

In compliance with the Open Public Meetings Act of the State of New Jersey adequate notice of this meeting has been mailed to The Daily Record and posted at the municipal building.

ROLL CALL:

Members Present: Joe Fleischner, Dan Nelsen, Nelson Russell, James Staszak, Scott Van Ness, Steve Bedell, Howie Weiss

Members Excused: Mayor Robert Greenbaum, David Scapicchio, Pat Walsh

Professionals Attending: Chuck McGroarty, Planning Consultant, Gene Buczynski, P.E., Tiena Cofoni, Esq., Catherine Natafalusy, Planning Administrator

Professionals Excused: Edward Buzak, Esq.

APPROVAL OF MINUTES

March 8, 2012 Public Meeting

Motion: Joe Fleischner
Second: Scott Van Ness

Roll Call:

Joe Fleischner - yes
Nelson Russell - yes
Scott Van Ness - yes
Steve Bedell - yes
Howie Weiss - yes

April 12, 2012 Public Meeting

Motion: Joe Fleischner
Second: Steve Bedell

Roll Call:

Joe Fleischner - yes
Nelson Russell - yes
Jim Staszak - yes
Scott Van Ness - yes
Steve Bedell - yes
Howie Weiss - yes

COMMITTEE REPORTS

MR. WEISS: Thank you lets jump into committee reports. The Mayor is not here, Councilman Walsh is not here so let's jump right into environmental commission Nelson?

MR. RUSSELL: Yeah it was a short meeting last night I reminded Jim Smith about the letter regarding the Highlands environmental and he's having one drafted. And they're looking for an updating on the tree planting. That's it.

MR. WEISS: Perfect so we'll keep looking for that letter from Jim Smith.

MRS. NATAFALUSY: Jim Smith actually called and left a message for me today that he asked the Board members, the commission I should say if they had any recommendations or changes to let him know by Sunday and he would get something to me by next Monday.

MR. WEISS: Okay I guess you can forward a letter if you get it.

MRS. NATAFALUSY: Yes.

MR. WEISS: Ordinance committee?

MR. STASZAK: Nothing at this time.

MR. WEISS: I have nothing from the street naming committee and Mr. Walsh is not here for open space so that's the end of our committee reports. Chuck or Gene anything?

MR. BUCZYNSKI: Just one thing. Remember last week we had a discussion regarding CVS Pharmacy I think Joe Fleischner brought it up. I have spoken to the engineer and looked at it it's only 18 feet in that little stretch. He will not agree to take out those signs because there's just not enough room out there I guess as far as two lane traffic that little ways. There's a concern for liability but he did speak to CVS to see if they would allow widening the road and of course the first comment was it was approved by the Board who's going to pay for it as we do it. But they haven't closed the door on it yet they're going to discuss it and see if they want to do anything to that at this point. We're going to still wait.

MR. WEISS: Just a waiting game. Okay thank you Gene and there's nothing Catherine besides that note from Jim Smith there's nothing else from you right?

APPLICATION #PB 11-35 – THE 11TH HOUR ANIMAL RESCUE INC.

MR. WEISS: Okay with that being said let's get into our first developmental matter which is PB 11-35 11th Hour Animal Rescue. Seeking a D-1 variance for an animal shelter/kennel and a D-1 variance for residential use preliminary and final site plan with variances on property located at 44 Route 46 Block 8301, Lots 11 and 12. With us this evening Mr. Selvaggi for the applicant, Michael welcome.

MR. SELVAGGI: Good evening and thank you very much. This is the continued public hearing for 11th Hour Rescue I believe we were here last time in March. At that time Michael Byrne who was our architect was testifying and Mr. Byrne is coming in in a minute here. He was asked to provide a rendering for the building from the neighbor's property and there was also some further cross examination that he was going to be subject to. So

MR. WEISS: Well Michael let me interrupt real quickly and I just want to summarize to make sure Tiena and I are on the same page. On the March 15, 2012 meeting we did (inaudible) we heard from Michael Byrne and you're accurate as you say it we ended up Tiena with exhibit A-5?

MS. COFONI: Yes so we can start with A-6.

MR. WEISS: Correct A-4 and A-5 were presented and just so that we all remember on March 15 that was a carried meeting from February 16. I have my notes and Tiena has her notes if anybody had any questions regarding the conversations from the 16th or the 15th of March perhaps we should review anything that's on our mind now or at that point I'll turn it over to Mr. Selvaggi and we can go forward with his next set of expert witnesses. Scott?

MR. VAN NESS: First I did sign the certification that I reviewed the minutes of the last meeting when they were here. I do have some questions of Mr. Byrne so when the opportunity arises I'd like to ask those questions of him regarding his testimony.

MR. WEISS: Michael do you know where Mike Byrne is?

MR. SELVAGGI: Yeah he should be here in a second he's just outside.

MR. WEISS: Okay because I might have just heard Mr. Van Ness has a couple of questions as he reviewed the tape and if you don't mind maybe let's go backwards a little bit so Scott can ask the question.

MR. SELVAGGI: Oh yeah however you want to do it.

MR. WEISS: Okay let's do that and then we can make sure that everyone is good and ready.

MRS. NATAFALUSY: Mr. Chairman for the record Mr. Bedell also read the minutes from the last meeting so he's eligible to vote.

MR. WEISS: Thank you for doing that Steve and Scott thanks. So Mr. Byrne as soon as you are set we'll put you right up on the hot seat.

MR. BYRNE: Okay no problem.

MR. SELVAGGI: Okay Mr. Byrne you were in the March meeting you had testified you were under oath at that time do you consider yourself to be under oath?

MR. BYRNE: Yes.

MR. SELVAGGI: Okay. Mr. Chairman we can have Mr. Byrne testify as to the additional renderings or if Mr. Van Ness wants to ask his questions.

MR. WEISS: Let's do that, let's go backwards first I know Scott had some questions so let's clear up the old.

MR. VAN NESS: I did review the minutes and the questions I'm going to refer to are from the minutes of March 15th. And particularly you had mentioned the awnings have manual controls? Are these controls also available to use electronically without raining, is it only rain that they can close them or

MR. BYRNE: No they're both. It's got an automatic rain sensor so that if in case of rain it will close but they also have a manual override so that the staff can adjust the level of shade for the animals on a manual basis.

MR. VAN NESS: And that can be done by a manual, when you say manual you're talking

MR. BYRNE: It's electronic.

MR. VAN NESS: It's electronic.

MR. BYRNE: Yes.

MR. VAN NESS: But it is also available to be That's what my questions. It's electronic but they can operate it at any time but is there a manual actual physically manual control where they're able to open and close them with a handle or a crank or something like that?

MR. BYRNE: My dilemma is I know that it's available as a manual I don't know if it's got a manual override if you get the electronic version.

MR. VAN NESS: Okay. Because I mean theoretically if you have a power issue but I did see that there's a generator plans.

MR. BYRNE: That was part of the essence we were putting the generator on the site to kind of accommodate the needs for the animals in case of . . . especially after last fall with the outages that we were having.

MR. VAN NESS: And if there happens to be a heavy snow on these awnings is the electronic version going to be an issue in trying to move them if there's enough snow on there where they can't

MR. BUCZYNSKI: Mr. Chairman sorry but in my notes I had it listed as, it was stated also manual system for open and close. I thought that was discussed at the last meeting.

MRS. NATAFALUSY: I have that to electronic and manually controlled.

MR. VAN NESS: Okay well I mean that it says electronic and manual but I wasn't sure that it meant hand cranking as opposed to manually electronically use it like if they want to adjust something. That was my question.

MR. BYRNE: I believe that was actually my intent at the last meeting was the fact that it's not just an automatic sensor in case of rain that they (inaudible) the manual override on it that they can control if Independent of it's

MR. VAN NESS: So theoretically your saying that it's three controls it's the rain sensor, the electronic override or a physical override.

MR. BYRNE: The physical override I'm not sure of. Like I said I know that they have models that have hand cranks in lieu of the electronic version I don't know if they have a manual override as part of the electronic version I'd have to look into that.

MR. VAN NESS: Okay.

MR. BYRNE: And also we're looking at three or four different options that make sense so I think we'll try to find one that does have that available to us.

MR. WEISS: Scott does the generator make you feel a little bit more comfortable than

MR. VAN NESS: Yeah the generator does but I'm just

MR. WEISS: Okay because I understand your concern.

MR. VAN NESS: Okay the other question I had was the . . . there's testimony that there's going to be a center divider of shrubbery for the most part which will kind of blank the space between the dogs so they can't look at each other. And is the concept on that that they're not going to bark?

MR. BYRNE: Well the concept both internally and externally was by reducing the visual connection of an animal across the way it does minimize the stress on the animal and does reduce the barking.

MR. VAN NESS: My question was really doing the dogs react to odor and the senses or sense of other animals? Is that how they Aren't they going to react more to that than opposed to just visual sight? I'm just posing that as a question I don't know the answer.

MR. BYRNE: In all honesty I don't really have the expertise to answer that part of the question.

MR. VAN NESS: And is the design, is this design where you're going to have that center shrubbery row is that used somewhere else in any of the other buildings?

MR. BYRNE: I don't know the answer to that.

MR. SELVAGGI: We have . . .

MR. VAN NESS: I see heads shaking to hold on.

MR. WEISS: That would be head shaking in the affirmative for the record?

MR. VAN NESS: In the negative.

MR. SELVAGGI: In the negative yes.

MR. VAN NESS: Okay I'm just curious about what I've been reading. And then the last question I have is about the aluminum louvers. To me aluminum creates a sound issue and is there going to be an acoustic value to having these louvers made out of aluminum? Does that make sense what I'm trying to say? Are aluminum louvers going to actually perpetuate a noise problem as opposed to some other type of material?

MR. SELVAGGI: We actually . . . our next witness is actually an expert in noise.

MR. VAN NESS: The acoustic sound person?

MR. SELVAGGI: Yes an acoustic so he might be better.

MR. VAN NESS: So I can ask that question to them. And that's all I have. I mean I based it on the testimony that was given that I have in the minutes.

MR. WEISS: Thank you Scott.

MR. SELVAGGI: And now Mr. Byrne as it came out during the course of testimony there was a request made for a rendering from the neighbor's perspective. Were you able to prepare something like that?

MR. BYRNE: Yes I was.

MR. SELVAGGI: All right is that what we're looking at over there on the easel now?

MR. BYRNE: Not right there.

MR. SELVAGGI: Okay.

MR. BYRNE: Can I be heard on the tape from over here or is that a problem?

MR. WEISS: There's a microphone behind you.

MR. SELVAGGI: Is this the rendering?

MR. BYRNE: Yeah this is the rendering here from the adjacent neighbors property.

MR. SELVAGGI: So let's mark that A-6 and we'll call that rendering from adjacent neighbor.

MR. WEISS: What's the date on that?

MR. BYRNE: It's revised today; I have today's date on the revision date.

MR. WEISS: A-6.

MR. BYRNE: Again directly along the property line as Mr. Glasson has elaborated in his testimony we have a stockade fence that's going to be put right at the property line and then we also have a row of vegetation that's going to be put on the property side of that fence. The element that you see through the trees there is the blank wall of the single loaded kennel section. So again there are no openings, there's nothing on that side that would allow the sound to come through that. So that was the wall that we were calling basically a Jersey barrier at the last meeting. To help absorb or help dampen any noise that would be created in the kennels. And again I'll defer over to the sound expert to deal with the actual acoustic aspect of it. But this is a view looking at the addition; this portion here is the existing structure the two-story structure that's out there. This is the single loaded one-story kennel structure that's going along here and you can see in the back there the existing accessory building that's in the back that we're going to be using for the quarantine building as well as the reception building for lack of a better term for when they first get the animals into the clinic.

MR. SELVAGGI: And what are we looking at then on the top left corner?

MR. BYRNE: The top left, these are the same renderings that we had at the last meeting. This upper rendering here is an internal rendering of the kennels showing the fact of the configuration was to not blind glass from one side to the other side of the aisles so that hopefully we can get some visual privacy there and to address your question the shrubbery down the center there again is to act as a barrier visually between the out fixture kennels.

MR. SELVAGGI: That's all I have for Mr. Byrne.

MR. BYRNE: There was one other item that was brought up at the last meeting I just want to

MR. FLEISCHNER: Can I just ask a question pertaining to that drawing?

MR. WEISS: Sure go ahead.

MR. FLEISCHNER: The fence you show there, how far off the neighbors property line does that fence sit? One foot?

MR. NELSEN: How high is the fence sir?

MR. BYRNE: It's a 6 foot fence.

MR. SELVAGGI: We've designed it to comply with the township's fence ordinance.

MR. NELSEN: It's stockade?

MR. BYRNE: Yes sir.

MR. NELSEN: Is it cedar fence?

MR. GLASSON: I don't know if they picked out exactly, it's either going to be a cedar or a vinyl.

MR. WEISS: So I guess just for the record Mr. Glasson responded by saying its cedar or vinyl to be determined. I guess the Board would have to determine, do we have a preference or does it matter we'll just keep that as an open item.

MR. SELVAGGI: And Mr. Glasson you were placed under oath at the beginning of this application and your still under oath correct?

MR. GLASSON: Yes I am.

MR. SELVAGGI: All right.

MR. WEISS: Does anybody else have any other questions?

MR. VAN NESS: Is the fence going to be white or is that going to be discussed with the neighbor if it gets approved?

MR. SELVAGGI: If it gets approved we would certainly work with the neighbor. I mean you know the vinyl fence you can get in pretty much any color you want.

MR. VAN NESS: Right thank you.

MR. WEISS: I think we need to leave that as a condition of approval that if we were to get this application were to receive approval that . . . that seems to be a big issue for the neighbor. So as much as you've said vinyl which could be any color or cedar I think there has to be an agreement, at what point we do that in the developer's agreement or . . . it needs to be addressed so that the neighboring property . . .

MS. COFONI: Do you mean that we need to set it here or you want the applicant to address it with the neighbor?

MR. WEISS: I think it should be addressed because you know we're concerned about the neighboring property that seems to be the major issue why they're going through this effort and I would like to think that the final product is installed is favorable to the person that's got to look at it. So I would like to hear at some point maybe Mr. Marx I could bring that up with you when you make your presentation, that you can address that for us if you can do that?

MR. MARX: It's the first we've heard of it we don't know what the choices really are. Personally I've seen vinyl fences but I don't know about a stockade . . .

MR. WEISS: Mr. Marx unfortunately I know I asked you the question but now we can't pick up your answer.

MR. MARX: All right I'll speak louder. I can't visualize a vinyl stockade fence I can see other kinds of vinyl fences but I think the applicant has to show Mr. Gladdish the choices. He'll be glad to pick one if that's the choice of the Board.

MS. COFONI: If mean if the Board so chooses to approve you can always make a condition of approval that the applicant works with the next door neighbor with regard to the material and color of the fence. Or you can you know I don't know if your concern is that the neighbor is pleased with it or if you have some concerns.

MR. WEISS: I think that's why we're going through this effort is to make sure that the neighboring properties understand and appreciate what's going in if it does in fact get approved. And so

therefore nobody here has a problem whether it's cedar or vinyl or whatever the product we seem to be in agreement but we're not the ones that have to look at it. So at some point in the process I'd like to have Michael maybe a communication at some point a confirmation that you've had a conversation with the neighboring properties and you have both agreed that the fence will be "X".

MR. SELVAGGI: If we're fortunate to get to that point we will gladly do it.

MR. WEISS: Okay then we can move on from the fencing.

MR. SELVAGGI: Your ordinance is it's got to be 6 foot I mean you already have enough perspective.

MR. WEISS: Conforming to the ordinance and I'd like to conform to the fact that the neighboring property owners are okay with what you put up.

MS. COFONI: The fence is on what side of the property?

MR. SELVAGGI: That would be on our side.

MS. COFONI: No I mean north, west.

MR. SELVAGGI: It would be on the easterly side of the property.

MS. COFONI: Okay I just want to put that for my notes.

MR. WEISS: Dan?

MR. NELSEN: Mr. Chairman. Mr. Byrne regarding the fencing aesthetically I understand where you're going with the fencing but is there any thought given to the security of the property as far as keeping the animals within the property?

MR. BYRNE: The entire property is fenced in.

MR. NELSEN: With what?

MR. BYRNE: The same fence.

MR. GLASSON: That fence is going to wrap around the entire property. There's going to be a locking gate, two locking gates I testified to a locking gate adjacent

MR. BYRNE: The other rendering shows that.

MR. NELSEN: Do you think that that fencing will hold the dog in?

MR. GLASSON: Well it's not designed to hold the dog in it's a 6 foot high fence it's designed to provide a perimeter for the dogs so that the dogs do not run free. It is designed

MR. SELVAGGI: Jim hold on, what are we looking at there? Has that been marked?

MR. GLASSON: A-4.

MR. WEISS: Catherine can you pick this up?

MRS. NATAFALUSY: Yeah.

MR. GLASSON: The bottom left corner of A-4 this just shows a view from the front of the building that picks up the fence, it's showing here as white, but it picks up the fence along the left side of the building it travels to the corner and runs to the back. As you recall it crossed our driveway right where our dumpster location was so that we had a double fence there so that we could gate ourselves when we came in with our own deliveries for our dog food and for the van for 11th Hour. And then it runs up the property line to the right hand side up towards the front of the building there's a gate here. So there would be two gate proponents one in the rear and one in the front.

MR. WEISS: Now just for the record that's oriented promptly so north is to the top.

MR. BYRNE: North is to the top correct.

MR. NELSEN: My concern is that a stockade fence or a vinyl fence would not be sturdy enough to keep a dog in or either get, one of his individual runs. Normally in a situation like that I think what you have is like two fences together you have a chain link fence or a solid fence of some kind, maybe a masonry fence, a masonry wall and then he aesthetically

MR. SELVAGGI: Yeah Linda Schiller who was our first witness can . . . and you're under oath Linda.

MS. SCHILLER: Okay. I just wanted to explain what we currently have we have chain link and we don't want to use chain link because dogs can climb chain link fencing. A solid stockade is much more appropriate and the dogs aren't going to be running free on the property. Within that perimeter of that solid fence we are going to have fenced in play areas so they're going to have indeed indoor fencing when they're out of their kennel. So that fencing will hold them if they get out.

MR. NELSEN: I would disagree with you to some extent. Yes a dog can climb a chain link fence but they make special chain link fence with smaller

MS. SCHILLER: And we prefer to have the solid.

MR. NELSEN: Right but I'm just saying if it's a stockade fence I don't believe a stockade fence can safely keep a dog in.

MS. SCHILLER: I have a 6 foot stockade fence, I've had it for 10 years, and at any given time I can have a dozen dogs at my house. I have never had one get over or under my fence.

MR. SELVAGGI: Well let me ask you, now the way you've described it that perimeter stockade fence is really the, I'll say the second line of defense

MS. SCHILLER: Right the dogs aren't going to be running free on the property. They're going to be in kennels and when they're not in the kennels they're going to be in a fenced in play area. That is just extra security I don't want my dogs out on Route 46 or Sand Shore Road. So it's a secondary . . .

MR. NELSEN: And there's no concrete underneath these fences? Or on your stockade fence at home?

MS. SCHILLER: No.

MR. NELSEN: You've never had a dog go under it?

MS. SCHILLER: No.

MR. NELSEN: You're fortunate.

MS. SCHILLER: Yep I am I mean that's smart I put stones and rocks around it and we're going to be very careful because that's our life blood these dogs. You know we're not going to put up something shoddy and let them get out so we are going to be very diligent with this. We have indoor play areas that will be fenced then we just have this simply for security. I don't want animals coming into the property as well, I don't want strangers coming in, I don't want people harassing our dogs I want to keep it a nice quiet environment for them.

MR. NELSEN: But if it's just the cedar stockade fence I don't believe it can keep a dog in who is determined to go elsewhere.

MS. SCHILLER: But he's not going to have that opportunity. It's only there in case a dog slips off his leash it's not going to be a dog . . . we don't have dogs running.

MR. NELSEN: But that happens, human error sometimes something like that could happen and a dog could

MS. SCHILLER: That's why we want to put a solid fence around, because the dogs are only going to be going from their kennels to a play area or going out to a van to go to an adoption event. They're not going to be running loose on the property.

MR. SELVAGGI: When your dogs are in the fenced in play area inside the stockade fence I mean they're always under adult supervision?

MS. SCHILLER: Yes.

MR. SELVAGGI: So if a dog were to escape that chain link play area I mean presumably you know in order to address Mr. Nelsen's question I mean the dog would have to be unattended for a period of time before it could get under that fence. Assuming the fence is built the right way.

MS. SCHILLER: Yeah it's not going to be a dog is left loose in the yard and he dug under the fence and nobody is there to watch him, they're taken out of their kennels on a leash, they're brought to a play area where the gates are locked. We're all about safety and keeping our

MR. WEISS: Can I interrupt, I think we've made the point we can go back and forth all night long. You've made your point, Dan you've made your point it doesn't seem like you're going to be convinced and that's okay. You can say it five more times it's not going to change and we can be here all night so obviously the applicant is not making a change, they're not going to put cement underneath it. The ordinance certainly doesn't say they have to is that correct?

MR. MCGROARTY: No we don't have any ordinance, fence requirements for kennels.

MR. WEISS: So I certainly don't mean to cut anybody off but the point is well made, your point is well made, Michael move on please. Hold on one second. Mr. Fleischner?

MR. FLEISCHNER: Could we just go back to your rendering because I'm trying and could you drop the picture down with the

MR. WEISS: You're talking about A-6 the new one?

MR. FLEISCHNER: Yeah A-6 I'm sorry, the fence rendering. In reality we're not going to even see that fence from the neighbor's right? Because they have a row of trees.

MR. BYRNE: Yes, yes.

MR. FLEISCHNER: Okay so that, not to criticize you're rendering but if it were really accurate we would maybe kind of see that fence peering through other trees that are there.

MR. BYRNE: You're going to see trees along the fence.

MR. FLEISCHNER: Okay I just wanted to clarify that in my mind. Okay I'm good thank you.

MR. WEISS: Anybody else? Go ahead Michael.

MR. BYRNE: The other item that was brought up I believe as part of the reports was also the building heights and I've taken a look at all of the building heights. The kennel buildings themselves, the double loaded kennel building has an overall height of 18 foot 3 inches. The single loaded kennel from the uphill side has a height of 15 foot 8 inches and on the neighbor's side a height of 18 foot 6 inches. The maximum height from the lowest point of grade around the building for the existing structure is 31 foot 4 inches and when we calculated the average grade around the building to the highest ridge it works out to be 29.78 feet. And in fact the strange part about that is the average grade around the building as it exists now actually is a variance situation but with the addition that we're doing in the back since the grade there is so much higher than it was at the front it actually dropped us into a conforming situation with the building height when we did the addition.

MR. MCGROARTY: So Mr. Byrne if I may Mr. Chairman?

MR. WEISS: Please Chuck.

MR. MCGROARTY: Just to clarify, so the existing buildings they're there and they are what they are but your new buildings the average grade will be just under 30 feet.

MR. BYRNE: No the worst case scenario the just under 30 feet is the existing portion of the building.

MR. MCGROARTY: Oh okay.

MR. BYRNE: The highest part that we're adding is actually the 18 foot 6 inch height.

MR. MCGROARTY: Oh the 18'6" okay I got it thank you.

MR. BYRNE: That's for that building and the other building that we have the accessory building the existing structure is 20 foot 6 inches to the ridge of the existing structure. The portion that we're adding to it is again 15 foot in height so we're not making that structure anywhere near the limitations of the ordinance.

MR. WEISS: Any other questions for Mr. Byrne from the Planning Board? Michael did you have any questions for Mr. Byrne?

MR. SELVAGGI: No we're complete.

MR. WEISS: Let me open it to the public then if anybody from the public has questions for Mr. Byrne based on the testimony that was delivered this evening. Mr. Marx was that you?

MR. MARX: Yes please. Mr. Byrne if you recall at the last session in March

MRS. NATAFALUSY: Mr. Marx?

MR. WEISS: Hold on a second Mr. Marx.

MRS. NATAFALUSY: Could you go up to the microphone please?

MR. MARX: Sure. Mr. Byrne if you recall at the last meeting in March we discussed the awnings and you were requested to bring us literature to show what they look like and possibly where they're used around here?

MR. BYRNE: I could not locate any areas around here where they are used but I did bring some literature on again one of the awnings that we're looking at so you can get a feel for the aesthetics of them.

MR. SELVAGGI: We'll mark this A-7.

MR. WEISS: And A-7 Michael would you say is literature based on the company information who makes the awning? Or is a sample facsimile thereof? What are we looking at?

MR. BYRNE: It's a brochure of the . . . from one of the awning manufacturers that we're investigating for the use on the property. They're all very similar aesthetically it's just a matter that some have certain features that we're just trying to evaluate which one makes the most sense. And again the manual override maybe one of the factors that determines which one we'll decide to use.

MR. MARX: Okay this particular literature has a number 4.01 that's by a company called Louvretec. So you're saying this is the type or similar to that it may not be this exact brand is that correct?

MR. BYRNE: Yes.

MR. MARX: You also said you showed on the rendering that there was a line of vegetation to be planted outside the wall?

MR. BYRNE: On our side of the fence.

MR. MARX: Well maybe it was your side yeah I think it was. And how big are those, how high and at what distance apart?

MR. BYRNE: I differ that over to Mr. Glasson.

MR. GLASSON: I believe it's on your landscape plan and I believe they're 6 to 8 foot as shown on my sheet 8. There is a row of 18 Douglas Firs 7 to 8 foot high. So the fence is 6 feet so they'll go roughly 1 to 2 foot over the proposed fence.

MR. MARX: So they will be 7 to 8 feet high.

MR. GLASSON: Yes planted height.

MR. MARX: And how will they be planted every 10 feet, every 6 feet?

MR. GLASSON: They're spaced about every 10 feet and there are 18 of them. So they basically go from the site line of your driveway from . . . lined up about the front of the building all the way back to the barn area (inaudible).

MR. MARX: Is the purpose of this row of 18 trees for soundproofing?

MR. BYRNE: No it's visual.

MR. MARX: It's visual. I have no further questions of Mr. Byrne thank you.

MR. WEISS: Thank you Mr. Marx. Anybody else from the public have any questions for Mr. Byrne based on the testimony delivered today? I have one question I don't know if we talked about this last time but I have it on my notes based on your testimony last week. I have a concern and it's obviously the rendering, what we just addressed but the other one is I think we talked about selling of the project. What happens if 11th Hour Rescue sells the property? I'm not sure who to ask this question of. If the property gets sold and it's sold to company "X" do the operations that we agree upon stay with the property or do they have to come in for approval?

MR. SELVAGGI: It has to be a not for profit agency that's running the kennel, anything different than that in my opinion would require use variance approval.

MS. COFONI: I don't know if they have a change of ownership any kind of approval or anything like that that they need?

MR. MCGROARTY: Not here but as Mr. Selvaggi said if the use remains the same if it's a different non-profit but with respect to the awnings and the plantings and the hours of operation and everything else if the Board approves this application with those conditions they apply.

MS. COFONI: Yes.

MR. WEISS: Because the reason I ask is I see we got this from Mr. Glasson just in the packet tonight and I don't know if this was in response to the questions. It appears your description of operation and I know we didn't talk about it yet, but does this document stick with the plan regardless of the ownership and it sounds like the answer is yes.

MR. SELVAGGI: Yes.

MR. WEISS: Again my concern was you know right now I know you had testified Linda once before that it's not an open facility it's by appointment. If the property gets sold and somebody is basically opened 9:00 to 10:00 at night and anybody can come in. That couldn't happen.

MR. MCGROARTY: I mean I would offer my opinion on that that again this is a use variance and if you approve it you can attach conditions to the operations to ensure that it doesn't have any adverse impact or to mitigate any adverse impact. And so hours of operation those kind of questions I think would be perfectly okay.

MR. WEISS: And I'm not sure why it ended up under Mr. Byrne's testimony but it was a note that I had as we ended the meeting. I don't remember if we spoke about it as a Board or I just made myself a mental note.

MR. NELSEN: Mr. Chairman I think in the terminology what you're calling it can have some effect in that if you call it a kennel it sounds more like a commercial boarding operation. If you call it a shelter it sounds more like what the applicant is proposing. So I think there's a difference in there.

MR. MCGROARTY: Yeah right this wouldn't be approved as a kennel.

MR. NELSEN: Pardon me?

MR. MCGROARTY: I would agree with you this would not be approved as a kennel.

MR. NELSEN: Right and some of the wording in this it says kennel/shelter. I think you should neaten that up a bit Tiena.

MS. COFONI: But I think as Chuck said because this is a use variance it's not because they're doing a site plan for a permitted use the type of use all of those, description of operations all of those things come into play a lot more than if you were dealing with a permitted use where there's a little more flexibility with those types of things, not as much regulation. So I think you can't look at one word a shelter versus a kennel there's a lot more to it included in this approval.

MR. NELSEN: Right but this simplistic way of looking at it is if you say it's a kennel it's a boarding facility for animals. If you say it's a shelter it's a not for profit.

MS. COFONI: Certainly yeah.

MR. WEISS: Well I just wanted to make sure that we have some kind of a language and it sounds like we do that The 11th Hour Rescue has told us that there's no kennel I made it very clear and then the property is sold and then the next owner says well it doesn't say that I can't so I'm going to and that's not what we want. So I just want to make sure that the township is protected that we have certain restrictions that we've been discussing that sticks with the property, sticks with the business regardless of the ownership. I know Linda that's not an issue for you because if you sell it your gone but are you confident that we can protect that.

MS. SCHILLER: Yes.

MR. WEISS: Fair enough thank you.

MR. SELVAGGI: If there's no further questions Mr. Byrne can return and we'd now like to call on our noise consultant.

MR. WEISS: Sound engineer sounds so much better.

MR. SELVAGGI: Yes. Matt Murello if he can be sworn?

MS. COFONI: Sure can.

(MATTHEW MURELLO SWORN IN FOR THE RECORD)

MS. COFONI: If you could state your full name spelling your last name and giving your business address for the record please.

MR. MURELLO: Matthew Murello (M-U-R-E-L-L-O) I'm the president of Lewis S. Goodfriend & Associates, 760 Route 10, Whippany, New Jersey 07981.

MR. SELVAGGI: Mr. Murello have you ever testified before the Board of Adjustment and/or Planning Board in Mt. Olive?

MR. MURELLO: Yes.

MR. SELVAGGI: When was that?

MR. MURELLO: A while ago.

MR. SELVAGGI: Okay so many of you may not remember but why don't we then just for the record go through your qualifications.

MR. MURELLO: Certainly. I'm a licensed professional engineer in the New Jersey and I think five other states. I've provided testimony on over one hundred applications with reference to noise in

environmental noise and vibration. I've testified in this municipality I think maybe two times, once for a supermarket and once for a rooftop equipment evaluation. I've been a licensed professional engineer since 1999, I've been president of Lewis S. Goodfriend & Associates which is a consulting engineering firm specializing in the field of acoustics since 2002 and the firm has been in business for almost 60 years so that's all we do.

MR. SELVAGGI: Okay and you've been accepted as an acoustical engineer in other municipalities?

MR. MURELLO: Yes I have.

MR. SELVAGGI: Have you ever appeared in Superior Court?

MR. MURELLO: No.

MR. SELVAGGI: Okay have you ever done work on behalf of kennels?

MR. MURELLO: Yes.

MR. SELVAGGI: Okay how many?

MR. MURELLO: More than a half dozen or so including another one in this municipality.

MR. SELVAGGI: I'd like to ask that he be accepted.

MR. WEISS: When you ask for kennels you're also meaning shelters correct?

MR. MURELLO: Kennels and shelters. Dogs within a facility the noise source within both is the same.

MR. WEISS: Okay fair enough. Does anybody have any questions for Mr. Murello?

MR. STASZAK: What one in Mt. Olive did you do?

MR. MURELLO: Waggin Tail over by Turkey Brook is the name of the park.

MR. WEISS: Mr. Murello I think you were in front of us for the A&P application.

MR. MURELLO: A&P or Shop Rite I can't remember which one it was.

MR. WEISS: I think it was A&P.

MR. MURELLO: That might be it. They all start to blend together after a little while my apologies.

MR. WEISS: I certainly do remember you from the A&P application. Does anybody else have any questions? Chuck?

MR. MCGROARTY: No.

MR. WEISS: Gene?

MR. BUCZYNSKI: No.

MR. SELVAGGI: Mr. Murello you were retained for purposes of performing acoustical analysis of the proposed shelter were you not?

MR. MURELLO: Yes.

MR. SELVAGGI: Did you in fact perform that investigation and if so what were the results that followed?

MR. MURELLO: I did. In order to evaluate the property line noise from the dogs on the outside kennels of this facility the first thing we did was to evaluate the existing sound levels at this site. And to

do that I visited the site on April 3, 2012 at approximately 9:00 or 9:30 in the morning, I went to the eastern property line about halfway back from Route 46 and performed an ambient sound pressure level measurement for about 30 minutes. The sound levels range based upon the dominant noise source out there at this time of year happens to be Route 46 even at 9:00 in the morning. The lowest sound level we measured was just under 50 dB(A), the highest sound level was approximately 63 to 65 dB(A). As you can imagine the higher sound levels as automobile traffic went on Route 46. Then we had to evaluate or we were asked to evaluate the potential of acoustical impact at the property lines due to dogs barking. To do that initially we used measurements of dogs at a, I don't know if it was a shelter or a kennel but it was an animal facility down in Monmouth County that had outdoor runs. We did measurements of ten dogs barking during those measurements; use that data to estimate what the sound pressure levels would be at the eastern property line to do that. We had to do a little bit of math and we also took into consideration the shielding from the dog kennels which have been testified to the outdoor runs by the buildings. We take into consideration the height of those buildings as well as the height of the source which is a dog which is about a foot or two off of the ground as well as the height of the receiver. And we did two calculations the first we did was at the property line at receiver height 5, 6 feet off of the ground, we then did a second calculation based upon some questions of a second story window further back on the property line and both of those calculations resulted in sound levels that were beneath the day time limit of the regulation and I'll talk about that in a second. And also comparable to the higher sound levels that we measured during the day time hours as traffic passes on Route 46. And the Board I know is well aware of the limits of the municipal and state regulation but just for the purposes of the record the noise regulation in the municipality and the State of New Jersey Department of Environmental Protection has two time periods for a residential property. The cut off is 10:00 p.m. so from 7:00 a.m. to 10:00 p.m. are considered the day time hours which is when there already has been testimony they'll be the only time the dogs will be outside. There's also been testimony by the architect that there are no penetrations in the building on the east side. So the only potential for dog barking to get to the eastern property line would be when the dogs are outside during the day time hours. So we compared the measured sound level of dogs to what we predict at the residential property line to the east. Based upon some comments we had received after our report was submitted to the Board we then went to the existing 11th Hour facility on Route 10 and did another set of measurements now with 20 dogs and outdoor runs. These runs are not shielded from each other they are simply chain link fence, those measurements were almost identical to what we used as our source data and we had twice as many dogs. What's important about that to note is that we went from ten dogs in the original measurements that the report was prepared on, and again that's the report that we have dated April 6, 2012 which I believe was submitted to the Board.

MRS. NATAFALUSY: Yes.

MR. MURELLO: And we also measured 20 dogs at the existing 11th Hour facility and both sound levels were comparable at a distance of 30 feet from those runs. The purpose of that or my conclusion from that is the more dogs we add, what happens is it doesn't necessarily get arithmetically louder, what happens is they turn into a more of a constant noise source. If one dog barks it's a bark, it's a bark, it's a bark, it's a bark. If 20 dogs bark or if 30 dogs bark it ends up being more of a constant noise and they don't add necessarily and get louder and louder and louder like you would if there was one air conditioner operating or two air conditioners and then three and then four. The noise just becomes more constant so the predictions we had in our April 6 report are consistent. We have sound levels that we expect to be below the day time regulation of 65 dB(A) and also below what we expect any typical pass by noise would be from what's typical from Route 46 traffic. That basically summarizes the report that we have.

MR. SELVAGGI: Okay we can go into a lot more you know I mean there's

MR. WEISS: Oh there's a ton more Mike and I appreciate that because it's pretty detailed I know Joe and I were talking earlier it's extremely thorough and I'd be lying to tell you that I understood the terminology. You've summarized it for us does anybody have any questions?

MR. SELVAGGI: Let me ask one question because I think the logical question that people may have is you know you put 10 dogs, 20 dogs, the testimony here is that this shelter can accommodate 70 dogs.

MR. MURELLO: Correct.

MR. SELVAGGI: And even though the other testimony was they go out in controlled environments, if you had all 71 dogs out there at one time would it exceed the noise level?

MR. MURELLO: No.

MR. SELVAGGI: I guess that's the . . . and when you say no and you said it pretty quick why no?

MR. MURELLO: We predicted, based upon the measurements we had at both the outdoor facility in Monmouth County and the existing 11th Hour facility one had 10 dogs and we measured and one had 20 dogs. In both cases the sound level we measured at 30 feet away with no shielding and no concrete sides and no absorption coming at us were about 85 to 87 dB(A). That's at 30 feet. Now if we add the solid partitions on the side as well as the dogs are not in a line there are three distinct distances the closer one, then the middle one and the one further to the west from the eastern property line. Factor in those difference in distances which we did in addition to the attenuation you get from the solid buildings intervening between 17 and 18 feet tall, in between each of those sets of dogs all of that serves to reduce the sound level and we predict the maximum sound level to be no greater than 60 dB(A), that's what we've predicted. And that's with as many dogs as we can get going in one distance away. When we spread them out over the property that will serve to reduce the sound on any one point. In addition the more dogs we add, unless we put them all in one spot, in one run they're not going to add in any one particular location on the property line it will just spread that sound level out all on the property.

MR. SELVAGGI: Now you had indicated you had done work for Waggin Tails, was that a similar analysis you were asked to do for them?

MR. MURELLO: Yes the only thing that differed between the analyses I'm testifying to tonight and the one from Waggin Tail from I want to say mid to late 1990's was we used different dog data. We measured different dogs for that application. I didn't testify to that but I did work on that application. The sound levels were going to be comparable.

MR. WEISS: Jim do you have a question?

MR. STASZAK: At night, and I'm sure the big question is what's it going to sound like at night with the dogs inside? Is any of that sound going to get out of that confined area that they're in? And if so, how much?

MR. MURELLO: I don't believe so. There's no penetrations on the east side of the building at all so any noise, any dog barks that might get out would have to come from the opposite side of the building and be shielded by it. There's no penetrations on the roofs so again you still have the building as a barrier to the east.

MR. STASZAK: Even the ones that are facing . . .

MR. MURELLO: Yes the east, I think east correct?

MR. SELVAGGI: Yeah.

MR. MURELLO: To the east.

MR. WEISS: Scott?

MR. VAN NESS: Nothing more annoying than a barking dog at night unless you love dogs as much as you all do, I get it.

MS. SCHILLER: Oh no we agree.

MR. VAN NESS: Okay. What is a real world example of 60 dB(A)?

MR. MURELLO: Standing at that property line in the front yard, back yard, whatever along the eastern property line we had sound levels that exceeded 60 to 65 dB(A) almost every time a vehicle passed by on the westbound lane.

MR. VAN NESS: Okay you're talking about a car not a truck, not a tractor trailer? A single car or cars?

MR. MURELLO: A car. When a truck went by the sound level far exceeded 65 dB(A) and I had a ridiculously loud motorcycle that went by at one point which I did factor out because it was not a normal event.

MR. VAN NESS: Did you have an opportunity to see the example of the louvered items they're considering?

MR. MURELLO: No I didn't. The one that was just handed to the Board? No I have not.

MR. VAN NESS: Louvers that are open, when these louvers are open . . . first of all let's talk about the material of the louvers. Would the material of louvers let's say they're aluminum which was my question, I don't have any clue.

MR. MURELLO: Are you talking about ventilation louvers on the building?

MR. VAN NESS: No well they're looking to make them on the roof. So the roof ventilation.

MR. MURELLO: Oh on top of the outdoor runs.

MR. VAN NESS: Right. Is that right the outdoor runs? So can the material be a part of the noise problem or can they amplify the noise if it's aluminum or some type of material, is that possible I don't know the answer to that question maybe you can help us with that.

MR. MURELLO: No.

MR. VAN NESS: Okay.

MR. SELVAGGI: No you can't help him or no it won't.

MR. MURELLO: Yes I can help you I'm sorry I only heard the question I didn't hear the rest. No the material cannot amplify the noise. If it were a solid absorptive material it could further reduce the noise but that's not what we're proposing.

MR. VAN NESS: But we're talking aluminum.

MR. MURELLO: Not unless someone was banging on it.

MR. VAN NESS: Okay then it would be louder.

MR. MURELLO: Yes.

MR. VAN NESS: And then on the last page you can see how they have the louvers angled?

MR. MURELLO: Yes.

MR. VAN NESS: If they're open at an angle can that make a difference on how the sound is projected towards the other property?

MR. MURELLO: It would be partially screening the sound that goes up but not anything significantly more than the actual physical barrier that's created by the building itself. So if anything it could make it slightly quieter than what we predicted but certainly not louder.

MR. VAN NESS: So it won't deflect it to that direction.

MR. MURELLO: No.

MR. WEISS: Does anybody else have any questions? Gene, Chuck, Tiena? Sorry Nelson?

MR. RUSSELL: I'm not so concerned with the number of decibels. A mosquito at night in your room isn't making a whole lot of decibels but it's extremely annoying, dog barks are an annoying sound. If the neighbor has a window air conditioners or that type of thing it helps mask that sound but I can imagine a hot summer night with the windows open it could be annoying.

MS. SCHILLER: Not after 9:00 because they'll be indoors.

MR. RUSSELL: They'll be indoors at 9:00 okay.

MR. NELSEN: The kennel buildings are made of cement block?

MR. SELVAGGI: Yes.

MS. SCHILLER: And I can just tell you that . . . I'm sorry to interject.

MR. MURELLO: No by all means.

MS. SCHILLER: When you come to our kennel the dogs . . . If you're not inside if they don't see you you don't know there's a dog there. It's only when they have stimulus that they start to bark so when we close them in for the night you wouldn't know we had one dog there. They just, they go to sleep, they're quiet and they're quiet until we open up the Guillotine doors the next morning.

MR. FLEISCHNER: Don't say that word.

MR. VAN NESS: So when the police go and shake your doors and rattle your fence and shine their flashlights in there and makes them all nuts so 71 dogs are going crazy for a few minutes is the neighbor going to hear that even though they're inside?

MS. SCHILLER: Who is going to be doing that?

MR. VAN NESS: The police are going to shake your doors.

MR. STASZAK: When they do a property check.

MR. VAN NESS: Yeah.

MS. SCHILLER: Why?

MR. VAN NESS: That's their job.

MS. SCHILLER: They're go in . . .

MR. VAN NESS: They're not going to go in they're going to shake your fences and your doors and make sure everything is locked. It's a security thing.

MS. SCHILLER: If they're just checking the outside perimeter . . .

MR. VAN NESS: If the dogs get startled by something lightning, thunderstorm then it goes away and the dogs all bark inside can they hear it outside?

MR. MURELLO: It's possible.

MS. SCHILLER: You can hear it outside possibly but our dogs I can just tell you from my experience at our kennel you don't hear a sound after 9:00.

MR. VAN NESS: Thank you.

MR. SELVAGGI: There's also . . . I mean Linda testified a while ago but there's also a caretaker that will be onsite in large measure to guard against that correct Linda?

MS. SCHILLER: Well it's for safety.

MR. WEISS: I think just for the record too we should know that Linda's answers were certainly an opinion. You're not testifying as an expert sound person you're just answering that with your expertise as a person involved with the operation. So I just want to make sure you're aware of that.

MS. SCHILLER: Yes I'm not a noise expert no.

MR. WEISS: Okay anybody else from the Planning Board? At this point let me open it to the public, is there anybody from the public has any questions for Mr. Murello as he's testified this evening? Mr. Marx?

MR. MARX: Yes thank you. Mr. Murello have you ever had the occasion to measure 71 dogs at one time?

MR. MURELLO: No.

MR. MARX: The job that you did for the other kennel in the Township was that located within 15 feet of a residence?

MR. MURELLO: I don't recall, I don't think so but I don't recall.

MR. NELSEN: It's not.

MR. MURELLO: It's not? Mr. Nelsen says no so

MR. MARX: Okay the trees, you've been to the site I presume?

MR. MURELLO: Many times.

MR. MARX: The trees that are planted there now along the border?

MR. MURELLO: The eastern property line?

MR. MARX: The eastern property line.

MR. MURELLO: Yes.

MR. MARX: As well as the trees that were proposed to be put every let's see every 10 feet would that have any benefit on sound?

MR. MURELLO: No nothing appreciable.

MR. MARX: Okay it's your testimony you're telling the Board that you can extrapolate from 10 or 20 dogs up to 70 but not arithmetically. That 70 or 71 dogs would not be

MR. MURELLO: Arithmetic.

MR. MARX: Arithmetically four times as much as 15 or whatever.

MR. MURELLO: Correct it's a log rhythmic relationship and to the extent that I don't want to put everyone in the room to sleep it is additive but it's not two plus two equals four per say. It is a logarithmic relationship assuming you have constant noise sources. By doing measurements of multiple dogs and finding out that the sound levels we measured were the same my conclusion is that if we were to continue to double the amount of dogs unless they were all at one point in one location the sound levels would not be increased over what we've testified to.

MR. MARX: Okay if you had 71 dogs and it was midnight and a groundhog should happen to wander through and they all went crazy and started barking that would be a considerable noise level would it not?

MR. MURELLO: If they were all outside at midnight yes probably.

MR. MARX: Even if they were inside.

MR. MURELLO: I doubt it.

MR. MARX: Okay and is it the plan to put these animals in every night even in the summer?

MR. MURELLO: That's my understanding yes.

MR. SELVAGGI: We would in fact just again for the record we would stipulate by 9:00 all of the dogs will be inside and the trap doors, the Guillotine doors will be closed. And just again because there's been some time they're not going to be able to see outside once they're brought into the shelter.

MR. MARX: Okay thank you.

MR. WEISS: Thank you Mr. Marx. Anybody else from the public? Tiena I know you have a couple of questions.

MS. COFONI: Yes Mr. Murello you mentioned doing work for Waggin Tails Kennel?

MR. MURELLO: Yes.

MS. COFONI: Are you still doing work for them are you currently . . .

MR. MURELLO: Engaged by them?

MS. COFONI: Yes.

MR. MURELLO: No.

MS. COFONI: Is the last time you worked for them in the 1990's?

MR. MURELLO: When they did their initial application.

MS. COFONI: And when was that?

MR. MURELLO: I apologize I joined the firm in 1994 and I worked on the project so it's sometime between 1994 and today.

MS. COFONI: Okay. Was it some time ago?

MR. MURELLO: It was some time ago. I did not testify on the application so it was probably between 1994 and 1999 if I had to guess.

MS. COFONI: Okay, okay that's fine. That's all of the questions I had.

MR. WEISS: Fair enough.

MR. NELSEN: I think it was about 1998.

MR. MURELLO: That would make sense.

MR. SELVAGGI: Yeah I wasn't sure if it was 1997 or 1998.

MS. COFONI: The reason that I ask is because one of the Board members owns Waggin Tails, Mr. Nelsen and I wanted to ensure that we do not have a conflict of interest with regard to your witness previously having worked. However if it's more than 12 years ago and you did limited work for him there's no . . . unless Mr. Selvaggi disagrees I don't think there's any conflict of interest with regard to that. Mr. Nelsen do you agree?

MR. NELSEN: Yes.

MR. WEISS: Thank you for asking that question.

MS. COFONI: Mr. Selvaggi?

MR. SELVAGGI: I'll agree yeah.

MS. COFONI: Okay.

MR. SELVAGGI: They didn't recognize one another I guess that's . . .

MR. MURELLO: Sorry Dan it's been awhile.

MR. WEISS: Okay I see no other questions Michael I'll throw it back at you.

MR. SELVAGGI: Okay Mr. Murello can be excused. Then Eric Snyder who is our professional planner will testify as to both the use variance and bulk variance aspects of the property.

MR. WEISS: Michael let me ask you a question when Eric Snyder is done do you any other witnesses?

MR. SELVAGGI: No.

MR. WEISS: And the reason I ask is because I'll keep on rolling if you have others and let's not take a break.

MR. SELVAGGI: No we hope that this matter can be concluded this evening.

MR. WEISS: And I do . . . just to remind . . . when you're done I know Mr. Marx probably wants to put on some of his testimony so we'll take by ear right now let's continue with Mr. Snyder.

MR. SELVAGGI: Yes. Can Mr. Snyder be sworn?

(ERIC SNYDER SWORN IN FOR THE RECORD)

MS. COFONI: If you could state your full name spelling your last name and giving your business address for the record please.

MR. SNYDER: My name is Eric Snyder business address is PO Box 202, Newton, New Jersey and you can spell the last name (S-N-Y-D-E-R).

MS. COFONI: Thank you.

MR. SELVAGGI: Mr. Snyder unless the Chair suggests otherwise . . .

MR. WEISS: Which is exactly right I think we've all seen Mr. Snyder. If anybody has any questions we know of Mr. Snyder's work we'll certainly allow Mr. Snyder to be an expert planner for your application.

MR. SELVAGGI: All right thank you very much. Eric let's start there's two aspects here we need some bulk variance relief and use variance relief. Do you want to start with the use variance do you think that's the more appropriate place?

MR. SNYDER: Yes.

MR. SELVAGGI: And we're proceeding under the D-1 analysis under the Municipal Land Use Law correct?

MR. SNYDER: Correct.

MR. SELVAGGI: You performed an investigation, you participated in every hearing or been here for every hearing correct?

MR. SNYDER: Correct.

MR. SELVAGGI: So you've heard all of the witnesses testimony. What's your expert opinion with regards to the applicant's entitlement to use variance relief for this shelter?

MR. SNYDER: Well I put together a report dated 15, March my conclusion in that report is that this is a very good case for a use variance. I think this application addresses a number of the purposes of zoning as outlined in the Municipal Land Use Law. I'd be happy to go through them.

MR. SELVAGGI: And while you're doing that just real quickly what's the burden that's imposed upon 11th Hour as is the case with any use variance applicant?

MR. WEISS: You know what I think we're all struggling a little bit. I don't know if we have a copy of Eric's report.

MR. SELVAGGI: Okay.

MRS. NATAFALUSY: I didn't get a copy.

MR. WEISS: I'm looking I don't have it either.

MR. SNYDER: I know Chuck got one because I sent it to him.

MR. WEISS: Did you get one Chuck?

MR. MCGROARTY: I got one but I don't know if the town got one.

MR. SNYDER: Yeah but that's because I sent it to him directly. I could just testify without it.

MR. SELVAGGI: You see I was going to submit it and then when we got the . . .

MR. WEISS: You know what might be smarter that you do it that way Eric because none of us have your report to follow so maybe you won't refer to it and just testify.

MR. SELVAGGI: Okay just testify that's fine.

MR. WEISS: Only because that wouldn't be fair even if you had one copy Michael to hand to Catherine without us seeing it. So let's just go forward as Eric suggested.

MR. SNYDER: Well as a D-1 use variance as the Board is aware we have to prove special reasons. We have to prove special reasons because technically speaking, and I use the word advisedly this isn't an inherently beneficial use. But if we go back to the discussion of five or ten minutes ago the difference between a kennel and a shelter we have a facility that rescues animals. Dogs, and I've been pleasantly able to do a lot of research on what dogs offer. Dogs have been human companions for millennia and if we bring it up to today dogs are canine companions. They are therapy companions, they are child socialization companions, they are rescue animals, they are a host of things that are really important to people. There are more dogs than children in the United States. Something on the order, and you probably know better than I do, but something on the order of 60 percent of all the households in the United States have pets of which the majority are dogs. So this facility rescues and animal that over the centuries of human development has become considered almost part of a family and I don't want to wax histrionic about this or push it beyond reasonable bounds but I do think this is a special case. I think this is worthy of being considered if not inherently beneficial then obviously beneficial. I think the benefits to society of an organization like this, and there are any number of them, that goes out and rescues animals, spends a great deal of time making sure that the animals when adopted are adopted by someone or some family that's compatible with them. It provides a very real public service. I've done some work for nursing homes and assisted living facilities and I had some personal experience with the impact that pets, and again I'll go back to dogs, specifically have on elderly patients. The literature talks about the fact that people who are visited by pets, and I won't say it's just dogs because it's dogs and cats and there's even some strange examples out there of people who like snakes, but there's a physiological impact that dogs have being in the room. They lower your blood pressure, they reduce excitability, they improve the degree to which you heal physically and psychologically they're incredible. And I don't have a dog and I'm just really impressed with what I've been able to learn. So you ask you know what the special reasons are and of course you know we talk about the reasons that are in Section 2 adequate light, air and open space. The design of this facility very clearly provides excellent facilities for these animals. Every effort has been made to ensure their comfort, every effort has been made in the design of this facility to make sure this fits with the neighborhood and I'll get to what the neighborhood is in my opinion in a little bit. The site itself is kind of a dilapidated former limousine service, former house indicating that you know residential use which your ordinance and Master Plan discourage along Route 46 really isn't a use that has much in the way of long term viability. This conversion will clean that up, it takes out a nonconforming structure garage in the front of the property to the western side comes out as part of this application. The place gets generally cleaned up so there's very clear aesthetic benefit to this application. Again there's a section in the Land Use Ordinance that talks about to provide space and appropriate locations for uses that conduce to the public health, safety and welfare and the overall benefit of the people of the State of New Jersey. This among others in my opinion very clearly conduces to the health, safety and welfare of the people who will get these dogs as companions. It conduces to the health, safety and welfare and you know again I

don't want to get too anthropomorphic about it but saving these dogs from being killed is just a benefit per say because they're part of the (inaudible) and weft of a community. I think it's important that a community looks at not just the obvious oh I don't know philosophies if you will, but talks about protecting a whole range of people and animals. We talk about humane societies, we talk about the State insuring animal welfare well this kind of activity does that very thing. So in redeveloping this property I think we go a long way towards answering needs and concerns that go well beyond Land Use.

MR. SELVAGGI: So what is . . . Eric in your opinion by showing site suitability that's tied obviously to the purposes of zoning I mean just for the record specifically what in your opinion are the several purposes under the Land Use Law that this application would promote?

MR. SNYDER: Well as I said under Section 2 Subsection B, light, air and open space; C) to ensure the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities to county and the State as a whole one part of the application we talked about was the Highlands. This has received Highlands sign off, the Highlands is a highly restrictive program designed to itself safeguard the health, safety and welfare of the public through making sure that our water supplies are protected. This property complies with that. We're talking redevelopment of a property all be it along a major highway the major thrust of development theory in the State of New Jersey these days is redevelopment rather than Greenfields development. This is consistent with that. I go on to provide sufficient space and appropriate locations which I just discussed and then of course there's the aesthetic piece as well. So those are specific elements in Section or the Municipal Land Use Law that typically are considered to be special reasons.

MR. SELVAGGI: One of the things that I thought was interesting too in Section G which talks about sufficient space and appropriate locations. The fact that this is a shelter there are some permitted uses that aren't in this zone that aren't that different, I don't want to say different but there's a canine or a veterinarian

MR. SNYDER: Well veterinarian offices are permitted in the zone, so too are nightclubs and bowling alleys and retail sales without any particular limitation and so on. So the neighborhood, and you know we kind of get to what's there today as opposed to the property itself so I took a couple of pictures a number of them of the property but also of the neighborhood itself, three of them actually. I have a number of sets of them so I'm happy to provide copies.

MR. WEISS: We'll bring that into evidence as A-8 and A-8 again is photographs of Mr. Snyder would you say you took these photographs and when did you take them?

MR. SNYDER: I took these in February.

MR. WEISS: It's a set of three photographs.

MR. SELVAGGI: And what we'll do is maybe we'll call this A-81 and what is A-81 we're looking at Mr. Snyder?

MR. SNYDER: This is a picture standing on the east property line looking southeast across Route 46 at the KIA automobile dealership.

MR. SELVAGGI: Okay and then we'll call this one A-8(2) and what are we looking at there?

MR. SNYDER: This is a photograph taken looking directly across the street at another car dealership

MRS. NATAFALUSY: Can't we call them 8, 9, 10?

MS. COFONI: Yeah I thought they were stapled together which is why we're doing that?

MR. SELVAGGI: No so A-8 will be the photograph of the KIA dealership, A-9 is the photograph of Callaremi.

MS. SNYDER: Callaremi yeah.

MR. SELVAGGI: And then A-10?

MR. SNYDER: A-10 is looking west up Route 46 again with more car dealerships and other significant retail.

MR. SELVAGGI: And what was the purpose for taking . . . I mean you took a bunch of photographs but kind of focusing in on these three in particular.

MR. SNYDER: Well what I tried to show with these pictures is what the neighborhood is like today. This is . . . you know our concern is how we affect the neighborhood because one of the issues that we have to address with any variance is the negative impact on the neighborhood and zone plan. Well the zone plan as outlined in your Master Plan and ordinance is highway retail, significant business activity, 24/7 lighting, activities coming and going, bars and nightclubs and what you have are all uses which have significant noise attached to them, have significant activity attached to them. And then we have Route 46 which according to NJDOT has an annual traffic flow of roughly 24,000 cars a day including truck traffic and as heard motorcycle traffic as well. This is a four lane highway it's busy 24 hours a day and this use this shelter for all that it has the potential to create noise has as you heard from the testimony much lower noise levels than are typically caused by the highway and certainly there weren't be typically caused by traffic parking next door coming and going on a regular basis through the evening hours and if it's a nightclub I'm assuming that . . . I don't know what Mt. Olive does but 2:00 in the morning. This is an excellent location for this kind of use because it is not a low noise neighborhood it's a neighborhood with a high level of activity all of the time, and this has a lesser level of activity as you've heard through the testimony than is typical of permitted uses in the zone. It is akin to uses that are permitted i.e. the veterinary offices tend to keep animals overnight they don't keep 70 animals overnight and I don't suggest that but they keep animals overnight who are under serious stress. They've been operated on, they're waiting to be operating on, it's not unreasonable to expect from the town's documents that noise is expected from permitted uses in the zone and would be expected from one of those uses located on this property. Because of that this use where every care has been taken to ensure that noise is much less of an issue this property is very well suited to this use. And in fact to use the words required, it is particularly suited to this use. There is nothing in the Master Plan or reexamination statements that I have found that suggests that shelters or kennels in any part of Mt. Olive are a problem and should not be permitted. As a matter of fact as I understand it kennels are permitted in residential zones.

MR. SELVAGGI: To the best of your knowledge are residential uses a permitted use in the C-2 zone?

MR. SNYDER: No. No the zone plan for the C-2 zone does not include residential use. The uses that are our neighbors are residential uses preexisting nonconforming uses. They have the absolute right to continue being such but are not uses that the town contemplates as being appropriate in that area. Most likely because it's a difficult neighborhood to have peaceful enjoyment of your property, with a major highway, car dealerships and everything else going on around you. Behind the property on the other side of Sand hill are two major industrial parks, some are under construction but nonetheless that's the neighborhood.

MR. SELVAGGI: Also you have the cell tower?

MR. SNYDER: And the cell tower right in the back yard sure.

MR. SELVAGGI: So in your opinion both the applicant both on the positive and the negative criteria in your opinion satisfies the standards for use variance relief.

MR. SNYDER: Yes it does.

MR. SELVAGGI: Now what about Mr. Glasson had pointed out bulk variance relief that was necessary. Do you have an opinion as to the applicant's entitlement to the bulk variance relief?

MR. SNYDER: Well many of the bulk variances that we talk about are existing conditions. Setbacks and location of parking with respect to the street and so on, the distance from the side line and so forth is what it is and the continuation of that has no significant effect. For example the addition to the rear of the former residence will fall partly in the front yard setback from Route 46. What that means is that the whole house is in the front yard setback and we're adding to the rear of it and that's still in the front yard setback. Now back when Route 46 was a fairly sleepy country road having houses fairly close up made a whole lot of sense. Certainly as a very busy road having significant setbacks makes a lot of sense except in my opinion for business. Businesses on major highways because of, and I may have talked about this before when I talked about Mike's project down the street, he had this cone

of vision, if your moving along at 55 miles an hour your cone of vision is very tight and so if I have a business which is way back off the street people won't see it if they're driving safely. That's probably why all of the car dealerships want their product as close to the highway as possible because that catches your eye. From a business standpoint on a high speed highway you don't want that setback to get you away from traffic you want traffic to be intimately aware of where you are and what you're selling. That's why we have all of the issues with regard to signage and what have you because people want you to know and they want it right in your face. So that's an existing condition. The side yard setbacks are existing conditions, we're extending the side yard setback condition because we're running the one kennel back off the side of the house. The same testimony and the same issues that we discussed with regard to the use variance the efforts to ensure that noise doesn't travel significantly over the eastern property or in fact over the westerly property line are Jermaine to the discussion of side yard setback. Side yard setbacks as you know are about light, air and open space, there are about separation of buildings, and they're also about separation of uses. The efforts that our engineer and our architect have made to almost soundproof this operation to support our request for a use variance are the same efforts that leave me the conclusion that there will be no substantial negative impact on the neighborhood and zone plan from the bulk variances that we're asking for.

MR. SELVAGGI: One point I wanted to just return to on the use variance aspect. I mean the care taker aspect, what is your opinion on that I mean because we are introducing a residential component but you would agree that that's an intricate part of the shelter use itself correct?

MR. SNYDER: I think that the testimony that has been given earlier that constant supervision, constant attention and care it's a big piece of this operation and so yes having somebody on site all of the time is a critical piece of this operation and yes it's a separate D-1 variance because it's a separate use but it's all one.

MR. SELVAGGI: Well let me ask you because Mr. McGroarty in his report says testimony should address how the introduction of a residential unit in a commercial zone district is not inconsistent with the Township's planning policies and regulations. What would you say in response to that?

MR. SNYDER: If the Board sees fit to grant this use variance one of the things I would expect them to consider would be the level of supervision of the operation. If the Board accepts our arguments that this is a use which is a clear public benefit and ought to be allowed then that secondary residential use comes as part of the packet. The town's interests in this as I see them are that we revitalize Route 46, that we bring in uses that are consistent with the overall thrusts of the Township's planning efforts, and that whatever uses go in along there are operated properly. Now earlier you talked about the fact that as a normal site plan for a permitted use you don't have a whole lot of control over how an operation is run because with a site plan if I meet the standards then I'm entitled to an approval. Under use variance it's very different and because of that I think that this is an extremely beneficial use and that the supervision is a critical part of it.

MR. SELVAGGI: What do you think, I mean first of all would you agree that obviously there's a connection that if there's no shelter there can be no residential use correct?

MR. SNYDER: Oh that the little one goes away if you don't give them the shelter correct.

MR. SELVAGGI: All right and in many respects the way this proposal has been introduced or testified to the residential component really is part and parcel of the overall effective operation that we're trying to achieve here?

MR. SNYDER: its ancillary I don't regard it as a standalone component.

MR. SELVAGGI: And having the residential unit there in many ways offsets perhaps or helps address the potential negative consequences.

MR. SNYDER: Well yes and then let me point out too that . . . and I don't know veterinary hospitals per say and it's not just a vets office it's a veterinary hospital that's permitted in the zone. Now I would expect that there would be times, maybe a great number of times when someone would stay there. When someone would spend a significant amount of time resident in such a hospital in such a facility to care for the animals. I mean I wouldn't expect that if animals had been operated on or were under some kind of therapeutic care that you would simply lock the door at 5:00 and go home. I think that's something that has to have been contemplated when the town decided that this was a permitted use.

MR. WEISS: But Eric wouldn't you say that's also possible by just having three shifts of employees rather than a residence? I think in fairness to that example.

MR. SNYDER: I'll grant you that Mr. Chairman but is there any substantive difference than between having three shifts of people, i.e. people resident in the facility 24/7 or an apartment?

MR. WEISS: I just think there's enough of a difference that I don't know if I agree with that last comment but we're looking at it two different ways.

MR. SELVAGGI: And obviously though

MR. SNYDER: Let me mention one more thing, motels and hotels are permitted so residential use of a kind is already permitted.

MR. WEISS: Your point is well made.

MR. SNYDER: Thank you.

MR. SELVAGGI: And the fact of the matter is in order to achieve the type of operational integrity that we're hoping for you really need somebody there in order to do that. I have nothing further for Mr. Snyder.

MR. WEISS: Maybe before we open it up for questions Chuck I'm looking at your report and on page four you listed approximately 8 questions I just wanted to make sure your satisfied that throughout the course of this testimony by Mr. Snyder and testimony prior to that that your questions have been answered?

MR. MCGROARTY: Well if I may then I'll do that Mr. Chairman I just want to note I don't think Mr. Snyder I don't think kennels are permitted in residential zones in Mt. Olive I just went back and looked. I think you had

MR. SNYDER: Maybe that was a miscommunication between the two of us then.

MR. SELVAGGI: They exist in residential zones.

MRS. NATAFALUSY: They do.

MR. MCGROARTY: They do, they do but they're not permitted. I mean so they exist by virtue of preexisting or use variances. Mr. Chairman

MR. SNYDER: And if I might break in that says good things about kennels because if the Reexamination Statement had found that there were problems with kennels presumably it would have said something in residential zones.

MR. MCGROARTY: I suppose so that's a fair point. Just for the variances on the bulk variances just to be clear the as I understand the plans anyway and again just so we have a clear record of what we're looking at. The addition of the kennel to the front building the principal building as Mr. Snyder mentioned the house or whatever it looks like a house I guess it was a house at one time, that will encroach into the front yard setback by virtue of the kennels being connected to that. It will likewise encroach in the side yard setback to the east again being connected to that building. And then the kennels that are attached to the barn which is in the back of the property that will also encroach into the side yard setback.

MR. SNYDER: That's right.

MR. MCGROARTY: Don't know if we said that but just to be sure we cover that.

MS. COFONI: Excuse me Chuck I'm sorry I may have missed it and lot width and lot area are also among the bulk?

MR. MCGROARTY: That's correct. The lot width and the lot area I don't know if it was addressed but it's a nonconforming lot it's 1.41 acres in a 2 acre zone I don't know if they investigated any potential to acquire property but we know properties on either side are developed. I mean I didn't

make an issue of it I knew that the properties on either side are developed and their lot runs from Route 46 back to Sand Shore Road it's a through lot.

MS. COFONI: Right there's no opportunity.

MR. MCGROARTY: Well I don't know if there is opportunity but none appears obvious to me anyway so I didn't so that's an existing

MR. SELVAGGI: That's also in the Preservation Area of the Highlands which would have you know creates throws this to be a major Highlands Development so you know

MR. MCGROARTY: Yeah but apart from that I don't know short of subdivision up on the adjacent lots I don't know if you can create additional lot area. And lot width is existing it's really again unless you acquire additional property you can't change it. So Mr. Chairman you asked about the comments, I think they were answered in some measure by other testimony it's been offered including what Mr. Glasson offered last time. It did . . . at some point we come back to it the question about the sign it wasn't a concern of mine it was just a suggestion about moving the sign I think Mr. Glasson said he was going to take a look at that. But let me if I can as long as I have the floor at the moment, if the Board as you consider this I am . . . I think there would be . . . that it's important to consider some very specific conditions if you are going to approve this. Because approving a use variance looking then at what kind of conditions that would attach, back to the point you had made earlier Mr. Chairman what if things change and would the future owners be bound by the same conditions and the like. And one in particular would be in my opinion the residential unit. That if the shelter ceases to operate the unit should be vacated. The problem is it's easy to say that here this evening, in the real world it's not easy to evict somebody. Now is it going to be a major harm to the town to have a residential unit there? Probably not I mean but that's in the eye of the beholder. But if the residential unit is ancillary to the shelter as Mr. Snyder said I mean in a way it is and when the shelter goes somehow there has to be a clear agreement that the residential unit goes as well unless the Board is inclined to leave it in place. I don't think the testimony would support leaving it in place because the testimony this evening is that it's subservient to the shelter. And as I said logistically it's not that easy to evict somebody once he or she is in place.

MS. COFONI: Chuck if I may just before you go on? I agree and I actually had that as a condition and I agree it's not easy to evict somebody but it would obviously be in the best interest of the owner at the time because otherwise they'd have a running zoning violation.

MR. MCGROARTY: Okay and I'm not . . .

MS. COFONI: So that would certainly be . . .

MR. MCGROARTY: Not that it can't be done I just want to say that it be crystal clear and again . . .

MR. SNYDER: And my testimony was very clear that that is an ancillary use all be it a freestanding D-1 and I would expect that sure.

MR. MCGROARTY: Right and you did say that I agree. And then Mr. Chairman the other comments that I had had to do with the hours of operation, control of light and the like and I'm pretty sure that that had been addressed I know Jim Glasson had this in an operations report. And we've heard obviously from the lady, I'm sorry I forgot her name . . .

MS. SCHILLER: Linda.

MR. MCGROARTY: Linda who is in charge there about the hours of operation. When I say operation in terms of when the dogs

MR. WEISS: And Chuck just to add to your concern going back to Linda's testimony from the 16th of February, and correct us if I'm wrong, you did say that you would open by 8:00 a.m. and that you'd shut down by 9:00 p.m. and you were consistent this evening that you said 9:00 p.m. Are we still on track 8:00 a.m. open?

MS. SCHILLER: Yes and also if the weather was . . . if it was extremely cold or extremely hot they would be in at an earlier time. So it would never be later it might be earlier.

MR. WEISS: That's fine as we set the parameters to answer item, I lost it but one of Chuck's items that question the hours of operation. It was clearly testified by you on the 16th of February that it would be 8:00 a.m. to 9:00 p.m.

MS. COFONI: If I may on that Mr. Chairman. When we're talking about hours of operation that 8:00 to 9:00 p.m. you're talking about letting the dogs outside. Not necessarily people coming there to do work or . . . So it's not necessarily an operation of the business per say it's more when the dogs are being let outside.

MS. SCHILLER: Yes. It's the taking care of in the morning cleaning, feeding and then as we said before we're not open to the public so there would be appointments during the day for people to come view the dogs. But it's not an open door so we don't . . .

MS. COFONI: Well let me phrase it this way. Could you have volunteers come at 7:00 a.m. to take care of the dogs?

MR. SELVAGGI: The dogs will not be outside.

MS. COFONI: No they'd be inside but the volunteer could come and do things inside.

MR. SELVAGGI: Well there would be a caretaker could be down there at 6:00.

MS. COFONI: Right.

MS. SCHILLER: Right.

MS. COFONI: And you could also perhaps have someone who wants to make an appointment at 7:00 to come see a dog. Again the dog would be inside but you'd be . . .

MS. SCHILLER: Yes there's a possibility that somebody might be there doing food preparation, doing laundry, getting ready for the day.

MS. COFONI: Right.

MS. SCHILLER: But the dogs will not be let out until 8:00 a.m.

MS. COFONI: I just wanted to make that clarification because this is kind of a unique situation where it's not necessarily that there's going to be no activity on the site outside of the hours of operation it's more of the location of the dogs.

MR. SELVAGGI: Yeah I think perhaps the better condition is there will be no dogs outside the kennel/shelter before 8:00 a.m. or after 9:00 p.m.

MS. COFONI: That's what I have.

MR. SELVAGGI: I think that makes more sense.

MR. MCGROARTY: And on my first question about the appointments I wasn't sure we got an answer for that. We perhaps did at the prior hearing but I can't locate my notes.

MS. SCHILLER: I would say we probably would not do appointments before 9:00, 10:00 because we need to clean them and feed them before we even let anybody come in.

MR. SELVAGGI: So what would you . . . and how late would you go with an appointment?

MS. SCHILLER: You know 8:30, 9:00. You know we're going to be shutting down at 9:00 so we'd have to do the last appointment at 8:30.

MR. WEISS: Shall we make that a condition as well?

MR. SELVAGGI: No appointments before 9:00 a.m. or after 8:30 p.m.

MS. COFONI: We could say after 9:00 p.m.

MR. VAN NESS: Why do we need that?

MR. MCGROARTY: I don't know if you need it. I don't know if you need a condition on that . . . well the reason why I asked is because it wasn't clear to me initially about how appointments worked here. Again if I recall the testimony correctly people just don't show up you have to have an appointment to visit this facility.

MR. VAN NESS: Right.

MR. MCGROARTY: I'm not . . . Presumably if I drove in there by mistake thinking I could just walk in you'll tell me to come back, to make an appointment.

MS. SCHILLER: We'd tell you to fill out an application and once you're approved we would set up an appointment for you.

MR. VAN NESS: Right I mean that's my question is that we already have that the dogs can't go out so I don't care if people are going in and out and it's not going to be that many according to the testimony.

MR. WEISS: But maybe we should if there's a stimulus added at 7:00 in the morning then it kind of changes the whole noise thing that we're concerned about. So it kind of limits when they can . . .

MR. STASZAK: Why don't we say the hours of appointments will be the hours that the dogs could be outside, it could be (inaudible) if we allowed the dogs outside then why not allow appointments during those times?

MR. FLEISCHNER: Because you have to be careful with the evening because what happens if somebody is coming and they caught in traffic? There's something and they're supposed to be there at 8:30 and all of a sudden it's ten to nine are they going to tell them well excuse me turn around and go back because Mt. Olive is going to come and get you. I mean that's a little kind of being ridiculous I think . . .

MR. MCGROARTY: I wasn't suggesting a condition I just asked a question when the appointments were going to be.

MR. VAN NESS: Right and I'm questioning why does it need to be conditioned and I'm not challenging Chuck's question I'm challenging the concept of why do we have to have a condition on appointments when it's already been testified to.

MR. WEISS: Right the dogs are out at 8:00 they can conduct business at 8:00. The dogs are in at 9:00 they conduct business up until 9:00.

MS. COFONI: So do you want a condition regarding the appointments or not? Because I don't have it written as a condition now I just have it as an answer to Chuck's question.

MR. WEISS: Well I think the condition kind of works itself in there if the dogs can't go outside before 8:00 and certainly someone is not going to be with them to work with them and visit with them at 7:00.

MR. MCGROARTY: Mr. Chairman let me ask if I may.

MR. WEISS: Sure.

MR. MCGROARTY: To, is it Linda? When do you lock up at night and go home? Everybody goes home did you say 9:00 or thereabouts?

MS. SCHILLER: Yes. Well we have volunteers who may come during the day to help the paid staff but we shut down at 9:00.

MR. MCGROARTY: So nobody will be there after 9:00 for an appointment.

MS. SCHILLER: No, no.

MR. MCGROARTY: Unless someone is there and . . . very unusual circumstances . . .

MS. SCHILLER: It would have to be something very usual.

MR. MCGROARTY: So after 9:00 or all intensive purposes there's not going to be anymore . . .

MS. SCHILLER: We won't have people coming in to do adoptions after 9:00.

MR. MCGROARTY: So the place will be quiet after 9:00 in terms of people coming in and out and that sort of thing.

MS. SCHILLER: Right.

MR. MCGROARTY: And in the morning you open?

MS. SCHILLER: At 8:00.

MR. MCGROARTY: At 8:00. Is that seven days a week by the way?

MS. SCHILLER: Yes.

MR. MCGROARTY: Do you have appointments on Saturday and Sundays as well?

MS. SCHILLER: Yes. That's actually during the week its slow most people are working and our greatest activity is the weekends.

MR. WEISS: I don't see any other comments from the Planning Board so I think we seem to be okay with nothing before 8:00 a.m. or after 9:00 p.m. Okay?

MR. NELSEN: Mr. Chair?

MR. WEISS: Yes sir.

MR. NELSEN: I'm going to add something to the hours there. Depending on the sensitivity of the neighbors to sound and noise I think 9:00 is late to subject the van that close to the property. I think you can run the operation without having the dogs outside that late. It's up to you run it; I don't think it's necessary to be there that late. My comment on the fencing was to help you because I don't want to see anybody get loose and I know dogs can do anything given the opportunity. So I just want to say the hours I think are a bit long and as I say depending on the sensitivity it might be an issue.

MS. SCHILLER: Most of them are well they're going in after dinner, they go out to relieve them themselves and then they are usually on their own come in at some point. Not every dog is going to be out until 9:00. And of course if the weather is bad, cold, too hot they're inside in the air conditioning and the heat.

MR. WEISS: Okay. Chuck and I think that might have addressed . . .

MR. MCGROARTY: Yes it did thank you.

MR. WEISS: With that being said we've heard from Mr. Snyder, we've heard from McGroarty, does anybody on the Planning Board have any questions? So what I'll do at this point let me open it to the public if anybody has any questions for Mr. Snyder on the testimony that he delivered this evening. Mr. Marx do you have anything?

MR. MARX: Mr. Snyder in your discussion of special reasons you brought up that this . . the question of whether this is an inherently beneficial and your conclusion was that it was.

MR. SNYDER: No with all respect my conclusion is that although technically it's not it almost rises to that level and so my testimony was based on special reasons so that we in my opinion have answered the first leg of the use variance requirements as though it were a stand along commercial use.

MR. MARX: All right I don't think anybody would argue with you about that. The question is the location, is this the best location in town or is there some place with acres available and the more

agricultural roomy area where they could buy a couple of acres and do this without being jammed in 15 feet from a house on one side and with a house on the other side.

MR. SNYDER: Well as I said I think that you know in large part because of some of the noise concerns and with all respect to the concern for the neighbor they picked a place where noise is much less of an issue than it would be out in a more pastoral setting if you will where noises are not the norm. And so for that reason it was my testimony that I find the site to be particularly suitable to the use.

MR. MARX: Do you think a car dealer at the 9:00 at night would make as much noise as this operation of 71 dogs?

MR. SNYDER: I think the testimony from our noise expert indicated that the highway makes more noise at almost any time and with 24,000 vehicles plus a day and that's not necessarily peak that's average. With the occasional motorcycle and truck I think it's an environmental where the town's Codes suggests that a high level of activity, a high level of lighting and noise tolerance are to be expected given the permitted uses in the zone.

MR. MARX: And if a preexisting use has been occupied as a residence for 42 years by the same person that's of no concern?

MR. SNYDER: Oh I didn't say it's of no concern and certainly all of the care that's gone into this application to deal with the noise issues, to deal with the concerns of our eastern neighbor make it very clear that we find that to be a concern and I suggest that it is of concern but I think that we've answered that concern.

MR. MARX: Talking about the bulk variances the side yard is there any reason why the eastern side of that new building can't be moved further in towards the center rather than having it right against the side line practically?

MR. WEISS: Mr. Marx that might be a better question for the engineer.

MR. SNYDER: Engineer yeah I don't have that answer.

MR. SELVAGGI: We don't have a problem having Jim answer it.

MR. FLEISCHNER: In the past we did answer it. In my notes it was there, it was Highlands.

MR. MARX: He said it was okay to extend the nonconforming use straight back from the house but where does it have to be?

MR. SNYDER: What I said was the impact of that has been addressed in the same way that we addressed the impact of the principal part of this application the nonconforming use.

MRS. NATAFALUSY: Mr. Glasson can you . . .

MR. GLASSON: The first restriction that we were under before we came to the town or did anything was the Highlands Act. The Highlands Act very clearly states that coverage must be put back where coverage is. So we did not have the opportunity to even look at taking a lot of the building and shifting it to a completely different spot so we started the whole design out knowing where we had to put our coverage in order to be able to get approval under the Highlands Act and then we designed our building such that we had no open areas along that whole side face the building opposite that side but we were severely restricted by where we could put our coverage.

MR. MARX: We had the existing house in the front but couldn't you start the new addition further in from the easterly side line.

MR. GLASSON: Behind the new . . . the existing house in the front is a grass area that has no coverage.

MR. MARX: Right.

MR. GLASSON: So under the Highlands you could not put the coverage there.

MR. MARX: And there was coverage where the new building is the new kennel?

MR. GLASSON: Yes there's a driveway there and there is a pool there and there also is a patio there and they were all accepted by the Highlands as coverage so once we knew where we had to kind of put our coverage we made our design then work for our sound barrier by placing our wall opposite having our kennels in the opposite direction. But we were very much regulated by the Highlands.

MR. MARX: Thank you. I have no further questions thank you.

MR. WEISS: Thank you Mr. Marx. Anybody else from the public? Seeing none, Michael I throw it back over to you.

MR. SELVAGGI: At this point I mean short of whatever information Mr. Marx wants to provide we'll rest I'll certainly sum up if the Board wants to hear that at the appropriate time.

MR. WEISS: Okay let's do that. Clear the table if you would Mr. Selvaggi. Mr. Marx if you'd like we'll give you the table and you can present your case.

MR. MARX: All right thank you. Mr. Gladdish be sworn please?

(ROBERT GLADDISH SWORN IN FOR THE RECORD)

MS. COFONI: If you could state your full name spelling your last name and giving your address for the record please.

MR. GLADDISH: Robert Gladdish (G-L-A-D-D-I-S-H) 482 Route 46, Hackettstown, New Jersey 07840.

MR. MARX: Mr. Gladdish are you the resident along the easterly side of the subject property?

MR. GLADDISH: Yes I am.

MR. MARX: And how many years have you lived there as your residence?

MR. GLADDISH: 42 years.

MR. MARX: And how far is the westerly edge of your property from the property line?

MR. GLADDISH: 15 feet.

MR. MARX: 15 feet and I have two pictures I'm going to ask the secretary to mark can you identify these, did you take these?

MR. GLADDISH: Yeah that's my house with the view of what I look at now at their house.

MR. MARX: When did you take these?

MR. GLADDISH: A couple of weeks ago.

MR. WEISS: We're going to need to mark those.

MRS. NATAFALUSY: O-1 and O-2?

MS. COFONI: Yes.

MRS. NATAFALUSY: Okay so O-1 is the photograph of the house and O-2 is . . .

MR. GLADDISH: The property in question.

MRS. NATAFALUSY: Picture from his house to the property.

MS. COFONI: So O-1 is the picture of Mr. Gladdish's house?

MRS. NATAFALUSY: Yes.

MR. WEISS: O-2 is the subject property.

MRS. NATAFALUSY: Right.

MR. MARX: Mr. Gladdish let me first show you what has been marked O-1.

MR. GLADDISH: That's my house.

MR. MARX: Okay and where are you standing taking that picture?

MR. GLADDISH: I was standing right on the property next door to me.

MR. MARX: Okay you were standing on the subject property?

MR. GLADDISH: Right.

MR. MARX: Looking at your house.

MR. GLADDISH: Looking at my house.

MR. WEISS: You were facing east is that correct?

MR. GLADDISH: Facing east sorry.

MR. MARX: Okay and let me show you O-2, what is that?

MR. GLADDISH: That's from my . . . the side of my house taking a picture it was the west side I guess.

MR. MARX: Now is this your driveway here?

MR. GLADDISH: That's my driveway right there.

MR. MARX: And these trees?

MR. GLADDISH: Those are the trees that they put in years ago they're dying and a few of them died already and there's a lot of empty space in between.

MR. MARX: And this big tree is on your property.

MR. GLADDISH: That's my property right.

MR. MARX: And this is the building which is going to be converted . . .

MR. GLADDISH: That's where they're going to add on to it.

MR. MARX: Add on to this and the apartment upstairs correct?

MR. GLADDISH: Right.

MR. MARX: Mr. Gladdish has this proposal to put this operation next to you caused you any anxiety or physical problems?

MR. GLADDISH: It put me under a lot of stress since I got that letter. The first plans I looked at when I came here the week I got the letter it was for a kennel, 40 kennels it was like a cross or something the plans I looked at. Then when I came the day of the meeting there was a whole together different . . . I saw this addition it was ridiculous and then they told me that for some reason being a kennel you only could have 40 kennels or something and so . . . but rescue you're allowed as many dogs as you want supposedly. So they changed the plans that I looked at.

MR. MARX: So from your house you're looking at the back of the kennel?

MR. GLADDISH: I sit on that side of the house so it's less than 50 feet from my house where that kennel is going to be.

MR. MARX: 15 feet.

MR. GLADDISH: The property line but from my house it's less than 50 feet and I sit on that side, I cook on that side I can't imagine being outside, I can't imagine being outside during the day time without noise. I don't care if it's a loud noise or it's just a noise it's just going to be aggravating and irritating. My blood pressure is sky high because of this nonsense, I'm on sleeping pills because of this, this has just made me a whole wreck this whole thing. I can't picture . . . it's just too hard to believe everybody I talk to they tell me you're never going to be able to sleep, you're not going to be able to do this, you not going to be able to open your windows, you're going to hear a constant noises, odors, and I mean it just takes its toll on me. It's taking its toll on me it's just driving me crazy.

MR. MARX: Do you have any opinion or feeling about what this will do to the value of your house?

MR. SELVAGGI: Objection he's not a real estate appraiser.

MR. MARX: Withdrawn. All right do you have anything else you'd like to tell the Board?

MR. GLADDISH: That I had to increase my blood pressure medicine, the doctor had to change my blood pressure medicine because of this and everything else. It's just health wise this is going to destroy me health wise if this goes through and that's not lying. And I don't think anybody on the Board if you were going through what I was going through right now would appreciate it either. I can see business, commercial property but I can't see something that's going to hurt the neighbor and in some way or another and as I see it it's going to hurt me badly. I love dogs but . . .

MR. MARX: I have no further questions thank you.

MR. WEISS: Anybody from the Planning Board? Scott?

MR. VAN NESS: Did you take the opportunity to visit a kennel or their other location?

MR. GLADDISH: I did visit a kennel on Route 10, 11th Hour.

MR. VAN NESS: And what was your opinion of what you heard, saw there?

MR. GLADDISH: I wasn't too happy about it the dogs are barking, half of the kennels were empty.

MR. VAN NESS: Now did

MR. GLADDISH: And that was loud.

MR. VAN NESS: Did that kennel have any of the soundproofing elements that they're proposing?

MR. GLADDISH: No it's all open down there.

MR. VAN NESS: It's all open down there.

MR. GLADDISH: (inaudible) they have the cages this way and then they have them they're separated.

MR. VAN NESS: Right but my question is if they didn't have any solid walls or building that the dogs (inaudible).

MR. GLADDISH: No.

MR. VAN NESS: So this really is not a true comparison then.

MR. MARX: I think there's all woods around that too there aren't houses on either side.

MR. VAN NESS: Right it's obviously a different . . . I've never been there so I don't know it sounds like a completely different location.

MR. MARX: No it's totally isolated from any other buildings.

MR. VAN NESS: Have you visited any other kennels that were . . . or shelters?

MR. GLADDISH: All I know is if you check one dog in a neighborhood you could hear it a block up the street. Now you tell me 15 feet from my house I don't care if it's a 6 foot wall or 8 foot wall you take 71 dogs barking it's going to be noisy. I don't care what they say about its going to be less noise. My house is back from the highway like 70 to 80 feet and it's peaceful it's not noisy. I can sit in my house and I don't hear nothing. But if this kennel goes in that close with those dogs in the daytime I won't be able to go outside. And I just retired too also this is the golden years you know, the happy years.

MR. WEISS: Anybody else on the Planning Board have a question for Mr. Gladdish?

MR. MCGROARTY: Mr. Gladdish you realize that the zone where your house is located there could be a 24 hour store next door to you or a gas station?

MR. GLADDISH: I accept that more than I would of this. Because of the odors they would have to keep that place clean three or four times a day they would have to keep after that place.

MR. MCGROARTY: And I was just going to say on the odors did you hear the testimony that was offered at a previous meeting about how the site would be maintained?

MR. GLADDISH: About the cleaning and all? Yes but that's only once a day. You take 71 dogs, forget it.

MR. WEISS: Any questions from the Planning Board? Seeing none let me open it to the public. Does anybody have any questions for Mr. Gladdish based on his testimony.

MR. SELVAGGI: No questions.

MR. WEISS: Thank you Mr. Selvaggi. Seeing none I'll close it to the public. Mr. Marx?

MR. MARX: Thank you okay that's it for our testimony thank you.

MR. WEISS: Okay with the testimony completed I guess what I'll do right now Mr. Selvaggi I'll give you a few minutes if you'd like to summarize, give a summation to the Planning Board. And Mr. Marx when he done (inaudible) the same.

MR. SELVAGGI: Well first of all I'd like to thank the Board for its patience; I would also like to thank the objector Mr. Marx for the courtesy and the decorum in which they conducted themselves. That's not always the case when it comes to objectors. We're here for a use variance, I think with respect to the shelter and the adjacent or accessory residential component to it. The testimony that Mr. Snyder offered kind of synthesized all of the information that had been presented at February's meeting, in March and then this evening. We do need to show satisfaction of the positive and the negative criteria and Mr. Snyder ably pointed out the purposes of zoning that would be demonstrated and in so showing those purposes of zoning we're able to show that the property is particularly suited. Now honestly that's not done the vacuum and I think what makes this property suitable is the architectural features and the design that were put into or considered in designing this so as to minimize the impact to Mr. Gladdish. I mean we're not stupid we knew going in that this was going to raise some concerns with Mr. Gladdish and obviously they have and that wasn't intentional. But the testimony that Mr. Murello had offered tonight you know an acoustical expert shows that despite what might be Mr. Gladdish's kind of basic instinct, God we're going to be this close to dogs and we're going to hear them barking, when you factor in there's concrete walls, there's no windows, there's no doors on that side you know if there was any noise it would be directed in a westerly fashion. But more importantly maybe Mr. Gladdish has just grown accustomed to the ambient noise in and around Route 46. You know the testimony and the evidence that Mr. Murello included in his report would suggest that the ambient noise that's there on Route 46 would certainly exceed the levels from the dogs. Moreover as the discussion we had a few moments ago 11th Hour does want to be respectful to Mr. Gladdish and anybody else in that area so the hours are designed for outdoor . . . the outdoor dog hours to be particularly respectful of his concerns. I think you know we've gone out of our way and offered a very credible and I would submit at this point uncontroverted evidence that the design, the materials, the

layout are all done in a way so that despite what Mr. Gladdish's concerns are they should prove to be unfounded if we build as we've suggested. Also too, related to that this accessory residential unit also further enhances the possibility of securing the peace and quiet for Mr. Gladdish in that neighborhood. You know moreover too and Mr. Gladdish has been there for 42 years and look God Bless Him I mean it's hard to find anybody that's been in any place for 42 years but you know the fact of the matter is is the zone in that area, he's a preexisting nonconforming use. And you know admittedly there are other permitted uses that could perhaps have an even more dramatic impact on his life that would not have to incorporate a lot of the safeguards that we've tried to do here. You know we can think of headlights, slamming doors you know some people would even submit a House of Worship can sometimes be a nuisance. So I think the applicant has, and again you know it's kind of in their nature I mean people that embark on this mission of rescuing dogs and going through the efforts that they do to match up a particular dog with a particular person are not . . . it's not a crowd that's going to cavalierly allow you know dogs to just bark indiscriminately and you know generally try to create a nuisance for those around them. So you know when we look at them we look at the negative criteria and what we've done you know we are in some respect if you put a price tag on these dogs and sold them like any commodity you could almost make the argument that it's a retail use that would be a permitted use in this zone. So you know we're not that far off from what the zone plan and your zoning ordinances are contemplating. I mean a lot of the features are consistent with a shelter or consistent with a lot of other uses you know people visiting you know a retail type component. So I would submit again you know as Mr. Snyder's uncontroverted testimony would suggest we satisfied both the positive and the negative criteria. And you as a Board have to weigh that, you have to look at the strength of the evidence submitted and while Mr. Gladdish certainly has an emotional appeal you know with all due respect to him you know there wasn't anything, we didn't hear anything that said Mr. Murello was wrong, that you know Mr. Glasson was wrong, that the materials that were being incorporated in the design by Mr. Byrne won't work and in that regard we think again the positive and negative criteria has been satisfied. But with all due respect we appreciate Mr. Gladdish's concerns and we will certainly work with him. I mean with the fence I spoke to Linda I mean you know whatever we can do to give him a sense of comfort and you know try to minimize what he perceives to be an impact a negative impact you know I think the applicant is more than prepared to do so. Again thank you very much and again I do have to thank, publicly thank Mr. Marx I mean it was a real pleasure dealing with you.

MR. WEISS: Thank you Mr. Selvaggi. Mr. Marx?

MR. MARX: Thank you. As I said in the beginning nobody can be against this organization or this use it's a wonderful thing and I'm not at all critical. My only problem is where they want to put this operation. First of all it needs to be out in the country, it needs to be in an agricultural area they don't need to be on the highway because it's not a retail business. So it's not like people have to see it as they go by and say oh I want to stop and buy a dog, it doesn't need to be on the highway there's no reason. It would probably be better for the dogs not to have the noise from the highway, pick a couple of acres in an agriculture area build it where nobody is within a couple 100 yards and who is going to complain. But now you have previous, prior nonconforming use it's been there for 50 years Mr. Gladdish has lived in his house 42, the man on the other side has been in his house for probably as long, 45 years. The lot is too small; it's too narrow because of the existing house they have to run the addition along to close to the side line because it already violates the side line. It's already in the front yard and they have to violate the front yard more it's just isn't appropriate in that spot. Now we heard testimony about the aluminum awnings and their operation I have some doubt about that because you're going to get a hard rain storm or a hail storm it's going to be a tremendous racket I can't imagine the dogs aren't going to go crazy listening to the pelting of aluminum. And I don't think aluminum is going to do anything to deaden the sound, it may not magnify it but it certainly isn't going to do anything to keep it from escaping. The one thing I have a big problem with Mr. Murello in his testimony that 71 dogs wouldn't create so much noise I mean that's just impossible to believe. It's not going to be a steady noise like a car or a truck going down the highway it's going to be intermittent but it's going to be a heck of a racket. Nobody here can say they ever heard 71 dogs together all yelping and barking at the same time and that's going to happen some times. I don't know if Mr. Nelsen has had that experience of that many dogs but it's quite a racket and to put that within you know close proximity to a residents that's already there maybe it wouldn't be built today because of zoning but it's legally there and it was there first just doesn't seem to be appropriate. So the benefit to the town, it might be a benefit and to society but not at that location. I think that's it I don't think I have anything else to say and we appreciate your courtesy in listening to us and thank you for your time.

MR. WEISS: Thank you Mr. Marx. Okay so here's what we're going to do. Dan go ahead.

MR. NELSEN: I might be backtracking here a little bit I just wanted to go over this. I don't know if it's Mr. Glasson or Mr. Byrne, is there insulation in the concrete walls? Sound insulation.

MR. BYRNE: It's going to be a thermal insulation which would still benefit from the sound standpoint to a certain degree.

MRS. NATAFALUSY: I can't pick him up.

MR. WEISS: It's hard to hear you Mr. Byrne. If you could go right over to the table there's a microphone there.

MR. BYRNE: There will be insulation in the block work it's not acoustic insulation its thermal insulation so it will give some benefit but not as high as an acoustic insulation. We also have on the outside of the block work a furring strip and they're going to be putting the vinyl siding on there aesthetically so it's not a block wall that you'll see from the neighbor's side there. It is possible we could add some acoustic insulation on the outside of the block but not in it.

MR. NELSEN: Okay there are different acoustical panels that you can put up and they can help absorb some of the sound. How about the ceiling tile?

MR. BYRNE: The ceiling tile we had some discussions with the acoustic person and we are going to be putting some ceiling acoustic membrane in the inside of the kennels.

MR. NELSEN: And there's also sound attenuation bats that can also be put above that to help.

MR. MURELLO: Just to answer what the conversations we've had about adding absorption inside the kennel building itself. We've gone through; we're in the process of trying to make selections because as you're well aware you just can't use regular absorption inside a facility it has to be cleanable, washable materials. So it limits the ability but there are acoustical panels designed for cleanable, washable which we are going to recommend to put inside the building. The purpose of that would be to minimize the noise bouncing around inside the building thereby less noise getting outside of the building. As far as the construction of that east wall, the block brick at the block siding construction will be more than adequate to keep the noise from getting in that easterly direction.

MR. WEISS: I think (inaudible) interpret real quick just for the record that answer was given by Mr. Murello to the answer to the question. I just want to make sure the record is clear.

MR. MURELLO: Just reiterating it but thank you Mr. Chairman.

MR. NELSEN: And then also your Guillotine doors.

MR. MURELLO: Trap doors.

MR. NELSEN: Guillotine doors, are they also insulated?

MR. BYRNE: In honestly we haven't made a final selection on those but we can definitely look into getting insulated doors.

MR. NELSEN: I'm just trying to get all we can for . . . And then there's the consideration of the hours. I'm not quite sure that you need to do what you need to do as long as you need to do it to get the same result.

MR. WEISS: Thank you Dan. Joe you had a question?

MR. FLEISCHNER: I actually have a question for Dan.

MR. WEISS: Sure.

MR. FLEISCHNER: Have any of your neighbors complained about the noise from the dogs at your kennel?

MR. NELSEN: I had one complaint in 1998 when I went for an expansion of my kennel.

MR. FLEISCHNER: But they haven't complained about noise or anything like that that you're aware of to you. Have they come to you?

MR. NELSEN: There was one noise complaint when I was going for my expansion of the kennel and that was dismissed we went to court and it was dismissed.

MR. FLEISCHNER: Okay thank you.

MR. WEISS: Okay so seeing that there's no more questions I think what we can do is maybe is Tiena you could review the conditions that would be included if a motion is made and the application is approved it would consist of the following conditions. And please members of the Planning Board if you have notes did any of your notes show that we're omitting please let Tiena know as she finishes her list. Sorry to put you on the spot.

MS. COFONI: No, no that's fine I just want to make sure I didn't mark any on the actual reports of Gene and Chuck. Okay, I have a condition that there will be no retail component, I have a condition about the hours for the location of the dogs being inside between 8:00 and 9:00 p.m., and I have a condition that the apartment is only for a caretaker residence, I have a condition that there's no private boarding, I have a condition that the exterior lighting excepting security lighting will be off by 9:00 p.m. I have it written this way but this condition I have is that the material and color of the fence along the easterly side of the property will be determined by the applicant in coordination with the adjacent neighbor. That's the way I have it written I can certainly change that if the Board wishes. I have a condition that there will, oh I already had this, but no commercial kennel operation the non-profit shelters specifically the approval. I have a condition that the residence is only permitted as a accessory to the shelter use, if there is no shelter there cannot be a residential unit. I have a condition that they're open seven days a week 8:00 to 9:00 p.m. appointments at all times during open hours.

MR. WEISS: Tiena go back to that last one. That sounds a lot better than the earlier condition that you said the dogs cannot be inside between 8:00 and 9:00. I think its better said and stated the way you just did.

MS. COFONI: Well I think its two separate things to be honest with you. One is where the dogs are located and one is people coming to the site and people operating.

MR. WEISS: Can you go back and read your first condition about the hours now?

MS. COFONI: I sure can. Oh I think that was in one of the earlier meetings.

MR. WEISS: I think that was the first or second meeting.

MS. COFONI: Yeah. I have that the dogs will be inside between 9:00 p.m. and 8:00 a.m. I wrote it wrong but you knew what I meant.

MR. WEISS: Okay I just wanted to make sure because that's why I said . . .

MS. COFONI: Yes, yes I said it wrong but yes.

MR. WEISS: So with the correction you're saying that the dogs . . .

MS. COFONI: The dogs will not be outside between the hours of 9:00 p.m. and 8:00 a.m.

MR. WEISS: Perfect.

MS. COFONI: So you are correct I read it opposite. I think there was a condition in Mr. McGroarty's . . . yes the affordable housing contribution is required. That's the only one I have marked on Mr. McGroarty's report at this moment. I don't know if anyone has any other ones?

MR. WEISS: Yeah I had one tell me if I'm right. I think we talked about, that an on-site caregiver must be present.

MS. COFONI: Okay I don't have that I can have that.

MR. WEISS: Are we agreed to that? An on-site caregiver must be present to operate this . . .

MR. VAN NESS: Does there have to be somebody there 24 hours a day?

MR. WEISS: Well I think the testimony said that there is, there's one to enhance this project so . . .

MR. VAN NESS: And this person if I may, this person is going to live there I would presume. That's the intention? Is that their

MR. SELVAGGI: Yes.

MR. VAN NESS: But can they go out to dinner, can they go shopping, can they go out for the night, you know what's the

MR. WEISS: Yeah I don't think we're saying that they have to be there 24 hours a day; there must be an on-site caregiver. So my thought is that this person who lives in the apartment decides to move away and now there's a vacancy they must fill that position.

MR. VAN NESS: I agree.

MR. WEISS: Okay. I know that's their intention I just think that we should

MR. VAN NESS: Be careful how you word it that's what I mean.

MR. WEISS: I just think that we should . . .

MR. FLEISCHNER: Be careful how you word it.

MR. WEISS: I know leaving it vague because there's obviously going to be a lag but . . .

MR. BUCZYNSKI: Another condition because of the amount of the improvements I think we should have a Developer's Agreement.

MRS. NATAFALUSY: Yeah.

MR. NELSEN: A what?

MR. BUCZYNSKI: Developer's Agreement. You have items to go with that regarding fees and bonds.

MR. WEISS: Does anybody else have anything on their notes?

MR. NELSEN: Those questions I asked about the acoustical tiles and sound attenuation bats and insulated doors and things and they said they were looking into it and going to address it. Good but what do we have on that?

MR. FLEISCHNER: But I think that can be handled in the developer's agreement can't it Gene?

MR. BUCZYNSKI: What's that?

MR. FLEISCHNER: The materials.

MR. BUCZYNSKI: It won't get into the developer's agreement.

MR. FLEISCHNER: Oh it won't?

MS. COFONI: That's not usually the kind of detail that would be in a developer's agreement.

MR. WEISS: Maybe Mr. Selvaggi has an answer for us.

MS. COFONI: I don't know . . . because they haven't actually picked anything out I don't know if they're prepared to commit to any kind of materials. That's why I didn't have it as a condition but we can let Mr. Selvaggi speak to that.

MR. SELVAGGI: But I mean we certainly, and Matt if you can help me out here, I mean we have no objection to incorporating you know those materials subject to you cleaning and everything else. I mean you know we haven't gotten, that's like a building permit issue but I understand Mr. Nelsen's

concerns and again we're not trying to be difficult. And if that works we'll do it you know . . . we've gone to the expense of bringing Mr. Murello in and it's not really just for tonight but hopefully as the process unfolds we can just perhaps when you know the company worked with your kennel and try to incorporate those things that you can do to minimize the noise. What they can be Matt I mean you know . . .

MR. MURELLO: We honestly haven't got to that point besides just discussing that there are options, I'm sorry Mr. Chair I thought I had a big enough mouth, we haven't gotten to the point where we were coming up with any finalized recommendations for specific products. Only discussing with Mr. Nelsen and his firm that there are options for absorption. If the Board wants to put as a condition that there will be acoustical absorption inside the building we can certainly comply with that and have it reviewed during the . . . I don't know how else to . . . Because at this point Mr. Nelsen I can't . . .

MR. WEISS: I think you kind of nailed it that's fine language.

MR. MURELLO: There will be acoustical absorption inside the building where the dogs will be and from there we'll make sure that we have . . . it is placed inside there in the building.

MR. NELSEN: Because that works to calm the animals too rather than have it banging around the soundwaves.

MR. MURELLO: I understand completely.

MR. NELSEN: It feeds off itself and if you can keep them calm . . .

MR. WEISS: Perfect. Good input Dan thanks.

MR. SELVAGGI: We appreciate it.

MR. WEISS: So we seem to have the conditions noted. Gene or Chuck was there anything else?

MR. MCGROARTY: No I think that covers the ones that I'm aware of.

MR. BUCZYNSKI: Permits they're always covered in your language.

MS. COFONI: Yeah in the general, yes.

MR. WEISS: So you're good Gene?

MR. BUCZYNSKI: Yes.

MR. WEISS: Okay that being said we have a list so at this point with the conditions as noted by Tiena I will entertain a motion from someone on the Planning Board.

MR. FLEISCHNER: I'll move that we approve PB 11-35 The 11th Hour Animal Rescue with the appropriate variances and the appropriate conditions as stipulated by our attorney.

MR. STASZAK: I'll second.

MR. WEISS: Seconded by Jim. I don't want to do this and I did forget there's a motion and it's been seconded I think it would only be fair to open it to the public we've been here for three meetings. If anybody from the public has any comments that they'd like to say, speak on any issue that we've discussed, anything that relates to this issue now would be the opportunity. Seeing none let's continue. We have a motion it's been seconded, conversation?

MR. VAN NESS: What's the requirement for passage?

MR. WEISS: With a use variance we need five of the seven in the affirmative in this particular case, not a simple majority. Five of the seven and a super majority will pass this. So a yes vote obviously approves it, five yes votes and the application passes.

MR. NELSEN: I'd just like to make one more comment. I think it's a good and noble thing that all of these folks do with the stray animals for adoption. I'm concerned about hours as far as Mr.

Gladdish's point of view and the noise that he might be subject to. But I think it's a wonderful thing that they do.

MR. SELVAGGI: These are all (inaudible).

MR. WEISS: Well I suppose, you know what I've heard Mr. Nelsen repeatedly say that's a concern and I certainly think before we go to roll call if there's a change to the hours it is now . . .

MS. SCHILLER: I would like to but I can't promise that I (inaudible).

MR. WEISS: Not good enough. You're going to stand at 9:00 and certainly you have every right to that I just want to make you aware that Mr. Nelsen has been very clear about his concerns and I certainly have no indication that that's going to change his mind I just wanted to give you one last opportunity.

MS. SCHILLER: Yeah I can tell you that they'll probably be in before that but I can't promise that I'll have everybody in.

MR. SELVAGGI: Do you know what this is? Because I looked I mean I understood it's one of those things that I think a . . . you know I have the good fortune of representing people like this and I have developers I've known and they say look we'll agree to it because chances are nobody is ever going to know about it anyway. And you know it's a dirty little secret that goes on in the . . . but you know while Linda I think just said it best, chances are they would probably be in. There's the fear you know particularly Mr. Gladdish you know one night it was raining at 6:00 they couldn't get the dogs out to relieve themselves until 7:30, they're trying to bring them in and there's a couple of dogs barking at 9:07, and what happens? Now for me I would tell you know a more sophisticated client does a lot of his . . . I'm not going to worry about it. That's what the concern is we understand what you're saying it's just that that occasions where you can't get it in what happens? Am I articulating that right Linda?

MS. SCHILLER: Yes.

MR. SELVAGGI: And that's you know that's where we are I mean I think if you can say well we get them in at 8:00 but give us you know a pass of once a week or whatever we can that's what they're worried about.

MR. NELSEN: The only thing is I actually live this life okay I'm there I live it and my dogs come in at 6:00 and it works.

MR. SELVAGGI: What's your capacity?

MR. NELSEN: The same amount 75.

MR. WEISS: Okay we've heard it, we've heard it both sides Catherine roll call.

MRS. NATAFALUSY: Joe Fleischner -

MR. FLEISCHNER: I'd just like to say my original concern was with the sound but I think Mr. Murello's testimony and the documents that he presented have kind of eased my concern and unfortunately none of the dogs were able to testify so I could hear from them point blank. And I certainly have concern for Mr. Gladdish and his property but I will vote yes and I just ask that you do everything to make it really as perfect as you can so that Mr. Gladdish's fears are allayed.

MR. WEISS: Thank you Joe.

MRS. NATAFALUSY: Dan Nelsen - yes
Nelson Russell - yes
Jim Staszak - yes
Scott Van Ness -

MR. VAN NESS: I want to also reiterate that what Joe said is that it's important that . . . I'm voting yes but it's important that you work very closely with your neighbor. The man has lived there his whole life and like he said he's just retired and he doesn't need to be miserable even in thought of being miserable because you're going to move in next door. And for you to not take every care in the world to make sure that he lives a peaceful life next door to you is doing him, yourselves and our community a

disservice. And we're going to keep a watchful eye and we'll be very disappointed with you if the case is that you fail us. I vote yes.

MRS. NATAFALUSY: Steve Bedell - yes
 Howie Weiss -

MR. WEISS: Okay so as Chairman I take a different look on this type of application. I think I'm going to sort of build off of what Mr. Selvaggi said. Mr. Marx I've been here long enough to see objectors and the fact that I didn't have to grab this once is a testament to you and your professionalism and for that I thank you tremendously. There's a couple of things that bother me about this application and I guess for the record I am no different than anyone else the work that folks do is tremendous and many people that I know have volunteered for your program and come back and just raved. And so what you do is never going to be an issue. My concern is to the application as we go back to the original testimony I think I asked you Linda point blank have you considered any other property and you answered me no. And I'm troubled by that because sometimes the first property that you find isn't necessarily the best and I know I have the utmost respect for the applicant's planner and he kind of agreed its maybe not in a perfect world the best location. I don't know if I was pleased with that I think that maybe there should have been more due diligence to find another property. Conversely I'm a little disappointed with the objector in that I didn't hear any other testimony to the sound or to the planning testimony. And I sit here and I know what my expertise is and it's not audio engineering and I absolutely flat out disagree with the testimony. It's just . . . it's a personal opinion that I know as my opinion as Planning Board Chairman that goes nowhere. I just, I have a problem with the way you explained it, unfortunately you're the expert and I have no other testimony but to accept what you told me whether I like it or not. I don't know, and Mr. Snyder I think I've told you before I think your testimony in front of us is the best that I've seen. I don't agree with you tonight and I think that, I don't believe that your response to the proofs of the negative criteria satisfied me. I do believe that granting this variance will cause a detriment to the community and that community is simply the man in front of you. And we heard the passion that Mr. Gladdish spoke about and maybe there's no use for that in Land Use but when you're talking about a use variance it does come into play when I make a decision. And so everything I've said and you know you've seen I take lots of notes and I try to be very prepared and at this point obviously my opinion, my vote doesn't matter but I'm going to vote no for this application because of what I said. So that being said the application passes six to one and approval will be granted there will be a resolution prepared in the next month at which point Mr. Selvaggi knows what to do with it. And for everybody here I thank you all for your patience and this application is complete. Any other business from the Planning Board?

MRS. NATAFALUSY: The June 14 meeting is going to be cancelled.

MR. WEISS: Thank you that's correct.

MR. STASZAK: When is the next meeting?

MRS. NATAFALUSY: The 21st is the next meeting.

MR. FLEISCHNER: Sign ordinance, where do we stand with that? Where do we stand with revising our sign ordinance?

MRS. NATAFALUSY: We're working on it you should get something next week.

MR. FLEISCHNER: Thank you.

MR. WEISS: Anything else? Motion to adjourn?

MR. VAN NESS: Motion to adjourn.

MR. WEISS: All approve, all agree?

EVERYONE: Aye.

(MEETING ADJOURNED AT 9:35 P.M.)

Transcribed by:
 Lauren Perkins, Secretary
 Planning Department

