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ROLL CALL:

Members Present: Joe Fleischner, Brian Schaechter, Nelson Russell, David Koptyra, Henry Fastert, John Mania, Dan Nelsen, Scott Van Ness, Kim Mott, John Batsch, Howie Weiss

Members Excused: None

Professionals Attending: Chuck McGroarty, Planning Consultant, Eugene Buczynski, Township Engineer, Tiena Cofoni, Esq., Catherine Natafalusy, Planning Administrator/Secretary

Professionals Excused: Edward Buzak, Esq.

MR. WEISS: Thank you, Catherine. I think for the record I want to add that we have two visitors with us tonight. We have two sixth graders from the St. Michael's School. We have...

MS. NATAFALUSY: Hold on a second, there is something going on with this. It's not working right.

MR. WEISS: Oh oh. Well, we have Steven to our left...

MS. NATAFALUSY: I don't know why. Ok. I think it's working now. Go ahead.

MR. WEISS: Yes.

MS. NATAFALUSY: Yes.

MR. WEISS: Ok. I mentioned for the record we have two visitors this evening from sixth grade at St. Michael's School. We have David. And we have Steven. And they are here to join us. They are doing a civics lesson in school. Right? Learning about the government. Excellent. Well welcome gentlemen. The first...

MR. MANIA : A round of applause for them.

APPLAUSE

APPROVAL OF MINUTES

MR. WEISS: We have approval of minutes for the January 21, 2016 Public Meeting. Will someone please make a motion?

MR. FLEISCHNER: I move we approve the minutes of January 21, 2016.

MR. NELSEN: Second.

MR. WEISS: Joe, thank you. And Dan, thank you very much. Any conversation? Seeing none, roll call.

ROLL CALL:

Joe Fleischner	- yes
Brian Schaechter	- yes
Nelson Russell	- yes
David Koptyra	- yes
Henry Fastert	- yes
Dan Nelsen	- yes
Kim Mott	- yes
John Batsch	- yes
Howie Weiss	- yes

COMMITTEE REPORTS

MR. WEISS: We have Committee Reports tonight. Nelson, anything from the Mayor?

MR. RUSSELL: No.

MR. WEISS: I'm going to just add a little bit...I did have an opportunity to meet with the Mayor on Tuesday evening with a couple of different individuals. Coincidentally, both of them had the same agenda. They were not...they had nothing to do with each, but the issue at hand was the concern of developing digital billboards in Mount Olive. Both of them had plans and they wanted to run them by the Mayor. I've since learned that Mount Olive Township does not allow for billboards in town. And any existing billboard is a pre-existing non-conforming use. But it's an interesting point because two people came which means it's probably a hot topic. I did reach out to Chuck and spoke to Catherine about it. It's probably something we might want to bring a little bit more forward. I know it was on the back burner as far as developing language for digital signs. I don't know if we are ever really going to address digital billboards because it's not allowed. So there really is no room for language in an ordinance that doesn't exist. But...I did ask Chuck to ultimately have a conversation with the Mayor to get the Mayor's direction. If this...if current administration feels that digital billboards are something that they like, then perhaps the Planning Board needs to know that and start making sure that we put in the protections as needed. For anybody that's not on the Ordinance Committee, we know that we have looked at digital signs on businesses. There is a few that have popped up. And we know we need to put controls in place as we enter the next level of technology. So I just thought it was interesting that in the same half hour period we had two separate individuals come before the Mayor and the Mayor just wanted me to report the fact that there is language out there, there's interest out there, so we need to make sure that we're aware of it and certainly Chuck and Catherine know about it. So, thank you for that. And, John, welcome back. Anything...

MR. MANIA: Glad to be back. Thank you.

MR. WEISS: So, you'll round us out. Anything for the Council?

MR. MANIA: Not right at this minute.

MR. WEISS: Ok. Environmental Commission.

MR. FASTERT: Joe is going to report for me tonight.

MR. WEISS: Ok.

MR. FLEISCHNER: For the record on May 14th, the Environmental Committee will be accepting...requests to do well testing. We will have a group of people here at town hall...I believe it's from 9 in the morning till noon. It will be published in the papers and on the websites, etc. for people to buy the testing kit and they will then be returned on Monday, May the 16th from 7:00 am to 10:00 am. And then the results will be given to the individual homeowner. It's not shared with anyone else. The rest of the meeting, we discussed different issues pertaining basically to the Lake and various issues around town. But that really...it didn't pertain to the Planning Board.

MR. WEISS: Ok.

MR. FLEISCHNER: That's it.

MR. WEISS: Thanks, Joe. And just...a little repetitive, Henry I know you weren't here last meeting, we kind of spoke openly about moving forward and utilizing the Environmental Commission in a little bit better way. I would like reports on future applications in writing.

MR. FASTERT: Ok.

MR. WEISS: So, if your commission feels that there is something that the Planning Board needs to be aware of, I'd like it in a written report that can be shared with the applicant.

MR. FASTERT: Ok.

MR. WEISS: I think that can become a very positive tool for both the applicant and certainly for the Planning Board. And it's something that was done many years ago. We have gotten away from that.

MR. FASTERT: It makes sense to me.

MR. WEISS: So if you can...if you...if there is an issue that the Environmental Commission would like to bring before the Planning Board, just please send it in writing.

MR. FASTERT: Ok.

MR. WEISS: And you can send it to Catherine. Ordinance Committee, Joe.

MR. FLEISCHNER: We need to schedule a meeting for a number of different topics. But we have not met really for a while so that going to be Chuck, and Catherine, and Gene to set a date for our meetings.

MR. WEISS: And I guess I can follow up, Chuck, based on our conversation earlier, the only day next week is Monday. If you wanted to do it next week, Joe is leaving on Wednesday...

MR. FLEISCHNER: Tuesday, I'm not available at all and I'm not available from three o'clock on...

MR. McGROARTY: Yes, Monday I can't.

MR. WEISS: Ok. So we might have to push it a little bit.

MR. McGROARTY: Sorry.

MR. WEISS: Or we can skype you in, Joe.

MR. FLEISCHNER: Um...you can try, but just remember I'll be six hours ahead, so...

MR. SCHAECHTER: You always are.

MR. SCHAECHTER: It just means you're going to be up late.

MR. FLEISCHNER: Yes, but I'll be watching a Temple basketball game.

INAUDIABLE

MR. WEISS: Ok. Here we go. Thank you, Gentlemen. Street Naming Committee I have nothing. Open Space Committee, Kim.

MS. MOTT: I do. I went to the meeting and due to the light winter they've starting cleaning up trails marking... kind of contraversing to see how they fared in that storm we had...they are talking about outside of each trail put up the maps and encase them for trail goers, and they also put the trail guide up on the township website. So people can utilize...

MR. FLEISCHER: Howie, I apologize one other issue that did come up with the Environmental Commission, I signed the letter in support of the grant on behalf of the Environmental Commission for the township to get money for the trails.

MR. WEISS: Ok.

MS. MOTT: And they're also talking about doing a clean up on Earth Day in April, I believe and they are going to talk about this next meeting. And then we'll post that and look for volunteers.

MR. WEISS: Ok. Thanks, Kim. Brian, anything from Board of Ed?

MR. SCHAECHTER: Sure, we have a couple of things. The pit project. The project for opening the makers basin. And the performance center is about a month ahead of schedule due to good weather. With the good weather we are also looking at ending school about a week early. We're giving back five days. So that means graduation will be moved up. Kindergarten votes stills looks like its on target for September, and I just saw the preliminary plans for what could be the new Sand Shore Expansion.

MR. WEISS: Thank you. I guess it would be only right to see if there is any kind of St. Michael's School Report? Gentlemen, do you have anything to tell us about St. Michael's School? No, nothing yet? Ok.

MR. WEISS: Tiena, Chuck, Gene anything else?

MR. MCGROARTY: No.

MR. WEISS: Ok. Let's move on with our agenda then. We have a Public Hearing on the Housing Element our Fair Share Plan presentation will be made by Chuck McGroarty and with that Chuck let's go with this.

PUBLIC HEARING

MR. MCGROARTY: Right. We've talked about his before. The Board is familiar with what we are doing here...without going into the lengthy history on it, we are under a Court mandated deadline of April 4 to submit to Judge Hansbury a Housing Element/Fair Share Plan actually the judge has issued a letter in February saying...that municipalities in Morris/Sussex were in need of jurisdiction could actually do it by way of sort of a draft kind of a situation but it was determined by all the attorneys involved that it was best to proceed with the Public Hearing which is tonight. So it's been noticed, Catherine.

MS. NATAFALUSY: Yes.

MR. MCGROARTY: Public Hearing. Public Hearing to amend the Master Plan to the Document Housing Element/Fair Share Plan. I've talked...I've mentioned on other occasions that used to be the case that we'd go through the Council on Affordable Housing process that means COAH...the Supreme Court back in March last year in their decision, they took COAH out of the process and it's now in the hands of...not Mt. Laurel Judges throughout the State of New Jersey and again Judge Hansbury in Morris/Sussex is the Court that we respond to. So, having said that you have a draft of the Housing Element/Fair Share Plan and all I was going to do is highlight the key points to it or what I consider to be the key points. It's a Public Hearing obviously so we want to establish for the record what is it we're doing. And if there's any questions, we'll go from there. I'll just mention the pages that I'm referring to if you're interested you can look to there. I'm looking at Page 5...as communicated in the report, Mount Olive along with more than 200 other municipalities have hired an expert Econsultant Solutions is the firm. They are responsible for putting together the actual affordable housing numbers statewide and then down onto the municipal level I have their report which is here and when you want to ask questions about the details. There are other parties in New Jersey who have a different point of view. And we've talked about that. I'm not going to spend any time tonight. They have their own experts. That's why this whole process is in the courts. We're in the court, by the way, not because Mount Olive did anything incorrect. We're in the court...so, we're in front of the court that is, so that the Township gets its plan at least...when we follow the courts instructions and meet the deadlines so the town is protected from the Builders Remedy Lawsuit. I don't have any information as to how quickly this plan or the other plans will be reviewed and improved. It could go for quite some time. It's possible more than likely the numbers will change. We'll be doing this again but having said that we need to go through this process right now. So, for Mount Olive we have three parts of this affordable housing obligation, it's on Page 5. I talked about it. Prior round means everything from 1987 thru 1999. That's the period of time that's one section we have to deal with. The Township we have an affordable housing obligation during those years of 45 units. We then skip ahead...to the present, or actually a year or two ago, to 2014, from 2014 through the year 2024, we have another obligation in addition to the original of 232 units. Some may ask why did I skip over the past? There is a 15 year gap there somewhere. That's the subject of a whole other...set of litigation going on now in New Jersey in another jurisdiction. And we'll see what happens. But our position...Econsultant Solutions' position is the Townships municipalities are not responsible for that 15 year period because it's already been built into the affordable housing numbers. I'm going to stop there because it just gets crazier to try and explain. Lastly we have is what is known as rehabilitation number is referred to as the present beings we're looking at...we have...according to the analysis done by the experts there's and COAH used to do the same thing. There are a certain number of homes within each municipality that are in need of substantial rehabilitation to bring them up to code so major systems, roofs, windows, heating systems, and the like all based on census data. In order to bring those homes into...a more livable condition for low and moderate income households not just renovating. So, when all is said and done, we have total obligation of 414 units. That includes those rehab numbers that I just mentioned of 137. Skip to Page 15 right around number 45 completely satisfied. I'll show you there how we accomplish that we're looking at using existing group homes that are in the township...Abiding Peace. Some of the senior units there, and we also have rental bonus

credit. I realize a lot of this, you know may or may not really register at the moment but suffice to say we're...I'm satisfied that we're doing this correctly this is probably the fourth...third round housing element we've done. But, we satisfy the 45 units. So now we move on to the prospective gain which is obviously a bigger number 232 units. Page 17 in your plan...trust me, we have the same numbers, page numbers...there's a chart there and again you'll see in this chart, these are all existing units in town or couple that are under construction today such as Mr. Dorlan's project, whether if you want an affordable unit...Mount Olive Mews which is Hal Simoff's project. Hal will be coming back here within a month or so with a revised plan so we will be getting affordable housing and what you see from that is we have a subtotal of existing work units in the pipeline of 272 units. We are eligible, in my opinion, for 58 rental bonus credit which brings us up to a total of 329 credits so we have surplus of 97 units actually. Obviously that's a very good position to be in to have surplus. That may all change in the future, but for the moment, that's a very good thing. At the bottom...rather...in the plan it identifies the Paragon Village and Abiding Peace those are surplus units we can't even count. And the reason why is we are capped, we're limited on how many age restricted units can be credited in the prior round or in this third round. There's...generally it's about no more than 25 percent of your obligation. And that's done intentional so that towns don't just do all of deed restricted housing...senior housing...and don't do any family housing. So that's why...some...it's not that...well...we're keeping those units in reserve obviously. We may have to apply them in the future. But...we'll...I know Henry had a question.

MR. FASTERT: Chuck, you know the assisted living and the independent living at Paragon, I'll use Paragon as an example. I don't think that's age restricted. It's more, you know, the needs of the individual.

MR. McGROARTY: I know, it is.

MS. NATAFALUSY: It's age restricted.

MR. McGROARTY: It's approved that way and it's funded that way.

MR. FASTERT: Ok. So someone, you know, someone is 50 who needs assisted living could not apply...

MR. McGROARTY: Well...you know...I don't...for a purpose of for affordable housing and it's an assisted living facility is classified as an age restricted unit.

MR. FASTERT: Period.

MR. McGROARTY: Yes.

MR. FASTERT: Ok. So regardless of people who are younger than 55 can't be there, it's still counted that way.

MR. McGROARTY: Yes, and for our purposes...it wouldn't be worth the effort to try to convince, in this case there will be...the Court...and the Court will have special master which other experts that will assist the judge in doing the plans. I'm satisfied that both independent and assisted livings traditionally have been classified as age restricted. And as you can see Mount Olive is in very good position today to satisfy the obligation. I'll move ahead then...right...it should be in the page or two after dealing with the rehabilitation obligation. The township has an affordable...an affordable obligation of 137 units. Now what that means is...these units that...are identified and are in need of rehabilitation, we have to demonstrate an average of 8...I guess the easiest way to say this we have to proceed on the basis that it's \$10,000 per unit for a major system. In some cases, the unit homeowner may be in the program and they may only need \$5,000 or \$6,000 or \$8,000 to do the job, some may be higher but it has to average out to 10. And so the safe bet is just...I approach it by its \$10,000 per unit that's it. The township has historically participated in the County...Morris County Community Development Block Grant Program. The County funds this program. Morris County is an excellent partner in doing this. Not every County in New Jersey does this for various reasons...insufficient funds, insufficient staff, and so on. So, we're in good shape there where to date, we have 45 units that have been credited in this program. And we will...we're indicating to the court that we will continue...the Township will continue over the next 10 year period which is how this works. For the balance of those units will be funded again through the...from the County's program and in the event that there's a short fall in the County's funding mechanisms, the Township again is in a very strong position because we have...a substantial amount of money in the Affordable Housing Trust Fund. Otherwise, the municipalities would have to commit to bond out of general revenue to cover the cost of a program like this. So that's it. I'll stop there, I mean if you want any particular discussion on items, I'll be happy to do so, but right now we are in very good

shape. And...we talked about the Foreign Trade Zone and the re-zoning up there and there will be more affordable housing built into that as well. But...the numbers may change. But all I can tell you is the way it stands at the moment...Mount Olive is in good shape and Mount Olive is in good shape because it's continued to do what it needs to do as opposed to just waiting till someone tells it to do something. So that's it. And if this Board approves this plan tonight, then we'll proceed to the Township Council in two weeks, they will authorize I trust it to be submitted to...to the court and so we'll satisfy the April 4 deadline.

MR. WEISS: And then what happens? Council then moves it to the court?

MR. MCGROARTY: Well, what happens is the governing body has...you adopt it because you adopt the Housing and Fair Share Plan cause it's part of the Master Plan so that of course is your jurisdiction as the Planning Board. This is a little different from other parts of the Master Plan because the governing has to authorize it to be submitted. In the past, they would have had to authorize it to be submitted to COAH. Right now the prevailing view amongst the attorneys is to follow that same procedure for governing bodies to authorize submission to the court. So that's why it would go to the governing body. What they'll do...is presumably adopt a resolution to authorize it to be submitted and then we'll go from there.

MR. WEISS: Ok. Thanks so much. Scott...

MR. VAN NESS: Chuck, on the calculations...the prior round, the prospective need, and the rehabilitation. Why is the prior round not included in the prospective need...in the calculation?

MR. MCGROARTY: Oh, because it's cumulative.

MR. VAN NESS: Ok.

MR. MCGROARTY: So that's how that works.

MR. VAN NESS: So the prior...the prior round is the number that was set for the earlier element and now these extra...the 232...are additional units that are required.

MR. MCGROARTY: Yes.

MR. VAN NESS: Thank you.

MR. WEISS: Nelson.

MR. RUSSELL: Correction to the report...under Section B, I don't have a page number on it, the analysis of democratic...demographic characteristics, second paragraph, almost 98 percent of the township's population is classified as White, followed by Asian with 8.2 percent, Black or African American with 5.7 percent, Hispanic or Latino of any race will count for 11.5 percent, that's considerably more than 100 percent.

MR. MCGROARTY: Yes. Yes, it is but...

MR. SCHAECHTER: I would say so...

MR. MCGROARTY: Right, but they are not mutually exclusive. And I apologize, I would have explained this in more detail but you know we had two weeks really to put a plan together and the other problem with census data that we're having now is in the old days we'd go and there would be a book of the Decennial Census where we would just look all that stuff up and now there're using not only the 2010 Census as we have to use it for housing and demographics but also there're using what's called...not American Care, but the American Survey and so there's estimates that come out every couple years, and I wanted to make sure we are using the consistent numbers. The particular question there is not everyone who identifies...you know...people that identify as other than White may be...like Latino...they may also be African American so there's...there's some distinctions that get blurred there with demographics. I will, however, double check just to make sure.

MR. RUSSELL: I think it was...

MR. MCGROARTY: Make a footnote.

MR. RUSSELL: Looking at almost 98 percent of the town is classified as one race...

MR. McGROARTY: I can't change what the census says. That's what the census says. It's not for me...I can't...but I will look at it again and check it. I take your point, and I will check it again. My focus was quite frankly was on getting the actual affordable units straight. But, if it's wrong it should be changed. And I definitely will check that tomorrow. So if you're going to...if the Board subject to any other corrections or changes, if you are willing to approve this tonight...I would commit that I will check that information and if it's...needs correction...correcting, I will do so. It doesn't change the Affordable housing update so...we don't have to come back.

MR. WEISS: Anybody else?

MR. FLEISCHNER: Ok. Here is a question. Would homeowner vacancy on those houses that are in foreclosure or just...

MR. McGROARTY: I don't know. I don't know, Joe. And I don't even know if I can always rely upon that and that's the problem. We are using surveys and some years there were vacancies...were higher...I wondered that too...whether they're actually foreclosures. I'm not sure in some cases. I even trust the information that's in there. Once again, you know...many years ago I used to spend more time doing demographics. I actually enjoyed it. Now, it's like this is...even though we have to put it in here...because it's part of the Fair Housing Act requirement, really where everyone is going to zero in is how are you're taking care of your affordable numbers. I will...

MR. FLEISCHNER: I'm just curious...

MR. McGROARTY: No, it a good question though because it does have a bearing on...on the other side. When I look at deficiencies in units that have overcrowding or lack of plumbing and the like, that ought to contribute to this rehab obligation and in some cases the rehab numbers are out...way out of whack. I think with it. They are way too high. But I don't...I don't know.

MR. FLEISCHNER: Thank you. Great report by the way. I think.

MR. WEISS: Yes, I agree. Thanks, Chuck. Anybody else? Well at this point, let me open it to the public. If anybody from the public has any comments or questions for the report our planner just presented now is the time. And I see none from the public. So I'll close it to the public.

MR. McGROARTY: Gene was just pointing out to me that on Table 15 which perhaps, Nelson, I don't know if that's what you're talking about, Page 11? One, I'm not even sure one race, I'll have to check the census again, but those who identify as White, consist of 80.7 percent of the population. Maybe the one race is...is the total response to the survey.

MR. RUSSELL: I think that's the 98 percent.

MR. McGROARTY: That's the 98 percent. One race.

MR. RUSSELL: But here it's 97.7

MR. McGROARTY: 97.7. Those identify as white constitute 80.7.

MS. COFONI: So, Chuck, on Page 10 in...on Paragraph B where is says...the second paragraph, almost 98 percent of the township's population is classified as white, I guess we can probably just say more than 80 percent. And that corrects that.

MR. McGROARTY: Yes.

MR. WEISS: Again, like Chuck made it very clear. He simply took this table from another source.

MR. McGROARTY: But I will correct the narrative there. Ok. If everyone's ok with that, we won't need to have another hearing.

MR. WEISS: It's not going to change the focus at the end of the day...

MR. NELSON: No, I'm just...

MR. WEISS: Of course...nope...

MR. McGROARTY: Always a good point. I'm not...I appreciate...it's better that if there's things that need to be fixed. We can be fixing now rather than later. So...

RESOLUTIONS

MR. WEISS: Ok. So, we'll come back to that in a second as we move along with our agenda. We have three resolutions this evening. First one is a resolution to approve the Annual Report for 2015. We did look at it last meeting.

MR. McGROARTY: Mr. Chairman, if I may just for the sake of continuity and for the record, can you hold that and just do...

MS. NATAFALUSY: the resolution.

MR. McGROARTY: Vote on the Housing on the Fair Share Plan and resolution at this time if you are inclined to do that?

MR. WEISS: Sure. Absolutely. Let's scratch that and move over to resolution to approve Housing Element/Fair Share Plan of the 2003 Master Plan and Master Plan Re-examination Report that was just presented this evening by Chuck...you have a resolution?

MS. COFONI: There is one. Right here. I don't have an original thought. Catherine, said she'll print one out. I apologize.

MR. WEISS: It's ok. I can come back and sign the original.

MS. NATAFALUSY: Yes.

MR. WEISS: Ok. So we have the resolution...

MR. McGROARTY: We will need a motion...

MR. WEISS: I will...I know...I have introduced it. I will need a motion. Someone please move that motion.

MR. FLEISCHNER: I'll move to approve the resolution for the Fair Share Housing.

MR. WEISS: Thank you.

MR. VAN NESS: I'll second.

MR. WEISS: Scott, thank you very much. Any questions, comments? Roll call, Catherine.

ROLL CALL:

Joe Fleischner	- yes
Brian Schaechter	- yes
Nelson Russell	- yes
David Koptyra	- yes
Henry Fastert	- yes
John Mania	- yes
Dan Nelsen	- yes
Scott Van Ness	- yes
Howie Weiss	- yes

MR. WEISS: Thank you. Going back up, we have a resolution to approve the Annual Report for 2015 and I just said, we spoke about it at our last hearing. Catherine, I'm not sure if anybody got back to you with any additions or deletions. I had none myself.

MS. NATAFALUSY: No, John...John had called and asked me a question about it. That was...that was it.

MR. WEISS: Ok.

MS. NATAFALUSY: So, we...we're...for this year we're not making any recommendations.

MR. WEISS: Ok. So we have the resolution. I'll look for someone to please...make a motion.

MR. SCHAECHTNER: I'll make the motion to adopt the Annual Report for 2015.

MR. WEISS: Thanks, Brian.

MR. NELSEN: Second.

MR. WEISS: Second by Dan. Any comments, questions? See none, roll call.

MS. NATAFALUSY: Ok. So this is the board acting in its capacity as the Zoning Board so the Mayor and the Councilperson do not...the Mayor's designated Councilperson do not vote.

ROLL CALL:

Joe Fleischner	- yes
Brian Schaechter	- yes
David Koptyra	- yes
Henry Fastert	- abstain
Dan Nelsen	- yes
Scott Van Ness	- abstain
Howie Weiss	- yes

MR. FASTERT: I missed that discussions so I'm going to abstain.

MS. NATAFALUSY: Ok.

MR. VAN NESS: I'm also going to abstain.

MS. NATAFALUSY: I can't hear you.

MR. VAN NESS: I'm going to abstain.

MR. WEISS: And is there anything for me to sign?

MS. COFONI: On this one...

MS. NATAFALUSY: I'll print one out for you.

MR. WEISS: Ok. Perfect. I'll sign that when it's ready.

MS. NATAFALUSY: Wait a minute, here. Sorry about that.

MR. WEISS: Final resolution this evening...

MR. WEISS: We have the third resolution this evening is, excuse me, PB 15-35 Al Collioud, someone please make a motion.

MR. SCHAECHTER: I will make the motion to pass PB 15-35 Al Collioud.

MR. RUSSELL: Second.

MR. WEISS: Brian, thank you. Nelson, thank you very much. Any comments, questions? Seeing none, Catherine, roll call.

MS. NATAFALUSY: Who seconded that, Nelson?

MR. FLEISCHNER: Nelson.

ROLL CALL:

Joe Fleischner	- yes
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Brian Schaechter - yes
Nelson Russell - yes
John Batsch - yes

MR. WEISS: Thank you very much.

APPLICATION PB 15-34 - D'EDIGIO – 5800/15 & 16

MR. WEISS: Ok. Brings us now to the point of our agenda where we are going to bring up our development matter for the evening. Our development matter is PB 15-34, Joseph D'Edigio...

MS. STONE-DOUGHERTY: D'Edigio

MR. WEISS: D'Edigio. I believe the attorney Rosemary Stone-Dougherty...

MS. STONE-DOUGHERTY: Dougherty...

MR. WEISS: Dougherty. Looks differently. Welcome.

MS. STONE-DOUGHERTY: Well, thank you.

MR. WEISS: Nice to see you this evening. We...I believe everyone has...so let me turn the application over to you Ms. Dougherty.

MS. STONE-DOUGHERTY: Thank you. Good evening, Mr. Chairman, Mayor, members of the Board. Attorney Rosemary Stone-Dougherty on behalf of the applicant, Joseph D'Edigio. We are here tonight on an application that is actually a reverse sub-division merging two undersized lots, known as Lot 15 and 16. Subsequently 44 and 46 Ironia Road, and then we are also looking to do a minor subdivision based off the fact that my client was able to obtain land from the adjacent lot to add to these two oversized lots to try to make it even slightly larger and the hopes of being able to put a single family dwelling on the property that will require no variances for the dwelling, no front, rear, side yard, coverage, etc. The only variance is the pre-existing condition that the lots, whether by themselves independently or even merge together with additional land are still undersized for the R-1 Zone requirements. So this evening I have with us my client's engineer, Mr. Alfred Stewart and at this point and time just to give you a quick roadmap, we really have only the one witness. I have the applicant Mr. D'Edigio with me in case there are any questions that come up that I need him for and you know hopefully we can move along rather smoothly. Ok. Can we have you sworn in?

(ALFRED STEWART 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. STEWART: Alfred Stewart. S T E W A R T Professional Engineer and Land Surveyor, address is 148 East Main Street, Rockaway, New Jersey.

MR. WEISS: Welcome.

MR. STEWART: Thank you.

MS. STONE-DOUGHERTY: Mr. Stewart can you give a little background as to your qualifications for the Board.

MR. WEISS: Yes. I think we can...

MS. STONE-DOUGHERTY: Stipulate...

MR. WEISS: ...we have seen Mr. Stewart in front of us. Tiena feels comfortable with Mr. Stewart being presented as an expert engineer. Unless anybody from the Planning Board needs to hear more, I think we can skip it and welcome Mr. Stewart.

MR. STEWART: Thank you.

MS. STONE-DOUGHERTY: And just for the record you are still licensed as of this evening. Correct?

MR. STEWART: Yes. Yes I am.

MR. WEISS: As far as you know you are...

MS. STONE-DOUGHERTY: Ok. Mr. Stewart can you give the Board just a little overview of the existing conditions and the zone the property is in?

MR. STEWART: Sure. I'm going to be referring to my plan that's revised to January 3, 2016, I believe the board should have a copy of that. That was submitted. That's the third revision. And basically what we are doing here is a minor subdivision of a piece of property. The parcels lay one in Mount Olive, one in Roxbury, as you seen in the plan, the township line basically dissect this parcel or parcels, I should say. Block 201, Lot 35, is the one lot in Roxbury. I'll be referring to that as Lot 35. There are two parcels in Mount Olive, one is considered Lot 15 which is to the westerly most side of the property, the other is Lot 16 which butts up against the lot 35 and the town line.

MS. STONE-DOUGHERTY: And those are two separate distinguishable lots on the tax map. Is that correct?

MR. STEWART: That's correct. Lot 15, 16 are separate lots. Ok. What we intend to do here is merge Lot 15 and 16 and we already appeared before Roxbury Township and subdivided a portion of the Lot 35 that's over on the other side of the town line so we can merge that with Lots 15 and 16 as well. That total area which is considered lot 35.02 in Roxbury now. If this portion gets approved I should say. Is actually 6,013 square feet of area that we are going to be merging with Lots 15 and 16 to provide a total of 33,198 square feet of lot area for our new lot that we are proposing.

MS. STONE-DOUGHERTY: Now...

MR. WEISS: Go ahead.

MR. FASTERT: So this new combined lot is going to both in Mount Olive and in Roxbury?

MR. STEWART: That's correct. And that's in order to increase the lot area for our new proposed lot.

MR. FASTERT: Chuck, are there any special concerns...when they...I don't think I've ever been involved...

MR. MCGROARTY: I should have addressed. It's unusual but it's not unique. I mean this stuff has happened.

MR. RUSSELL: Do you have to pay taxes in both towns?

MR. MCGROARTY: That's for the governing bodies to work out...one or the other municipality will take care of taxes. That's something this board doesn't get involved with.

MS. STONE-DOUGHERTY: And normally...

MR. MCGROARTY: There are a couple of things with regard to future improvements but once they are done testifying Gene has a report. If there are any other questions I can...

MS. STONE-DOUGHERTY: But normally just to hit on that question, normally where ever the improvement or the majority of the improvement is located normally determines which municipality does the taxing. And in this case, as the plan proposes the improvement itself, the house that will be built will be solely on the Mount Olive side.

MR. WEISS: Go ahead, John.

MR. MANIA: How many square feet is the house?

MR. STEWART: The house that we show here is conceptual. And the footprint is at 1,900 square feet approximately. I believe the living space, which I just had this conversation already with the

applicant, the living space which we show on this house that is conceptual...is approximately 2,600 square feet.

MS. STONE-DOUGHERTY: And, Mr. Stewart, in that line that was just brought up now, the applicant had considered doing a larger house but due to concerns that were raised at the Roxbury Hearing by an adjacent neighbor did downsize the house considerably. Correct?

MR. STEWART: That's correct. What we did for Roxbury we show...or we have shown a similar house that is existing there on a lot...Lot 35 in Roxbury. Which is I believe if I remember correctly about 3,500 square feet or 3,600 square feet of living space.

MS. STONE-DOUGHERTY: And that house already exists, is already built, it's been built for a number of years.

MR. STEWART: That's correct.

MS. STONE-DOUGHERTY: But originally the applicant was thinking similar sizes on the new combined lot, however, again greatly scaled down as to concerns raised at the Roxbury Hearing by the adjacent neighbor. Correct?

MR. STEWART: That's correct.

MR. MCGROARTY: If I may, Mr. Chairman, I know it's tough for you to do the testimony with the interruptions...

MR. STEWART: It's ok.

MR. MCGROARTY: ...what's the size of the house, are you committing or your client committing to a size...a square footage...or at least a maximum square footage...for a house on this size...?

MR. STEWART: For the footprint itself? I've...just give me one second. I just...

MR. MCGROARTY: ...cause this isn't a site plan approval...that's why...

MR. STEWART: Alright. As far as a footprint that shown here, that's acceptable to the applicant. Which is basically a 30 x 42 main house and a 26 x 24 two car garage area.

MR. NELSEN: Sir, just to clarify...

MR. WEISS: Wait. Hold on one second. John...

MR. MANIA: Is this a spec house or does Mr. D'Egidio plan on residing?

MS. STONE-DOUGHERTY: I mean...its...its...the answer is it's spec even though from a legal stand point it's irrelevant...but it is...the house will be sold.

MR. NELSEN: Just to be clear, you're saying the footprint is nineteen hundred and something square feet?

MR. STEWART: It's approximately 1,900 square feet and...

MR. NELSEN: ...so you're only committing to the footprint, not the size of the house.

MR. STEWART: We're committing to this footprint shown on the drawing.

MR. NELSEN: So, it could be a 3,800 square foot house?

MR. STEWART: I don't believe so. I don't think that 3,800 square feet would fit there because...

MR. NELSEN: Well 2 story...

MR. STEWART: Oh, that's true. I'm sorry. I apologize. That's correct. If you add the garage area into as well, yes, that's correct...so 2,600 square feet is acceptable...for the living space.

MR. NELSEN: I just wanted that on the record to clarify that...

MR. STEWART: I understand.

MR. WEISS: Ok. Mr. Stewart go ahead.

MR. STEWART: If I may just back up a little bit, basically what we have here is for Lots 15 and 16 the existing combined area is 34,543 square feet which goes actually to the center line. With this proposal here we are dedicating to the township 35 foot wide Right-of-Way or 30 foot wide from the center of the Right-of-Way to the township for road purposes. That will reduce our area down and in combining the 6,000 square feet that we're proposing to merge with Lots 15 and 16 does equate to our total area of 33,198 square feet which is the variance what we are seeking tonight. The required area is 43,560.

MS. STONE-DOUGHERTY: Ok. So, again just back up because those were a lot of numbers. In essence, is what happened, is the two existing lots without the dedication were 34,543 square feet. Correct?

MR. STEWART: That's correct.

MS. STONE-DOUGHERTY: But if you would have done the dedication, they would have been substantially smaller. Correct?

MR. STEWART: That's correct. Yes.

MS. STONE-DOUGHERTY: So, the applicant did as municipal land law use says, look to see if there is any additional land they could pick up to try to make this undersized lot larger. And fortunately they were able to get 6,000 plus square feet from this Roxbury lot. Correct?

MR. STEWART: That's correct.

MS. STONE-DOUGHERTY: And, just to give the Board some history with Roxbury the applicant tried originally to get more land. Correct?

MR. STEWART: That is correct. We were going for, I believe, it was...maybe another 3,000 square feet on top of that.

MS. STONE-DOUGHERTY: But Roxbury was unwilling to make their lot undersize so the Roxbury lot is now is fully conforming. Correct?

MR. STEWART: That's correct.

MS. STONE-DOUGHERTY: Ok. So this is the max amount of land available for the applicant to pick up?

MR. STEWART: Yes, that's correct.

MR. WEISS: So once again, when you take the 6,000 square feet from Roxbury, it still makes the Roxbury lot conforming?

MR. STEWART: Correct. Yes.

MS. STONE-DOUGHERTY: However, it still doesn't bring in enough to bring the area conforming on even the two lots merged together.

MR. WEISS: Tiena.

MS. COFONI: So, just because I need an exact numbers, 33,198 square feet is Lot 15 and 16 with the Right of Way dedication? Is that correct?

MR. STEWART: With the Right of Way dedication.

MS. COFONI: Ok. Hold on. And then how much are you getting from the Roxbury lot?

MR. STEWART: 6,013.4 square feet.

MR. MCGROARTY: Just to be clear, the 33...it's in Gene's report...the 33,198 square feet that includes the 6,000?

MS. STONE-DOUGHERTY: Correct.

MR. STEWART: Correct.

MR. MCGROARTY: Our attorney might have...

MS. COFONI: Ok. I didn't know that. Ok.

MS. STONE-DOUGHERTY: This is...

MS. COFONI: That's what I was asking. Ok. So, the 33,198 includes the 6,000?

MS. STONE-DOUGHERTY: Correct. In essence, what happened is we took two undersized lots that by themselves without the dedication would have been 34,543 square feet. Right?

MR. STEWART: Yes.

MS. STONE-DOUGHERTY: And...but...knowing that we had this issue with the Right of Way and the centerline, we went over to Roxbury and even though we picked up...how much...

MR. STEWART: 6,013.

MS. STONE-DOUGHERTY: 6,013...once we give the deed the dedication we actually end up still smaller at 33,198 square feet.

MR. BUCZYNSKI: But, if I could...that lot really was like 40,550 because you're dedicating roughly 7,400...

MS. STONE-DOUGHERTY: Right.

MR. BUCZYNSKI: ...the lot really is like 40,550 I think.

MS. STONE-DOUGHERTY: Correct.

MR. STEWART: If you add the 7,000 back in for the Right of Way dedication, that is correct. Forty thousand and change.

MR. WEISS: Catherine, what's the zoning?

MS. NATAFALUSY: R-1. Minimum lot size is one acre. 43,560.

MS. COFONI: So why on the map...why on the plan, does it say required 40,250 square feet?

MR. STEWART: That's Roxbury.

MS. COFONI: Sorry. Sorry. Ok. That's better.

MR. STEWART: There is a lot of information.

MR. WEISS: Let's go back. You also said what you need to conform to the ordinance is 43,500?

MR. STEWART: That's the...yes...that's your zoning right now 43,560 for the lot size.

MR. WEISS: So you're off by 10,000 square feet.

MR. STEWART: Approximately 10,000 square feet.

MS. STONE-DOUGHERTY: But that's the result of the deed of dedication.

MR. STEWART: Correct.

MS. STONE-DOUGHERTY: Ok. I mean we are...

MR. WEISS: ...3,000 square feet.

MS. STONE-DOUGHERTY: Right. But we would be substantially closer than if we didn't pick up the land from Roxbury and we just had the two separate tax lots that combined would only be 34,543.

MR. BUCZYNSKI: lot numbers...

MR. STEWART: I know.

MS. STONE-DOUGHERTY: I mean the problem we have...we have two very small undersized, pre-existing, non-conforming lots in your R-1 Zone. And rather than the applicant coming in here trying to build two homes on two very small lots, he's doing a reverse subdivision merging them together and we did the lot line adjustment with Roxbury to pick up as much land as we could to make this lot as large as possible to put one modest single family dwelling on it.

MR. VAN NESS: I have a calculation for you.

MS. STONE-DOUGHERTY: Sure

MR. VAN NESS: Do you have the square footage of the lots combined with the 6,000 square feet with the existing road lines?

MR. STEWART: If we were to add in the 6,000 square feet onto the existing Lots 15 and 16...

MR. VAN NESS: With the existing road lines as of today...

MR. STEWART: Sure, basically existing Lots 15 and 16 is 34,543 square feet, adding in the 6,013 from the Roxbury lot would give you 40,559 square feet. But, that does not include the dedication in Roxbury for the Right of Way. That is shown in the cross hatched area in front of that Lot 35.02.

MR. VAN NESS: Thank you.

MR. WEISS: Anybody else? Ok.

MS. STONE-DOUGHERTY: Ok. Just to kind of step back...

MR. FASTERT: I just had one question. It's for Chuck...a comment was made that the two existing lots could be built on small dwellings...could be placed on those...is that true?

MR. MCGROARTY: No, not without variances.

MR. FASTERT: Ok.

MR. MCGROARTY: Not without a variance.

MS. STONE-DOUGHERTY: Right...but they are...

MR. FASTERT: So actually they would require variances to be built on those small lots if they were maintained separately.

MR. MCGROARTY: If they were under separate ownership. If...yes...well they would need variances...you know...the question that would be asked then is being asked now is why they...the question would be as the attorney just mentioned a few moments ago would the applicant be able to find additional land so if you came in with two substandard lots in Mount Olive...you this board I'm sure would ask why can't they just be merged into one lot and they'll...you know...rather than two houses one lot...essentially what they're doing with some additional land that they are carving out from the Roxbury side.

MR. FASTERT: So the fact that it's a pre-existing condition they still...it's irrelevant, they still need the variances necessary.

MR. MCGROARTY: That's right.

MS. STONE-DOUGHERTY: Again, just to backtrack for a minute though, the house as proposed with the footprint that is shown on the minor subdivision plan, the house itself is fully conforming as far as setbacks, coverage, etc. Correct?

MR. STEWART: That's correct.

MS. STONE-DOUGHERTY: Ok. So again the only variance that we are seeking tonight is a variance that now is technically new but is a pre-existing condition because we have two undersized lots. The applicant on their own is proposing to merge. And even going a step further, trying to get additional land...that is as much land as they could and is still undersized. Correct.

MR. STEWART: That's correct.

MS. STONE-DOUGHERTY: Ok. Did you have an opportunity to review the Township Engineer's letter dated February 9, 2016?

MR. STEWART: Yes I did.

MS. STONE-DOUGHERTY: Ok. As far as the technical issues items 1 thru 9...

MR. STEWART: We agree to all of them. Especially number 5, I know it's an addition to the drawing that we have here it's for the street trees...we will gladly place street trees 40 – 60 feet apart on the plan.

MS. STONE-DOUGHERTY: Ok. So the applicant will do the street trees. So a waiver is not required for that.

MR. STEWART: Correct.

MS. STONE-DOUGHERTY: Ok. And...what is your position on item number 8?

MR. STEWART: Oh, as far as item number 8 that's regarding the LOI from DEP which was issued in 2004, I believe it was, that does fall into the Permit Extension Act. So we are still good underneath that current LOI. So as far as obtaining an additional one, I don't think that's necessary.

MS. STONE-DOUGHERTY: And then, of course, we'll comply with number 9 if it were to be approved.

MR. STEWART: Yes.

MS. STONE-DOUGHERTY: And did you also have an opportunity to review the Health Department memorandum of February 19?

MR. STEWART: Yes, I did.

MS. STONE-DOUGHERTY: And did you discuss that with the applicant?

MR. STEWART: Yes, I did.

MS. STONE-DOUGHERTY: And what is the applicant's position as far as the Health Department?

MR. STEWART: As far as the soil logs that are shown on the plan, they are outdated, as far as Mount Olive regulations go. So we are...we'll gladly do additional soil logs if necessary. And the soil that was analyzed back when these were completed in 1994, I can't remember the exact date. I think it was '94. Provided a K2 soil which is the minimum standard for Mount Olive...that still is accepted as far as septic code goes and we can still design septic for this property. Although we were...we have an intention of going for a sewer from Roxbury because as you can see from on the drawing on the back of Lot 35, we are proposing a 20 foot wide utility easement. And if we can access the sewer main in Roxbury, we are going to do that rather than build a septic system.

MR. BUCZYNSKI: Just regarding that, of course if you did that they would have to amend their Waste Water Management Plant.

MR. STEWART: That's true.

MR. BUCZYNSKI: ...to get that way. In my report I said something contrary to the Health Department but I said that the soil logs show that they can put a septic system on the site, which they can. Feasibility wise, yes, the soil logs, are more than 5 years old but the soil doesn't really change. So...with K2 value you can build a septic system...under K1 soils...in Mount Olive the Health Department has a stricter condition where they won't allow K1 soils, just K2. But, you do have K2 soil. So, I'm very comfortable that from a feasibility standpoint, which is what you look for when you look at minor subdivisions that it shows that the soil can handle the septic system. But they have to do more...new tests to conform to the requirements of the Health Department.

MR. WEISS: And you're willing to do those tests?

MS. STONE-DOUGHERTY: Absolutely.

MR. WEISS: So, if this application is approved, Tiena, would make that obviously a condition.

MR. BUCZYNSKI: Of course, subject to approval of the Health Department when they come in for a septic system design

MS. COFONI: So, it's the well and the sewer? I mean and septic that would be subject to Mount Olive Health Department?

MR. BUCZYNSKI: Oh, yes.

MR. WEISS: Gene, could you go over your report if there is anything else...

MR. BUCZYNSKI: They just covered it...they brought the items regarding the soil logs I want to put on the record and Mr. Stewart mentioned that they wrote out the street tree number 5 in the report...I'm requesting a design waiver you're going to put the trees where ever it is. Correct?

MS. STONE-DOUGHERTY: Yes.

MR. BUCZYNSKI: Ok. And there's number 6...they'll contact the Tax Assessor for...as far as the new lot number. So they basically addressed all my items.

MR. WEISS: Ok. Anything else?

MS. STONE-DOUGHERTY: I think we covered everything. Yes.

MR. WEISS: I just had a general question. We've talked about the properties 15 and 16 and then the Roxbury property 35, what about...tell me about the property behind it. What's behind this 15 and 16.

MR. STEWART: That would be lot 14.11 which is basically like an "L" shaped property. I'll just go to my board right here so I can point it out. Directly behind in Mount Olive is lot 14.11 which is this lot right here which is on the upper left hand corner of your drawing. That lot area exists as 46,253 square feet. Now directly behind our property the one that we are proposing in Mount Olive Lots 15 – 16 and a portion of Lot 35 or Lot 35.2 in Roxbury. Directly behind that is a lawn area and a pool area which is directly behind the home that sits on Lot 14.11. That's what's directly behind our property.

MR. WEISS: There's a swimming pool?

MR. STEWART: A swimming pool. Yes.

MR. MCGROARTY: I was just wondering if we are going to have testimony on the variance.

MS. STONE-DOUGHERTY: Yes, can you go thru...besides the addendum that we provided in the application in support of the variances, can you go thru in your opinion 40:55D70c2 as far as the variance relief?

MR. WEISS: Is Mr. Stewart able to give that testimony?

MR. STEWART: I'm an engineer and a surveyor. As a surveyor, I can actually apply some area standards within...or the area within...the lot areas within this area of this property.

MR. WEISS: is that testimony sufficient Tiena.

MS. COFONI: Yes, traditionally it is. As the board is aware we have variance applications all the time where we don't necessarily have planners here, so I think the applicant...the board would listen to whatever testimony Mr. Stewarts' going to give and give it the way that you see fit given that he's not a planner. And of course I assume that he won't be testifying as a professional planner.

MR. STEWART: No, I won't.

MS. COFONI: So you're saying you're a land surveyor. I guess I didn't catch how that would be applicable...how that would be relevant.

MR. STEWART: Well, I can show that the lot area is within the area of our proposed lot are consistent with what we are proposing if that may help.

MR. WEISS: Wait, say that again.

MR. STEWART: The lot areas...

MR. WEISS: Yes.

MR. STEWART: ...within our neighborhood I should say are consistent with what we are proposing.

MS. COFONI: For the size of the lot proposed is consistent with the size of the lots in the neighborhood.

MR. STEWART: Sure. If you look at the map and I'll just start with lot 35 itself. The existing lot area is 55,000 square feet. Ok. That's to the center line.

MR. WEISS: Is that before you take away the 6?

MR. STEWART: That's before we take away the 6.

MR. WEISS: Ok. That really doesn't help us. So...

MR. STEWART: No, let me finish. Then with the proposed Right of Way dedication of 10,000 square feet that will reduce it down to what we are...with Lot 35.02. Let me just look over here onto Roxbury. Proposed Lot 35.01 is 40,251 square feet. So if you add back in the Lot 35.02 that's another 6,000. So, that would be 46,251 square feet. Ok? Which is a little bit larger than the lot we are proposing, of course. Now, if you look behind that lot at Lot 61.1 in Roxbury, that lot is at 35,016 square feet. But we are proposing for Lots 15.01 and 35.02 our proposed lot, that's at 33,198 square feet. So, it's within reason. It's about 2,000 square feet difference. Now, if you go to Lot 61.2 which is further north in Roxbury that lot is at 32,523 square feet. That lot 61.2 is actually less than what we are proposing on our property. And then if you look to the right of the drawing, across right court, those lots are similar in nature to...the lot sizes that I just spoke about of 61.2 and 61.1.

MR. WEISS: Chuck, I think you had a comment.

MR. MCGROARTY: No. Well I'll just wait for Mr. Stewart to finish.

MR. STEWART: Ok. Now if you look at the Mount Olive properties which are basically off of St. Andrews Court, Lot 14.11 as I stated was at 46,253 square feet and Lot 14.10 is at 43,651.7 square feet. Those are larger and do comply with the Mount Olive ordinance. They are about 10,000 square feet than what we are proposing. But, keep in mind that the available area for our properties we are basically pursuing available area from the lot next door and that's all that's available. So that's all we can gain to make our lot more conforming.

MR. WEISS: When I asked you earlier about existing conditions, you addressed the Mount Olive property and you told me there was a swimming pool directly behind Lot 15 or 16. Tell me about

the property behind the Roxbury lot currently 35. I'm trying to determine if there is any way to acquire extra property going thru the rear.

MR. STEWART: That is Lot 61.1 which is a community well. Which is owned by Roxbury Township Water Company or Roxbury Water Company I should say?

MR. WEISS: Can you point that out?

MR. STEWART: That would be this one right here.

INAUDIBLE

MR. STEWART: For us to take a piece of that Lot 61.1 I can't see how that would benefit our proposal right here. We might have a little flag in the back just to gain more area but to benefit that lot...I think it would be...

MR. WEISS: It would reduce the need for a variance I would think if you...

MS. STONE-DOUGHERTY: Well, if I could just interrupt for...Mr...Mr. Chairman...the problem we'd have is that's already an undersized lot per Roxbury standards so under the Municipal Lane Use Laws it's really just favored to take land and make it even further non-conforming to try to make another lot conforming. I mean it's what we try to do is look to take land without creating several other undersized lots.

MR. WEISS: I don't know if I agree with that. But, I'm certainly entitled to that opinion. You have an undersized lot...Ok, I asked the question, you gave the answer.

MS. COFONI: What about...what about attempting to acquire additional property from Lot 14.11 because they are oversized?

MR. STEWART: There's a...directly behind our property there's a swimming pool and a 6 foot high fence with a fairly large berm with large plantings on it. Again, the reduction in area there would only deal approximately 2,500 square feet, I believe, if I got my math correct, for that lot.

MR. WEISS: Mr. Stewart, would you just repeat what you just said about possibly 2,500 square feet max?

MR. STEWART: The lot area for 14.11 is 46,253...252.9 to be exact which if you are to reduce that to Mount Olive's Zoning of 43,560 that would be approximately 2,500 square feet. I didn't do the calculations exactly.

MR. WEISS: Scott, do you have a comment?

MR. VAN NESS: A question. I need to go back to the...Permit Extension Act, you had stated that the Permit Extension Act covers your existing permit.

MR. STEWART: I believe it does. Yes.

MR. VAN NESS: And...you believe it does, but have you confirmation of that number 1? The permit was originally issued 2004 and how I read the Permit Extension Act is it would have made your permit expire June 30, 2015. Now, I'm not an expert on reading this stuff. However, if you would clarify that for me, please.

MS. STONE-DOUGHERTY: I think that's more a legal question. And my position is that the Permit Extension Act actually expires June 30, 2016, this year.

MR. VAN NESS: There are several extensions, however, there were dependent on the original expiration date how I understood it. I would like some type of clarification on that to make sure that the permit does exist at some point.

MS. STONE-DOUGHERTY: We can do that and we can go a step further and say if the board were to approve this and your legal counsel disagreed with my position and...you know...certainly documentation I can pull off the DEP website as well being I'm also a board attorney for municipalities

and if I had this same issue come before me, then we can certainly put a condition in the approval that we would get a new LOI. I mean that's not something...

MR. VAN NESS: That's satisfactory. Thank you.

MR. WEISS: Ok. So, that really covered any other potential property acquisition based on the existing conditions. There's really nothing else we can look at.

MR. STEWART: No, there's not.

MR. WEISS: Chuck.

MR. MCGROARTY: Yes, I don't want to make a federal case of this but I really don't...I don't think it's really helpful to tell us what the lot sizes are in Roxbury because for purposes for a variance really need to address the Master Plan and the Zoning Ordinance in Mount Olive not so much...but I appreciate the fact that Mr. Stewart is at least giving us a sense of the character of the area. I don't think that...let me say it a different way. I think they have the grounds for a variance. You know...and I imagine they'll just address the negative criteria too, but I think it would be helpful...because I know in the amendment that was prepared, I guess, by the attorney listed a number of provisions with the Land Use Law but of course that's just the paperwork as opposed to testimony. I think the bottom line...I think it's a c-1 Hardship Variance. I don't think it's a c-2 Variance. A c-2 Variance is a little different. If the applicant is going to argue it's a c-2 Variance, I know this sounds tedious, but I think it's important just for the record. The Supreme Court has said the Kaufman Case many years ago, if it's a c-2 Variance you've got to show that...it's not just the...it not just benefits the owner of the property, it's a better alternative for the zone plan. And I don't think an undersized lot, anyway you can argue it, is a better alternative for the zone plan. However, c-1 Variance I think they have a hardship. I don't know if they expressed it quite this way. They've got two undersized lots in Mount Olive; I think the testimony from Mr. Stewart is they've done as much as they can to get some more land from Roxbury. Then of course, they are dedicating their own frontage in Mount Olive so that reduces the size. So, I think perhaps if it was set this way but I'm jumping in just to understand the testimony. I think it's a c-1 Hardship Variance with respect for the negative criteria that is the impact of the zone plan which is the Master Plan and the Zoning Ordinance which is the R-1 Zone in this case. I think it's pretty self-evident that...you know...this is an isolated somewhat unique situation. Perhaps the last thing that should be addressed is impact to the neighbors because that is part of the negative criteria. Is there...will there be a substantial detriment to the surrounding neighbors and I know...I guess Mr. Chairman you were getting at that with the questions of what's around this property and maybe if...when it's up to the public, you'll hear more. But I think I just wanted to say that because sometimes I think we get fuzzy about what kind of variances there are, I think it's important to establish...as long as I have the floor and I'll just stop after this...I think one other thing really is important to clarify. Which is the house, the post house, assuming this is approved. And the footprint shown on the plan is the amount of footprint which would be approved. It might be maneuvered in slightly different ways within the building envelope. We need to be very very careful, I think, because I haven't heard any testimony on this yet but the house will be built right up to the municipal boundary which is fine because it's the lot line in Roxbury that counts. It's not the municipal boundary that counts for setbacks. However, any improvements on proposed Lot 35.02 which is in Roxbury, if I understand caseload correctly it goes to Roxbury. It doesn't now come back here, to this Planning Board. So, if that house shifts a foot over, then the applicant has a problem and last thing we want is an applicant leaving the meeting saying we didn't know that. Sometimes that happens. So I think we either get some kind of commitment tonight as a condition that that house will not extend past...the footprint of the house...does not extend past the municipal boundary or if it does they are aware that they may have to go to Roxbury for approval for a portion of the house as silly as that may sound. Now, of course, Tiena and the applicant's attorney can tell me if I'm reading the cases wrong, but there is a Supreme Court case on this which I think is very clear. What happens in these types of situations. Jurisdiction does not come back to this board for improvements on a lot which is in Roxbury. The other thing I just say along those same lines is even if it's not the house...any other accessory structures; Catherine noted too, they are going to very close to the rear line of the building envelope. So if they in the future wish to put a deck on there, then maybe back in front of this board. But if they have any, being whomever owns this property in the future, wishes to put a shed either in the side or the rear yard, again, if it's on that rectangular portion that's in Roxbury, they will have to go to Roxbury for that. Again, this will be a little...you asked earlier...these type of situations do occur but as you can see, they do create problems. Not that it's the applicant's fault. It's just the way it is.

MR. VAN NESS: So, just out of clarity, so the applicant would have to go to...they wanted a shed and they want to put it in the 6,000 square foot...would the setback requirement be off the township's line as well as the rear and side yard?

MR. MCGROARTY: It's Roxbury zoning. Whatever it is, it's not Mount Olive zoning. I mean Roxbury has jurisdiction of the land in Roxbury so whatever their...I don't know what their...I mean...the plan...it wouldn't be Mount Olive...

MR. VAN NESS: And the other example or question I have is for example in the zone, I believe it's a 10 foot setback off the house, an accessory structure must be. If this building structure is built to the property line or to the township's line and the Roxbury code is only 5 feet from their township line, then it is indeed within our regulations from a home within the township. So how are we to manage that?

MR. MCGROARTY: I don't know the answer to that. Good question. I don't know the answers.

MS. COFONI: I don't know the answer to the question either. It's an interesting...because I think Chuck is right. I think if they have a shed in Roxbury, they are going to go to Roxbury. And you're right; Roxbury is not going to enforce Mount Olive Zoning. So it could potentially be that they would be able to put a shed within 5 feet under your example located within 5 feet of the principle structure even though Mount Olive requires 10 feet. Yes, I don't know the answer.

MR. VAN NESS: I mean there might be different rules required that might prevent that. However, I don't know what Roxbury...I think it's a state code. I'm just curious. That's just one example.

MR. FASTERT: Chuck, I have a question about the c-1 Hardship Variance. Part of that is the negative criteria impact to the neighbors, surrounding neighbors. Are we required to look at the impact of neighbors in Roxbury? Or is that outside of our jurisdiction?

MR. MCGROARTY: No, I think you can. You hear what I said earlier that...you know...I was somewhat critical in a way of saying well we're going to describe what's in Roxbury to meet the positive criteria, so it would be sort of inconsistent if I were to say it's a good idea to consider that. But I think the reality is that with the Medici case I think it was all one town anyway but I think there are potential impacts to neighbors in Roxbury, if you think they are severe and substantial they are worth considering...I don't know if there are any...

MR. FASTERT: When you look at...I mean...the proposed structure is much closer to the house in Roxbury than to the house in Mount Olive. But, my assumption here is that the owner of Lot 35 sold the property in the first place probably is not so concerned.

MR. MCGROARTY: I assume they are the same party or related because they brought the application to Roxbury and now they are here. And again, they will meet the setbacks in Mount Olive for the side yard setback. Scott...

MR. VAN NESS: Notice required?

MR. MCGROARTY: I'm sorry...

MR. VAN NESS: Notice required? Did notice go to Roxbury residents within 200 feet...

MS. STONE-DOUGHERTY: Yes...If I may jump in because there was a lot of conversation and just answer a couple of the points that Chuck brought up. I agree with you I think the c-1 Hardship Variance is the more adequate variance for this particular application giving the pre-existing undersized conditions of the lot and the lack of land to be able to acquire or make the lot conforming. I can also tell you that the applicant would stipulate that the structure itself would be built in Mount Olive. I can also tell you that when we were in Roxbury and in front of the Roxbury Board you know they expressed a similar concern just from the taxing perspective more so which is a council issue not a board issue so we did make that. As far as the hypothetical which sometimes we as attorney, engineers, and planners like to think hypothetical on a lot of issues, if my client were to look at or a future owner of the house look at putting a shed in on the property that's technically in Roxbury, I mean looking at the surrounding lots, the impact would be the Roxbury adjacent neighbor and municipal land to the rear, you really have no argument or impact on the Mount Olive resident who's lot line expires up at the township line.

MR. MCGROARTY: Yes, I wasn't saying that there was a potential negative impact...

MS. STONE-DOUGHERTY: Yes, ok.

MR. MCGROARTY: ...from a shed. I was just saying just procedurally because we generally don't see...there is only a very few in my experience here...that we've had a municipal boundary separated property. So, I'm not saying it's a negative impact. I'm just...I just wanted to...as I said before just clear up the procedure steps would be.

MS. STONE-DOUGHERTY: And also, you know this same plan is part of the site plan referenced in the Roxbury resolution with the exception of it's an earlier version cause Mr. Stewart had to make some clean up updates for this board. But, as far as showing the location of the driveway and the structure those are all things the Roxbury board did look at and consider and again the history of the Roxbury application was we wanted to take more land and Roxbury had the concern of we don't want a house even closer we don't want to create an undersized lot so this is the max we could get. As a matter of right to be able to add that to our land which again goes to that c-1 Hardship?

MR. MCGROARTY: I don't disagree; I think you did as much as you can.

MR. WEISS: Any other questions? Ok, Mr. Stewart anything else?

MR. STEWART: I think that's all I have.

MR. WEISS: Anybody else has any questions for this. At this time, what I'll do is I'm going to open the meeting to the public. If anybody in the public has any questions for Mr. Stewart based on the testimony that he just delivered, you are more than welcome. Sir, if you will, will you come to the podium, you'll state your name and address for the record. And again, you're going to ask a question for Mr. Stewart.

MR. MATHUS: Good Evening. My name is Glen Mathus. I live at 2 St. Andrews Court. My house is the one with the pool that is up against the proposed...lot where two non-conforming lots put together to equal another non-conforming lot. If we talk acreage, I got 1.1 acres. This combined lot, I believe, is .78 acres. In a development that's all 1 acre or more, a selling point to anybody who owns and especially me.

MR. WEISS: Well, let me just stop you for one second. There will be time for comments.

MR. MATHUS: Ok.

MR. WEISS: It's just...

MR. MATHUS: I just...ok...that's what I wanted to know before the procedure.

MR. WEISS: We'll certainly come back and open it up to the public for comment.

MR. MATHUS: Ok.

MR. WEISS: You seem to have some testimony...

MR. MATHUS: Based on what was talked about, not questions. Right?

MR. WEISS: Mr. Stewart testified on some...

MR. MATHUS: Ok. Very good. Ok. What was mentioned was the septic system. This is the first that I'm hearing that it could be tied into Roxbury's which would be great. But has anybody done studies? Cause my drinking water well is fairly close. It's on the other side of my pool plus closer to it on the corner of my pool. Can I go over here?

MR. WEISS: Go ahead, please.

MR. MATHUS: My pool is right about here. So right about here I have a super pump that pumps water into my pool from only 10 feet down. Now I have to do that because there is a high water level and if I don't do that sometime it can lift the liner. So would I be sucking urine and everything into my pool? That's a question I need answered. Also, on the drawing what wasn't brought up and this is the most important, the elevations are on the drawing. There is a serious rain runoff issue comes down from Roxbury. You see the elevation?

MR. WEISS: I'm going to have to stop you again.

MR. MATHUS: Save that for later?

MR. WEISS: Yes, only because I don't believe that the expert testifying to any kind of elevation or drainage...

MR. MATHUS: But it is presented on the map. That's why I brought it up.

MR. WEISS: Gene, go ahead.

MR. BUCZYNSKI: Mr. Mathus mentioned about the well he has for the pump water for the pool.

MR. MATHUS: Yes.

MR. BUCZYNSKI: You have...did you get a permit for that well?

MR. MATHUS: Yes, it was...all when I had the pool done because it was a dry well underneath it. They put stone there because they hit water.

MR. BUCZYNSKI: They got a permit from the town?

MR. MATHUS: Yes, well that was done like 12 years ago.

MR. BUCZYNSKI: Ok.

MR. MATHUS: And that's only used to fill the pool up.

MR. WEISS: Chuck

MR. MCGROARTY: I don't if this will be out of order. But someone will tell me and I don't know if it will be. Mr. Mathus, did the applicant, Mr. D'Egidio, make an offer to sell you the property in Mount Olive?

MR. MATHUS: No.

MR. BUCZYNSKI: It gets a little hairy too because I'm not sure how the Health Department is going treat...the septic system is the Health Department. Usually it's like 100 feet away from water course.

MR. FLEISCHNER: I was going to ask...

MR. BUCZYNSKI: Ok.

MR. FLEISCHNER: ...what was the ordinance septic to a well?

MR. BUCZYNSKI: Usually its 50 feet but I think in Mount Olive it's 100 feet.

MR. MANIA: 100 feet in Mount Olive.

MR. BUCZYNSKI: It is. Any my concern is how the Health Department is going to treat the fact the well that Mr. Mathus has does pump water into a pool. So, they are going to treat that as water course and this could be...the septic system is going to have to be 100 feet from that well. I don't know.

MR. FLEISCHNER: I would like to question that because every house in my neighborhood off Karen is 50 feet into the well to the septic when those houses were built. There were all 50 feet.

MR. BUCZYNSKI: I have to check but I thought Mount Olive had it stringent ...I thought it was 100 feet.

MR. FLEISCHNER: I'm just saying I know they're 50 feet.

MR. BUCZYNSKI: I'm not sure what it was way back when. There might have been a different ordinance at that time.

MR. FLEISCHNER: Yes, it was back in '73, '74...

MR. BUCZYNSKI: Could very well been, because this is...

MR. FLEISCHNER: Every house is 50 feet.

MR. BUCZYNSKI: ...they became stringent, more stringent in Mount Olive, so could...

MR. MANIA: You're absolutely right, Gene.

MR. BUCZYNSKI: I mean that's not for right now but it could cause a problem here.

MS. COFONI: Well that will just eliminate their ability or they would have to revise their septic area in order to get Health Department approval which would be a condition of our...the Planning Board's approval.

MR. WEISS: Yes, Henry.

MR. FASTERT: Question. The pump...do you pump water out to stop your pool from lifting?

MR. MATHUS: Well, if you don't keep water in the pool...obviously I get evaporation too, but if you don't pump water from underneath it, the liner does lift and I do have a wrinkle in it.

MR. FASTERT: So why do you want that water back in your pool?

MR. MATHUS: It's groundwater. I had it tested, it's fine.

MR. VAN NESS: It weights down the liner.

MR. MATHUS: It weights down the liner. Right. And I water the lot with it too. I can put a sprinkler head, I got piping, and it's very useful. And I need it. But would I be filling my pool up with urine at 10 foot level? That's a question. You know...if I fill it up with the well, I could burn up my well.

MR. WEISS: Mr. Mathus, Mr. Schaechter had asked if you can go to the map and show the Planning Board...

MR. SCHAECHTER: and maybe draw your pool?

MR. WEISS: Don't mark the map, but just kind of show us where...

BOARD MEMBERS: Don't draw...

MR. MATHUS: It's right here. It's a pretty big pool, like 42,000 gallons, big pool, a lazy L. And this is all cool deck stoning and I've invested, when I was working, over \$60,000 on this...

MR. WEISS: Let's come back, there's a question....

MR. SCHAECHTER: How far from your fence?

MR. MATHUS: From the fence...it's a...the closest points probably about less than 20 feet. It's close. That's going be in comments. One other thing that you did talk about and bring up, I guess I could ask in questions. Well, not really, I guess it would be comments. It's about the hardship and who would the hardship be put on. So is that a question, something I could bring up now? Should I save it for comment?

MR. WEISS: Save it for comment and you will be entitled to give those comments.

MR. MATHUS: Ok. So then right now you didn't address the water which is major. And I got...I'll show you where that is later. I'll save it all for comments.

MR. WEISS: Fair enough.

MR. MATHUS: Ok. Just let me know when I could.

MR. WEISS: Hold on, Mr. Mathus.

MR. MCGROARTY: Mr. Mathus, I just want to make sure I understand you're on...your portable water is by way of a well. Is that correct?

MR. MATHUS: Yes.

MR. MCGROARTY: And the Health Department in Mount Olive gave you a second permit to do...or gave you a permit to do a second well to fill your pool?

MR. MATHUS: Oh, it's not a well. It's not a well. It's just to drain the water from underneath the pool. There's...when they put the pool in, they hit water. So if it's heavy rain, I just take out the water. And I use it...for...

MR. BUCZYNSKI: You put it back in the pool.

MR. MATHUS: Yes.

MR. MCGROARTY: But that's different

MR. MATHUS: I don't drink it. Although I've been to pool places I get it tested and they say it's fine. It's like no heavy metals or nothing like that. It doesn't smell.

MR. MCGROARTY: But it's not a well.

MR. MATHUS: No, it's not a well. It's a...I think when they put in the pool, they did put crushed stone there and then they put...they are only sucking it up...about 9 – 10 feet.

MR. BUCZYNSKI: Because the water table is high you're actually getting water from the heavy rains...

MR. MATHUS: Yes.

MR. WEISS: I suppose your question, Mr. Mathus, is how do you assure yourself that the waste from this property doesn't end up in your swimming pool?

MR. MATHUS: Right. That's one. And then my well is on...right on the other side of the pool. Now I don't know which way the ground water goes, I know which way the water goes on the surface, but I don't know how it goes underground.

MR. WEISS: I don't know...

MS. STONE-DOUGHERTY: All I can say is again that would be the Health Department issue. I mean the application, if approved, is going to be subject to the Health Department's...provisions and regulations. I mean certainly you can note it as a concern in the resolution that would bring it to the attention of the Health Department I'm sure the adjourning property owner will as well. He did attend the Roxbury hearings and he's very familiar with the property. There is a long history between my client and the adjacent property owner. So to answer Chuck's question, is it was testified to at the Roxbury hearing that there had been past offers to sell the property that did not...were not fruitful. So that's why it was not done. Again...

MR. MCGROARTY: If you would just put that on record again just so that's clear. In the Roxbury case, you already dealt with that question.

MS. STONE-DOUGHERTY: Yes, that question was raised. He came as an objector to the Roxbury hearing as well and...

MR. MCGROARTY: He being, Mr. Mathus.

MS. STONE-DOUGHERTY: Correct.

MR. MCGROARTY: So an offer was made Mr. Mathus...

MS. STONE-DOUGHERTY: In the past. Correct.

MR. MATHUS: An offer was made to me?

MR. WEISS: That's what the attorney just testified.

MS. STONE-DOUGHERTY: Yes, that's what Mr. D'Egidio testified to at the Roxbury hearing that you were present at.

MR. MATHUS: The offer was made to me to...buy land?

MS. STONE-DOUGHERTY: Yes, previously.

MR. MATHUS: When?

MS. STONE-DOUGHERTY: I don't recall what year but...he was at the hearing, as part of the transcripts...

MR. MATHUS: I missed that part. Nobody ever offered to buy land from me.

MR. MCGROARTY: Not buy land from you. If you were interested in buying...

MS. STONE-DOUGHERTY: In buying this land.

MR. MATHUS: Don't remember. Because I'm there 13 years.

MR. MCGROARTY: Well that adjusts the question I raised. Thank you.

MR. WEISS: John.

MR. BATSCH: Mr. Mathus are you on city sewers or you do you have septic?

MR. MATHUS: No, I got septic well.

MR. BATSCH: Where is your septic?

MR. MATHUS: Septic is in front of the house.

MR. BATSCH: Thank you.

MR. MANIA: How many feet from the well is your septic?

MR. MATHUS: Oh, it's pretty far. So...I'll show you. Septic is right here and the wells about right here.

MR. WEISS: Mr. Mathus, you've been given some testimony which is fine, you're asking good questions, the attorney would like to swear you in, If you would please.

MR. MATHUS: Ok.

(GLEN MATHUS IS SWORN IN FOR THE RECORD)

MS. COFONI: If you could state your name again for the record.

MR. MATHUS: Glen Mathus. I live at 2 St. Andrews Court. In Flanders, New Jersey for about 13 years.

MS. COFONI: Thank you.

MR. WEISS: Thank you, doesn't change our direction. Just in case someone from the Planning Board asks you questions.

MR. BUCZYNSKI: Not to keep on going on the issue of the well? I'm sure the Health Department doesn't even know about the...I don't want to say dry well...where he gets the water from because really it's not a problem. The problem is the fact that he's putting the water back into the pool. But the if the water wasn't being put back in the pool, there really isn't a concern.

MR. MATHUS: Well, my drinking water. I want some kind of guarantee that...I mean...I got children...at my age.

MR. BUCZYNSKI: Well drinking water it's going to be how many feet it is from the septic to the well. That's the regulations.

MR. MATHUS: Yes. Whatever regulations...I don't care...as long as it's regulation. Ok. And one other thing based on what was talked about was the possibility of a sewer connected to Roxbury. Is that just in house sewer line or is that address drainage also? That's just...

MR. BUCZYNSKI: Just sanitary sewer.

MR. MATHUS: Just in the house sewer.

MR. MANIA: Right. Sanitary sewer.

MR. MATHUS: Ok. I'll save that for comments. I'm good now. Just let me know when the comments are because I got a bunch.

MR. WEISS: We certainly will. Thank you. Anybody else from the public have comments from the testimony that was delivered by Mr. Stewart? Seeing none, I'm closing it to the public. Anybody else from the Planning Board has any questions for Mr. Stewart. I see none. Thank you, Mr. Stewart.

MR. STEWART: Thank you.

MR. WEISS: Ms. Dougherty, anything else?

MS. STONE-DOUGHERTY: I'm just going to summarize because your planner brought it up correctly. Under Cox, the requirement on a vacant undersized lot or an isolated lot is simply to be able to establish a prima facie case of hardship that the lot is undersized, is isolated, and there is no additional land that can be purchased. That's the standard under Nash v. Board of Adjustments of Morris Township that cited in all the other cases moving forward. Certainly we feel we have met that prima facie burden. We've taken from the only land that we can take from as far as being able to add any real square footage to the two existing undersized lots. You know...the applicant is proposing a modest sized dwelling because the lots are still undersized for Mount Olive's zoning ordinance. When the adjacent property owner attended the Roxbury hearing, he was concerned as to the size, we scaled down the house. I mean...unfortunately there's nowhere else to go. We can't go across the street because that really doesn't help us. So this is where we are at. We are looking to put one modest size house. It's not going to be a perfect lot. I mean every town has many imperfect lots. Otherwise we wouldn't be here. And we really did look at all the other alternatives to try to make this the most reasonable and straight forward and get rid of two undersized lots to do the best we could and I do think from a legal perspective and I think...you know...your planner may or may not agree but I do think you do have to look because we do have the property...municipal boundary line right in between we have to look at all of those 200 foot properties and how it all fits together. Not just one portion of Mount Olive. And I think we've proved that burden here tonight and certainly...let's face it...it will improve the lot, it will bring a nice home into the area and it certainly be probably more visually appealing than what's there today.

MR. WEISS: Thank you. I think at this point if anybody has any questions, I'm going to open it to the public for any kind of comments that anybody from the public might have about any issue that's on your mind. Mr. Mathus, your reminded you are still under oath. And so I will give you the microphone and certainly bring up your points, your questions, and your comments.

MR. MATHUS: Thank you. So now everything I say is good...

MR. WEISS: Absolutely, within reason.

MR. MATHUS: Ok. When I...when my wife and I bought that lot that's the first house we built together. We bought it and had assurances from our builder and the township that that was a non-conforming lot. And nobody could build on it. That's the only reason why we bought this lot. Of course, we asked, who owns that? Builder said it's too small. It doesn't conform. And even with all this other acquisition, it still less...about a quarter of an acre less than what I've got. The...the foundation of my

house...back about 10 years ago, Mr. D'Egidio used this dynamite about 30 – 40 feet away from my house to blow up a chicken coup. Yes. And the township has a record of it. Because an engineer came out to look at my foundation, the corner, and he even admitted that...

MS. STONE-DOUGHERTY: I'm going to object to that point because now its hearsay, I'm sorry.

MR. MATHUS: No. This all leads into the water I'm going to get to...ok. So dynamite was used about 30 – 35 away from my house, and windows shook. My wife was home. He said that it was rats and they were the size of cats in the chicken coup. Ok. And I had the township come out and check my foundation without digging down. Down below sub grade, my walls were sweating. Ok. I had to spend hundreds of dollars on dry lock. The water runoff to that lot, as far as I'm concerned, it's wetlands. The water is major when it rains. I have pictures of just this week of how the street is never dry because the water is running through that property creating potholes and it...if you want...do you want to look at the pictures?

MR. WEISS: Mr. Mathus, this is what we're going to do, if you are going to present pictures to the Planning Board, we're going to mark them. How many pictures do you have?

MR. MATHUS: I got about 8. It shows my house, the property, where everything is and...

MR. WEISS: Why don't we do this, why don't you mark them if you would each picture starting with O1 thru O8.

MR. MATHUS: Ok.

MR. WEISS: Then you'll date them and then tell us what each one is and then you'll present those to us. So as you...so as you have the pictures mark them.

MR. MATHUS: So this is the same drawing as that.

MR. WEISS: So we are going to need to mark that as well.

MR. MATHUS: Ok.

MR. WEISS: If you would...we are going to call that, let's start with that one as O1.

MR. MATHUS: Ok, because nobody addressed this before. This is the major thing. If this house, nobody said nothing, are they going to take the dirt and raise the house that they get from the foundation? Is the house going to sit high? Because if it sits high, I'm going to flood. The water comes down from Roxbury, goes through that lot, it's always wet. Heavy rain days comes down over my property, right down here. Within feet I have a little raise just before my foundation about 2 feet.

MR. WEISS: So this testimony you're giving us is based on observations, actual physical observations that you made.

MR. MATHUS: Yes, I know that.

MR. WEISS: And you're seeing the water roll in the direction that you're

MR. MATHUS: Every time it rains, this is wet. It goes to the street, the street is always wet. That is why you get those massive potholes all the time. Ok. And even the water on my land over here and this little area by Ironia Drive always gets flooded. If you raise the house, you're going to multiply my problems tenfold. And I've never seen a house built where they're not going to raise it.

MR. WEISS: Mr. Mathus, would you please mark that as O1?

MR. MATHUS: Anywhere?

MS. NATAFALUSY: What is it?

MR. COFONI: It's the site plan marked up.

MR. MATHUS: It's the site plan but I gave a general...the way the water flows.

MS. STONE-DOUGHERTY: Do I get to see it?

MR. WEISS: Absolutely. Now if you would, please mark O1 on the front of it with today's date and then if you would please give it to Ms. Dougherty.

MR. MATHUS: Alright. I'll do that but I just want to write down...today's the 10th? Right?

MR. WEISS: Today is the 10th.

MR. MATHUS: Ok. So that water to me is...I mean my basement alone, I have a finished basement and the water right now is...comes up...

MS. COFONI: Mr. Mathus, we need you to actually provide us with that exhibit that you just showed us.

MR. MATHUS: Yes, you can have it.

MS. COFONI: And we need...if you could give it to the applicant's attorney so she can take a look at it.

MR. MATHUS: Ok. It's the same one as that. Except I gave...you know...the elevations on this are 2 and 3 percent elevations from Roxbury and the houses...

MS. COFONI: And you have...I notice a blue marker on that side plan.

MR. MATHUS: And that's just the water flow and then the outer barrier on that water flow shows how it will come over to me even more on a heavy rain and then my property gets so muddy I cannot even mow it.

MR. WEISS: Mr. Mathus, just to be...just to be...you're not standing here testifying as an engineer, as a hydrologist, or any other expertise. You're simply giving...

MR. MATHUS: I'm an Asphalt Technologist though with the state though

MR. WEISS: ...you laymen's opinion based upon...

MR. MATHUS: Yes, that's right. Based on a homeowner who deals with water on property.

MR. WEISS: But you're not testifying as an Asphalt Technologist.

MR. MATHUS: I am an Asphalt Technologist.

MR. WEISS: But you're not here tonight...

MR. MATHUS: No, no, no...

MR. MANIA: This is nothing to do with asphalt.

MR. MATHUS: Well, the potholes and the wet roads and all that...

MR. WEISS: So, your testimony tonight is basically a layman's observation as a homeowner...

MR. MATHUS: Yes.

MR. WEISS: That's fair enough. Not testifying as an engineer. And the Planning Board certainly has to understand that.

MR. MATHUS: And...ok...comments continue...

MS. COFONI: Mr. Mathus, do you want to provide us with the pictures as well?

MR. MATHUS: Sure, but I didn't number them yet.

MS. COFONI: Ok.

MR. MATHUS: You can look at them and you can ask me the questions. I kind of labeled them to give you an idea of exactly of what...

MS. COFONI: You want to hand them to me. I will mark them. Ok. So, we are going to mark them O2 thru O...I think it's O9...but let's see...

MR. WEISS: And while we are looking at the pictures, Mr. Schaechter.

MR. SCHAECHTER: Mr. Mathus, in your 13 years at...

MR. MATHUS: Yes.

MR. SCHAECHTER: ...have you ever had the town engineer come out and look at the water runoff into your...?

MR. MATHUS: No. No, because it was going thru that property. It hasn't flooded the basement at all.

MR. SCHAECHTER: So, it's not really a problem yet.

MR. MATHUS: Right.

MR. SCHAECHTER: Ok.

MR. MATHUS: But, if you build and raise that lot, it's going to channel it to me.

MR. BUCZYNSKI: Could I just ask...

MR. SCHAECHTER: But, I don't this you can say that. I don't think you can testify to that.

MR. MATHUS: It's going to go somewhere downhill.

INAUDIABLE

MR. BUCZYNSKI: Just a question, because Mr. Mathus brought it up regarding elevations. Maybe you can explain to me on the other lot in Roxbury, why the finished floor in the rear is 689 but in the front it's 699? Am I missing something?

MR. MATHUS: The stairs going up to the front door. If you see in the front...

MR. BUCZYNSKI: Yes, but...says...

MR. MATHUS: Finished floor. 699.11 on the front of the house.

MR. BUCZYNSKI: How come on the back it's lower?

MR. MATHUS: It's a walkout basement.

MR. BUCZYNSKI: Ok.

MR. MATHUS: Ok.

MR. BUCZYNSKI: But 699 means it going...the house is going to be raised.

MR. MATHUS: That house is higher. Yes.

MR. BUCZYNSKI: So he knows, it's about 7 feet high. Just the ground under is 692.

MR. MATHUS: Yes, 694 is by the stairs, if you see there is a contour there.

MS. BUCZYNSKI: Think of it that way. The house next door, the one that's in Roxbury, is going to be 6 to 7 feet higher above the existing ground. So, all the other land is going grade towards this property. But, then his property is going to be raised too then.

MR. STEWART: I'm not sure. It's possible. The house will be raised of course. But as far as the property itself, we didn't provide a grading plan.

MR. BUCZYNSKI: No, I know.

MR. WEISS: Henry.

MR. FASTERT: Mr. Mathus, can you describe the property behind your house and what the property on lot 15 look like, is it wooded, is it grass?

MR. MATHUS: No, it's grass. They maintain it. The township maintains...it's a pump house...they come and work on it every morning...its...its...its...

MR. FASTERT: How about lot 15?

MR. MATHUS: What's that?

MR. FASTERT: The one that's directly behind your home?

MR. MATHUS: That's the one where the pump house...in Roxbury?

MR. FASTERT: No.

INAUDIABLE

MR. MATHUS: Behind my home?

MR. FASTERT: In Mount Olive.

MR. MATHUS: Or next to my home?

MS. COFONI: Next.

MR. FASTERT: The one we're talking about now. The one they are going to build a house on.

MR. MATHUS: Oh, that one.

MR. FASTERT: 15 and 16 are the...

MR. MATHUS: That's the proposed lot.

MR. FASTERT: Yes.

MR. MATHUS: That's...its just...over brush right now...marsh land, it's always wet, if there's a drought it's dry but whenever you get in spring time, it going to be water in there. All the time where you will see it on Ironia Drive the street, it will be sunny for days and the street, like those pictures show, are wet. And that's washing away the sub-base and that's why you get the massive potholes.

MR. FASTERT: The picture had a...

MR. WEISS: No, no...

MS. COFONI: But we...

MR. WEISS: Don't talk about the pictures yet. We're just making our way down. Matter of fact, what I'm going to do is. I'm going to take a ten minute break. It's now 8:40; we are going to come back in session at 8:50. What's going to happen over the next few minutes, please just review the pictures. We'll end up over here. And then we'll have Mr. Mathus testify to what those pictures are and then we'll make sure that the applicant gets a chance to look at them. So, I'm going to take a break. Let's get caught up with looking at the pictures.

MR. WEISS: I would like to call the meeting back to order. We left off, we have the photographs. I'm not sure if Ms. Dougherty...Ms. Dougherty did you take a look at the photographs?

MS. STONE-DOUGHERTY: I did. Yes.

MR. WEISS: Ok. So what I'd like to do then, Mr. Mathus, if you wouldn't mind, you have about 10 pictures in front of you. They've been marked O2 to O11. I just want to make sure that you tell us about those photographs. If you took them, when you took them, so you're...there's a record. So...

MR. MATHUS: I took them.

MS. COFONI: When did you take them?

MR. MATHUS: Less than a week ago. I'd say about 4 – 5 days ago.

MR. WEISS: So if you can just hold up the picture because we all have seen them. And then tell us a story about each of those pictures and why you're presenting them.

MR. MATHUS: Alright, this one obviously I took the wrong side of the..this is the proposed site where the house is going to be. This is showing that the asphalt is wet where the potholes are and it hasn't rained in days. But the water is still seeping out of that property.

MS. NATAFALUSY: What number is that?

MR. WEISS: That's 1.

MR. MATHUS: O2.

MR. WEISS: O2.

MR. MATHUS: The map is O1. O3 is the back of my house which is only about 20 feet or so to the corner of the property. And you can see I invested a lot with a lot of windows. I don't have shades on. Privacy is a big thing for me. I came from Jersey City, and built my dream house. It has a lot of glass in the back and this house or whatever they are going to put on their property, whether it's a dog shed or what. It's going to be very close to me. Right there.

MR. WEISS: Yes.

MR. BATSCH: Where is the pool?

MR. MATHUS: Pool is right here.

MR. BATSCH: Oh, it's covered.

MR. MATHUS: Lazy L. It's like 42,000 gallons. Like I said when I bought this house, I was working. I had a job for 32 years. I lost my job September 2013...never saw it coming...this is now from my...O4 is taken right out of the steps out of my sliders...

MR. WEISS: I just want to make one small correction. You noted that the corner is your house is 25 feet to the property...

MR. MATHUS: Something...something like that.

MR. WEISS: It's about 35 feet.

MR. MATHUS: Ok, 35 feet. I never measured it. But it seems close.

MR. WEISS: Just for the record.

MR. MATHUS: Yes. Ok. And here's the corner where it's the closest point to when the house would be somewhere up in here. But this area all floods. It's all wet.

MR. MANIA: And that's O what?

MR. MATHUS: That's now O4.

MR. MANIA: Ok.

MR. SCHAECHTER: Mr. Mathus, on O4 you have a pretty big berm there.

MR. MATHUS: Yes.

MR. SCHAECHTER: Is that the dirt from the pool they put back there? And does that prevent the water from encroaching on your property?

MR. MATHUS: No, actually it...I don't know where that dirt came from.

MR. SCHAECHTER: Forget about where the dirt came from, does that prevent the water...

MR. MATHUS: No, actually it...I'll get to that in the next picture. The water actually seeps in under the berm. This is the part where I'll start seeing water. Here's my house, here's the barbeque, and I don't see water this way towards the pool. But, I'll start seeing this whole area flooded and then this whole area on the side of the house, I'd say a quarter of that gets about an inch or two of standing water where you can't even mow because it's mud.

MS. NATAFALUSY: And what's that O4?

MR. MATHUS: That's O5.

MS. NATAFALUSY: O5.

MR. MATHUS: But the water actually permeates through the berm.

MR. WEISS: John, did you have a question?

MR. BATSCH: Same question berm..

MR. MATHUS: And if you raise this house, water will come around the berm and multiply the problem.

MR. WEISS: In your opinion.

MR. MATHUS: Yes.

MR. WEISS: Ok.

MR. MATHUS: But the water has to go somewhere. That's O5.

MR. SCHAECHTER: Where are your leaders? Your gutters?

MR. MATHUS: On the other side.

MR. SCHAECHTER: So on the side you can't see.

MR. MATHUS: On the side you can't see. Right there.

MR. SCHAECHTER: So it's right on the other side of this corner.

MR. MATHUS: Right.

MR. SCHAECHTER: And that drains into this area.

MR. MATHUS: Yes.

MR. SCHAECHTER: From the roof?

MR. MATHUS: Yes. But I have meters all around the other side of the house and they don't flood.

MR. WEISS: You're on O6 now?

MR. MATHUS: O6. O6 is just a different picture showing after many days of no rain how the street is always wet with the potholes coming from that lot. Drainage is a big thing. That pothole why it is still there from 2 to 3 weeks? It's massive.

MR. WEISS: That's O7?

MR. MATHUS: O7. And it's full of water. And it hasn't rained. Water is coming down from that lot. Ok. This is the house that is there in Roxbury. And in my opinion, that's the water flow into that lot. And if you raise all this it got to go some place. And that's a high lot. It's going to go to the back of my property over here that's always been dry. And it will add to the problem of raising my pool liner. It will come... if you raise this here, it will come this way, and here's my pool. And then I could risk losing my liner again if it's constantly wet, if we get a number of days of rain in a row. That's O8. O9 again is a different one on a sunny day showing the lot...street on Ironia is never dry. This water has to be addressed other than sewer system. It's got to go someplace water goes downhill. Now this is my property...this is Roxbury, right here, there's a little marker there, with an orange thing, and this is Ironia, this area my property will flood also this by the street. Coming...there's like a little channel there but this whole area will get water and usually I can't mow there, and I usually don't have grass there. That's O10. And O11 is just different shot of more potholes closer to me that are still wet proving that the bed underneath the road, the sub-base, is in water just about all the time.

MR. WEISS: I'm sorry, Catherine.

MS. NATAFALUSY: What was O10?

MS. COFONI: The one you just showed.

MR. MATHUS: That was O11.

MS. COFONI: What was O10?

MR. MATHUS: O10 was my little tail end of the property adjacent to the lot, the non-conforming lot, that I get water to coming out of their property.

MR. WEISS: Ok. We'll make sure...leave those photographs with Catherine.

MR. MATHUS: Anybody that drives on Ironia where the potholes are, it's always wet. And it's not coming from my land.

MR. WEISS: Scott, go ahead.

MR. VAN NESS: You're an asphalt professional?

MR. MATHUS: I work for the state.

MR. VAN NESS: The piping that exists under the road. Is it possible that it's damaged or collapsed or plugged?

MR. MATHUS: There is no piping under the road.

MR. BUCZYNSKI: Yes, there is. You probably can't see it, but there is.

MR. MATHUS: There is?

MR. VAN NESS: Part of the plan about...within the area of the potholes that you are speaking of there is drainage...

MR. MATHUS: So, then there might be some issue there. I don't know. I've never seen a stigmatic of...

MR. BUCZYNSKI: That's what I think the problem is, Mr. Mathus, that pipe is clogged. So, all the water is backing up because it's not getting thru that pipe.

MR. MATHUS: Ok. But water is still traveling to that pipe through the lot.

MR. BUCZYNSKI: The ground travels that way, that's how the water ground goes.

MR. MATHUS: And if you raise the lot with the dirt from the foundation you're going to cause that water to go the path lease resistance which is on my lot. I am positive about that.

MR. BUCZYNSKI: If they raise it, they are still going to grade it towards the low point which is the roadway...if you raise the lot, it still going to grade toward Ironia Road.

MR. MATHUS: The water has to get around the raised area and that would be at the far side of the house by garages by my property.

MR. BUCZYNSKI: I mean they can grade this regardless so the water gets around it.

MR. MATHUS: Well they would have to be some type of a drywell around their property. I do not want any more water.

MR. BUCZYNSKI: Discussing it now without a grading plan...you know...

MR. MATHUS: I agree. I just want to you guys to be aware that I'm anticipating flooding. There is a lot of water that sits there. There's a lot of water accumulating...

MR. WEISS: I think, Mr. Mathus, you just understand that if this house to be approved there will be a grading plan, there will be a drainage plan, that will account for what you are talking about. That's all I can tell you. I'm not arguing with you. That word is not coming from somewhere. But the water will be address if the house is to be built. Scott.

MR. VAN NESS: Is the berm and fence on your property, along the property line?

MR. MATHUS: Yes. But it's not the whole way.

MR. VAN NESS: Thank you.

MR. MATHUS: Yes. It's not the whole way.

MR. WEISS: Anybody else? Catherine, I'm getting the look.

MR. BUCZYNSKI: Normally the question...I'm sorry Catherine...for a minor subdivision normally you don't have to submit the grading plan and house plan, but this is a variance situation and there is a concern. I think the board could be within themselves if they were to ask for some type of conceptual grading plan that could decide where the house would be, to show you a plan, to show you what the grading is, I think you would be within your reason to ask for that if you wanted to.

MR. WEISS: Joe.

MR. FLEISCHNER: Mr. Chairman, we hear testimony obviously from both sides but my concern is I don't know if Mr. Mathus, Mr. Mathus is obviously not an expert in the one area, but I'm uncomfortable voting for something unless I hear from an expert telling me which...because there is an issue...which way the water is going to run.

MR. BUCZYNSKI: I can tell you which way the water is going to run. The water is running right into this pipe and all the grading, grades towards that pipe. I don't know what else to tell you. I can't tell you right now if that pipe is clogged but I bet you its clogged. So what happens right now is the water is pushing back onto the property. I mean when they did a wet land study, yes it was 2004 but they didn't find any wetlands on the property. Probably that pipe wasn't clogged then. And that's just my assumption but that's the way I really feel is happening.

MR. FLEISCHNER: And that probably is the case, but I'm uncomfortable voting on an issue which we could exasperate the existing condition now if the pipe lead is clogged, then it needs to be cleaned. That will solve a lot of the...

MR. BUCZYNSKI: ...concerns.

MR. FLEISCHNER: ...concerns.

MR. BUCZYNSKI: I can't give you the answer to that right now.

MR. FLEISCHNER: Right. And my point is maybe that has to be done first before we vote on things.

MR. BUCZYNSKI: Well you can look at 2 things, you can look at that. You can also look at...you can also ask...like I said again...you can ask for a grading plan, a special grading plan...

MR. FLEISCHNER: I would agree with you.

MR. BUCZYNSKI: ...you know so they have an idea that it's going to work and it will leave your concerns that it could really effect Mr. Mathus. I think...normally you wouldn't ask it in a lot of situations, but this is a...to me it is a variance situation. But I think you have some lead way on this.

MR. FLEISCHNER: Plus the applicant is going to have a grading plan at some point.

MR. BUCZYNSKI: For a Building Permit.

MR. FLEISCHNER: Correct.

MR. BUCZYNSKI: Right. Do it now or do it later.

MR. FLEISCHNER: Pay me now or pay me later. But you're going to pay me. So why don't we do it now.

MR. SCHAECHTER: But if the grading permit, I'm sorry, the grading plan doesn't exist today and they're still going to have to provide it any way to get an approval for...to build. Then why delay the applicant further, if they don't need to be delayed in this hearing.

MR. FLEISCHNER: Well the only thing that concerns me, Mr. Mathus, is that...you know...when he asks which is your error, when the town says we're going to do...you can't build on a property...you were given false information. I was told I was going to have sewers and I had sewer lines. That was 1974, I still don't have sewers. So, I mean...let's...I'm trying to live in a real world here...

MR. MATHUS: But 12 years ago, that what we were told and that's why we bought...

MR. FLEISCHNER: Yes. But that's why I'm concerned let's try and if it can be built there, that's great. But if it can't be built there, well then it can't be built there. But I think we have to try to alleviate and know as much information before we make a vote. In worse, in my mind I'm missing information.

MR. WEISS: Henry.

MR. FASTERT: I'm generally uncomfortable with the lack of planning information.

MR. WEISS: Well, before we get to comments like this, I think it's fair to us to let Mr. Mathus continue with his comments and concerns and I think a lot of us have some issues. Let's table these for now. To let Mr. Mathus continue with his comments.

MR. MATHUS: Alright. Other than the flooding and personally in my opinion is that drain will not be enough to handle all that water. That's my opinion. But the second biggest thing that bothers me is Number 1 the non-conforming lot being over looking my \$60,000 investment in my pool, in my backyard. My \$12,000 fence, it's going to destroy me. It's going to kill my resale value. Talking about hardship, what hardship? They got money to build a house. I don't. I lost my job. I have a 15 year old. This is my investment. Who's going to buy a house with a house looking my pool and looking into the windows in the back of my house and how am I going to say this is a development that every house conforms to over an acre, when the house next to me is about three quarters of an acre overlooking my...my yard and into my bathrooms. I have a lot of windows. Can you make them not have windows on that side of the house because my neighbors have windows on only one side? You can't do that? I want privacy. How about can you make them plant trees for privacy? Your destroying...this is

destroying me. This would cost me 30 – 40 thousand in resale value. Why would somebody buy a house with a house overlooking me when they can get something someplace else with 16 – 17 thousand dollars in taxes? Back about ten years ago, Mr. D'Egidio cut down about 20 trees in the lot. We complained. Township ordered him to plant about 20 trees. He never did. If you ok this non-conforming lot to build a house, I would like those trees that he was ordered to re-plant over 10 years ago and never did. Keep my property value in mind on any decision you make because out of all the 24 houses in there, I'm the only one and my taxes will not go down a penny. This is my investment. I'm 61. And I have a 15 year old, and a daughter in NYU. So this is the last big house, I'm buying and already they're not selling and whose going to buy my house with that looking right over into my private pool?

MR. WEISS: Mr. Mathus, I know you asked some questions, some of them may have been rhetorical but you asked if we could ask them to put a house with no windows, that of course...

MR. MATHUS: On that side of the house...

MR. WEISS: This is a Land Use Board and we cannot...

MR. MATHUS: Ok. That's a question...that's a question...

MR. WEISS: You raised a comment about landscaping. Absolutely, we can look into a landscape plan, make sure that that...

MR. MATHUS: My privacy other than the runoff is the next biggest thing...I don't want to look at people looking at me in the pool overlooking at me.

MR. WEISS: Understood. I think this board can...can...

MR. MATHUS: You've seen the pictures. Like in my kitchen, I paid extra for these half moon glasses and everything when I was working. And I just want the town to enforce...you ordered him to plant 20 trees and he never did...

MR. WEISS: Well, you know, I was going to bring that up. I know you've said that before. At this particular hour of the day, nobody on this end can confirm that. If you have other details that you direct the municipality to, because right now there's not a person on the board here that really understands what you are talking about. We understand what you are saying but we have no confirmation of such that the applicant was asked to...

MR. MATHUS: It's somewhere in the record. Yes.

MR. WEISS: The ratio should...

MR. MATHUS: Alright, just privacy is a lot to me. I was born and raised in Jersey City. I move here, I got farm land across the street. I don't need someone looking on top of me in a non-conforming lot where I conform.

MR. MCGROARTY: Mr. Mathus, if he was a conforming lot, he still could be looking on top of you.

MR. MATHUS: Right. And then I wouldn't have bought the property.

MR. MCGROARTY: Well, I don't know who in the town ever told you, he couldn't build on it, but.

MR. MATHUS: Somebody in the township, my wife inquired, plus the builder.

MR. WEISS: We hear that all the time.

MR. MATHUS: They said you have to have an acre to build.

MS. COFONI: Mr. Mathus, where are those pictures that are the exhibits? Do you have those?

MR. MATHUS: Yes.

MS. COFONI: Ok. Could you please provide those to the Board Secretary? We are going to need those for the record, and also the O1. We need to keep that for the record. You have that. Ok. Thank you.

MR. WEISS: When you're ready, Mr. Mathus.

MR. MATHUS: Like I said, I just want to conclude. I heard hardship. Hardship is multiplied on me. My resale value will go down. No doubt. The risk of water in my basement will go up. My privacy will be gone. My \$60,000 investment in my yard, my pool, will be gone. My resale value will be diminished immensely. I really hope the town says no to this. Protect me who lived there for 20 years and had paid over \$200,000 in property taxes to date, instead of somebody trying to have an investment. This is my investment. It's definitely going to hurt me. My basement floods, who do I go after? I can't afford any more money. I work for the state now and I'm making about one third of what I used to make. I went two years without a job. Barely making ends meet now. With a 15 year at Delbarton.

MR. WEISS: We certainly understand your plight, Mr. Mathus, and thank you for your comments. I think what I should do at this point is come back to the applicant and see if there's any kind of comments you would like to make in response to Mr. Mathus.

MS. STONE-DOUGHERTY: Yes, thank you, Mr. Chairman. I'm going to go out of order for just a minute...I'm going to ask Mr. Stewart a question or two and then I'm just going to offer our summary of the neighbor's commentary. Mr. Stewart, one of the board members raised a concern regarding the pipe in the road. When you were out doing the engineering for the Roxbury and also for this side of the minor subdivision lot line adjustment, did you have an opportunity to do any on site investigation regarding the piping.

MR. STEWART: Sure I actually did the survey on the property myself. I actually located that pipe and I can state that it's not very well maintained. That's for sure.

MS. STONE-DOUGHERTY: Alright. When you were out there was any portion of the clog...

MR. STEWART: Yes, I would say...off the top of my head at least half of that pipe was probably filled with some sort of sediment.

MR. BUCZYNSKI: At that's at the end of it. Who knows what...

MR. STEWART: Who knows what's at the other end. Yes.

MS. STONE-DOUGHERTY: And as an engineer since you also did the surveying yourself and you did the grade elevations, can you give the board an idea...I know the board's own engineer did a little bit how the water is flowing and how the effects of the berms may be affecting the water he is experiencing.

MR. STEWART: Sure. And I'll refer to my drawing on the board here...basically what the typical surface were off in this area is doing its flowing like the adjacent owner said from this Roxbury lot the Roxbury Water Company lot flows this way basically from northeast to southwest and this area over here is the low point of that whole drainage area...I guess...

MR. BUCZYNSKI: And that's where the pipe is too...

MR. STEWART: And that's where the pipe is...

MR. BUCZYNSKI: You got another pipe to the left of that.

MR. STEWART: That's correct. I'm not sure which was that one is flowing. It appears that there is an inlet across the street. Yes, that's...

MR. BUCZYNSKI: It's still flowing across the street; it's flowing across the street.

MR. STEWART: I think it's flowing back across the street. That's correct. To the same low point which is right in here and from there is drains out. Now with that said, as the adjacent owner stated, he has a berm across his property, near his property, which I have seen is very low planted, there is also a fence there. Basically that berm as you can see the runoff is coming from this direction. It's going to stop at that berm and basically cause his property to be somewhat saturated and not allowed to drain

through our property although it shouldn't because typically when you have a grading plan, you redirect your run off away from your adjoining properties. And that's what he did with this berm, he didn't direct the run off to go on our property or his proposed lot I should say. So with that said, our run off will continue to go this way and when we do a grading plan which the town...we will apply to the town...if this gets approved...this run off will still be going the same direction to this little area that's located on the front of our property to that drainage pipe. And of course, we are required to do that with your ordinances.

MR. FLEISCHNER: Can you say for the record who is responsible for that drainage pipe?

MR. STEWART: It's underneath the roadway; it would be a municipal issue.

MR. FLEISCHNER: Is it municipal or county?

MR. BUCZYNSKI: No, it's the town. It would be the town.

MR. STEWART: It's a municipal roadway.

MR. WEISS: Mr. Mathus, you have a question for Mr. Stewart?

MR. MATHUS: Yes. My berm is only half of the distance back. It stops somewhere about...it's about 60 percent. There is no berm here. It doesn't go the whole way. This is all flat. And which pipe are you talking about? Are you talking about the pipe here?

MR. STEWART: No. There's one pipe located in the middle of the property, right here.

MR. MATHUS: Right here? And that's where it starts and that's where it finishes?

MR. STEWART: Yes.

MR. MATHUS: Well what about the pool of water you have got here? How's it suppose to make it to the pipe? When you raise that, that water is going to go around it. This is high, this is high. This is going to be all high. Water's got to go this way. I didn't know about a pipe here. I know there's a little pipe here that really doesn't do anything but I didn't know about this. But if you raise this, water is going around it and I have no berm there. Nothing. It's flat.

MR. STEWART: Well, basically as you're stating, your berm comes about 60 percent.

MR. MATHUS: Yes, about 60 percent.

MR. STEWART: Say in there. I always thought it went full width.

MR. MATHUS: And the water flow goes right there.

MR. STEWART: Ok. I'm answering your question. Basically your water flow, this water flow goes this way...

MR. MATHUS: Right.

MR. STEWART: Ok. And we're maintaining that same direction...

MR. MATHUS: Right.

MR. STEWART: ...with the fact that you do have a berm here. Keep in mind that we are going to re-grade this property so the water is running towards that low point in front of our lot. And as I said, we do not have a grading plan as of yet. We will be applying...if we apply for building permits, we will have one.

MR. MATHUS: Ok.

MR. STEWART: And we'll keep and continue the run off to go into that lower area here. Also, your berm is here so that does protect your property from any run off that would come from our lot.

MR. MATHUS: It doesn't go up hill though.

MR. STEWART: It doesn't go up hill, that's right, doesn't go up over your berm. You can't jump your berm.

MR. MATHUS: The flow is this way, not that way.

MR. STEWART: Exactly, we will maintain that flow going that way. As a grading plan, that's what we're going to do to maintain...

MR. MATHUS: You should address something over here also...

MR. STEWART: As far as this goes, over this way?

MR. MATHUS: Yes.

MR. STEWART: It's coming this way.

MR. MATHUS: And is going to go around your raised foundation...

MR. STEWART: Whatever we disturb that area of disturbance will be erected towards the roadway, towards the...

MR. MATHUS: And in the plans, are you planning on giving me some privacy over here? Or is my yard now...like my wife, she won't lay in it...if there is someone over looking it. Will you plant...here, give me my privacy? I pay a lot of taxes for privacy.

MR. WEISS: Mr. Mathus do you think you can go back on the microphone so we can pick you up?

MR. STEWART: Now, as you stated earlier you have a berm there and in your own photos which I saw, I'm not sure which number it was, shows a picture of your berm which does have very tall plantings on top of that berm.

MR. MATHUS: And I...

MR. STEWART: I don't think your privacy will be disturbed.

MR. MATHUS: There...look at the picture...those...I got an idea how those plants died. They're all...the top of them, is beautiful. The bottom of them is dead. You can look right through them. I have no privacy.

MS. COFONI: But, Mr. Mathus, those are on your property? Right?

MR. MATHUS: Say again.

MS. COFONI: Those plants that you are talking about that died are all on your property.

MR. MATHUS: Yes. But they died off the bottom half of them died off in the last couple 2 years ago, 3 years ago, they died. The tops are healthy. The bottom is...are not. I don't know why. Other than once we did complain to them about the weeds. And he sprayed weed killer and then all of a sudden my trees died.

MR. STEWART: That's typical of deer.

MR. MATHUS: My property is fenced in. I don't have deer.

MR. STEWART: And is that a stockade fence?

MR. MATHUS: Yes, I've never seen once a deer in my back yard.

MR. WEISS: So, let's come back to this. Excuse me. Ms. Dougherty for rebuttals or comments, I know you want to wrap it up.

MS. STONE-DOUGHERTY: Yes, but I want to make sure he's done before I summarize. So...

MR. WEISS: Well, we weren't done. Actually, Mr. Stewart was testifying...

MS. STONE-DOUGHERTY: Right. I understand. I meant I just...so, Mr. Stewart, are you done? So that I...

MR. STEWART: I believe so. Yes.

MS. STONE-DOUGHERTY: Ok. Ok.

MS. COFONI: Are we closing to the public, Mr. Chairman?

MR. WEISS: We...we did close to the public..we..we...

MS. COFONI: Opened it back up again. But know we are closing again. Right, Because Mr. Stewart is done testifying. I think you re-opened to the public because Mr. Stewart provided more testimony.

MR. WEISS: I did. So now we are going to close it to the public.

MS. COFONI: Ok.

MS. STONE-DOUGHERTY: Thank you.

MR. MATHUS: Thank you. Counting on you to protect me.

MS. STONE-DOUGHERTY: As I stated from the beginning, this is a very odd situation and we all agree. We had two significantly undersized lots. Lot 15 and 16 that clearly if there were independent lots, whether you have grandfathering ordinance or not or came in argued issues over mutual ownership not merging, etc. would be a condition that nobody wants so my client took it upon himself to merge these lots. Go over to Roxbury at great expense and pick up as much land as possible so that we can comply with what the Municipal Land Use Law says. Try to get all the available land that's there. And we did that. And we are before you now with the best application that this applicant can put forward. Mr. Mathus was at the Roxbury hearing. He brought up a lot of legitimate concerns. And my client listened to those concerns. So what this board is seeing is a result of those concerns. Which is a much scaled down, smaller house. As we already stated, the applicant is willing to stipulate to the 2,600 square feet which was a concern. We moved the house intentionally. Originally we had the driveway here and the house over here. We moved the house as far away from his dwelling, from his very beautiful...no one's denying him that he has done a wonderful landscaping on his property...however, he does have these berms. He provided the photos. He's got very large trees and he has a fence and he...I'm sorry, I only have an half acre lot, I can't emphasize with an acre but I still have to put blinds on my windows too and there's a lot of buffering here. We moved this house a significant distance. I mean he's 35 - 40 feet here. We don't...we're not violating any setbacks. This house, but for the size of the lot, conforms with all of your setback requirements. Your size, your impervious coverage, it conforms. We're not asking for rear yard setback. We're not asking for side yard. We've pushed this house all the way over. We did that intentionally to appease the neighbor. I mean listen, is whoever gave him advise that there would never be anything built there? We can't answer for that. Obviously it was bad advice. It was incorrect. Every client as the Land Use Board knows has a right to develop their property. That's an inherited right. And we're being modest. We are not being piggish. I'm sure this board sees applications all the time that are just huge homes, mansions, variance relief, etc. We are not asking for that. We are conforming. We've pushed the house over. We've done everything that we can to make this the cleanest best application that we could bring forward. This wasn't something just thrown together. We went to Roxbury and he voiced those opinions, and we listened. I mean that's what really what every objector wants. They want someone to listen to them and we did. We redesigned the house. We moved it, we shifted it. We did everything we could. As he already testified, short of nothing ever being built there, he's not going to be happy. Well something's got to be built there. Unless the town is saying no, we are never going to let you built and we're willing to buy your land. And I don't think this board is prepared to make that decision. I don't think it's feasible. This is a c-1 Variance case. I agree with your planner. We've met the prima fascia that is required under NASH to show that we did what we could to get available land. Remember, once this gets approved, if it does get approved, which we're hoping you will do, there is still a lot more steps involved. You know the engineer will put together a grading plan that will go through review with your board engineer, your town engineer, your construction department, all of those issues will be addressed and the grading. We don't even know if the house is going to be elevated. That's hypnotically at this stand point. You know again, but at the end of the day, you will

have a nice single family detached new construction home. Most new construction helps elevate the neighborhood, not take away from it. And it will be the last you will ever hear from Lot 15 and 16 little undersized lots that are sitting over there on Ironia. And we're doing the Deed of Dedication so that it cleans that up as well. I really hope this board considers all those benefits and does vote favorably on the application.

MR. WEISS: Chuck or Gene, do you have any comments?

MR. McGROARTY: No.

MR. BUCZYNSKI: No.

MR. WEISS: Anybody from the Planning Board have any comments? Henry, I'm sorry, Nelson.

MR. RUSSELL: I'd like to see a new letter of interpretation from New Jersey DEP in that this is a new proposed lot. I don't know what the old one was based on. I have some questions because the house shifts over to the right and it may be swampy or marshy over on Lot 14. I'd like to have that revised.

MR. BUCZYNSKI: Well, may I address that because it makes no difference because it's a new property, new lot coming in. The lot is based on the land itself. So, I don't see why you'd think because they're going to put a house on it now that that's going to change. The thing is to just verify and I think they talked about a condition in the resolution to verify if the LOI is still valid. I think it's still valid.

MR. RUSSELL: Well the objector testified that its marsh land. I'd like somebody to rule on that. That would be NJDEP would it not?

MR. BUCZYNSKI: That's what they said in 2004. They said there were no wetlands on the site.

MR. RUSSELL: One other thing, in the Roxbury resolution, it says under the therefore, applicant shall receive sewer capacity allocations from the governing body if public sewer is desired by the applicant. It should be if public sewer is available. And that would relieve the problem of having urine in the pool. We have public sewer as opposed to a septic.

MR. McGROARTY: Wait a minute. Are we talking about the lot in the Roxbury resolution wouldn't they be referring to the lot in Roxbury then?

MS. STONE-DOUGHERTY: No Chuck, because what happened is we show an easement where we like to if possible but that's an if because as you know we have to go and see if we can get the ability to even be able to tie in. So I mean that would be preferred by the applicant as well. Because he would much rather have the public sewer than have a septic. But I don't think it's a reasonable condition to put on the resolution that we can't build if we're not allowed to tie in.

MR. McGROARTY: Yes, I was just wondering if...I mean Roxbury would have no authority to pose that as a condition for the lot in Mount Olive so I was just looking for the language.

MS. STONE-DOUGHERTY: Right. Only because we showed it as an easement in Roxbury to let them know it's something we'd like to do. They just wanted to clarify that obviously we'd have to get approval to do it. And that was the intent.

MR. McGROARTY: But it's no...and I know Mr. Germinario in Roxbury he knows his stuff inside and out too. They wouldn't attempt to oppose a condition on the lot in Mount Olive.

MS. STONE-DOUGHERTY: Right, no. In fact, they said they weren't even sure if we could tie in, but we are welcome to try. That's why we show the easement. And that's why we're here with the proper septic application because it's a hypothetical.

MR. WEISS: Just before you do, I just want to follow up on a point that Nelson made talking about the LOI. The LOI apparently is 12 years old. Does this board have the ability to request the applicant to do a LOI?

MS. COFONI: What I think is required is that well what has been offered is that they will either demonstrate that the LOI is still valid and it may be because of the Permit Extension Act. I have to look

at the act and then look at the dates and everything to be able to determine that or they will get a new one. If it's valid then you have no ability to make them get a new one. If it's not, then they are going to get a new one. So either way it's handled.

MR. WEISS: Ok. Henry.

MR. FASTERT: Yes, I just want to go back to the verbage where it says the applicant shall receive sewer capacity...

MS. COFONI: I think that's poorly worded. I think what means is is...

MR. FASTERT: It says they will receive...

MS. COFONI: Yes. I think that's...I think...I obviously wasn't involved. My guess is what they are saying is...if they want sewer capacity, then you need to go the governing body and get approval for it. The Planning Board cannot give it to you essentially.

MR. BUCZYNSKI: Where does it say shall? It doesn't say shall.

MR. FASTERT: The one I'm reading says shall...

MR. COFONI: Yes, if you keep going. It does.

MS. STONE-DOUGHERTY: I mean, we'd love to have his interpretation...

MR. FASTERT: All the way to the bottom of page 4.

MR. MANIA: Page 4.

MS. COFONI: I think that's what it means. It means if you want...

MR. FASTERT: The memorial has resolution.

MS. COFONI: If you want sewer approval, you have to go to the governing body for approval. Right. I mean sewer connection.

MR. FASTERT: This says shall receive approval in a memorialized resolution.

MS. COFONI: From the governing body. The Planning Board can't tell the governing body what they have to agree on. So that's why I'm assuming it means, you need to go and apply to the governing body and get granted...

MR. MANIA: Governing body to get the sewerage.

MR. BUCZYNSKI: If you read the other page, Item 11 on Page 6 it doesn't say shall.

MS. COFONI: Yes. I think it's just the wording.

MR. MCGROARTY: Not only that. I think...who knows what they are talking about.

MR. WEISS: John.

MR. BATSCH: Mr. Chairman, question for Gene. Gene, if the grading plan was prepared, and it's not properly and the drainage pipe was repaired, will that eliminate the problem of flooding?

MR. BUCZYNSKI: If it was graded properly and...I think that pipe is clogged.

MR. BATSCH: Ok.

MR. BUCZYNSKI: I think if you relieve that pipe, I think it will take care of the problem. I think they can grade the lot for the lot to grade the same location it's going right now. If you look at the plan...the grading plan, it all grades towards that pipe. The pipe, as Mr. Stewart says, from the inlet side it was already half full so it can't...water probably can't get through, probably in the middle of that pipe it's probably solid.

- MR. BATSCH: But if that was repaired in your opinion...
- MR. BUCZYNSKI: I think that would resolve the problem.
- MR. BATSCH: Ok. Thank you.
- MR. WEISS: Any other comments from the Planning Board? Joe.
- MR. FLEISCHNER: I would like to...I heard from the objector that supposedly, and I said supposedly because it's hearsay at this point, that the applicant was supposed to plant x number of trees a number of number of years ago. The trees would have been a lot taller. Is there a way that we can find out if that actually was...do we have records that go back? Because...I mean...an order by the township to the applicant then you have to plant trees.
- MS. NATAFALUSY: Yes. Who would have given that order?
- MR. FLEISCHNER: I don't...that's why...
- MR. FASTERT: And why? There's nothing...
- MR. FLEISCHNER: Let me...
- MR. BUCZYNSKI: If Mr. DiEgidio went up there and took down trees down, I'm sure the town came out there...could've come out there...
- MR. FASTERT: ...replace them...
- MR. BUCZYNSKI: I'm not sure what authority that person had to tell him he has to put 20 trees back. I don't know who would have done that.
- MR. McGROARTY: And on that point, pick up on what Tiena's saying too, I don't know when and how...I was here at some point and Catherine was here. Gene was here too. I would never assume the authority to tell people they would have to get...bring a violation to court...
- MR. FLEISCHNER: That's what I'm saying, if it was some kind of violation...
- MS. NATAFALUSY: I can check the Zoning File for this property, but other than that I don't know where else...
- MR. SCHAECHTER: If there was a Zoning Violation and they didn't correct it, it would go to the Municipal Courts, right?
- MR. McGROARTY: If the town initiated the summons to bring him to court.
- MS. NATAFALUSY: Right.
- MR. McGROARTY: And I don't know if that was done. You know...we heard different things tonight. But...
- MR. FLEISCHNER: See, that's one of my concerns. Because one it leaves the board, reality is...pretty much...we don't know what happens after it leaves here.
- MR. VAN NESS: I somewhat disagree with that.
- MR. FLEISCHNER: Well, I mean since you...we've asked different questions and it's left up to either the Builder's Agreement, etc. But we as a board know it comes back to us.
- MR. McGROARTY: Yes, but your decision on the minor subdivision variance is not predicated on the buffer between residential properties.
- MR. FLEISCHNER: I understand that.

MR. MCGROARTY: I'm just saying that the testimony...and I think was testimony...that the town ordered trees to be removed. I would say anyone in the town who would...took that responsibility upon himself or herself was out of bounds. You don't have the authority to order someone to plant trees.

MR. SCHAECHTER: And it's probably a long shot but we don't have the authority to ask someone to put a screen between residential developments.

MR. MCGROARTY: You're right. No, the ordinance doesn't require buffers between like properties. I can tell you...I've been here for many years, Catherine's here, Gene's here, if we give someone a Zoning Violation and it goes to Municipal Court, it is the judge who has that authority. You know...we don't tell people to go out and mitigate a problem by doing this or that...I mean, we don't have that authority. And if someone here, who worked for the town and is no longer working for the town, did that, I don't know what authority that would have...

MR. FASTERT: Short of somebody taking trees down that they weren't supposed to take down, what authority would there be?

MR. MCGROARTY: Yes. But they could have taken trees down without a permit...

MR. FASTERT: Right.

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MR. MCGROARTY: ...still doesn't...

MR. BUCZYNSKI: Still don't have the authority...

MR. MCGROARTY: Still don't have the authority to not tell somebody to replace them.

MR. FASTERT: Oh. Even in that case you don't.

MR. BUCZYNSKI: No.

MR. MCGROARTY: No. The judge has the authority.

MR. BUCZYNSKI: ...it's a violation.

MR. MCGROARTY: That's my only concern in that issue. I mean if there were supposed to be trees. We can check.

MS. NATAFALUSY: I can check.

MR. BUCZYNSKI: Is there a time period? How many years ago it would have been?

MR. MATHUS: 10 plus.

MS. NATAFALUSY: I mean I could check the file for this property, but that's...

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MR. FLEISCHNER: I would just ask if this board sees fit to improve this on the contingent we go back and look. Sort of like the drainage, I would like to see the drainage report before we voted.

MR. MCGROARTY: I would say, Joe, even if this board doesn't approve this, Catherine will go back and look because that's a separate issue. But I don't know if the Tree Ordinance was in effect 10 years ago.

MR. FLEISCHNER: I think it was, maybe. I don't know.

MR. MANIA: Mr. Chairman.

MR. WEISS: Mr. Mania.

MR. MANIA: Would it be improper to ask the applicant under oath to be asked whether he took those trees down?

MR. WEISS: No. I can't imagine that's going to do anything to...

MR. MANIA: I'm just asking...

MS. COFONI: Here's the reason why to some extent that isn't in our jurisdiction. If there was an order, I don't know who, like Chuck said, I'm not sure who would entered that order. We are not enforcing...we don't have enforcement jurisdiction. So we can't enforce it. We can't do anything about it as a Planning Board. Now Catherine, can look into it. Find out and bring it to the appropriate attention of the enforcing agency. But as far as the jurisdiction of this board, we don't have any enforcing...

MR. MANIA: That's why we have you here to answer questions like I just asked.

MR. FLEISCHNER: But the only reason why I ask that is because if there was something, trees were planted 10 years ago, those trees would not have been small trees now and the objector has raised issues of privacy which we know anything can happen but those trees would have provided a certain amount of privacy today and made life easier for the applicant because you would have...

MR. MCGROARTY: I will say, one other point, the applicant today if those trees were planted would have every right to ask to remove those trees in order to put in a septic system.

MR. FLEISCHNER: But we could also refuse that. We have that right also, Scott.

MR. VAN NESS: I would like to add that this not a new application. That this, the rumblings of this development have existed for years. And the objector had not brought up to the town's attention that any trees that have been removed were required to replace and whatever else, there's no record that there was any complaint that this hadn't happened. It may have happened 10 or 12 or 15 years ago, however, since then till this actual application is in front of the board, there hasn't been a complaint to the township. So, therefore, I have to question to what extend is reality of what is the town actually required to do as opposed to what's perceived to have been done. So...that's just my...

MR. WEISS: Nelson.

MR. RUSSELL: The objector is free to institute an OPRA Request, the burden of proving that on the objector.

MR. WEISS: Ok, so noted, any other comments? I actually have a couple of comments before I put it out for a motion. It's very clear that this has been a complicated application. We've all admitted that. The applicant has said that there have been some complications from the Roxbury version. We talked about the close proximity to a municipal boundary that makes it a little complicated. And I'm very disappointed in what I hear tonight obviously, merging the lots wonderful idea. I believe you're doing everything you can to make these lots as buildable if you will as far as lot sizes as you can. But that's only one part of what we have to do. I'm disappointed that I didn't see a formal grading plan. If water was an issue, it been an issue. I think we should have seen it. I think that towards the end of the evening, Mr. Stewart did give us a better over view of the existing conditions. But up until some side conversations, we had no testimony as to existing conditions besides the size of the lots. As so we focus or at least you, the applicant has only focused only on the lot size. So you're requesting a variance and you come before this board without a planner. And as the Chairman, I take great exception to that. You as the applicant know that this is an issue and the variance being requested. If it wasn't for Mr. McGroarty there would be no testimony whatsoever to the positive criteria. And as I sit here hours later, there is still no testimony at all given by the applicant to the negative criteria. So asking me to grant a variance without the proper testimony is just never going to happen. So I say it before we roll to roll call, because I think that...I think this board deserves a grading plan before you ask us to vote. And I believe this board deserves testimony from a planner because we didn't get it. We just didn't hear anything about negative criteria. Not even, Mr. McGroarty like I said I believe he gave the positive criteria. So I have a problem with that. You know you talk about, you mentioned that the house elevation and if it is elevated at all is a hypothecial. Well why is this Planning Board asked to make a vote on a hypothecial? Shouldn't we know the house will be elevated or it's not? And if it is, what's going to happen. And if it's not, what's going to happen. So you're asking the Planning Board to make a decision with many things not addressed. So, I say that upfront. If you feel that my comments are going to hurt your application, and I'm going to give the opportunity to think about what I'm saying and

maybe we'll adjourn this and you'll come back with more. And if you're satisfied with the application and testimony, then we move forward and I'll ask for roll call. Nelson.

MR. RUSSELL: I'd also like to see a hydrologist report.

MR. WEISS: Tiena is saying we don't have the right to ask. I would imagine that. You can certainly like to see more testimony on the water. I would like a more advanced grade plan. But these are just my opinions. And I think that with no other comments.

MR. VAN NESS: I would like to make a comment on your part.

MR. WEISS: Please.

MR. VAN NESS: While I agree that the applicant should have brought more to the grading plan with their application, I also believe the township has the appropriate ordinances and set up available to it to require a proper grading plan before any building permits can be issued. And they would not be able to provide us with a grading that doesn't conform to an ordinance or creates a hardship for a neighboring property. That's the rule. And we're going to be relying on the township's professionals to do that job no matter what. And that applicant has to provide that and satisfy that before they can ever build one stick of that house or any house. No matter...

MR. BUCZYNSKI: You know what my concern is with that? I tell you, I don't know who review all the plot plans in this town. I don't. I don't get them all.

MR. WEISS: Scott, my only comment is that I think this Planning Board should have the privilege to see it before you're asking us to make a decision.

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MR. WEISS: Well, that's exactly true. Many applications come before with a proper grading plan. It's addressed. And in this case, it's not a simple application. I think it should have been done. It's my opinion. It will affect my decision. I don't know if there's any response to my comments. If not, we're going to move forward and I'll ask for roll call.

MS. STONE-DOUGHERTY: I'm trying to digest your comments to be quite frank, Mr. Chairman, because as an attorney, there are some things I certainly take issue to and I certainly appreciate your position and at the same time because you have a very difficult job. And you sit here and you listen to applications. You give up your time, your energy at night, and you're very active in your community which is the best thing for Mount Olive. Is what I think I need to do thought because I have responsibility to my client, if I can is ask for a two second recess. So I can just discuss the matter with him instead of making a decision for him because he may not agree with my decision as often time clients don't.

MS. WEISS: Totally acceptable. We'll stop the meeting now and we'll bring it back into session when you give me the word.

MS. STONE-DOUGHERTY: Great. Thank you.

MR. WEISS: I'll turn it back over to you, Ms. Dougherty.

MS. STONE-DOUGHERTY: Yes, thank you, Mr. Chairman. I've conferred with my client and also with my clients that engineer. And we do request to be carried to the next meeting. However, I want to stipulate something and make sure we're not wasting each other's time. Ok. I've heard a lot of board members, specifically you, Mr. Chairman, say you want to see a grading plan. We have a problem here. Ok. It's a legal dilemma. Ok. Health Department will not give us septic approval until we have an approved lot. Ok. So what we can do is we can design the septic. We can do the perc testing, we can give you grading. That's as good as we can give you until this board sees fit to approve the application but you have to understand then the grading may change if the Health Department comes and says look we want to slightly change the septic or change the design or location. I'm not going to be able to give you something that's 100 percent.

MR. BUCZYNSKI: I think if you can determine what you want for the elevation the home, get the grading plan taken care of, show the septic where you have it now, we understand it could change subject to the Health Department.

MS. STONE-DOUGHERTY: Right, but I just want to be upfront. Because I don't want us to come back and then it is pointed out that it's not 100 percent and it doesn't have Health Department approval because I can't give that.

MR. BUCZYNSKI: With those adjustments, we'll still make it work.

MR. WEISS: I don't need to tell you; obviously you have plenty of experience with land use, that the greatest part of this process is compromise.

MS. STONE-DOUGHERTY: Right.

MR. WEISS: So, I'm sitting here saying I've got nothing. And you're offering to bring me something. And that's wonderful. Something is better than what I have so far.

MS. STONE-DOUGHERTY: Got you. I just wanted to be clear though...

MR. BUCZYNSKI: Your engineer will verify the LOI status.

MS. STONE-DOUGHERTY: Yes, I can do that with Board Council.

MR. WEISS: Gene, would it be unrealistic to also assume that we can get a peek at that pipe?

MR. BUCZYNSKI: I'll be looking at that pipe tomorrow.

MR. WEISS: So maybe we'll have...

MR. BUCZYNSKI: Tomorrow morning.

MR. WEISS: John.

MR. MANIA: So are you saying that sewers are out of the question?

MS. STONE-DOUGHERTY: No, what I'm saying is that we have to deal with the parameters that we have now. In a perfect world, my client does want to be able to tie into Roxbury. That's why we're showing the easement. That's why we showed it to Roxbury and that's why Roxbury put that language in their resolution. However, I have to show a house with some type of sewerage, so I have to use what I have right now, which is a septic. In a perfect world, if you cannot do the septic, that's what my client wants to do, but we have to have Plan B which is the septic.

MR. WEISS: I've also made it very clear and you know better than I do, that you don't need a planner.

MS. STONE-DOUGHERTY: Correct.

MR. WEISS: But you certainly need to give us testimony. And I don't know if we'll agree but there was no testimony to the negative criteria at all on the variance request. So, my advise if we are going to carry it, please address that.

MS. STONE-DOUGHERTY: No. I understand. And I mean I did address NASH case which deals with the prima fascia case that you need to have. I understand and I took notes.

MR. WEISS: Especially when you have an objective who kind of from the opposite side, told his side of how it is a deterrent and detrimental to the community. So I would like to hear your testimony. Understand the objector has its place, but I think the applicant has the obligation to make that proven. So let's look at our schedule. And I think...how much time do you think you would need?

MS. STONE-DOUGHERTY: Probably a month to be fair.

MR. WEISS: I was asking them.

MS. NATAFALUSY: April 14th is the first meeting...the second Thursday in the month. That's when we met next in April.

MS. COFONI: Don't forget, you'll have to have grading plan in 10 days before the meeting.

MS. STONE-DOUGHERTY: Right.

MS. COFONI: So, that would be April 4th.

MR. WEISS: Only the 21st is available. Catherine, correct.

MS. NATAFALUSY: Yes. We're possibly having a large...

MS. STONE-DOUGHERTY: Wait, I'm deferring...oh wait...

INAUDIABLE

MR. STEWART: As long as we can get the Health Department out there, because I want to do the soil logs prior too so I have a good idea of what's happening on with the septic.

MS. NATAFALUSY: So, would you prefer the 21st?

MR. STEWART: Probably with 21st would be better. I'm not sure of their schedule.

MR. WEISS: This application will be carried till April 21st. There will be no further notice. I will work with Catherine and I will certainly give you the courtesy of being first on the agenda.

MS. STONE-DOUGHERTY: I appreciate it.

MR. WEISS: And we'll finish this one. Catherine, will you work on the schedule?

MS. NATAFALUSY: Ok.

MR. WEISS: Again, there will be no further notice. April 21st here in this room this application will be carried. And we would like to thank you for that.

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MR. WEISS: Anybody else on the Planning Board have an issues or conversation tonight? Welcome back, John. Scott.

MR. VAN NESS: I have one thing. Motion to adjourn.

LAUGHTER

MR. WEISS: Motion to adjourn on the table. All in favor

AYE

(MEETING ADJOURNED AT 9:48:43 PM)

Transcribed by:
Mary Strain, Secretary
Planning Department