Lots 8 and 9 on Brandywine Road; today they have some trees and one of the driveways is on WSRR; tomorrow they will have a 5 ft. wide gravel strip without any planting; they will have a series of two retaining walls; set the stage for the top of the detention area; it also sets the stage for the first floor of the house that will potentially be on Lot 5; instead of a natural area, these neighbors will now be looking at a house that is visually elevated 10 ft. but the base of it will be accentuated by the rubble retaining walls; major physical change; trees may be damaged by the trench; out of the character of the ordinance; disfavored by the local ordinance and the RSIS; found the interest of retaining the existing conditions as much as possible are reflected in Chapter 63; the theory is to minimize the disturbance and the import/export of soil; the rubble retaining walls are stones; their cross section is shown on Exhibit O19; shows two tiers of walls; it will be a major feature that will not only accentuate the height of the house, but it will be in place of normal vegetation; applicant claims the walls should be looked upon as conforming; Mr. Steck's stated there is a wall system; the applicant wants to get to a position of 10 ft. higher; he can do it with a 10 ft. wall or break them into two smaller walls and have sloping in between; if you view the wall from the side, the sloping between the walls will be diminished; you will see two sections of walls, 3 ft. each in height; it will appear to be taller than a 3 ft. wall; scale applied to the drawing from the inner aspect of the top wall to the boundary line of the Dabbagh property to the south; Mr. Inglima drew a measurement of 13 ft; Mr. Steck stated the inside of the second wall is approximately 12 ft. away from the property line; the walls are 4 ft. apart from each other; this is viewed as a walled system that should be viewed in its entirety; structurally it is viewed that way; from DiGiacomo's backyard, viewing the wall from a northerly direction, it will appear to be one big wall; the first 5 ft. are just a gravel bed; there is no landscaping; can't plant something that will compromise the structure; when it is initially installed there will be no landscaping and it will appear largely to be a 6 ft. tall wall; area should be a side yard; a shed on the top of the wall would accentuate the change from the natural environment even more; shed at second floor window height; you will see landscaping at this time; another red mark is the ordinance states, where practicable, property lines should be radial to curbed streets; the lot line that is proposed between 7 and 8 is not radial; could be made radial; has been marked on the exhibit; retaining walls and trench are adverse impacts as a result of the proposed drainage design and subdivision plan; they are clearly accessory structures; violate setback requirements; drainage issues in areas of the site to the south and west were described earlier in the

testimony; objections were made to the basis for Mr. Steck's conclusions with respect to drainage problems; his observation were that there appear to be drainage problems in the area; from the evidence from the scouring adjacent to the pavement surfaces; evidence from a house having sandbags in front of the garage door; ponding issue; there is evidence of drainage problems at this time; this development is relying on the existing drainage system; it is fundamental for the adequacy of the existing drainage system to accommodate the drainage water produced by this site; that evaluation is an essential part of this application; the application and the design of the drainage system shown on the plans contemplates that they would discharge stormwater directly into an existing system on WSRR; into the 24 inch pipe; that occurs at a low spot in WSRR; the evaluation is an engineering one, but the ordinance requires an analysis within 500 ft.; there is no reason why not to provide this information, since it is clearly a concern of the neighborhood; the analysis of the upstream conditions is obviously going to be fruitless if the downstream pipe can't handle the volume; the grate of the inlet on WSRR is shown on the applicant's plan; it is at 107.22 ft.; the grate of the inlet located near the common boundary between the Dabbagh and the DiGiacomo properties on Brandywine is at 101.34 ft.; difference of approximately 6 ft.; the water is entering the system on Brandywine 6 ft. lower than it is at WSRR; appears from the drawing that everything is going into the same pipe; it is indicated as flowing to the NE via the 24 inch pipe.

Mr. Inglima: asked if Mr. Steck based his opinion on the need for investigating this issue further, in part, upon the fact that the lower lying area on Brandywine could have water come up out of the pipe faster than it would on WSRR.

Mr. Whitaker: objected; going into an engineering aspect; no objections to Mr. Steck making statements that it needs to be evaluated from a planning perspective, but to opine/discuss the drainage pattern and issues is something within the prerogative of the engineer.

Mr. Inglima: asked if Mr. Whitaker was suggesting by his objection that a planner cannot tell the difference between elevations when they are 6 or 7 ft. apart.

Mr. Whitaker: stated he can talk in terms of what he sees as topographic conditions; when he opines about what the ramifications are from an engineering standpoint, it is beyond the realm of a planner.

Mr. Inglima: asked Mr. Steck, based on his basic knowledge of drainage systems, engineering, as it reflects on land use planning; would Mr.

Steck say, that if water reaches an elevation of 102 ft. it will come up out of the B inlet.

Mr. Whitaker: objected; again calls for a conclusion pertaining to engineering expertise which this witness does not have.

Chairman Hanlon: stated Mr. Inglima suggested that his witness was going to make recommendations; have not heard anything near that yet.

Mr. Inglima: stated he has given recommendations during his testimony; he has recommended there be a drainage area map and a study prepared with respect to the area at least 500' from the site.

Chairman Hanlon: stated he is looking for clarification that Mr. Steck has agreed to give recommendations.

Mr. Inglima: asked Mr. Steck, if it was fair to say, that if water reaches a level of 102 ft., it is going to be emerging from the B inlet in front of the DiGiacomo property.

Mr. Whitaker: objected.

Mr. Inglima: asked for a ruling from the Board.

Mr. Allen: stated the Chair did rule on this matter and the objection has been sustained.

Mr. Inglima: asked if Mr. Steck was allowed to answer any questions that any of the Board members could answer based on common sense and knowledge and the physical attributes of water and elevation.

Mr. Whitaker: stated the objection had been sustained.

Mr. Allen: stated Mr. Inglima is entitled to make his argument; the basis of the Chair's sustaining of the objection was based upon the expertise of the witness; the witness is a planning expert not an engineering expert; therefore he is either rendering an engineering opinion or coming so close to it that it is in essence the same thing; if the question was more or less, as a planner, what is his concern, it would be less objectionable, but that wasn't the question.

Mr. Inglima: stated, hypothetically, if flooding were to occur on Brandywine Road, under any conditions, does Mr. Steck believe that is a condition that should be taken into account by the Board in determining whether or not to approve the drainage system.

Mr. Steck: stated the code requires an area wide analysis; (started to comment on what the “applicant was saying”).

Mr. Whitaker: objected; as to what the applicant is saying.

Mr. Steck: stated the applicant has not submitted the information to date; asked for this information to be waived; it would seem to him that if there is an adverse drainage condition now, the question comes down to will this subdivision and particularly the cul-de-sac, exacerbate the situation; this seems to him an essential part of the analysis; a subdivision review is not just determine what items of relief are needed, it is also to look at the design and make sure there is no detrimental affect on the surrounding area and that includes the impact from stormwater runoff.

Mr. Inglima: asked Mr. Steck if the Board should be concerned with the low points in the system that feeds into the pipe that is drained past the applicant’s site to which they wish to connect.

Mr. Steck: stated there should be an engineering review.

Mr. Inglima: asked if Mr. Steck had an opinion in respect to the construction of detention system improvements.

Mr. Steck: stated he has indicated the applicant is artificially increasing the elevation of Lot 5; extends into public right of way; in order to connect to the system, there are structures that are proposed in the right of way that include a structure up to three feet in height over the ground; it needs approval of the governing body; raises an issue of danger.

Mr. Inglima: asked if Mr. Steck had an opinion in respect to the connection of the applicant’s detention system to a catch basin and pipe that is at a low point in WSRR; impact of water backing up.

Mr. Whitaker: objected; engineering conclusion.

Mr. Inglima: stated he is asking Mr. Steck if he has a concern as a planner.

Mr. Whitaker: objected; from a planning perspective it calls for a conclusion that pertains to the science of engineering and not planning.

Chairman Hanlon: stated he is going to allow this question; believes he understands where this line of questioning is headed.

Mr. Steck: stated stormwater runoff is one of the fundamental issues of a development; if it were a variance free subdivision, it is obviously a major concern; that is why there is a subdivision review; the ordinance states to view the drainage structures within 500 ft.; these drainage structures are above ground, visible and in the required yards, makes it more important because it relates to the negative criteria on those variances that the applicant needs.

Mr. Inglima and Mr. Steck discuss: this application does not advance the objectives of the MLUL in Mr. Steck's opinion; variances are required and other items of relief that have not been acknowledged by the applicant; particularly the new cul-de-sac creates a contorted situation that does not follow established planning practices in terms of the double frontage lots; adverse visual effects on Hollywood Avenue; improvements will have adverse effects on the lots to the south and they fundamentally relate to the design that the applicant has selected which causes these inefficiencies and invitations to future variances.

Mr. Inglima: asked if Mr. Steck had identified any unique conditions affecting the property that would prevent it from being developed for a conforming subdivision.

Mr. Whitaker: objected to the form of the question; presupposes that it is not conforming.

Mr. Inglima: stated it is a good question; asked for a ruling.

Chairman Hanlon: asked for Mr. Inglima to re-word his question.

Mr. Inglima: asked Mr. Steck if there were any conditions affecting the property that would prevent the applicant from creating a conforming subdivision without a roadway.

Mr. Steck: stated, in his opinion, there are not; unusual in shape; has the advantage of road frontage on three streets which doesn't require the production of an additional road necessarily to develop the property efficiently; no justification for the various items of relief.

Mr. Inglima and Mr. Steck discussed: the applicant's property currently has a driveway connecting to Hollywood Avenue; no reason for not having lots that front on Hollywood Avenue in the future; lots on the other side of Hollywood Avenue have driveways that access Hollywood Avenue; the approval of this subdivision would not advance the objectives of the Master Plan; because of the disruption of the natural characteristics of the property and creating improvements and situations that are in conflict with the pattern of the neighborhood; RSIS waiver for

sidewalks and other elements and objectives of the RSIS, Mr. Steck feels the design of the subdivision and the various facilities shown on the plan do not advance the objectives of the RSIS; believes it violates it particularly because of the structural approach to handling the stormwater runoff.

Mr. Inglima: asked Mr. Steck if he felt the design of the applicant's site and the drainage plan advance best practices and other objectives of drainage design.

Mr. Whitaker: objected; as it pertains to what is being talked about in terms of "best practices;" needs to be defined.

Mr. Steck: stated a civil engineer would be the best person to respond.

Mr. Inglima and Mr. Steck discussed: Mr. Steck feels the design of the site and the drainage system does not advance the objectives of non-structural design; the proposed construction of drainage systems exposed above grade within the right of way of WSRR are hazardous; the subdivision design does not constitute proper and sound planning; it encourages variances in the future; believes the houses proposed along Van Dyke, do not comply with the ordinance requirement; closer to street than what is the established pattern; the introduction of a cul-de-sac will cause a lot of problems; the combination of the appearance of the retaining walls, no landscaping, no buffer, 5 ft. wide gravel path; it will be very much uncharacteristic of the area; Mr. Steck is not aware of any evidence that would support a wall and mound along the south border of the property; the current application warrants a denial.

Mr. Inglima: asked if Mr. Steck believed there was an adequate basis in the law for the Board to exercise its discretion in denying the subdivision application.

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

Mr. Inglima: asked if Mr. Steck, based upon his knowledge of the MLUL, RSIS and as a planner, feels the Board has discretion to deny this application.

Mr. Steck: stated the burden of proof is on the applicant; the applicant does not acknowledge that some items of relief are needed; with any support for those waivers, de minimus exceptions of the RSIS or other dimensional variances; in his opinion the Board has no choice but to deny this application.

Mr. Inglima: no further questions of Mr. Steck.

Chairman Hanlon: stated that based on the discussion during the break, the meeting will conclude at this point; Mr. Steck will be returning on July 24th.

Mr. Steck: confirmed he would be in attendance at the July 24th meeting.

Chairman Hanlon: stated this was the conclusion of this evening's hearing; there will be another hearing next Thursday starting at 7:30PM; public hearing only.

Mr. Allen: stated, to clarify for those in the audience who do not understand the procedure, it is being suggested that next week will only be the continuation of this application with additional witnesses, etc.; nothing different than what the public has seen this evening.

Chairman Hanlon: stated Mr. Allen was correct; this evening the Board actually had two meetings; one was the regular Board meeting, then the public hearing; next week the entire meeting will be the hearing that is before the Board this evening.

Motion to Adjourn: Berardo, Rorty

All Board Members present approve Motion to Adjourn.

Meeting adjourned at 10:20PM

Respectfully submitted by:

JoAnn Carroll
Planning Board Secretary
August 28, 2014