

**Planning Board Minutes
Borough of Kenilworth
August 13, 2015**

The meeting began with an affirmation of the Open Public Meetings Act. The schedule of meetings is on file in the Borough Clerks' office, was posted on the bulletin board, and has been mailed to the Cranford Chronicle, the Kenilworth Leader, and the Star Ledger.

Pledge of Allegiance was led by Rich Picerno.

Roll Call: Present: Richard Picerno, Madonna Bogus, Mayor Fred Pugliese, Councilman Sal Candarella, Antonio Cuppari, Arthur Manee, Robert Grimaldi and Dominic Costa
Absent: Christopher Pallitto, Anthony Pugliese & Kevin Klemm

Motion was made for the approval of the July 9, 2015 minutes and Special Meeting minutes of July 22, 2015. Motion made by Madonna Bogus, seconded by Sal Candarella

Mr. O'Brien pointed out the minute months on the agenda were incorrect, should be July not June.

Motion was made to pay the recording secretary. Motion made by Madonna Bogus, seconded by Mayor Fred Pugliese.

Communications given by Madonna Bogus that the application for Claudia Moreno will be rescheduled for September 10th meeting. Notices will carry over if all is in order.

Rich Picerno stated that we need to take a 5 min break, the Planning Board attorney needs to speak to an applicant. He asked for a motion to adjourn the meeting.

Motion made by Madonna Bogus, seconded by Sal Candarella. Adjourned

Motion made to re-open meeting by Madonna Bogus, seconded by Sal Candarella.

Mr. Picerno thanked everyone for their patience while some business needed to be discussed. He then proceeded to call up to the microphone application #3-15 & #351, Super Bread II/Newark Glass Industries, 515 N Michigan Ave, Block 1, Lot 9.

John Schmidt Jr from Lindabury, McCormick, Estabrook & Cooper was representing the applicant.

Mr. Picerno stated that he would like to have the attorney, Mr. Bongionvanni, address some concerns with the notice.

Mr. Bongiovanni stated that there was a problem with the notices and asked for the notices to be redone. Public notice and property owners notice should be redone. The notice should have contained that you needed a bulk variance to remove this condition as you called it in your notice. Perhaps there was a misunderstanding of the relief you were seeking when the notices were done. After reviewing, the Board agrees that you need a bulk variance. There is no way in this notice that anyone would understand what was being sought and doesn't specify the area of where action will be needed. So I ask that you re-notice because the Board does not have proper jurisdiction to hear the case.

Mr. Schmidt respectfully disagreed and feels that the wording any and all variance is sufficient to cover the balance of it, but you've ruled and asked when this would be heard again? 2 months down the road, 3 months?

Mr. Bongiovanni stated to him that you have indicated that your professional would not be available for the September meeting, is that correct? I believe October is available.

Mr. Picerno asked Mrs. Bogus when the October meeting is. Mr. Picerno said we could reschedule this for October 8th.

Mr. Schmidt stated that if an extension of time was needed, he would like that in writing. Mr. O'Brien said that it would probably be best if Mr. Bongiovanni can give it orally until the day after the meeting, October 9th. Mr. Bongiovanni stated that was ok.

Mr. Picerno said that Super Bread has been before this board in 2012 with an application before us with some conditions, and have noticed that there are conditions that have not been met as of yet. He asked that any conditions on any past applications be addressed so we can have some closure on the old applications, so we can move forward. He asked if Kevin O'Brien could follow up on those conditions that have not yet been taken care of before the applicant returning on October 8th.

Mr. O'Brien stated he took a look at the sight and saw several conditions that were not met and sent a report out to Mr. Schmidt this afternoon. He will take another look at the property 2 weeks prior to the next hearing.

Mr. Schmidt stated that he hopes the Board understands that they have not paved which is one of the major considerations. We've paved the front part of the property, but from where the fence is down to the back, we have not paved until this issue is resolved because of the costs involved.

Mr. Picerno stated he did understand that portion; however, there are other conditions that were not met like the planter boxes and other issues. I am familiar with the property; please bring those items up to snuff so we can have a better look at what will be before us on October 8th.

Mr. Schmidt said he understood. Thank you.

Mr. Picerno said we will continue with Application number 14-02, Vincent Paparatto Realty Co, 22 Cross Street, Block 54 Lot 4. Anyone wishing to be heard, please step up.

Donald B. Fraser, Jr. of Perotta, Fraser & Forrester, Clark NJ. Tonight I'm representing Mr. Vincent Paparatto of Vincent Paparatto Realty Co. in regards to the major subdivision application that's before you. I have our professional engineer here this evening, Mr. Edward Dec, who will be offering testimony this evening as well as my client, Mr. Paparatto.

Mr. Picerno stated to Mr. Fraser to expedite this process, why don't we have you, your professional & client sworn in as a group. Mr. Bongionvanni sworn in Mr. Dec, Mr. Paparatto & Mr. Fraser.

Mr. Fraser called his first witness, Mr. Edward Dec.

Mr. Dec was explaining the set of plans to the Board members and the audience as a major subdivision of 22 Cross Street, Block 54 Lot 4, Borough of Kenilworth, NJ. The plans consist of ten sheets, I will go through each sheet explaining quickly and then we will address the letters from the Borough Planner and Engineer.

Mr. Fraser asked Mr. Dec how many lots the applicant proposes to create from the sub-division.

Mr. Dec replied, the entire track consists of almost 51,500 square feet, we are proposing to create 7 single family lots out of that track.

Mr. Fraser asked do all lots each comply with minimum zoning requirements in which they are situated.

Mr. Dec responded that each lot complies with lot area, depth; we are also showing on our plans the side yard, rear yard and correct setbacks.

Mr. Bongionvanni asked for the plans to be marked as an exhibit.

Mr. Fraser responded that he is marking Mr. Dec's plan as A-1 in the right corner with today's date of August 13, 2015. He then continued asking Mr. Dec in regards to the seven lots being created; each and every one of them is fully compliable.

Mr. Dec stated that is correct.

Mr. Fraser stated to Mr. Dec, that some of the lots are in excess of the minimum requirement, is that correct.

Mr. Dec answered that is correct.

Mr. Dec then proceeded to explain each sheet.

Sheet 1 (cover sheet) shows a zoning map, aerial view in the center of the plan and also our 200 ft. radius map to the left of the sheet, we have a table which is the bottom left which is the zoning chart table showing the lots being created. Lot 4.01 through 4.03- 8,000 sq. ft. each, Lot 4.04 – 5,500 sq. ft., Lot 4.05 – 8,300 sq. ft., Lot 4.06 5,986 sq. ft., Lot 4.07 7,640 sq. ft. The minimum required is 5,000 sq. ft.

Sheet 2 is the existing condition plan which shows present condition of the property with an existing structure on it, an older residential structure and the rest of the lot is an open grass area. The site is bounded by Cross Street, Washington Ave, and school property. Also shown on this sheet is the location of the structures within 200 feet as required by the check list?

Sheet 3 is the sub-division map; a final map will be submitted at the County level after we receive approval from the Board. Individual lots, dimensions, proposed storm water system and all side yard setbacks.

Mr. Fraser asked, what is the required setback you are showing. Mr. Dec replied 5 foot 5 yard setback.

Sheet 4 is the prior approval plan shows a building block within the set back line, it is not a shape of what the building will be, it's just an example to show what can be there in the future.

Mr. Fraser stated in other words it's a blue-print of the envelope and not a blue-print of the structure.

Mr. Dec said he would call it a building blue-print, an envelope is more of the perimeter of the building set back.

Mr. Fraser said my point is that those specific locations are not necessarily the exact placement of where the structure shall be built, but a placement of where the structure could be built.

Mr. Dec replied, exactly.

Mr. Fraser said on Mr. O'Brien's report there were concerns about the houses being placed 10 feet apart from each other, obviously you are not the builder, Mr. Papparatto will have to supply plans to the exact placement of the buildings.

This sheet also shows the placement of the driveways in order to meet the criteria of design and improvement, walkways and sidewalks, future connections into the street on Cross Street and Washington Ave. Also shows the location of where the underground retention is to be placed or the proposed drainage system which collects the run-off to be directed to the retention system.

Sheet 5 is the more detailed version of the utilities specifically the sewer utility where we have the sizes of the pipes, depths of the pipes, grades of the property. We are also showing the proposed quantity and quality which is a requirement due to the fact that this is considered a major project.

Sheet 6 is the Utility Plan which shows the mark or outline of other connections other than storm sewer, shows the connections of water, electric, gas and sanitary sewer.

Sheet 7 shows that the proposed storm water and sanitary sewers work and have no conflicts in design.

Sheet 8 is a detail sheet showing standard details such as curbs, pavement, man holes and sewer connections.

Sheet 9 is a more detailed description of proposed storm water detention system along with the piping design which reduces the amount of runoff from the site to a 50% 2 year rate of runoff, whereas, the State requires the amount of run-off coming off the site, remember right now it's mostly grass, so we're not talking about a large amount, still reducing that to half of that amount. We are strictly reducing and improving if there were any adverse conditions for the present site without impacting any adjoining properties.

Sheet 10 is a sediment control plan, this plan has not been filed yet with the Soil Erosion Commission, we plan on doing so once we receive preliminary approval.

Mr. Fraser reiterated that this plan (sheet 10) has not been sent for approval with the Soil Erosion Commission nor sheet 3 the subdivision map to the County for approval.

Mr. Dec responded that is correct.

Mr. Fraser asked Mr. Dec if he was familiar with or reviewed the Harbor Consultant report of July 6, 2015. He stated he had, Mr. Fraser then proceeded to ask if Mr. Vinegra raised any concerns. Mr. Dec stated that he had spoken to Mr. Vinegra and we can address all his concerns to his satisfaction.

Mr. Fraser asked if Mr. Dec had a moment to review the August 10, 2015 report from Mr. O'Brien? Mr. Dec said he did. Mr. Fraser directed Mr. Dec to page 3 of this letter, section C – waivers requested, item # 11: signs & exterior lighting – are these applicable to this application in your opinion? Mr. Dec responded I don't think it would be applicable, but the lights would be the type you find on homes, entry lights, driveways, & garage.

Mr. Fraser then asked about item # 23 same page: preliminary floor plans & elevations, Mr. Dec you previously testified that to your knowledge, Mr. Paparatto does not have final plans for the build so that's the reason this item has not yet been addressed. Whatever was proposed to be placed on each lot, would meet all the township requirements & ordinances.

Mr. Fraser pointed out item # 30: Landscaping & buffering plan – Mr. Dec said he thinks it would be a preference by each individual homeowner, but again following all township ordinances.

Mr. Fraser referred to page 4 of Mr. O'Brien's letter of August 10th, "Other Agency Notifications Required", and stated that these were already addressed. Section 2 of page 4: Storm water

Management, Mr. O'Brien asked a question – "How does the applicant comply with the above requirements?" Mr. Dec can you answer that?

Mr. Dec said it is considered a major development and we had met those requirements by addressing both storm water quantity and storm water quality.

Mr. Fraser referred to the next point on page 4, proposed home layout: we kind of touched on a little, Mr. O'Brien asks: "Why are the homes so close together?" even if the homes were to be depicted as on the schematic they would still comply with the town's ordinances & regulations is that correct? Mr. Dec stated that is correct.

Mr. Fraser went on to the next point page 5: size of homes, (Mr. Dec) do you know whether the sizes have been decided on the sites to be developed? Mr. Dec replied he did not. Mr. Fraser asked Mr. Dec if he has made a comparison of the other homes? Mr. Dec said no. Mr. Fraser stated however, these houses would comply with Borough ordinances, is that correct. Mr. Dec stated yes they would.

Mr. Fraser stated the next point Landscaping & Lighting was discussed previously. Next number 6: buffer to school property – is there some provision in the Borough ordinance concerning a buffer that this did not comply with? Mr. Dec stated to the best of his knowledge, no. However for uses there may be a separate requirement that we would have to have further explanation on. Mr. Fraser asked if that was something that can be addressed prior to a final approval. Mr. Dec replied yes, it can be.

Mr. Fraser said ok – in reference to number 7 on page 5; impact – Mr. O'Brien pointed out impacts to the Borough – traffic, environmental and fiscal impacts, with respect to traffic impact, how many homes are proposed – Mr. Dec replied 7 single family homes. Mr. Fraser asked if that would have any negative impact on traffic. Mr. Dec stated it would not have any adverse impact on the area. Mr. Fraser then continued with environmental impact, Mr. Dec interjected with regards to environmental if you consider that is the storm water runoff which we will be reducing by the storm water design. Also the sanitary sewer which will not have any impact on the existing system.

Mr. Fraser stated he noticed the Mr. O'Brien raised a question about fiscal impact, I'm not sure if that's appropriately relevant here or if it has something to do with a fully conforming subdivision. There is also comments regarding the Master plan – Mr. Dec you are not a planner are you? Mr. Dec answered no I am not.

Mr. Fraser stated turning to page 7 of Mr. O'Brien's report; Mr. O'Brien asks if the applicant received assurances from the utility companies that adequate capacity is available? Mr. Dec replied: We have not, usually that is only done on a larger scale where it could impact the existing utility system. The utilities that exist now should be more than adequate to supply the seven houses. Mr. Fraser asked if it were customary to a seven lot subdivision where no roads are being caused to be constructed by the applicant to be going through the utility companies? Mr. Dec said no you can look at it as seven individual lots that are being constructed at the same time, so it's not something that would have an impact on the system.

Mr. Fraser said Mr. O'Brien has another concern, are there any variances being requested? Mr. Dec said no – no variances.

An issue arose today regarding the storm water retention system and the need for a homeowner's association. We need to address the need for a homeowner's association and why that exists. Mr. Dec said that issue came up in the Borough Engineer's letter and the Planner's letter. Mr. Fraser interjected, why do we need one? Mr. Dec stated we need the retention system to meet the State's requirement. A site like this in its existing condition of mostly grass, a very small amount of runoff is generated from that. Now we are improving it so now we have to collect all of the runoff from that site to a detention system so we can hold that back at a greater reduced rate than what is presently there. So we need a system that addresses that. Individual recharge systems will address the runoff but will not address the 2/10 or 100 yr. criteria where we have to reduce those rates and levels. So we do need a detention system.

Mr. Fraser asked why does the retention system have the need for a homeowner's association? Mr. Dec answered because of the size we have to expand it over the number of proposed lots. Mr. Fraser stated that this is for all seven lots, correct. Mr. Dec replied yes. Mr. Fraser stated it will burden a few of the lots, correct? Mr. Dec said yes, four I believe. Mr. Dec continued that probably all lots are affected by the detention system because we have to collect the water from all the lots in the subdivision and bring it to the detention system, so not only is the detention area a part of the system, but the overall drainage connecting to that system is also part of it. So I would say that it affects all of the lots in one way or another.

Mr. Fraser asked Mr. Dec in his expert professional opinion is there any reason this fully conforming subdivision could not be granted and any of the reasonable concerns made by Mr. Vinegra and Mr. O'Brien cannot be addressed? Mr. Dec replied that he did not see any reason why the subdivision should not be granted and is sure we could address those conditions & recommendations.

Mr. Fraser then turned the floor over to the Chairman.

Mr. Picerno thanked Mr. Dec and stated he had some questions, but will yield to his Board first if they have any questions.

Mr. Cuppari stated that Mr. Dec explained that the lots are relatively the same size, but is having a hard time understanding the maps and asked what size are the front three. Mr. Dec replied if you turn to page 3, it shows the individual lots and dimensions there. Mr. Cuppari replied ok, so what is the back? Mr. Dec said the rear setback is 20 feet. Mr. Fraser said that the plans are not necessarily showing the house being put that far back, but setback. Mr. Dec said that's correct.

Mr. Candarella asked when referring to your homeowner's association are you referring to it as in a townhouse or condominium, where you are talking about everybody maintaining the roofs and the plumbing, or your association would only be responsible for the retention/detention system, not repair, snow removal, replacement of roofs, etc. Mr. Fraser said that's not really a question for Mr. Dec, but he will answer, yea we are not doing all of that. Mr. Candarella

reiterated that the homeowner's association would only be for the detention system? Mr. Fraser said that is correct and frankly if we didn't have to do that, we wouldn't be doing that either.

Mayor Pugliese asked if there were any alternatives to the association being created with regards to this drainage issue? Or other alternatives that you've considered that can be put into effect rather than a homeowner's association?

Mr. Dec said he does not think you can get away without doing some sort of association as rightfully stated in the Borough Engineer's letter, we can eliminate the underground system by creating an above ground basin, but what that would do would be to eliminate one of our proposed lots and by doing that the lot would then be deeded over to the town for maintenance and their responsibility. So we think this works better and doesn't encumber the town, it only encumbers the people of this new development.

Mr. Pugliese asked if there would be a third alternative? Mr. Dec said no the size and amount of retention required would require that we have to keep it within the number of lots, we couldn't just put in one, and it would benefit all seven lots, so even if we were to place it in one area, all seven lots would benefit from that which means they would have to be part of that association.

Mr. Pugliese said than they would have to pay into that maintenance. Mr. Dec replied, correct. Mr. Pugliese asked if Mr. Dec had any idea as to what the annual fees would be, as you know if one or more of the homeowner's doesn't contribute then you're left in a situation where the other homeowner's could be affected by the shortfall. Mr. Dec said this is fairly maintenance free system all for except the filtering system. The filtering system is a replaceable filter made out of fibrous material and we've had some experience with this because we've been doing this I guess since the new regulations came into effect around 2004-2005, after the first year after all the debris, and solids are caught into these filters and all the lawns and driveways are established and all the construction is finished, after that the filters only have to be changed once every 2-3 years. That could be done by the same company that develops and designs these filters. It's an expense that has to be divided among the seven lots however but maybe it's \$2,000 for every time these filters have to be changed. Mr. Fraser said maybe \$1,000 total each year total? Mr. Dec said I don't even think that much per. Mayor Pugliese said for all 7 lots? Mr. Dec said it could be something maybe we could escrow? Mr. Fraser said that's probably more of a question for the attorney's rather than the Engineer, but I can represent to you that we're told we have to have a detention system required homeowner's association is something that will be addressed at each closing once hopefully these houses are constructed and sold and appropriate escrow will be required.

Mayor Pugliese said he understood, but wasn't sure if "we" want to get into that position from the town's perspective where we have a homeowner's association, a relatively small homeowner's association where I don't know what carrying costs are, you're telling me its low, what other major capital expenditures could be required let's say 5, 10, 15 years down the road that could cause the homeowner's association more than a \$1000 than what we are looking at?

Mr. Dec said again it's only for the storm water system. Mayor Pugliese asked but 5, 10 years down the road, what major expenses could incurred by the association? Mr. Dec said you could

have pipe failure. Although if you look throughout the Borough the storm system has been in place for 50, 70 years and doesn't have issues. But it could happen, and the filters would need to be serviced.

Mr. Picerno stated that having built a few detention systems usually if there's going to be a problem it will come up immediately, once it's in place and working, it is about changing filters. If there's a collapse or break in the line, you're probably going to find out in the first twelve months.

Mr. Grimaldi asked if there is a similar system at a comparable cost that could be individualized per lot that can meet the requirements? Mr. Dec said if you want to do each lot separately, you would have to separate each lot with a wall to keep the runoff from going onto another property. For example lot 1 runoff now goes onto lot 2, lot 2 now becomes responsible for lot , so you would have to isolate them completely or it's a regional type system.

Mr. Picerno stated the detention system would be put in place prior to anything else happening & each lot would have their own system, so having said that hypothetically what if someone were to purchase that piece of property and just put one house on it, would it still meet the requirement of having to put the retention system throughout the whole property? Mr. Dec stated that if it were sub-divided into the 7 lots you would need the system. Mr. Picerno said so regardless if sub-divided it needs this system.

Mayor Pugliese asked if the LLC filed for the subdivision and only wanted to build one house, what would happen? Mr. Fraser said these rules wouldn't apply, it's only because it's a major sub-division. Mr. Dec stated right but to sub divide into the seven lots then we have to build that retention system.

Mr. O'Brien asked Mr. Vinegra isn't by the square footage of coverage or square footage of development rather than number of lots that kicks into major development for state statute? Mr. Vinegra said it's based on coverage but you also can't do a minor, minor, minor. Normally larger lots over $\frac{3}{4}$ of an acre use these systems. It's common, that's why my review letter addressed it early, these are conditions that are tough to call. You can create a standalone lot with the system in it that would either be maintained by the municipality or you still would have to have a homeowner's association to maintain the stand alone lot. Right now they are proposing an installed system in the front side yard that doesn't affect any patios, pools or decks in rear yards. It's something that you can't create minor minors, also normally you don't do individual systems until you get into the one acre lot size.

Mayor Pugliese asked if he could ask a question to Mr. Vinegra. Going back to what you just said, why don't engineers do individual systems is it the expense or the practically of it. Mr. Vinegra said it is the expense. You would want to have a large single system in the front yard, because if the system fails you want it to fail out to the curb, you don't want the system in the back yard to encumber the homeowner. It can be done, the Town should look into an ordinance for the future, right now, there isn't one now on individual lots, if it's the town's preference, there are four lots that can be done individually.

Mr. Pugliese asked what the additional expense is, because personally he is not in favor of a homeowner's association that is so small, but if the expense is relatively great compared to – Mr. Vinegra said the volume of underground piping would be the same, you'd have to install now seven filtration chamber systems instead of one. The pipe would be the same but probably would be more because of the additional filter chambers, I'm not sure what they are going for now, maybe \$4,000-\$5,000? Mr. Dec said it depends on the size. Mr. Vinegra said maybe an extra \$50,000 project cost for additional filter chambers. Each home would have to have a filter chamber, it's a cartridge that would slide in. Sometimes a homeowner's association can drive the cost of the house down. Some people don't want to live in a single family home with a homeowner's association.

Mr. Grimaldi said that was his point because there are bad times there are times when houses and people fall in a bad position and all of a sudden one or two of the families are hit and now the house is abandoned and now we're leaving five homeowner's to bear the burden of seven. Whereas if you had an individual and the cost upfront was known it takes out some of the deed restrictions, you go into a closing and all of a sudden those things pop up & scare the heck out of a homeowner, if it's not clear enough. An overall project, yes, it's easy enough for us to say \$50,000 is not a huge increase, but it is an increase but also I think it would be a possible benefit to the owner of the property now to be able to sell them individually. What happens if the association fails because it is so small? Who is the burden on?

Mr. Vinegra said the ordinance is silent to this new requirement it's not permissive nor is it restricted. So that's why I brought it up in the letter.

Mr. Picerno asked in your experience Mr. Dec, you have done this before how has it worked in the past and what are the results? Are all of these things that everyone brought up going to happen, have they happened or in your experience it's been a pretty smooth sail? Mr. Dec said homeowner's association are now becoming more and more common. As far as people wanting to be part of one, I'm not sure. However, in this condition the situation we are in now, the entire site is just about grass and we are going to have to retain a lot of runoff. I haven't looked at the individual design per lot, I would hate to go through all of that to find that we can't.

Mr. Fraser asked if he could address this? What we are talking about here is seven lots and an approximate cost of \$7,000 per lot an additional cost that he has to get. I agree and my client fundamentally agree with Mr. Grimaldi with all things being equal we prefer not to have the homeowner's association, it's an easier sell for prospective purchasers. Whether or not it's a \$7,000 easier sell we are not so sure. It's something we are open to considering. I respectfully suggest to the Board that it's our view, we are entitled to the application as it is as of right, we have to come back for final anyway, and we are going to take some sharp pencils to it because if we can figure out a way if we can do it individually at a cost that is not insane per lot we like the idea, but aren't so sure about it at \$7,000 per lot and maybe go back for more calculations. All things being equal, the applicant would prefer not to have an association.

Mr. Picerno said his follow-up question was sort of along those lines. At the inception of this detention system, the builder is going to put that in, that's his responsibility. This is just a "what if" – and I heard about \$1,000 per year to maintain per house, that's \$7,000 a year. So what if

there were some type of escrow set aside for the next however many years to make sure that that was maintained and then visit that at the end of that period, which could be another alternative to protect the people in the house at inception and so on and the township.

Mr. Pugliese said you've done closings, these things generally are a head-ache at the closing table and before that, people once they find out, not necessarily at attorney review. Mr. Fraser said that's usually where it's more of an issue than the closing table, at the closing table everyone already knows there's a homeowner's association – you're right, at the attorney review, at the time of marketing the property when the realtor comes in to look at the plans and see's oh – there's a homeowner's association there's a section of the market who are not going to be interested for that reason, but as Mr. Dec said, they are becoming more common, all things being equal, the buyer would prefer not to have it, that's why I'm saying if the numbers can be crunched down something per lot that works, I think the applicant would be the first person to agree with Mr. Grimaldi's suggestion that maybe we try to avoid this. We're going to have to see some numbers on that to see if it makes sense. Mr. Chairman you brought up about an escrow, that was the direction I was going because yes, it does make fiscal sense for the homeowner's association to be properly capitalized to protect against future problems and x thousand dollars from every closing may have to be put into a fund so that the homeowner's association is prepared to deal with potential problems. Maybe there's an insurance that can be bought by the homeowner's association at a nominal cost to protect against these problems. These are legitimate issues that I respectfully suggest that my client will have to work on and we can do that between now and the time of the final. We want to be responsive to the Board's concerns in every way and think we can give some food for thought on if we can avoid the association, which we don't like anyway.

Mr. Pugliese said this would be better for the town because it would increase the value of the properties which in turn would increase the ratable of the properties if there isn't an association, maybe if the engineers and attorneys put their heads together. Mr. Fraser said an increase in values is music to Mr. Paparatto's ears. We want to work with the town on this.

Mr. Picerno asked if there were any other questions for Mr. Dec. Mr. Cuppari said he had a question regarding a comment in the engineer's report, some lots will not have basements because the storm water will be too near the basement, isn't that why you have the storm water system? Mr. Vinegra said that comment was there to protect the future homeowner, normally we will do a test bit or two to look at the characteristics of the soil. If the soil is a fine grain sandy soil you really want to keep a basement away from it even if a closed system. If you have a good clay soil, most of Kenilworth is clay soil, you'll have it. I just wanted the builder to be aware that these systems if too close to basements do create problems.

Mr. Cuppari asked, how close is too close? Mr. Vinegra said it's a closed system, so if any water gets out of the system and finds a sand layer or sand lens and hits your foundation wall, it's coming in your basement. No stopping it.

Mr. Picerno stated Mr. Dec has already said that he has seen Harbor Consultants Engineering report and said that he would adhere to everything that they have on there. So they will take precaution. Mr. Vinegra said normally what we can do before each house is built is test the soil

and inspect it as the back hoe is digging and make a determination based on how the soil looks. That way you are actually field witnessing of the soil for each lot, one by one. That's the best way to do it.

Mr. Picerno asked if there were any other questions for Mr. Dec. Seeing none he asked Mr. Fraser if he had anyone else.

Mr. Fraser called Mr. Papparatto to the microphone to answer any questions from the Board may have and perhaps address concerns on the houses being built. Mr. Fraser asked if his company would be the company building the homes on the proposed lots. Mr. Papparatto said yes, that is correct. Mr. Fraser asked if he has decided what you're going to build? Mr. Papparatto stated not right now, not at this point. Mr. Fraser asked Mr. Papparatto at this point you are just asking for the sub-division, is that correct. Mr. Papparatto stated yes. Mr. Fraser said to him, you heard all this discussion about a homeowner's association, do you want a homeowners association. Mr. Papparatto said not really. Mr. Fraser then asked if you could avoid it & the cost is not prohibitive would you be adopting the kind of suggestion Mr. Grimaldi put forth? Mr. Papparatto said yes. Mr. Fraser said ok then that is something you will be addressing with Mr. Dec between now and the time of the final. Mr. Papparatto stated yes. Mr. Fraser said you haven't really decided where these houses are going to go, correct? Mr. Papparatto stated correct. Mr. Fraser: You're just going to put them on the lots within the building envelope as the individual permits are issued. Mr. Papparatto stated right. Mr. Fraser stated he really didn't have a lot for Mr. Papparatto but wanted him to be available to answer concerns and questions the Board has.

Mr. Picerno stated to Mr. Papparatto I understand there is no design and there is no house yet for us to take a look at, however, whatever you do is going to meet or exceed all the set back and be in compliance and all that. Mr. Papparatto said sure. Mr. Picerno stated in addition, I heard you say that you are not in favor of the association but would be in favor of what Mr. Grimaldi and others had to say, Mr. Papparatto said, yes – Mr. Picerno: but just let's say that cost comes in over the top, I also heard this Board say specifically – Mr. Pugliese and others, that they really aren't for this burden of this association and now all of a sudden we will be left to deal with that if this approval goes through. That's going to be a bit of a hard pill to swallow when you come back here because I know what's going to happen, should you be approved tonight. You know what this thing is costing me more than I thought, we have to have this homeowner's association, now we're left to deal with that. Am I correct? I would like to see is that third option in play of that escrow, I was told it's only going to cost \$1,000 or so for seven homes, if there can be set aside a program by your side as the builder, for the next 10 years you're talking \$7,000, 20 years \$14,000 it's diminimus of what's going there. I think we could put this Board a little more at ease giving that a consideration. I didn't discuss this with the Board, I don't know how they feel about that, but it is something to think about and I would yield now to the Board to see what they have to think about that.

Mr. Candarella asked that developer's escrow would not be held by the town, it would be held by the association, I don't think the town wants to be involved in the escrow. Mr. Picerno said no it would be the association, no matter how many houses there at the time whether it's 5 houses 2 or 1, they are protected.

Mr. Fraser said to let him address it a different way, the way I'm envisioning this happening and let me know if you're on the same page as I am, is that it's not even so much as an escrow as it is to a funding to the association that each closing of each of the seven homes, a couple of thousand dollars or whatever the right number is, has to be funded at each closing into the calfers of the homeowner's association so that the association has a check book with money in it to act as a reserve against these issues. Mr. Picerno said he doesn't know if he was going that route. Mr. Fraser then stated that he's not following what you mean by escrows, who would hold the escrow.

Mr. Picerno said let me put into layman's terms, I don't have the proper nomenclature that Freddie would have who does closings all the time. Let's just say Vinny came out of pocket with \$14,000 dollars and gave it to the homeowner's association and it sits there for the next 20 years that's wear it is. It really doesn't have anything to do with the closings or anything at that point, it's already there. In 20 years from now they can fend for themselves, that's a terrible way to say it, in 20 years then another plan will have to be put into place.

Mr. Fraser said, it's probably 6 of one, half a dozen of another whether it's \$2,000 per closing or a onetime check for \$14,000. Mr. Picerno said I don't think I have a problem with which way it goes, as long as it goes away.

Mr. Vinegra suggested that at final when we find out which way they are going come up with some kind of agreement with the municipality on how to capitalize that fund. Either developer capitalized so it's not all incurred at the individual closings, but we can discuss that at final when we get final design.

Mr. Pugliese asked if he could direct a question to our Engineer? In terms of functionality in regards to the individual systems would that work just as good as the joint ones? Mr. Vinegra said yes. Then they are only responsible for their own. Mr. Pugliese asked what would be the rough estimate?

Mr. Vinegra said the price would be about the same, the units themselves are around \$5,000 but I think it would make the property more valuable. Mr. Pugliese said we are going way beyond what we are here for today, but let me just say if we're talking about \$400,000 dollar homes here, the cost is only \$5,000 additional.

Mr. Vinegra said if they come back at final with this same system, we can set up a developer's agreement with the municipality on how to fund the homeowner's association, is it developer 100%, an insurance policy and how to capitalize that. It's either capitalized at 100% in the beginning and what number will be used to capitalize it, is it going to be \$50,000 dollars. Do we want \$50,000 held in abeyance in case of failure five years down the road and then that money can be distributed after 15, 20 years or it can be accrued by if the maintenance of this system is only \$1,000 a year the fee can be a little bit higher to each homeowner to build the fund up to a certain dollar amount and then stop at that point if you choose a homeowner's association. We can do that at final if the design comes back as is.

Mr. Picerno said he was interested to know, Mr. Papatatto did you have any opportunity to research someone who would be doing this and what that cost estimate would be? Mr. Papatatto said no, not really.

Mr. Candarella asked, if you do come back and determine a need for a homeowner's association, and obviously one house is going to be built first then I assume the developer would have to fund the other six portions, five, etc. Mr. Fraser answered yes.

Mr. Picerno asked Mr. Papatatto what his projection on the build was? Mr. Papatatto asked on the start? As soon as I get an ok. Mr. Picerno said ok, then you will be doing this immediately. Mr. Papatatto said yes. Mr. Fraser said one of the things that have come into focus that I was speaking with Mr. Papatatto on earlier today was well you can always sell these lots individually once you have obtained subdivision approval. I think everybody knows Mr. Papatatto is a very reputable, experienced and well known builder in the area, that's not his plan. His plan is I'm going to build these houses, but the alternative thing is you always other options. What came into focus for me today was with this association plan we don't have those options because really only one builder has to do the whole thing with the association. We don't like the association, if there's a legitimate way to fund this, to build with separate systems for each lot and is not out of line in terms of cost, I know what Mr. Papatatto 's going to do, he's going to do it individually.

Mr. Picerno said to Mr. Fraser since you opened another can of worms in my end. What you're saying is that if this major sub-division goes through that Mr. Papatatto is going to build all seven of these, no sell individually, although he can, are you now placing a condition that he's not going to? Mr. Fraser said no not at all. Mr. Picerno said then who takes care of the detention system? Mr. Fraser said, what I'm saying to you is with the homeowner's association, one builder has to do all seven, that could be Papatatto or he could sell it to whomever, but one builder has to come in and do the project with the association. If there's no association, he could build a few houses, sell a few lots or do whatever. That's likely not going to happen, but he has flexibility without the association. With the association, he's deprived the flexibility.

Mr. Pugliese said, I personally think without the association, the houses would be worth more. And I think everyone would agree with me on that. I think if we could do this individually, I think that's the way to go, if you guys could work a way to do that that would be great. Actually sooner or later you have to sell them, then the town is left with the problem of the association. It's not a big problem, but it's still there, speaking as a member of the Planning Board and a member of the Governing Body, if you guys could work toward that, I really think it could be a win-win situation.

Mr. Fraser said I very much believe that is what we would like to do. We're going to go back and try to grind down and figure that out, but I don't want to be unclear in any way. The application that is before this board tonight as to I respectfully re-iterate I believe we are entitled as of right has this homeowner's association, we've been trying to be responsive to what we've heard, not only to satisfy you, we've liked the idea that we've heard and if it makes economic sense as it well may, Mr. Pugliese, we agree with you that the houses are probably worth a bit more without the association, we're going to do that and come back and come back for final on

that, but the application that is here tonight is the application that's here, I don't want to be in any way disingenuous about that.

Mr. Grimaldi stated that he's glad Mr. Fraser and his client like the idea, he thinks we will all benefit from it, but and I don't know who to ask this to probably Victor— who would set that number if there were an escrow and he wants to come back to do it that way, how is the determination of such an escrow be made?

Mr. Vinegra said one thing we could do is ask for a bonding estimate which would be an estimate as to the cost of the items, so maybe half that amount. Or they may want an insurance policy for \$50,000, so either the homeowner's association would have to be capitalized or have access to the insurance policy or maintenance bond of \$50,000 – that is something we come with over time on projects and can be worked out prior to building permits.

Mr. Grimaldi asked could that be something that never fades away? Mr. Vinegra said that as long as that detention system is in place that is something that will never go away. Mr. Grimaldi said he agrees with other Board members, it's either something that falls apart right away or something that does a long time from now, so we will either know immediately or won't know till. Mr. Vinegra said we can do that with bonding and have a maintenance bond we're sure going to have time 3-5 years after the installation, so after the installation a maintenance bond of \$100,000 could go away, but you should still have some type of capital account or access to capital.

Mr. Grimaldi said maybe an insurance can be there to cover the possibility of failure. Mr. Vinegra said there should be something sitting there for repair. As stated so if you have another recession or homes get bought back by the bank or the bank's not paying into the funds then you have some capital there until things get better. It has happened, that's one of the reasons Florida is an issue, it has also happened in South Jersey, so we need to work that out.

Mr. Picerno asked if anyone else had any questions for Mr. Paparatto at this time? No one had any other questions for Mr. Paparatto. Mr. Picerno turned the floor over to Kevin O'Brien.

Mr. O'Brien said he does know that Mr. Fraser has repeatedly said that this is a fully conformed sub-division which it is, I agree with that, however, I do point out to the Board that this Board has an obligation under the Municipal land use law to review this application and it does have approval power over this application in terms of the public health and welfare and can certainly deny an application if it felt that the public health and welfare were not being met. I'm not suggesting to this Board to deny application, but it is within your rights to do so or approve it, as you wish. I do suggest to the Board first that the applicant has stated repeatedly on the record that they have amended their application to seek preliminary site plan and not final as the original application said so, Mr. Fraser can confirm that on the record.

Mr. Fraser said that is correct, the fact that the soil and the County Planning Board application have not been submitted precludes from final at this time.

Mr. O'Brien said there are also 3 waivers that were requested by the applicant from the Borough check list, 1- for exterior lighting, 2nd for floor plans and elevations and 3rd for landscaping. I would request that the Board deny waivers for those items and request them for the final application to come to this Board, because in my opinion, I believe that public health and safety and welfare are advanced by you being able to access the impact these homes upon the surrounding neighborhood. This is an R-2 single family neighborhood that surrounds this application, it also borders a school property with a very large amounts of youngsters as well as staff on that property, I think this Board would be well served by knowing exactly what is going to be appearing in front of it in terms of what these homes look like, where they are located on the property, what kind of lighting, what kind of pump is going to be offered and I know that a comment was made that each homeowner will have those items, but because this is being built as a sub-division, they are all going to be built probably as a typical model or typical several models and all of those improvements are going to be placed on these properties prior to a homeowner getting them. Since this is going to be done as a set, we should see what that set looks like. These are my comments to the Board.

Mr. Picerno said so you're saying wait for the architectural to see that? Mr. O'Brien said you'll do that at the final sub-division approval hearing and my suggestion is that by denying the check list waiver of those three items that the applicant would have to come in with those items prior to the next hearing. Also, as Mr. Fraser has pointed out, both the County and the Soil Conservation district have yet to be notified and I suggest that be done, those applications be placed prior to the final hearing. Mr. Fraser said, absolutely.

Mr. Fraser asked if he could ask Mr. O'Brien a question, Mr. Picerno said sure go ahead. Mr. Fraser asked, Mr. O'Brien, if I heard you correctly I think you said that is a single family zone, but isn't this a largely two family area? Mr. O'Brien said there are two family homes adjacent to this property as well as single family homes. Mr. Fraser thanked him.

Mr. Candarella asked Mr. O'Brien to confirm the waivers requested. Mr. O'Brien referred to page 3 of his report item numbers 11, 23, and 30.

Mr. Cuppari asked whether a traffic study should be done. Mr. O'Brien said he had thrown in discussion of the impact and Mr. Dec is an Engineer, not a planner, but if you want that type of testimony done, you can ask for it of Mr. Fraser for the next hearing. It would be up to the Board and you can certainly say this affects the public health and safety and hear how that would be addressed.

Mr. Grimaldi asked we have two way streets coming up to this point and a two way street right up to the edge of the school. Does it come upon the township or the property owner to look into if we should resign anything there, do we even have any type of stop sign at the gates of the school?

Mr. O'Brien said if the traffic study were done, perhaps that would be raised as one of the concerns, in the absence of the study, unless Mr. Cuppari wants to suggest that the Board request one from the applicant you ask Victor or myself to see if there are any concerns that should be

addressed in the area. So you can ask the applicant to come in with a study and we can review it or you can ask us to take a look at the area.

Mr. Cuppari suggests that it be done, we've had them done for other projects. Mr. O'Brien said he refers to the Board.

Mr. Fraser said he would like to respond to that, we're talking about seven single family homes, there's one there now, we're talking about six additional single family homes 3 new houses on Cross Street and 3 new on Washington Ave, I respectfully suggest to the Board that there is no legitimate reason why there should have to be a traffic study for this project.

Mr. Cuppari asked, how many cars will each of these houses hold? Mr. Fraser said typically, I would imagine there would be 2-3 cars per household. Mr. Cuppari stated 21 cars. Mr. O'Brien said that the requirement to be provided for parking is 2.5 cars. Mr. Cuppari said there's a lot of other activity, there's the school, there's children walking. We've asked for this before for other uses. Mrs. Bogus said there are several schools in this area.

Mr. Fraser asked, when you say uses, what other uses? Mr. Cuppari said we just had one done down on Boright, we asked them for a traffic study. Mr. Fraser asked, commercial or residential? Mr. Cuppari stated commercial. Mr. Fraser said this is a residential, on a commercial property cars are coming whether it be a strip mall, a law office, doctor or whatever, you have cars coming in and out for commercial use. These are single family residential homes that are going to be built here as of right, what could a traffic study tell us, that there will be 2-3 cars from each house coming in and out, they're going to have to drive out of the house to go to school or go to work or the 7-11.

Mr. Cuppari said there's an ambulance squad here, a school there, 2 other schools, fire department. Mr. Fraser said so the traffic study's going to tell you that the car drove by the school.

Mr. Picerno said usually when we ask for a traffic study, it's usually in a commercial area where we are going to have an impact of trucks and things like that coming in and out turning radiuses, traffic patterns whether they are going to use different streets along the Borough. We have what I'm considering is almost a dead-end street, you're going into the parking lot of the school and yes then you have Cross Street that goes up the block. I think a traffic study would be great just to say hey let's get a traffic study, but I think Mr. Fraser is right, what are we going to see, a couple of cars coming out of a driveway and think we're going to put an undue cost on the applicant when we already know what that study is going to produce. Is there going to be an impact of more cars, yes, there's going to be a car and a half for each house. At some point we already know what's going to be there, and on the Washington Ave side what do you have, 3 houses, I'll yield to the Board on that, but I don't want to take this so far out that it becomes almost out of control.

Mr. Grimaldi said he would have to generally agree with Mr. Picerno's statement. My concern and my worry is the access from the school in and out. I remember when I was seventeen pulling out of that lot and growing up across the street from the school, seeing what happens in

that lot at night directly from my bedroom window, seeing the donuts being done in the parking lot and flying right up Washington. I think maybe we should ask our Professionals looking at the size, do they think there is something we need to do now or by the development of this property now, is there anything we can ask the developer to do, if we think there is something to do?

Mr. Vinegra stated that if he felt we had traffic issues in the area, he would have put that in his letter. I walked this site on different occasions, I've witnessed the volume on that road is very light. All a traffic study will tell you is how much is going to add to the volume however the level of service will not be decreased. They're not relative to the location of the school, they're not relative to the location of the fire house, what they will do is count traffic directly in front of the project, which by law is all they have to do on a small project, they're going to say "x" amount of cars per hour and each time of day. The additional traffic is not going to increase the level of service. I don't see this as being a big traffic generator. To answer your question about circulation, that's something that can be done with the Police Chief and our Firm and Kevin. We could look into signage and if there are issues with the Traffic Safety Officer and ourselves to decide the safety issues. The developer is not responsible for that, they are responsible for their frontage, if they create so much traffic to reduce the level of service at an intersection down the road they are then obligated to fix that, but I can't see six additional homes creating that.

Mr. Candarella said if everyone stopped at the stop lights and stop signs, there wouldn't be any issues. Coming out of that parking lot of the school....

Mr. O'Brien stated since this application will be coming back to us for final approval pending your decision this evening on how you are proceeding, and more information will be given to us such as the exact location of the homes, exact locations of driveways that will give Mr. Vinegra and I an opportunity to layout where these building are going to go, give us an opportunity to suggest to get those driveways as far away from the schools as possible, given the confines of each individual lot, we will be able to speak a little more authoritative about it once we have the details. I would take the Boards comments to heart as Mr. Vinegra's point out, I am a member of the Institute of Transportation Engineers, a graduate degree in transportation, so I would be more than happy to keep those thoughts in mind as I look at the this for the next review.

Mr. Picerno said we accept your credentials, thank you!

Mr. Pugliese said to Mr. Cuppari, I see your point as to the distinct location of the property, it is between three schools, there is a fire department and there is an ambulance squad right across the street, so the property is unique in that aspect, with that being said, you had good intentions and that's the reason I brought it up, but a traffic study probably wouldn't be the best way to go but if our Professionals are telling us that this project does not need a traffic study, then I'll follow your recommendations after that point.

Mr. Cuppari commented that he was sorry he brought it up, Mr. Pugliese said no it's a great question, Mr. Picerno stated that's why I'm agreeing with you, we have a piece of property that is sitting in the center of a lot of things.

Mr. Pugliese said Mr. Fraser says we have to grant the sub-division with the association, I disagree, I don't think we have to grant that as a matter of right. My personal inclination is not to at this point until we get more numbers as to what the cost expense is to do the individual detention basins for each property, I don't know if it's cost prohibited to do that and I don't have anything in front of me to indicate what would be the difference in expense from doing it the way the applicant proposed. I personally would rather see the individual units. I don't know at this point how it will affect the structures with those individual detention basins. I would be more inclined if you could come back in a month and give us that information, rather than voting on it tonight, but that's just my personal opinion. You might be entitled to the sub division but may not be entitled on the way you want.

Mr. O'Brien stated to Mayor Pugliese that he would add a note that the municipal land use law gives this Board "an obligation to deal with matters vital to the public health and welfare and goes on to say such as drainage, sewage disposal, on and on". This Board has that obligation to look at this very carefully and if they feel that aspect of this application could affect public health and safety down the road, then it is up to this Board to decide how to handle it.

Mr. Fraser said respectfully Mr. Chairman, the Board is going to do what the Board is going to do, I appreciate and I think we've been very responsive to the concerns that have been addressed by the individual Board members and I meant it when I said before if we can do it the way Mr. Grimaldi has suggested, that is certainly the applicant's preference. If the Board approves it without the homeowner's association, so be it. I don't want to be pretentious, I think Mr. Pugliese's idea is wrong, what I want out there for the record was the applicant's position, that the applicant is entitled to this approval as submitted. I think the key-word that Mr. O'Brien just used was "vital". Vital to health and safety, great, and there's nothing un-healthy or un-safe about what the applicant has produced and what the applicant has proposed. I respectfully suggest to the Board that the application should be approved and the applicant has the right to that approval. I think I've said it all, I don't want to sum up any further.

Mr. Picerno said to Mr. Fraser, you said when you walked in here tonight you were informed that you had to form an association, did I misunderstand that? Mr. Fraser said, Mr. Chairman, I personally before I picked up this file today and opened it up and said, ok what do I have to do to get ready for tonight and I sat down and called Mr. Dec and discussed it, I said wait a minute, we need an association! God's honest truth that was exactly the conversation. That was the genesis of my point. Mr. Picerno asked that came way by Mr. Vinegra, I mean Mr. Dec. Mr. Fraser said I read Mr. Vinegra's report and I sat and read Mr. O'Brien's report and called Mr. Dec, ok Ed we have to get ready, what time do you want to meet to prepare for testimony, went to Mr. Dec's office, so I wouldn't look like a complete idiot standing in front of you and all of a sudden I'm hearing we need to have a homeowner's association. Why do we need a homeowner's association? I'm a lawyer, I'm not an engineer. It was explained to be about the detention basin is going across the property lines and it's going to service seven lots and therefore, we need a detention system that's going to serve all of these lots and there's two basic ways to do it. One basic way is loose a lot, give it to the town make the town maintain it, that didn't seem like a great idea or other choice is to have an association to maintain the system.

Mr. Picerno said with respect, being the professionals that everyone is, how did you get this at the eleventh hour and not know this going in? Even Mr. Dec too, I don't mean this in a bad way but you had to know this prior? How did you find this out today?

Mr. Fraser said, Mr. Dec knew, I did not know. Mr. Picerno said ok – so to Mr. Pugliese's comment you're just finding out about this today, had you known this thirty days ago, maybe Mr. Paparatto would have had the opportunity to get some valued engineering on costs of what this may be to do an individual. Mr. Fraser said to Mr. Chairman, that may be but that's ultimately with all due respect, irrelevant. The application that is before you is conforming, legitimate and we are entitled to it. You have come up with some great ideas, I'm not so arrogant that I can't listen to someone else and have my mind changed. Frankly, Mr. Chairman, based on what I've heard from the Board, my inclination and I'm going to discuss this at length with my client, I'm persuaded he should probably do the individual retention pits. I agree, but I don't have to commit to that now, is my legal position, we've submitted an application as to which I believe we are entitled to approval between now and the final if we can work it out, as has been suggested, I think it's a great idea and we are probably going to come back at time of final and say you guys were right, let's do it your way. I can't commit to that tonight. I have an application that I believe I'm entitled an approval on, I'd like that approval, then want to work on good faith now. Mr. Pugliese said it best, these houses are going to sell better without a homeowner's association. Mr. Paparatto is in the business of building and selling homes, he knows that better than I do. You have to explain to people they have a homeowner's association, they think that stinks. So if it makes sense from a cost perspective, heck yeah, let's do the singles.

Mr. Bongiovanni said, maybe we can short cut this a little, if the Board was inclined to grant this preliminary sub division, but with the condition that a plan of individual detention basins be worked out between now and final, unless Mr. Paparatto can demonstrate that kind of system is cost prohibited.

Mr. Fraser said it's the same he would have done if he were sitting on that side of the table. Problem is what we both know is what's cost prohibited? Here is what I think is a practical answer if the Board does that, although it's not what I'm asking for, and not what I'm consenting to, I think the problem will go away before the final. But as a legal matter, I'm not consenting to it, my application is the way the application is.

Mr. Bongiovanni said they don't have to agree with that. Mr. Fraser said he understood, they can see we're not doing it your way, we're doing it our way.

Mr. Pugliese said Mr. Fraser said he can't consent to that. He asked Mr. Bongiovanni to repeat his suggestion. Mr. Bongiovanni said if the Board saw fit to approve the preliminary sub-division could approve it with the individualized detention basin concept unless between now and final the developer can demonstrate that kind of system is cost prohibited.

Mr. Pugliese said, speaking for himself, he thinks that's a good move. No one wants to do something that's cost prohibited, it'll keep the properties barren for the next two decades. I'm ok

with that, but I can only speak for myself. That gives everyone a chance to mull their options going forward when they come back for final.

Mr. Grimaldi asked Mr. Chairman, if we approve it the way Counsel just brought up, agreeing with our Planner of denying waivers and we are presented with whatever option they choose upon and come back and choose the option of the homeowner's association and we don't come to an agreement about the money, escrow, developer's agreement, we can't come to an agreement, are we still in full ability to deny this project at this point.

Mr. Picerno said his answer to that would be yes. We could deny, am I correct, we would be able to deny to base on....Mr. O'Brien said public health, safety and welfare. Mr. Picerno said exactly. Mr. O'Brien said if you find the proposed storm water detention system is unworkable or the procedures and process are unworkable and therefore the storm water will have an effect on the Borough then that is a public health, safety and well fare question.

Mr. Grimaldi asked if the welfare could be fiscal welfare also? Mr. O'Brien stated the Municipal land use law does not address fiscal concerns from an applicant's point of view. Mr. Grimaldi said no, from our stand point. Mr. O'Brien continued from the Borough's point of view yes. So whether it's cost effective for the applicant has no bearing on your decision concerning the municipal land use law, concerns for practicality of course you want to hear what will work and what will not work.

Mr. Grimaldi said we come back, we like the lighting, the landscaping, the positioning, driveways but this Board does not agree with their version of the contractor's agreement of how it's funded, the amount or anything like that, solely upon that basis that we don't agree with that homeowner's association and how it's funded, we can deny this project?

Mr. O'Brien repeated, as a Planner, I say the words public health, safety and welfare are discussed in the municipal land use law, I refer to our attorney as to his opinion as to whether you can or cannot deny it.

Mr. Grimaldi said based upon my thought, if we don't get to a monetary agreement that we are comfortable with that protects the town, not worrying about the contractor, that protects the town, that we are falling within that definition.

Mr. Bongionvionni said we'll have to look carefully at the ordinance, performance guarantees to see if they are adequate to protect the township just under the numbers we come up with the performance guarantees, I can't really answer that any other way tonight.

Mayor Pugliese said: we can't just reverse ourselves based on the concept, we can't work on the fiscal items that would run with the association. Mr. O'Brien said plus the possible concern because the financials don't work that the storm system could fail because no one is taking care of it, and that affects the Borough.

Mr. Picerno said so we have to be careful how we phrase that. Mr. Grimaldi said he didn't want to further burden the application. The application basically our professionals have stated are

meeting 99% of what we need it to be and we still have another step. We have another step to deny it, why clutter the works, we have an ability to not deny it if it doesn't come back. Mr. Pugliese said I think we have to agree on concept, right now we don't have any association bigger than two that I know of. Is there any way we can carry this to the next meeting and perhaps come back and discuss the individual effects, costs, building envelope, etc. at a subsequent meeting this way our engineers, planner, and the applicants can exchange ideas so we can possibly avoid that scenario of voting on it tonight?

Mr. O'Brien said to Mayor Pugliese, the Board has the right to postpone the deliberation on this application until you receive further information and put that information on the record. If you wish.

Mr. Picerno said I'm listening to Fred and Robert and think they are all major concerns, but the application before us is saying that the applicant is with his rights, I think and I am concerned about the Borough and everything we talked about, but I think this is phase 1, if this was to be approved tonight based on the conditions set forth we could take a look at this at the next meeting. I think we are just prolonging the inevitable what we are actually saying here is we don't want this, you better come back with that, I think that's the message we are giving and I want to be careful on how that's portrayed.

Mr. Bongiovanni said maybe Counsel has a suggestion of which of those two ideas sound better to him. The Board making a decision tonight that we don't agree with the homeowner's association or the Board saying we can come back in maybe thirty days and may be agreeable at that time since everything else has been explored.

Mr. Fraser said it seems to him that what Mr. Pugliese and possibly other members of the Board want is to approve this without the homeowner's association being a possibility. Reading between the lines, that's what I'm getting. If that's what it is, there's nothing that stops Mr. Pugliese or any other member from making a motion to approve it that way, even though I don't like it and I don't consent. If I walk out of here tonight with an approval with the sub-division but there's a condition I think that the Board has wrongly attached to it, question is what am I really going to do? I'm going to see whether or not we can live with that in which case if we can, and I hope we can, when we come back with final we will accede to that decision of the Board. If on the other hand, my client finds that he can't live with it, but I think he will, but if he were to determine that he couldn't live with it, then we come back to the Board to amend that approval and make whatever argument he wants to make to amend it or guess he could take it up with the County, but the costs and time of doing that will start to make building the single retention things very attractive. So I think a practical solution although I can't consent to it has sensible presented itself to the Board.

Mr. Picerno said I like that idea, it sounds like it makes the most sense. Having said that, I'm glad you asked him to give his opinion. Mr. Fraser stated, but I do not consent. Mr. Picerno said you don't have to consent.

Mr. Pugliese said it seems if that motion was made then we could possibly entertain it and a motion to amend to give everyone a chance to get their ducks in a row.

Mr. Picerno asked if there were any other questions for the professionals from this Board. Mr. Bongiovanni said he wanted to do some housekeeping points: I'd like the resolutions to reflect that you have offered exhibits that are listed in Mr. O'Brien's report of August 10th, under the section resources utilized, there's a letter from Donald Fraser, statement of principal points, Borough Application, Borough check list, Zoning Officer denial letter, application of zoning permit, referral letter, submitted to Board Secretary, submitted plan letter from Ed Dec, letter from Donald Fraser a major subdivision, I would just like to mark those as Exhibits A2-12.

Mr. Fraser said no objection. Mr. Bongiovanni said you also heard Mr. O'Brien testify from that report, I would like to mark that as Exhibit B1, Mr. Fraser said just so we are clear that's the August 10 report of Mr. O'Brien. Mr. Bongiovanni said I think you are also familiar with B-2 the completeness review he did on July 9th. Mr. Fraser said he has seen that, no objection to that. Mr. Bongiovanni stated B-3, completeness review of June 2nd. Mr. Fraser said, no objection. Mr. Bongiovanni went on with B-4 our Engineer's report of July 6, finally a photo site shoot done on August 7th as B-5. Mr. Fraser stated he had no objections.

Mr. Picerno asked for a motion to open this portion of the meeting to the public. Motion made by Mayor Fred Pugliese and seconded by Mr. Manee. Anyone from the public wishing to speak on this matter? Seeing no-one, I'd like to have a motion to close the meeting to the public. Motion made by Mr. Candarella, seconded by Mr. Grimaldi.

Mr. Picerno said at this point, I think we've exhausted this pretty well, I think there was some conditions placed, the attorneys should get together on some of the conditions set forth and we can make a motion based on those conditions to approve this application. I would like to hear from both or one of you who has them all, then we can put them into the motion.

Mr. Candarella said he would like to also include in the motion Mr. Fraser's thoughts about approving it without the association. Mr. Picerno said yes. Mr. Pugliese said those are the conditions, were there any other conditions discussed? Mr. Picerno and Mr. Candarella both said the waivers, Mr. Picerno elaborated the lighting, landscaping, buffering.

Mr. Bongiovanni said just the area that there were some contention on tonight, we should do a list of those. Mr. O'Brien said it's very short at the moment: the application was amended for preliminary sub-division only that the waiver request for items # 11, 23, 30 be denied, meaning they would be provided prior to final sub-division hearing, and no homeowner's association as part of this application.

Mr. O'Brien asked Mr. Vinegra if he had any comments to the list, Mr. Vinegra said no joint detention system.

Mr. Picerno said do we have to re-iterate that to get the motion or can we just have the motion? Mr. O'Brien said if everyone is onboard with that. Mr. Picerno asked if everyone understood? He asked for a motion for everything that was just said by the Engineer, Attorney, Planner and himself. Mr. Candarella made the motion, Mr. Pugliese seconded the motion.

Roll call please: Mr. Picerno – yes; Ms. Bogus – yes; Mayor Pugliese – yes; Mr. Candarella – yes; Mr. Cuppari – yes; Mr. Manee – yes; Mr. Grimaldi – yes; Mr. Costa – yes

Mr. O'Brien asked prior to concluding this matter to give Mr. Fraser the option of coming back to date certain and continuing his notice or do we have to re-notice? Mr. Fraser said he was just going to ask that, when do you want this heard? Mrs. Bogus replied September. Mr. Picerno answered September 10th.

Mr. Fraser thanked the members of the Board for their consideration this evening. We appreciate the approval and would like the Board to understand that we are taking the comments of the Board in a very constructive and good faith spirit and are going to try, if we can to do it the way the Board wants.

Mr. Picerno thanked Mr. Fraser for his testimony tonight and thank you for being forth-coming and not leaving us blind-sided, you brought a lot of things to our attention. We are trying to work with you and also have the good of the Borough in mind and I'm sure Mr. Papparatto is going to do the right thing when you come back, and I hope this works out for everyone.

Mr. O'Brien asked for the September 10th meeting if the applicant could get revisions into us about 2 weeks out so we know if it's on or off and gives Mr. Vinegra and myself time to get them a report on a timely basis. Mr. Picerno asked Mr. Dec if he could get that information to the Planner by August 27th? Mr. Dec asked for more time. Mr. O'Brien said we'll go for the October meeting, having stuff into us by September 24th. Mr. Dec said yes.

Mr. Picerno thanked everyone and asked if there were any comments for the good of the Board? No comments. No comments from public. Motion to adjourn meeting: Mayor Pugliese made motion to adjourn, seconded by Mr. Costa.

Respectfully submitted,

Lisa Wood
Substitute Recording Secretary