

HARDYSTON TOWNSHIP
JOINT LAND USE BOARD

IN THE MATTER OF: : TRANSCRIPT
: :
APPLICATION: # LB-6-23-2, : OF
SMS Hamburg LLC, Interpretation, :
"D" Variance, Preliminary :
And Final Site Plan, "C" : PROCEEDINGS
Variance, Block 14, Lot 21.02 :
: X

Monday, May 13, 2024
Municipal Building
149 Wheatsworth Rd
Hamburg, NJ 07419
Commencing at 7:29 p.m.

BOARD MEMBERS PRESENT:

WILLIAM HICKERSON, Chairman
JAMES HOMA
CARL MILLER, (recused - ineligible on the "D"
Variance only)
ED ZINCK
JAMES CAIAZZO
SALLY GOODSON
TONY ALFANO, (Alt.1)
SAVAS SAVIDIS, (Alt.2)
VALLY CICERALE
SCOTT LOBBAN

ALSO PRESENT:

ANN-MARIE WILHELM, Land Use Administrator
MICHAEL G. VREELAND, P.E., P.P., Board Engineer

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A P P E A R A N C E S:

VOGEL CHAIT COLLINS SCHNEIDER, P.C.
BY: THOMAS J. MOLICA, JR., ESQUIRE
Attorneys for the Board

BEATTIE PADOVANO, LLC
BY: ANTIMO A. DEL VECCHIO, ESQUIRE
Attorneys for the Applicant

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1 CHAIRMAN HICKERSON: Hearing LB-6-23-2, SMS
2 Hamburg LLC, Interpretation, "D" Variance, Preliminary
3 and Final Site Plan, "C" Variance, Block 14, Lot 21.02.

4 SECRETARY WILHELM: Tony, on this matter
5 you were going to vote in place -- if we do have a roll
6 call, in place of Jim who was going to be out, but Jim
7 came tonight. So this one you can stay on the dais but
8 you won't be voting.

9 BOARD MEMBER ALFANO: Can I ask questions
10 or no?

11 SECRETARY WILHELM: Mr. Molica?

12 MR. MOLICA: You are not voting?

13 BOARD MEMBER ALFANO: I am not voting.

14 MR. MOLICA: What's the Board's procedure?
15 I mean, what were you doing with Mr. Brigliadoro? I
16 want to keep it consistent.

17 SECRETARY WILHELM: Well, typically he
18 could stay in the event that we did not come to a vote
19 and proceeded to the next hearing, not knowing what the
20 attendance might be then. So typically he would remain
21 but he won't be called at roll call.

22 MR. MOLICA: Okay. Feel free to ask
23 questions, Mr. Alfano.

24 BOARD MEMBER ALFANO: Thank you.

25 MR. MOLICA: Counsel is going to give an

1 opening. The applicant did renotice again. I looked
2 at everything. It all appeared to be in order.
3 Ann-Marie, you have the originals and everything is in
4 order.

5 SECRETARY WILHELM: I checked it.

6 MR. MOLICA: So with that, why don't we
7 hear from Counsel and then we'll figure out how we're
8 going to proceed.

9 MR. DEL VECCHIO: If I may, good evening.
10 Antimo Del Vecchio of the firm of Beattie Padovano on
11 behalf of the Applicant, SMS Hamburg, LLC. I guess we
12 called it an opening but actually I'm going to call it
13 an update since we started these hearings back on
14 October 24th of 2023. And at that point we had paused
15 the hearings in order to proceed to Hamburg with the
16 approval process there, as well as determine whether
17 any changes would come out of that process that might
18 impact what we did here in Hardyston.

19 So just by way of background, again, and
20 updating, you've heard some of this before. The
21 property's a total of 4.8 acres in size. It is located
22 about 3.4 acres in Hamburg and about 1.4 acres in
23 Hardyston. It's located in your MIDD-5 Zone. We had
24 gone to Hamburg with the application as originally
25 presented to this Board, which essentially had 40 units

1 of multifamily housing located on the Hamburg side of
2 the parcel. We left the Hamburg process with 36
3 multifamily housing units. We shrunk the one building
4 that was closest to the neighbors substantially in
5 order to mitigate the size of that building, and we
6 also installed new landscaping features that you hadn't
7 seen, provided line-of-sight drawings. We met with I
8 believe both engineers from both Hamburg and Hardyston.
9 We invited the neighbors who live on the adjacent
10 street to also attend. We went thoroughly through all
11 the drainage, made changes and updates. I know we have
12 received the review letter from Mr. Vreeland's office
13 in advance of this meeting and I won't speak for Mark
14 but I don't believe there are any items in there that
15 we can't or wouldn't agree to comply with in terms of
16 some suggestions or better practices that were
17 recommended in his review letter.

18 One of the things that came about through
19 the Hamburg process was a review of what exactly was
20 being constructed in Hardyston. I think there was a
21 recommendation by this Board, or at least through
22 suggestions through comments that we perhaps move the
23 detention basin that we propose further back again from
24 the neighboring properties which this plan does
25 accomplish, and that is the only improvement that is

1 proposed to be constructed in Hardyston is the
2 detention basin. Essentially a hole in the ground that
3 will provide our stormwater management for the project.

4 But as we look at the project and we
5 reviewed the presentation, because of the prior
6 application some years ago by another applicant it was
7 assumed that the detention basin located in -- well,
8 proposed to be located in Hardyston was in fact a
9 principal use. But when we re-reviewed the Hardyston
10 Ordinances as well as the case law it became very clear
11 to us that the detention basin is not a principal use.
12 In fact, nowhere in your code is a detention basin
13 listed as either a principal or accessory use, but yet
14 your code in a separate section of stormwater
15 management requirements in fact requires the use of
16 detention basins to achieve the stormwater quality
17 requirements that are mandated for all new development.

18 We went back and looked at the Deeds for
19 the property and the property is comprised of one
20 tract. Regardless of where the municipal boundary line
21 falls it's always been treated, always been conveyed,
22 always been handled and represented as a single tract.
23 And with that the Ciocon Case out of Franklin Lakes
24 pretty much tells us that when those factors confluence
25 together that you disregard the municipal boundary

1 lines when you analyze the zoning for the property.
2 And in this case I don't think anyone would argue that
3 if the municipal boundary line wasn't there the
4 detention basin would be treated as a normal accessory
5 use, accessory structure, however you would like to
6 label it, to the residential development that has now
7 been approved on the balance of the tract. So if we
8 disregard the municipal boundary line it is an
9 accessory use/structure and therefore negates the need
10 for a "D" Variance. And that is the amendment that we
11 have made to the application requesting an
12 interpretation by this Board that in fact our analysis
13 of the zoning status, if you will, of the proposed
14 project when reviewed against your Ordinance is in fact
15 that that detention basin is an accessory not a
16 principal use and therefore a "D" Variance is not
17 required.

18 It is our intention to request that you
19 vote on and analyze the interpretation first because
20 obviously that then dictates the standard of proof and
21 the nature of the relief that may or may not be
22 required after the interpretation is rendered.

23 I have with me this evening Mr. Gimigliano
24 who will talk to you in greater detail than the
25 overview I've given you about the amendments we've made

1 and the changes we've made to the plans since receiving
2 our approvals in Hamburg. And also I have Ms. Keller
3 who testified as our planner at the original hearing to
4 provide some testimony on the interpretation, again, in
5 greater detail than the overview that I have provided.

6 And I think if we are to proceed with the
7 interpretation the first question that needs to be
8 answered and we defer to the Board and your Counsel on
9 is which members should be qualified to vote and hear
10 the interpretation.

11 MR. MOLICA: If you're going to proceed now
12 with the interpretation Mr. Miller can hear that
13 component of your relief. So we can have Carl back on
14 the dais as a voting member on that. How are we
15 constituted right now? How many voting members do we
16 have?

17 SECRETARY WILHELM: Well, right now we're
18 constituted as a Zoning Board. So we have seven and I
19 have two alternates up here, Tony Alfano and Savas are
20 out as Ed Zinck certified and Jim Caiazzo came this
21 evening, so we have the full seven.

22 MR. MOLICA: You have a full seven. Are
23 you ready to proceed with the Board as currently
24 constituted?

25 MR. DEL VECCHIO: As I said, we defer to

1 the Board and Counsel. If the Board is properly
2 constituted we're ready to proceed.

3 MR. MOLICA: Who would Carl --

4 SECRETARY WILHELM: Carl is out because
5 he's a Class --

6 MR. MOLICA: I know, but on the
7 interpretation question he would be allowed to hear
8 that relief.

9 SECRETARY WILHELM: Well then that is
10 planning testimony. Then he'll leave and somebody else
11 will come on, you're saying?

12 MR. MOLICA: Yes. What will happen after
13 we deal with -- we're going to deal with the
14 interpretation question first, okay. The Board will
15 make a motion whether or not it's a "D" Variance, okay.
16 They'll make a finding to that effect. If they find
17 after listening to the testimony that Mr. Del Vecchio
18 is going to present, that they agree with the Applicant
19 that "D" Variance relief is not in fact required then
20 Carl will be able to remain on the dais as part of the
21 adjudicating body.

22 If they deny the interpretative relief and
23 maintain that "D" Variance relief is required then Carl
24 will then step down from the dais.

25 SECRETARY WILHELM: Okay.

1 CHAIRMAN HICKERSON: Can you get Carl?

2 MR. MOLICA: Now, you're going to call your
3 planner, Mr. Del Vecchio, right?

4 MR. DEL VECCHIO: Yes.

5 MR. MOLICA: Then I would suggest that he
6 provide -- you'll have the planner provide some
7 overview about the property the way you did in your
8 opening, okay.

9 MR. DEL VECCHIO: Absolutely.

10 MR. MOLICA: I want to swear your witness
11 in again, too.

12 MR. DEL VECCHIO: Before we proceed if we
13 can just take care of a few housekeeping items because
14 I know they'll be referred to in the testimony. We
15 have some new documents that need to be marked. We're
16 picking up, I believe, with A-5. And I would propose
17 that the new plan set prepared by Dykstra Walker
18 consisting of 24 sheets last revised January 24th, '24,
19 is A-5.

20 (Exhibit A-5 is received and marked.)

21 MR. DEL VECCHIO: The Dykstra prepared
22 stormwater report last revised January 24, '24, A-6.

23 (Exhibit A-6 is received and marked.)

24 MR. MOLICA: What was the date of that?

25 MR. DEL VECCHIO: 1/24/24. We have a

1 Dykstra response letter/submittal letter prepared
2 2/28/24. And a Dykstra Walker letter system
3 summarizing plan changes dated 3/18/24 as A-8.

4 (Exhibit A-7 and A-8 are received and
5 marked.)

6 MR. DEL VECCHIO: Mr. Molica, would you
7 like to swear both at the same time or one at a time?

8 MR. MOLICA: We're going to take your
9 witnesses one at a time. So why don't we start with --

10 MR. GIMIGLIANO: Mark.

11 MR. MOLICA: Mark is just going to give a
12 brief overview and then you're going to move to the
13 Planning testimony.

14 MR. DEL VECCHIO: Mark will provide a brief
15 overview, of the changes that were made to the
16 application based on our appearance in Hamburg, like
17 the reduction in the number of units and the building
18 size and --

19 MR. MOLICA: And then you're going to have
20 your Planning testimony?

21 MR. DEL VECCHIO: Correct.

22 MR. MOLICA: Okay. Mark, state your name
23 for the record, please.

24 MR. GIMIGLIANO: Mark Gimigliano.

25 MR. MOLICA: Do you swear or affirm any

1 testimony you're about to give in this matter is the
2 truth, the whole truth, and nothing but the truth so
3 help you God?

4 MR. GIMIGLIANO: Yes, I do.

5 M A R K G I M I G L I A N O, having been
6 duly sworn, testifies as follows:

7 MR. MOLICA: Does anyone have any questions
8 about Mark's qualifications as a licensed civil
9 engineer? He's appeared before this Board on other
10 applications, including hearings on this particular
11 application. (No response.)

12 CHAIRMAN HICKERSON: Any questions?

13 MR. MOLICA: We recognize your
14 qualifications.

15 THE WITNESS: Thank you.

16 BY MR. DEL VECCHIO:

17 Q. Mark, you were here in October of last
18 year?

19 A. Yes, I was.

20 Q. Providing detailed testimony concerning the
21 nature of the application?

22 A. Yes, I did.

23 Q. We are here this evening to, one, provide a
24 brief overview of what the application is since some
25 time elapsed, and also to talk about the changes that

1 were made as a result of the approval process
2 culminating in an approval from Hamburg, the
3 applications that were filed there.

4 So if you can fill in those blanks for us.

5 A. Sure. So I have an exhibit that I brought
6 with me tonight that I'll refer to during my testimony.
7 What number were we up to?

8 MR. DEL VECCHIO: It's going to be A-9.

9 (Exhibit A-9 is received and marked.)

10 BY MR. DEL VECCHIO:

11 Q. Can you just identify it for the record?

12 A. Sure. It's called Site Layout Exhibit.
13 It's dated 2/12/24. And it's a colorized version of
14 the site plan that we submitted to support the
15 application. Shows the proposed buildings, roadways,
16 parking areas, walkways, stormwater management basins,
17 and it's the landscaping and it's overlaid on an aerial
18 image of the subject and surrounding property.

19 So just to give another brief overview,
20 we're proposing a multifamily residential development
21 now with the reduction that Andy mentioned we're down
22 to 36 units, 36 two-bedroom dwelling units and four
23 buildings. Each building contains two apartment units
24 over a garage. Each apartment will have its own
25 one-car garage with a parking space outside of the

1 unit. There's a paved loop road with access to Route
2 23 that goes around the development and provides access
3 to all the garage spaces, as well as parking areas in
4 the front and the back of the property.

5 Stormwater management is handled by a small
6 infiltration basin in the front, but the majority of
7 the stormwater is handled by a bioretention basin
8 that's location in Hardyston portion of the property.
9 Corps. You'll see on the exhibit the dark black dashed
10 line. That's the municipal boundary line. Everything
11 over on the right is the township of Hardyston, and the
12 left is Hamburg.

13 Q. Mark, what has changed with the detention
14 basin?

15 A. So the detention basin we made a few
16 changes. There was some productive discussions at the
17 last meeting. We got input from the neighbors and
18 feedback from the Board. There were some questions and
19 suggestions that were made in how to modify the design.

20 We added some additional landscaping
21 between the basin and the buildings in -- and the homes
22 in Hardyston. What you see on this exhibit the dark
23 green areas, the wooded area in the back will remain.
24 This dark line is the bioretention basin, and we added
25 evergreen plantings, Norway Spruce trees between -- in

1 the cleared area between the wooded area they'll remain
2 and the basin.

3 The basin itself we've changed to a
4 bioretention basin. You'll recall last time it was a
5 large infiltration basin. This basin will function the
6 same way. Water will flow into it, infiltrate into the
7 ground with overflow of water, then draining to behind
8 the properties on Fairview Ave. where it goes today.
9 The difference is there will be plantings in the basin,
10 a mixture of shrubs and trees. And that will add to
11 the overall greenery in the portion of the property
12 that's on Hardyston.

13 Q. What's the depth of the basin?

14 A. The basin, the maximum depth of water will
15 be about 3 feet -- 3.1 feet. And the basin is still
16 designed the same way with an emergency overflow which
17 is located on the backside of the basin. So if this
18 basin did ever overtop the emergency overflow will
19 drain into the woods to the north and not to the
20 dwellings to the southeast of the site.

21 We added some other things we talked about
22 at the last meeting. We're making the basin a little
23 different in shape and farther away from the homes on
24 Fairview Avenue. We moved the basin about 45 -- 35 to
25 40 feet. It was 40 feet away from the homes and now

1 it's 80 feet away from the homes. We also oversized
2 the basins so it can spread out the water that's
3 infiltrated. We talked a little about groundwater
4 mounding and the mound that occurs when water's
5 infiltrated into the ground. And that mound is largest
6 underneath the basin and dissipates with distance away
7 from the basin.

8 The previous design has the mound
9 dissipating at or near the property line. We've
10 adjusted that, so now the mound will dissipate about 50
11 feet from those properties. So there will be no change
12 in the groundwater elevation on any of the adjoining
13 properties as a result of the basin.

14 Q. Mark, the design of the drainage and
15 further changes were made as a result of a field
16 meeting between yourself, the Hamburg and Hardyston
17 engineers in the field?

18 A. That's right. So there were a few things
19 that happened since our last meeting. The two meetings
20 that we had with Hamburg. As a result of that first
21 meeting and the last time we were here there were a
22 number of residents that got up and spoke and they had
23 concerns about the basin, but nothing really focused on
24 drainage concerns that they had on their property.

25 We got to Hamburg a lot of their residents,

1 especially on the Hamburg side of Fairview Ave.,
2 reported that they had existing drainage problems on
3 their property. So we agreed to meet with them on
4 their site and talk with them about their drainage
5 problem and see if there's anything we can do to add to
6 our site to help even in a small way to help the
7 drainage conditions on their site.

8 And I was out there, Mr. Green was out
9 there, John Ruschke the Board Engineer from Hamburg was
10 there a little later, and what we saw was that the area
11 behind the homes on Fairview Ave., specifically in the
12 Hamburg portion of -- the Hamburg properties is sort of
13 an isolated depression. So any of the water that flows
14 from our site flows from their properties off the roofs
15 and collects in the backyard and there's nowhere for it
16 to go. So it ponds and slowly drains into the ground.

17 There's a small french drain on Lot number
18 4. Lot number four which is the property farthest
19 south and closest to the home closest to Route 23, and
20 that french drain does take some water and conveys it
21 out towards the drainage system on Fairview Ave., but
22 it's too small to handle the amount of water that gets
23 there on a regular basis.

24 So the things that we did on our site to
25 improve their conditions were to create a swale along

1 the back just to make sure the water continues to go
2 where it flows today and there's no change in the path
3 of the water. So anybody that's not experiencing
4 drainage issues now that won't change as a result of
5 development.

6 We also added some drains and a small
7 infiltration system along the property line. So for
8 small storms, water that flows through that area that
9 would normally flow on to the residences will now be
10 collected and held on site and infiltrated into the
11 ground. But the one way where we could make a
12 significant change to those drainage issues will be to
13 collect the water and pipe it out to the drainage
14 system in Fairview Avenue.

15 And the Applicant offered to construct that
16 and add that to the design, but it would have to be on
17 the Lot 4, the last home all the way on the end. And
18 because of the disturbance to their yard and they would
19 require an easement for this pipe they decided not to
20 pursue that improvement. But we're still going to add
21 the additional drainage along the back of our property.
22 We've set it up so if they change their minds and they
23 want to make that connection in the future it can be
24 made. And I think we agreed at the Hamburg Board to
25 leave that offer to construct those improvements open

1 for a certain amount of time after construction begins.
2 So that offer to add additional drainage improvements
3 beyond what's required just to deal with existing
4 drainage conditions today is still open and is still a
5 possibility.

6 Q. Mark, those are the essential changes to
7 the plans as they might impact what is happening in
8 Hardyston portion; correct?

9 A. That's correct.

10 Q. There is no building proposed in the
11 Hardyston portion of the property; correct?

12 A. That's correct.

13 Q. The only construction and clearing if you
14 will is the landscaping, detention basin, and the
15 plants to go inside the basin?

16 A. That's correct.

17 MR. DEL VECCHIO: I have no further
18 questions for Mr. Gimigliano. I make him available to
19 you and your professionals for any --

20 BOARD MEMBER CAIAZZO: I have a question.
21 Is the retention basin at a higher elevation than the
22 property that has the buildings?

23 THE WITNESS: It's at a lower elevation.

24 BOARD MEMBER CAIAZZO: And have you
25 actually been on the property and walked around?

1 THE WITNESS: Oh, yes several times.

2 BOARD MEMBER CAIAZZO: And how would you
3 describe the soil beneath your feet when you're walking
4 in the area of the potential basin?

5 THE WITNESS: The soil was -- I would
6 describe it as loamy soil. We did soil testing in that
7 area and the soils --

8 MR. MOLICA: Spell that, Mark. What did
9 you say, loamy?

10 THE WITNESS: Loamy.

11 CHAIRMAN HICKERSON: We've got questions on
12 the plan, but this is a hearing to decide whether it's
13 a D or an E, so we'll hold our questions. Write them
14 down. Let's go on with the testimony. This is an
15 overview and we'll come back to this depending on what
16 type -- I don't mean to cut the questions off but write
17 them down and we want to get on and get to the hearing.

18 MR. MOLICA: The Board wants to make a
19 decision about the relief first, then you might have
20 more testimony to give about you your plans, okay?

21 MR. DEL VECCHIO: That's fine. Mr.
22 Gimigliano is going to remain so he'll be here to
23 answer any questions at any time.

24 THE WITNESS: If I could just finish my
25 answer. The soils were suitable for the infiltration.

1 MR. DEL VECCHIO: Unless there are other
2 questions, or do you want them all held? I'll have Mr.
3 Gimigliano sit --

4 CHAIRMAN HICKERSON: I have questions on
5 the detention -- we have questions, but let's figure
6 out --

7 MR. DEL VECCHIO: I will call Ms. Keller
8 then.

9 MR. MOLICA: I know you were previously
10 sworn.

11 MR. DEL VECCHIO: And qualified.

12 MR. MOLICA: And qualified. We're just
13 going to do it again, okay? Raise your right hand,
14 please. State your name for the record, please.

15 MS. KELLER: Kate Keller, K-e-l-l-e-r.

16 MR. MOLICA: Do you swear or affirm any
17 testimony you're about to give in this matter is the
18 truth, the whole truth, and nothing but the truth so
19 help you God?

20 MS. KELLER: I do.

21 K A T E K E L L E R, having been duly
22 sworn, testifies as follows:

23 MR. MOLICA: Ms. Keller was previously
24 qualified before this Board in the area of Professional
25 Land Use Planning. I assume your licenses remain

1 current, Kate?

2 THE WITNESS: Yes.

3 MR. MOLICA: Does anyone have any questions
4 about her qualifications?

5 CHAIRMAN HICKERSON: No questions.

6 THE WITNESS: Thank you.

7 MR. MOLICA: You're recognized as a expert
8 in the field of Professional Land Use Planning and you
9 are under oath, so why don't you explain this
10 interpretation question that the Applicant has brought
11 to our attention?

12 THE WITNESS: Sure. So if Andy, are you
13 ready for me to go or --

14 MR. DEL VECCHIO: Yes. What I would
15 suggest is the to the extent you need to just reframe
16 the description of the property. As it is important to
17 your planning testimony go ahead and do that, and then
18 segue directly into the interpretation.

19 THE WITNESS: Sure. So this site is, as
20 this Board is aware, this is a property that is located
21 at 100 Route 23 West. That's its technical lot in
22 Hardyston. And it is adjacent -- it measures
23 1.4 acres, and it is adjacent to a 3.4 acre lot in the
24 Borough of Hamburg where the principal development is
25 proposed. This is a unique lot. Majority of it --

1 this tract, I would say, is because that's really what
2 we have here. We have a tract that measures almost
3 five acres in total. And the majority of it is in
4 Hamburg. So when we first came to this Board we had --
5 as is typical when there is a project that's in two
6 different municipalities, two different jurisdictions,
7 we apply to both Boards. And the response from your
8 professionals was that we needed to seek a D-1 Variance
9 with regards to the location of the stormwater
10 management basin as a principal use in the zone in
11 Hardyston.

12 After all through the course of our, you
13 know, just you're finding the application, looking at
14 your Hardyston Ordinance, looking at how this decision
15 was rendered since then in Hamburg, which is positive
16 to permit the use variance that was needed to permit
17 this property, need to permit this development, we also
18 reviewed some case law. And we are now of the opinion
19 that given the unique circumstances affecting this, you
20 know, this application, this is really a case where,
21 and we're not looking -- the interpretation is not as
22 I'll explain is not for this case in particular but
23 rather how your Ordinance applies here.

24 So simply a portion of the stormwater
25 management facility that would serve the multifamily

1 development is being proposed in Hardyston. We are now
2 seeking an interpretation from this Board serving as a
3 Zoning Board of Adjustment as to whether or not a "D"
4 Variance is required, or if it is simply an accessory
5 use and/or structure to the development in Hamburg.

6 Per Section -- as this Board is likely
7 aware, per section 70B of the Municipal Land Use Law is
8 one of the powers of the Zoning Board of Adjustment --
9 this Land Use Board serving as the Zoning Board of
10 Adjustment is to hear and decide requests for
11 interpretation of the zoning map or ordinance.

12 So in this case we are asking you as a
13 Board to listen to -- spend a couple of minutes
14 listening to our testimony here based on some case law
15 we put together, and our interpretation of the
16 Ordinance, and asking you as a Board to look at this
17 from the perspective of your actual Zoning Ordinance as
18 to whether or not we really are seeking a -- a
19 principal use on the rear lot.

20 In this case the distinction is that if
21 it's determined that this is simply a accessory use
22 that a "D" Variance would the not be required, however,
23 we may still need site plan approval and bulk "C"
24 Variance is applicable, but the D-1 Use Variance would
25 no longer be needed.

1 helpful. I will be referencing some of the items that
2 are listed in that letter as well as some additional
3 testimony. So it might be helpful to look at those
4 actual definitions.

5 But what we're looking at here is that the
6 question has been raised about what defines a lot in
7 case law. And Mr. Del Vecchio, our Counsel, raised
8 this as part of the introduction, which is that there
9 is a case from 1998 called Ciocon versus Franklin Lakes
10 in which the Court dealt with a split lot case where
11 the municipal boundary intersected the lot. In that
12 case the question was limited to the applicability of a
13 rear yard setback line. But what the Court determined
14 there was that the setback is the distance from the
15 rear lot line located in the adjoining municipality
16 rather than from the municipal boundary line that
17 bisected the overall tract area.

18 So this is a case where subsequently there
19 was another determination in a case called Nunziato
20 versus the Borough of Edgewater where the Appellate
21 Division expanded on this by allowing the inclusion of
22 acreage in a adjacent municipality in a similar
23 situation where the only thing that really bisected
24 these two tracts was the municipal boundary by allowing
25 the calculation of lot coverage and density which would

1 constitute a "D" Variance by including that separate --
2 the lot that was -- the portion of the lot that was in
3 another municipality as part of the overall tract area.

4 Because in essence what both of these cases
5 held is that the municipal boundary line and a zone
6 boundary line, in this case it's the municipal boundary
7 line, but these do not constitute a lot line. The
8 entire site is considered as a whole where any kind of
9 regulations are dependent on the lot line. Whether
10 that's lot area, setback, coverage, or in this case
11 happens to be a different zone.

12 If you look, for example, I'm not sure if
13 the plans that are up at the exhibit, I apologize I
14 don't have the exhibit number offhand.

15 MR. DEL VECCHIO: A-9.

16 THE WITNESS: A-9 that we just referred to
17 that's up on the Board right now, you'll see that there
18 is a white line -- and I am referring now to a portion
19 of the property that's in Hardyston. There's a white
20 line on the property that shows where there's two
21 zones. The property's in two zones in Hamburg. And
22 even though that is in two different zones it's still
23 considered one property, and that's what is typically
24 referred to as a split zone lot. It's slightly
25 different when it comes to the technicalities as far as

1 when something is in two municipalities. For example,
2 the state requires each municipality to make their own
3 tax lots, to make their own tax maps. They're done in
4 accordance with their specific regulations. So for
5 that reason a property like this is divided into two
6 lots, one in Hardyston, one in Hamburg, but the case
7 law has shown -- stated that for the purposes of zoning
8 it's really indistinguishable from just being one
9 overall lot.

10 I would offer for this lot in particular,
11 this tract in particular this has been the subject of
12 two previous applications, and both of which -- because
13 specifically here, because all the frontage is in
14 Hamburg, so it's very difficult to develop or possibly
15 develop the Hardyston portion of the property without
16 that Hamburg portion. And that goes back to as early
17 as we could find. We looked at some of the Deeds and
18 the records related to this property and some of the
19 sales. As far as we could find back to 1945 this
20 property has always been held in common ownership in
21 both the Hardyston portion and the Hamburg portion.
22 And previous development proposals for this site has
23 shown that as well.

24 So in my opinion given the definition of a
25 lot which is does not make a distinction in your

1 Ordinance for the municipal boundary line, but rather
2 the tract established permitted by law, the lot of this
3 case is really comprised of both properties. And when
4 you look at there in practice that really means that
5 the entire site and the whole development should be
6 looked at as one overall development.

7 So while the majority -- the actual
8 residential development was approved in Hamburg, the
9 stormwater management basin is a customary accessory
10 use -- customarily incidental accessory use to that use
11 and that's the part that is in Hardyston.

12 So our opinion is that the use variance and
13 site plan application as approved in Hamburg were
14 dependent on a provision of this appropriate stormwater
15 management on the site. And even though this involves
16 this basin at hand, which is now a bioretention basin.
17 It's subordinate customarily incidental and this is
18 generally something that's accepted as accessory in
19 site plan and subdivision applications and in your own
20 Ordinance throughout Hardyston.

21 For example, for this zone that this
22 property is located in, the MIDD-5 Zone there is a
23 provision for example for cluster development that
24 offers that a subdivision would have a stormwater
25 management basin and that's set forth the design

1 standards as something that's a customary accessory
2 use.

3 So in our interpretation of your Ordinance,
4 and this is also I believe in that letter from Mr. Del
5 Vecchio that you received is the definition for the
6 accessory use or structure in Hardyston which is that
7 is a structure that's subordinate to customarily
8 incidental to the principal use or structure on the
9 same lot. So to really -- to go back to the case law
10 that I quoted for the Ciocon and the Nunziato Cases, if
11 the lot is designed by the full tract area of the
12 development site, regardless of the municipal boundary
13 line, it's not -- not defined by the individual tax map
14 of each individual municipality. In this case the
15 stormwater basin is located on the same lot as the
16 principal use, and therefore in our opinion it can be
17 permitted as a accessory use per the Hardyston
18 Ordinance, and therefore no use variance is required.

19 So I'm happy to take questions regarding
20 the specificity of the Ordinance, but we're really
21 looking here is how this applies when you have a unique
22 property like this where the only thing really dividing
23 these two separate portions of the tract is the
24 municipal boundary line rather than a street or
25 something like that that would otherwise distinguish

1 lot lines.

2 MR. DEL VECCHIO: Mr. Molica, I'd like to
3 have my letter marked since it was referred to now.

4 MR. MOLICA: It's already part of the
5 record but we can mark it. It would be Exhibit A-10,
6 Mr. Del Vecchio's letter of April 19, 2024.

7 (Exhibit A-10 is received and marked.)

8 CHAIRMAN HICKERSON: When this was approved
9 some years ago I think something similar to this --

10 MR. MOLICA: I'm going to suggest, Mr.
11 Vreeland is here, okay. We know that he's a
12 professional engineer. He was sworn in as the Board's
13 Professional Engineer at the beginning of the year. I
14 don't know if he was sworn in as a Professional Planner
15 too. I know he has a Professional Planning license. I
16 suggest that we swear Michael in in his capacity as a
17 Professional Land Use Planner, too.

18 Michael, will you raise your right hand,
19 please? Do you swear or affirm any testimony you may
20 give in this matter is the truth, the whole truth, and
21 nothing but the truth so help you God?

22 MR. VREELAND: I do.

23 MR. MOLICA: State your name and
24 professional affiliation for the record.

25 M I C H A E L G. V R E E L A N D,

1 having been duly sworn, testifies as follows:

2 MR. VREELAND: Michael Vreeland, Branch
3 Manager, Professional Engineer, Professional Planner,
4 Van Cleef Engineering.

5 MR. MOLICA: And you are licensed in the
6 field of Professional Land Use Planning in the state of
7 New Jersey, is that correct?

8 MR. VREELAND: That's correct.

9 MR. MOLICA: And your licenses are current?

10 MR. VREELAND: Yes.

11 MR. MOLICA: You're obviously very familiar
12 with this property; correct?

13 MR. VREELAND: Yes, I am.

14 MR. MOLICA: And you heard the testimony of
15 the Applicant's Planner tonight; correct?

16 MR. VREELAND: Yes.

17 MR. MOLICA: All right. So Michael is now
18 sworn in. You know, the Board can now ask questions to
19 Ms. Keller, but also to Mr. Vreeland as your Planner,
20 okay. Heyer and Gruel was hired at the beginning of
21 the year as the Board's Planner, too, in addition to
22 Michael. If the Board feels that this question has
23 become too complicated and they want Heyer and Gruel
24 involved you can make a motion to appoint Heyer and
25 Gruel to serve as Planner in this case, too, to help

1 you determine whether or not a "D" Variance is in fact
2 required.

3 MR. MILLER: I'm somewhat familiar with the
4 Franklin Lakes case from another thing, but what the
5 Applicant's Planner said makes a lot of sense to me,
6 Michael.

7 MR. VREELAND: I think the specifics in the
8 Franklin Lakes case are a little bit different because
9 that talked about setbacks and measurements and
10 distances. This is talking about use, which is a
11 little bit different than making a measurement between
12 buildings and doing an interpretation on what the
13 appropriate rear yard setback is. The Board --
14 previous Boards did hear very similar applications to
15 this application on more than one case, and testimony
16 was put on the record by at that point in time the
17 Applicant's Planners and Engineers and it was reviewed,
18 and it was never contested that a use variance wasn't
19 necessary for this piece of property for this type of
20 use.

21 MR. MOLICA: You're talking about this
22 particular property, right?

23 MR. VREELAND: Talking about this specific
24 piece of property located exactly where it was in the
25 prior applications. A use variance was granted for a

1 stormwater detention basin, because stormwater
2 detention basins are not listed as a permitted use in
3 this zone, and that decision was rendered. That
4 decision was not argued. There was no objection to it.
5 It was never overturned. To me this seems like a very
6 similar application, almost identical application to
7 what was already decided by a previous Board.

8 BOARD MEMBER CICERALE: Mike, I liked Ms.
9 Keller's interpretation that it's all to be considered
10 as one lot. But being that we have no control over
11 Hamburg's input, interpretation or design they're
12 forcing us to assume a responsibility with nothing that
13 we were able to have input in. If it's considered one
14 lot and it is in a MIDD-5 why aren't there housing on
15 our -- if we were to put housing on our portion of the
16 property and move the retention basin to Hamburg, would
17 that seem unreasonable?

18 MR. VREELAND: All I can say is that's not
19 the application in front of us right now. When I look
20 at the plans and I look at the boundary survey I see
21 clearly two lots with metes and bounds for two lots,
22 and I see, maybe although not an improved roadway, but
23 I see a paper right-of-way, Kirkwood Ave., that would
24 provide access passed the developed residential
25 properties towards this piece of property located in

1 Hardyston.

2 So to me it would appear that the principal
3 proposed use on the lot in Hardyston is the detention
4 basin, which is not permitted in the zone. And like I
5 said, that question has been answered by previous
6 Boards in almost identical applications put forth on
7 this piece of property.

8 MR. MOLICA: And Mike, to your earlier
9 point, you feel that the case law cited by the
10 Applicant's Planner addresses bulk requirements with
11 dimensional measurements as opposed to uses; correct?

12 MR. VREELAND: I didn't see anything in the
13 case law that talked about uses, that's correct.

14 MR. MOLICA: One thing that could be
15 significant too in the second to last paragraph of page
16 two of Exhibit A-10 acknowledges that the Applicant in
17 the cited case law had to get a use variance from the
18 other town to locate their swimming pool and tennis
19 court, or whatever it is, right?

20 MR. VREELAND: That's correct.

21 CHAIRMAN HICKERSON: The recommendations
22 telling me maybe we do defer to our Planner that we
23 hired to help us make the decision?

24 MR. MOLICA: I mean, if the Board wants to
25 move in that direction, you know, we're going to have

1 to -- this case won't continue tonight and we're going
2 to have to return, okay, and we'll have to schedule
3 accordingly, but that is something that this Board can
4 do if it feels necessary.

5 CHAIRMAN HICKERSON: We were here last
6 month and I think that this may be time well spent
7 making sure that we make the right decision since this
8 is a CRD.

9 MR. MILLER: In my opinion, I think this
10 appears to be fairly straight forward. I think my
11 history pretty much laid out the circumstances. I
12 understand the distinction between the case law and
13 what we have in front of us, definitely the use. It's
14 one thing when you're talking about a few feet setback
15 here and there and certainly an entirely different case
16 when you're talking about use.

17 CHAIRMAN HICKERSON: So you're saying pass
18 --

19 BOARD MEMBER MILLER: I would -- based upon
20 what I've heard here, and I've listened to both sides,
21 Mr. Vreeland and the Applicant's Planner, and I am
22 somewhat familiar with that Franklin Lakes case and it
23 certainly was dimensional and not use. So I think with
24 what the Land Use Law is about is use. That's what
25 this is all about is use. It's not about dimensions

1 it's about use. To me it's straight forward.

2 BOARD MEMBER CICERALE: I agree. It
3 doesn't fall within the MIDD-5 Use.

4 MR. MOLICA: Well, the question is, does
5 the Board want to make a finding to that effect
6 tonight? The Chairman had I think asked you all as the
7 Board whether you wanted further planning services from
8 Heyer and Gruel or whether you're comfortable with what
9 Mr. Vreeland discussed and opined to tonight.

10 MR. MILLER: I would be willing to put a
11 motion forward that it be a "D" Variance and we can see
12 if the Board supports it or whether we need to get
13 additional input from a Planner.

14 MR. MOLICA: So Mr. Miller would move to
15 find that the Applicant still requires a "D" Variance?
16 Not withstanding their request for an interpretation,
17 you feel that the Ordinance requires a "D" Variance?

18 BOARD MEMBER CICERALE: And I would make a
19 second. I think we have confidence in Mr. Vreeland's
20 opinions and expertise.

21 CHAIRMAN HICKERSON: Was that a second?

22 BOARD MEMBER CICERALE: Yes.

23 MR. DEL VECCHIO: Mr. Molica, many I going
24 to be given an opportunity to --

25 MR. MOLICA: Do you want to sum your --

1 provide a summation before they entertain and vote on
2 the motion on the interpretation?

3 MR. DEL VECCHIO: I think I'm entitled to
4 cross-examination.

5 MR. MOLICA: Sure. I don't have any
6 problem with that, Mr. Del Vecchio.

7 MR. DEL VECCHIO: I'm just holding. I
8 didn't know where --

9 MR. MOLICA: You're going to be asking
10 questions of Mr. Vreeland, I assume, right?

11 MR. DEL VECCHIO: Correct.

12 MR. MOLICA: That's what you're referring
13 to. Absolutely I think that's appropriate. Mr.
14 Vreeland gave an opinion and gave his testimony about
15 his history with the property, what's happened in the
16 past. The Applicant is entitled to cross-examine.

17 MR. DEL VECCHIO: Is now an appropriate
18 time?

19 MR. MOLICA: Sure.

20 EXAMINATION BY MR. DEL VECCHIO:

21 Q. Mr. Vreeland, let's start from the
22 beginning, if we can. You indicated you were qualified
23 or accepted as a Planner this evening. When you were
24 retained by this Board on -- in January of this year,
25 were you retained as the Board Planner or Engineer or

1 both?

2 A. I was retained primarily as the Engineer
3 and Planner, as necessary.

4 Q. And that is in a written contract with the
5 Board?

6 A. I believe so. I don't know off the top of
7 my head.

8 MR. DEL VECCHIO: Through Mr. Molica I
9 would ask that a copy of the contract be produced.

10 MR. MOLICA: This evening or --

11 MR. DEL VECCHIO: No. Subsequent to this
12 evening would be fine.

13 MR. MOLICA: I think it's a public record,
14 if I'm not mistaken, but I think we can endeavor to
15 provide that --

16 SECRETARY WILHELM: I think we can redact
17 --

18 MR. MOLICA: Yeah, I think we have to
19 probably redact certain components of it, but you want
20 to see what he was actually hired as?

21 MR. DEL VECCHIO: Correct.

22 MR. MOLICA: Okay. I think we can confirm
23 that tomorrow.

24 SECRETARY WILHELM: We can confirm. I have
25 a copy of the contract here and our first line is the

1 Engineer/Planner.

2 MR. MOLICA: Okay. So do you want to --
3 we'll provide a redacted copy of that, but you heard
4 the Board Secretary's representation. She read that
5 into the record that it says Engineer/Planner.

6 MR. DEL VECCHIO: Understood.

7 BY MR. DEL VECCHIO:

8 Q. Mr. Vreeland, during the last year you were
9 the Board Engineer/Planner in 2023 as well?

10 A. Yes.

11 Q. During the course of 2023 through the
12 current date how many times did you act as the Board
13 Planner?

14 A. On every application that required planning
15 review when Heyer and Gruel was not present. I don't
16 know how many applications that is but I can certainly
17 pull the record.

18 Q. But as you sit there this evening you can't
19 quantify it, I assume?

20 A. No. This isn't the only Board that I
21 represent as Planner and Engineer. So it's difficult
22 to keep track of which cases are heard and how many are
23 heard.

24 Q. I'm not taking issue with it, I just want
25 the record to be clear.

1 A. Not a problem.

2 Q. With regard to the Ciocon case versus
3 Franklin Lakes when was the last time you reviewed that
4 case?

5 A. I reviewed that today.

6 Q. And at whose request?

7 A. At no one's request. I reviewed it as part
8 of preparing for tonight's hearing, because it was
9 cited in your Exhibit that was prepared and submitted
10 to this Board.

11 Q. Now, recognizing that you're not an
12 attorney but been qualified as a Planner sometimes
13 those lines get pretty close in the Land Use world.
14 You would agree that the primary holding in Ciocon s
15 that when you deal with a split municipal boundary line
16 tract that you ignore that tract line when reviewing
17 the land use attributes of that property?

18 A. I would agree to a degree, yes.

19 Q. And to the extent that a portion of a tract
20 lies within I'm going to call it municipality one and
21 two for the illustration purposes, the portion of the
22 tract that may lie within municipality one would be
23 governed by municipality's one's land use controls, as
24 it applies over that portion of the tract?

25 A. Yes.

1 Q. And same would be true for municipality
2 two, municipality two's land use controls would apply
3 to that portion of the tract that lies within
4 municipality two?

5 A. I agree.

6 Q. So in the Ciocon case you wouldn't apply
7 Franklin Lake setback to the portion of the development
8 occurring in Wayne, and you wouldn't apply the Wayne
9 setback to the portion that is in Franklin Lakes;
10 correct?

11 A. Correct.

12 Q. However, if you were to fall back to the
13 fundamental concept of Ciocon that for land use control
14 purposes you erase the municipal boundary line for your
15 analysis, one portion of the property as permitted by
16 municipality one either by variance or by permissive
17 use under the Ordinance could be developed for a
18 principal use; correct?

19 A. Yes.

20 Q. Now, if that occurred on municipality one
21 like just illustrated could municipality two also have
22 a principal use on that portion of the property located
23 in municipality two?

24 A. Could you ask that question again?

25 Q. Yes. You have a principal use permitted by

1 Ordinance or as of right by Ordinance in municipality
2 one. Over the line into municipality two, municipality
3 two has a -- allows a principal use on the property,
4 whatever it may be. Could municipality -- could the
5 property in municipality two be developed with a
6 principal use in municipality two that is different
7 than the permitted us in municipality one?

8 A. Yes.

9 Q. And in that case would you then have two
10 principal uses on the lot or one?

11 A. You would have a principal use on each of
12 the lots.

13 Q. So you would have two -- well, you agreed
14 with me that you erased the boundary line to analyze
15 the tract. Now I have two principal uses on the tract?

16 A. The question was, could you develop the
17 principal use on Lot 1 with what's permitted in
18 municipality one, and could you do the same thing in
19 municipality two.

20 Q. Correct.

21 A. And if that was the case then you would
22 have two developments on each side -- you'd have a
23 development on each of the lots.

24 Q. But each of them would be principal, would
25 they not?

1 A. Each would be principal.

2 Q. So you would then have two principal uses
3 on a single tract?

4 A. No. You'd have a principal use on each of
5 the lots.

6 MR. MOLICA: I think the distinction here
7 might be what Michael was talking about earlier. I
8 think -- did you opine that Ciocon when it comes to
9 bulk measurements and distances and things like that --

10 MR. VREELAND: It talked about setbacks.

11 MR. MOLICA: Right. But it doesn't extend
12 to uses. So uses in your opinion are different?

13 THE WITNESS: Correct.

14 MR. DEL VECCHIO: That wasn't the testimony
15 that I elicited, but I'm free to allow Mr. Molica to
16 ask his questions when he chooses to.

17 MR. MOLICA: I'm just trying to get Mike's
18 opinion for the record. I think you heard that he said
19 he doesn't think Ciocon extends to uses.

20 BY MR. DEL VECCHIO:

21 Q. So in your opinion Ciocon only applies to
22 setbacks?

23 A. The way I read the case law it applies
24 specifically to setbacks.

25 Q. Does it apply to coverage?

1 A. I didn't see anything that talked about
2 coverage.

3 Q. Does it apply to lot disturbance?

4 A. I didn't see that mentioned in the case
5 law.

6 Q. So when you say you see it wasn't
7 mentioned, is it your opinion that it doesn't apply?

8 A. My opinion is that it applies specifically
9 to setbacks.

10 Q. And in your read of Ciocon that would be
11 the only instance where the precepts to Ciocon would be
12 carried forward?

13 A. That's the way I read it.

14 Q. I know how you read it. I'm asking what
15 your opinion is?

16 A. My opinion is that Ciocon applies
17 specifically to the setbacks.

18 Q. And only setbacks, nothing else?

19 A. Specifically to the setbacks.

20 Q. Does it apply to anything else?

21 A. I only saw it applied to the setbacks.

22 Q. So would be fair to say you read Ciocon to
23 only apply to setbacks?

24 A. I see it applied to the setbacks.

25 Q. And nothing else?

1 A. I see it applied to the setbacks.

2 Q. I understand what you see, but you've been
3 qualified as an expert and able to render opinions.
4 You're reading the case law and you're telling us that
5 it applies as you read it to setbacks. Simple question
6 is, does it in your reading apply to anything other
7 than setbacks or only the printed words on the page?

8 A. It doesn't apply to addresses, is that what
9 your question is?

10 Q. I'm asking -- I gave you examples. Does it
11 apply to impervious coverage?

12 A. No.

13 Q. Does it apply to disturbance?

14 A. No.

15 Q. Does it apply to accessory versus principal
16 use distinction?

17 A. I don't know how it applies -- I don't know
18 how it would apply to that, no.

19 Q. So under any scenario other than setbacks
20 your answer would be no, as I'm hearing our exchange?

21 A. It applies -- that's correct, it applies
22 specifically to the rear yard setback.

23 Q. So when see Ciocon instructs that you
24 ignore the municipal boundary line you only ignore it
25 for setbacks, though?

1 A. As I read what was written in the case law
2 I would say yes.

3 Q. And no -- well, I'm going stop there.

4 MR. MOLICA: I think that we're getting a
5 little redundant. You heard Mr. Vreeland's opinion and
6 you specifically heard him apply that it doesn't apply
7 to uses, which is really what we're talking about in
8 this case here.

9 BOARD MEMBER SAVIDIS: Can I interrupt for
10 one second? Can I ask for a recess for two minutes?

11 SECRETARY WILHELM: What's the question?

12 BOARD MEMBER SAVIDIS: A recess for two
13 minutes?

14 CHAIRMAN HICKERSON: Oh, you need a recess?

15 BOARD MEMBER SAVIDIS: Yes.

16 CHAIRMAN HICKERSON: Okay. We're going to
17 take --

18 MR. MOLICA: Counsel --

19 MR. DEL VECCHIO: I have no objection.

20 MR. MOLICA: Okay.

21 CHAIRMAN HICKERSON: Ten-minute recess.

22 (Whereupon, the Board is on recess at 8:29
23 p.m.)

24 (Back on the record at 8:39 p.m.)

25 CHAIRMAN HICKERSON: Okay. We're calling

1 it back to order. Note that all the Board members are
2 on the dais.

3 BOARD MEMBER SAVIDIS: Am I allowed to ask
4 questions tonight?

5 CHAIRMAN HICKERSON: About the "D" or "C,"
6 I believe?

7 MR. MOLICA: Yes. And I said the same
8 thing to Mr. Alfano at the beginning of the hearing.

9 BOARD MEMBER SAVIDIS: I just won't vote at
10 this point.

11 MR. MOLICA: If we take a vote tonight on
12 anything you won't be needed as a voting member.

13 BOARD MEMBER SAVIDIS: Okay.

14 CHAIRMAN HICKERSON: Any questions from the
15 Board?

16 MR. DEL VECCHIO: I still have more cross
17 when appropriate.

18 CHAIRMAN HICKERSON: Okay.

19 MR. DEL VECCHIO: Continue?

20 CHAIRMAN HICKERSON: Yes.

21 BY MR. DEL VECCHIO:

22 Q. Mr. Vreeland, did you also have an
23 opportunity to review the Nunziato decision?

24 A. I did review that, yes.

25 Q. And what did Nunziato hold or say about the

1 Ciocon principle of disregarding the municipal boundary
2 line?

3 A. It talked about the density.

4 Q. What did it hold? Did it agree with
5 Ciocon? Did it apply it differently? Did it disagree?

6 A. It agreed and applied it slightly
7 differently.

8 Q. How did it apply it differently?

9 A. It allowed the overall area to be utilized.

10 Q. So you recall my question to you before we
11 broke about whether or not the Ciocon principle would
12 apply to lot coverage, and we got into a spirited
13 disagreement about whether or not Ciocon applied to
14 anything other than setback and I think we ended on it
15 applied the setback because that was the only thing in
16 Ciocon; correct?

17 A. Yeah, I would say you're correct, yes.

18 Q. So Nunziato took the Ciocon principle and
19 applied it to something other than setback; correct?

20 A. Yes.

21 Q. And in fact, the quote from Nunziato was,
22 after citing Ciocon at page 208 and applying the
23 principle to setback Nunziato quoted the following,
24 "There is no reason why the principle there applied to
25 interpret setback requirement should not also apply to

1 the requirement limiting lot coverage." Do you
2 remember reading that in Nunziato?

3 A. Yes.

4 Q. Is there any reason why the Ciocon
5 principle shouldn't apply to the distinction between
6 accessory and principal uses from a planning
7 perspective?

8 A. To accessory and principal uses?

9 Q. Yes.

10 MR. MOLICA: I think what he's really
11 asking, Mike, in your opinion should under the case law
12 he's citing, Ciocon and Nunziato, should uses -- should
13 the use in Hardyston be treated as an accessory use
14 even though it's on its own lot in Hardyston because of
15 the totality of the development?

16 THE WITNESS: I don't think the two cases
17 apply to use.

18 MR. MOLICA: Do you think uses are
19 different than things like bulk requirements, like
20 setbacks or lot coverage?

21 THE WITNESS: Yes, I do.

22 MR. MOLICA: I mean, isn't it true that
23 when adjudicating these variances one of the reasons it
24 has an enhanced burden of proof and voting requirement
25 is because they are different than -- those types of

1 variances are different than bulk variances?

2 MR. DEL VECCHIO: I'm going to interject
3 here, Mr. Molica. With all due respect, you've
4 hijacked my cross-examination a second time. And while
5 I'm pretty tolerant, I just want the record to reflect
6 it.

7 MR. MOLICA: We don't have formal rules of
8 evidence here, and I'm not trying to cut you off, Mr.
9 Del Vecchio.

10 MR. DEL VECCHIO: Well, I was in the middle
11 of a line of questioning --

12 MR. MOLICA: I was just trying to expound
13 on his answer a little bit, that's all. I'll wait
14 until you finish. I'm sorry. Please continue.

15 MR. DEL VECCHIO: Thank you.

16 BY MR. DEL VECCHIO:

17 Q. Mr. Vreeland, if we were to get up on that
18 Board, look at A-10 -- I'm sorry, A-9, the color
19 rendering that's up on the easel, and got up there and
20 just erased the municipal boundary line, pretended it
21 didn't exist. If that municipal boundary line did not
22 exist would you agree that the detention basin serving
23 an otherwise permitted principal use on the balance of
24 the property would be an accessory use or structure?

25 A. It's on two separate lots. So you're

1 saying it would all be on one lot?

2 Q. We're erasing the municipal boundary line.
3 And I'll ask you a follow-up question. I don't want to
4 ask a second one while one's pending.

5 A. If there was no lot line there I would say
6 it would all be on one lot.

7 Q. If there was no municipal boundary line
8 there, in fact, those two lots -- that lot line could
9 be erased by a merger without anybody's approval;
10 correct?

11 A. It could be.

12 Q. So but for the existence of the municipal
13 boundary line a line on a piece of paper somewhere, the
14 layout that is proposed on A-10 could very well be
15 viewed as a principal use and an accessory detention
16 structure?

17 A. If it was on one lot, yes.

18 Q. And in most -- in other instances where you
19 don't have a municipal boundary line and you have a
20 residential development of any sort that a stormwater
21 management requirement is imposed on that new
22 development; correct?

23 A. Yes.

24 Q. Many times that requirement results in the
25 construction of a detention basin of some sort;

1 correct?

2 A. Yes.

3 Q. And when those detention basins are
4 corrected -- constructed or proposed on other
5 properties they would be treated as an accessory use;
6 correct?

7 A. If it was -- what do you mean other
8 properties? Other properties in Hardyston? Other
9 properties --

10 Q. I'll clarify it. If there were other
11 tracts proposed for development and the tract included
12 a residential component that also had somewhere on that
13 tract a detention facility, the detention facility
14 would be treated as an accessory structure or use to a
15 residential development?

16 A. It would be -- it would be -- yes, it would
17 be. Yes.

18 Q. And that happens even though detention
19 basins or structures are not listed specifically in the
20 Township of Hardyston code as a permitted accessory
21 use?

22 A. That's correct because they're required by
23 law.

24 Q. And you would agree that a detention basin
25 to service the multifamily project of the sort proposed

1 by SMS is a requirement imposed by law?

2 A. Absolutely.

3 Q. And other than the analysis of whether it's
4 accessory or principal you have issued a review letter
5 offering some comments from an engineering basis
6 separate and apart from your planning --

7 A. Yes.

8 Q. -- opinion?

9 A. Yes.

10 Q. Sorry. Apologize for the pause there. You
11 have not issued any kind of letter or report in advance
12 of this evening concerning your planning analysis?

13 A. That's correct.

14 Q. When did you become aware that you would be
15 offering planning testimony this evening?

16 A. I'm always available to offer planning
17 testimony when requested by the Board.

18 Q. Okay. Were you -- did you have any
19 understanding prior to attending tonight's meeting that
20 you would be offering planning testimony on this
21 specific application?

22 A. I'm always available to provide it when
23 requested by the Board.

24 Q. Did anyone ever tell you you should review
25 a particular document in advance of this evening and

1 possibly be prepared to offer planning testimony?

2 A. No.

3 Q. Under the Nunziato decision is there any
4 reason from a planning perspective that the Ciocon
5 analysis should not apply to a use analysis as opposed
6 to a bulk analysis?

7 A. I can't think of any reason why it
8 shouldn't apply.

9 Q. Well, I'm asking you the reverse question.
10 I'm sure Mr. Molica will ask you any question he'd
11 like, but I'd like mine answered, if possible.

12 A. Please ask your question again.

13 Q. Is there any reason from a planning
14 standpoint that the principles established by Ciocon
15 should not be applied to a use analysis?

16 A. Because use has a higher standard.

17 Q. How is that important from a planning
18 standpoint?

19 A. I mean, it's the nature of permitted and
20 nonpermitted uses.

21 Q. But you agree that if we erased the
22 municipal boundary line that the proposed layout would
23 be perfectly fine and acceptable and in fact permitted.
24 So what planning harms are visited upon the zone plan
25 or the neighborhood from applying Ciocon analysis when

1 you have a line on a piece of paper somewhere that
2 splits two municipalities?

3 A. I didn't say that there would be harm.

4 Q. I'm asking, what harm would there be?

5 A. I don't see the potential for the harm. I
6 mean, I think from a planning perspective there is
7 unique aspects in this application that could support
8 the argument for the fact that there is a proposed
9 detention facility on a lot where it's not permitted
10 given the uniqueness of this application and previous
11 decisions that were rendered by prior Boards.

12 Q. And the MIDD-5 Zone would not permit
13 residential development within its confines; correct?

14 A. The MIDD-5?

15 Q. Yes.

16 A. It allows residential development.

17 Q. And what's the nature of the residential?

18 A. Single-family homes.

19 Q. So if single-family homes were constructed
20 on this portion of the property and a detention basin,
21 the detention basin would be treated accessory?

22 A. If it was constructed in conjunction with
23 the single-family home, yes.

24 Q. So again, if the single-family homes were
25 constructed on the Hamburg side of the line your

1 opinion would be what regarding a detention facility on
2 the Hardyston side?

3 A. If it was the only thing instructed on that
4 lot in Hardyston it would need a use variance.

5 Q. So what else -- I mean, strike that.

6 If a parking space servicing the
7 residential facility were moved over the municipal
8 boundary line would that parking space then carry the
9 use of a residential use from Hamburg into Hardyston
10 and avoid the accessory use analysis that you believe
11 applies?

12 A. You want to -- can you show me where
13 this -- are you saying one of the parking spaces that
14 is being proposed?

15 Q. Yes.

16 A. -- or is the parking --

17 Q. A parking?

18 A. Is the parking space going to be the only
19 thing on the Hardyston lot?

20 Q. Along with the detention basin.

21 A. I think it's the same situation.

22 Q. And if the applicant were to propose one
23 single-family home somewhere on the Hardyston side of
24 the property along with the detention basin does that
25 change your analysis?

1 A. If the detention basin is being built to
2 serve the home on that lot it would change my analysis.

3 Q. Just that home? It could not serve the
4 multifamily in Hamburg?

5 A. I didn't say that.

6 Q. I'm asking?

7 A. No. I would say -- because generally
8 detention facilities aren't -- unless it's a seepage
9 pit sized to handle runoff only from the footprint of a
10 residential house. So I would say if it was serving
11 that home I would not consider it as a principal use.

12 Q. If it served that home and the rest of the
13 development?

14 A. I would say the principal use on that
15 property would be the residential use.

16 MR. MOLICA: So just let me clarify. I'm
17 not trying to interrupt you, Mr. Del Vecchio.

18 The hypothetical is if the applicant were
19 to locate or propose a single-family home on the
20 Hardyston lot with the detention basin or stormwater
21 management improvements that would service both the
22 single-family home on the Hardyston lot and the
23 apartment complex on the Hamburg lot, would that
24 stormwater management improvement or improvements then
25 be accessory because of the single-family home?

1 THE WITNESS: Single-family home.

2 MR. MOLICA: Not withstanding their size?

3 THE WITNESS: Correct.

4 MR. MOLICA: Okay. I understand.

5 BY MR. DEL VECCHIO:

6 Q. So theoretically a -- you're familiar with
7 the portion of the property that lies in Hardyston;
8 correct?

9 A. Yes.

10 Q. You would agree that it is wooded at its
11 periphery and has some regulatory water constraints on
12 the peripheral edges of the property; correct?

13 A. Yes.

14 Q. Particularly along the border with the
15 properties that it borders on Fairview Avenue?

16 A. Yes, I would agree.

17 Q. You would also agree that it has some
18 water -- regulated water issues as it abuts the portion
19 of what is labeled as Kirkwood Avenue as an unimproved
20 right-of-way?

21 A. Yes. There are wetlands illustrated or
22 buffer areas illustrated on the plans.

23 Q. And that would be the only possible area
24 where access to the Hardyston lot could be obtained
25 from; correct?

1 A. Without permission from going across one of
2 the other properties, that would be correct.

3 Q. And let's assume for the sake of argument
4 that permission to access one of the other properties
5 is not granted, you would essentially be under the
6 zoning Ordinance compelled to seek approval for a
7 Section 36 permit for a house not fronting on an
8 improved street?

9 A. Yes.

10 Q. If access were granted from the Hamburg
11 portion of the lot would that same Section 36 permit be
12 required?

13 MR. MOLICA: I mean, this is a pure
14 hypothetical, Counsel, correct? I mean, now you're
15 asking pretty detailed questions that involved
16 locations. So the witness doesn't have the benefit of
17 a map that shows what your --

18 MR. DEL VECCHIO: It's on the site plan
19 Sheet 424.

20 MR. MOLICA: Yes, but the would-be
21 residence on the Hardyston lot, the single-family home
22 isn't.

23 MR. DEL VECCHIO: I'm not asking about the
24 locations to the residence, I'm asking about whether
25 the lot qualifies a lot fronting on an improved street

1 or not. It has nothing to do with the residence.

2 THE WITNESS: So the question was?

3 BY MR. DEL VECCHIO:

4 Q. If a single-family home were proposed to be
5 constructed on the Hardyston portion of the property,
6 and was granted access through the Hamburg portion of
7 the property to Route 23 --

8 A. It would still be on -- it still wouldn't
9 have frontage.

10 Q. So it still requires Section 36 permit in
11 your opinion?

12 A. Yes.

13 MR. MOLICA: Does the Applicant want to
14 build a single-family home on the Hardyston portion?

15 MR. DEL VECCHIO: It seems to be that's
16 where we're perhaps headed, but -- all right.

17 I'm going to leave my cross-examination
18 there for you. Thank you. I assume to the extent
19 testimony will be elicited from Mr. Vreeland on the
20 future components, if any, on this application I'll
21 obviously reserve the right to require that.

22 THE WITNESS: I'm here.

23 BOARD MEMBER CICERALE: May we ask
24 questions?

25 MR. MOLICA: Counsel has confirmed he's

1 finished with his cross-examination now. So I think it
2 would be appropriate if the Board had further questions
3 that they would like to ask Mr. Vreeland in response to
4 the cross-examination that that's a good idea. You
5 should do that.

6 BOARD MEMBER CICERALE: Mr. Vreeland we're
7 talking about one lot. But this one lot has three
8 zones, three different zones. Does that come into play
9 when you're developing a piece of property? Do you not
10 have to go and get that property rezoned in order to
11 apply that to the tract as a whole?

12 THE WITNESS: You mean are we talking this
13 specific?

14 BOARD MEMBER CICERALE: This specific piece
15 of property.

16 THE WITNESS: I don't know what it's all
17 zoned --

18 BOARD MEMBER CICERALE: Well, we're in a
19 MIDD-5 in Hardyston. Obviously Hamburg has stated that
20 they have two different zones. Looks like one portion
21 is basically a parking lot towards the 23 side. And
22 the majority of the housing is in a different zone.

23 THE WITNESS: I really -- I can't speak to
24 what the zoning requirements are in Hamburg,
25 specifically what's allowed and not allowed in the HC

1 Zone and the OR Zone that this property is located in.
2 I mean, I do know the lot that's located in Hardyston
3 Township is located in the MIDD-5 Zone.

4 BOARD MEMBER CICERALE: Right. If this
5 entire tract were located in Hardyston and there were
6 three different zones, how would you navigate this?
7 Would it be necessary to go for a "D" Variance? Would
8 it be necessary to have it rezoned?

9 THE WITNESS: It would require -- it would
10 require zoning relief. I'm just trying to -- I'm
11 trying to envision what that would look like given the
12 smaller size of the piece of property. I don't think
13 we have anything like that in Hardyston.

14 BOARD MEMBER CICERALE: Okay. Taking that
15 into account, this development, is there any way for
16 this -- for a detention basin to support a housing
17 project in Hamburg to be placed in Hamburg? Would it
18 be incorrect to say that they would have to decrease
19 their density in order to accommodate the property?

20 THE WITNESS: I mean, I would -- and I'm
21 speculating, but I would imagine that it could be
22 redesigned. But again that's not plans that are in
23 front of us and I don't -- I didn't do the original
24 design. And again just based on past experiences and
25 -- anything could be designed.

1 BOARD MEMBER CICERALE: Thank you.

2 MR. MOLICA: Mr. Gimigliano is still
3 available too and when the time comes you can ask him
4 that question.

5 CHAIRMAN HICKERSON: Do we have a motion
6 and a second to --

7 MR. MOLICA: That motion was made. I'm
8 going to suggest maybe -- that motion was made before
9 Mr. Del Vecchio's cross-examination and before Board
10 Member Cicerale gave Michael some questions on
11 re-direct. You should probably start over if it comes
12 to motions on the interpretation question.

13 MR. MILLER: My motion stands.

14 CHAIRMAN HICKERSON: I have a question.
15 Going back and forth we hear testimony if we got rid of
16 the Hardyston Hamburg line and just have one lot you
17 will -- you know, would that basin require -- fast
18 forward. I'm going to go the other way. If that line
19 wasn't there and it was one lot, I think this is going
20 to be on what Vally said, could they take out one of
21 those buildings in the front which happens to be I
22 believe the lowest point in this development and create
23 the detention in the front of the development?

24 THE WITNESS: I mean, I don't know why -- I
25 don't know why it couldn't be done. I mean, I haven't

1 analyzed it, I haven't looked at it from that
2 perspective.

3 CHAIRMAN HICKERSON: So, okay. Carl made a
4 motion to proceed.

5 BOARD MEMBER GOODSON: I'll second.

6 CHAIRMAN HICKERSON: Discussion?

7 MR. MOLICA: For the record, the motion,
8 Mr. Miller, is to reject the interpretation of the
9 Ordinance as posited and presented by the applicant and
10 require or continue to require the "D" Variance relief;
11 correct?

12 MR. MILLER: That is correct.

13 MR. MOLICA: And was there a second?

14 BOARD MEMBER CICERALE: Yes.

15 SECRETARY WILHELM: Motion by Carl Miller,
16 second by Vally Cicerale. Any further discussion?

17 CHAIRMAN HICKERSON: The only discussion I
18 have is the Board doesn't want to go to Heyer Gruel to
19 review this?

20 MR. MOLICA: The Chairman has asked if the
21 Board wants to -- in addition to get -- having Mr.
22 Vreeland's opinion as the Board's Professional Planner
23 part of the record, if the Board wants to obtain the
24 opinion of Heyer and Gruel as the planner.

25 BOARD MEMBER HOMA: Well, the basic problem

1 here is that it's not a permitted use on our MIDD-5
2 Zone, right, correct? That's cut and dry.

3 THE WITNESS: In a nutshell that question
4 has been answered by prior Boards for this piece of
5 property.

6 BOARD MEMBER HOMA: Right. So that's cut
7 and dry pretty much?

8 MR. MOLICA: So with that I think you're
9 ready to vote on Mr. Miller's motion.

10 SECRETARY WILHELM: Roll call. Carl
11 Miller?

12 MR. MILLER: Yes.

13 SECRETARY WILHELM: Jim Homa?

14 BOARD MEMBER HOMA: Yes.

15 SECRETARY WILHELM: Sally Goodson?

16 BOARD MEMBER GOODSON: Yes.

17 SECRETARY WILHELM: Scott Lobban?

18 BOARD MEMBER LOBBAN: Yes.

19 SECRETARY WILHELM: Jim Hickerson?

20 CHAIRMAN HICKERSON: Yes.

21 SECRETARY WILHELM: Vally Cicerale?

22 BOARD MEMBER CICERALE: Yes.

23 SECRETARY WILHELM: Ed Zinck?

24 BOARD MEMBER ZINCK: Yes.

25 SECRETARY WILHELM: Jim Caiazzo?

1 BOARD MEMBER CAIAZZO: Yes.

2 SECRETARY WILHELM: Tony Alfano?

3 BOARD MEMBER ALFANO: Yes. Am I voting on
4 this?

5 SECRETARY WILHELM: Yes.

6 BOARD MEMBER ALFANO: Then yes.

7 SECRETARY WILHELM: Motion carries.

8 MR. MOLICA: "D" Variance relief is
9 required for the Board's motion and finding. Mr.
10 Miller will have to recuse himself, statutorily
11 ineligible on the "D" Variance.

12 (Whereupon, Board member Miller is recused
13 at this time.)

14 CHAIRMAN HICKERSON: Okay. So the
15 interpretation is LB-6-23-2, SMS Hamburg, LLC,
16 interpretation "D" Variance, Preliminary and Final Site
17 Plan.

18 Do you want to continue your presentation?

19 MR. DEL VECCHIO: Yes. Thank you, Mr.
20 Chairman. Obviously the Applicant reserves all rights
21 and will proceed under the alternate avenue required by
22 the Board and requests a "D" Variance.

23 MR. MOLICA: Incidentally, Counsel, let me
24 just reconfirm. The Applicant did notice accordingly.
25 Okay. It did spell out in the notice that it was going

1 to seek the interpretation and if things didn't go its
2 way on that question as alternative relief it would be
3 seeking the "D" Variance that it requires, okay.

4 So you have jurisdiction to continue this
5 public hearing and specifically the "D" Variance and
6 site plan relief that the Applicant is now seeking.

7 MR. DEL VECCHIO: Most of the "D" Variance
8 planning testimony was provided by Ms. Keller at the
9 earlier hearing. At this point I'm going to ask Mr.
10 Gimigliano to come back and answer any questions on the
11 engineering but then re-call Ms. Keller after his
12 testimony's concluded to supplement her prior "D"
13 Variance testimony.

14 MR. MOLICA: Mark, you remain under oath.

15 THE WITNESS: Yes, thank you.

16 M A R K G I M I G L I A N O, having been
17 previously sworn, testifies as follows:

18 BY MR. DEL VECCHIO:

19 Q. Mark, the Board has questions, please
20 answer them.

21 BOARD MEMBER CICERALE: Okay. If you don't
22 mind I'll start. Can you reconfigure your development
23 tract and incorporate a retention basin on the property
24 other than in Hardyston?

25 THE WITNESS: That's -- there's always a

1 possibility to --

2 BOARD MEMBER CICERALE: I mean, I really
3 know the answer to that, but --

4 THE WITNESS: Right. Most likely we could
5 reconfigure it to include a storm water basin on the
6 Hamburg tract that would result in a reduction in the
7 size of the project.

8 BOARD MEMBER CICERALE: Okay. Thank you.

9 CHAIRMAN HICKERSON: Question. Where is
10 the lowest point in the development?

11 THE WITNESS: The lowest point in the
12 overall development is where the stormwater management
13 basin is located. Well, the front of the property has
14 a very small area where this stormwater basin is
15 located as well. There -- so that's -- it's probably
16 at a similar elevation. It may be a little lower in
17 the front. But it's a very small area where storm.
18 The larger area where stormwater drains today where it
19 collects today and where we're proposing to collect it
20 is in the back of the property.

21 CHAIRMAN HICKERSON: And from the earlier
22 prints we saw that there was a drain at the bottom of
23 the detention?

24 THE WITNESS: There's an outlet structure
25 in the detention basin so water will flow into the

1 basin. It will fill up the water for smaller storms
2 will infiltrate into the ground. Larger storms will
3 overflow out of the basin and drain along the back of
4 the property, the side of the property where it drains
5 today.

6 CHAIRMAN HICKERSON: Where would the
7 overflow be?

8 THE WITNESS: The overflow will be located
9 in the basin on the south.

10 CHAIRMAN HICKERSON: So how is that going
11 to flow back to the front?

12 THE WITNESS: I'm sorry?

13 CHAIRMAN HICKERSON: How is -- because we
14 get a lot of storms around here that are well over 2
15 inches, and I think you testified about the two days
16 for when we get a storm to drain.

17 THE WITNESS: Sure. Yeah, I'll just kind
18 of give you a general overview of how the stormwater
19 design works is that we looked at this property and
20 water drains off of the property in different
21 directions, some drains out to Route 23. A small area
22 drains to the north, but a majority of the property
23 drains to the back along the side property line. And
24 so generally with drainage design you want to try to
25 maintain the existing drainage pattern. You don't want

1 to send more water where it's going than where it's
2 going today. So we still allow some water to drain off
3 the front of the property. A very small area will
4 drain to the north, but a majority of the property will
5 drain to the detention basin. And the basin will allow
6 some water to infiltrate into the ground, but the rest
7 will be slowly released, detained and slowly released
8 so that it follows the same pattern as water follows
9 today.

10 Earlier I said we'll have an emergency
11 overflow in the basin, and that would be for storms
12 larger than the hundred-year storm event, the largest
13 storm that designed for. And in that case if there was
14 an extreme amount of water that was larger than the
15 basin was designed for that water would flow to the
16 north and away from the homes. Just an extra safety
17 factor that we've added.

18 CHAIRMAN HICKERSON: And were you
19 considering a 100-year storm? What was it designed
20 for?

21 THE WITNESS: It was designed for the
22 100-year.

23 CHAIRMAN HICKERSON: How many inches of
24 rain?

25 THE WITNESS: I'm sorry?

1 CHAIRMAN HICKERSON: How many inches of
2 rain?

3 THE WITNESS: About eight, eight and a half
4 inches.

5 BOARD MEMBER CICERALE: Which we exceeded
6 recently.

7 CHAIRMAN HICKERSON: Is there a swale of
8 some sort to keep overflow in the bottom where the
9 water comes out? Because right now you've got grass,
10 woods, and stuff. We don't have access. Obviously
11 there's going to be more water running into the
12 drainage area.

13 THE WITNESS: Yeah. The way the topography
14 is, there is a -- the area behind most of these lots is
15 a little lower than this lot, so if you walked off of
16 the back of this property there's a natural swale that
17 runs along the property line. Once you get down to
18 these last two or three properties it sort of spreads
19 out and that's how the water gets on to these adjoining
20 properties. So that's going to remain.

21 And one thing we worked on with Mr.
22 Vreeland's office is because there's going to be a lot
23 of disturbance back there that we're going to
24 reconstruct the swale to make sure the water continues
25 to go where it's going today. So there will be a

1 swale. Water will discharge out of the basin. It will
2 following in the swale down to this lower area. It
3 will be picked up by a couple of drains and some
4 additional water will infiltrate into the ground. But
5 most of the water, especially to the larger storm
6 events will continue to flow onto the back of these
7 properties.

8 CHAIRMAN HICKERSON: Where does it go after
9 that?

10 THE WITNESS: That's the drainage issues
11 that the neighbors had and that they -- we met with
12 them and talked to them about. And the water -- right
13 now water from this property, and from the backs of all
14 these properties all drain down to a low area in their
15 backyard. So water is going to continue to go to that
16 spot.

17 CHAIRMAN HICKERSON: Is there going to be
18 more water going there?

19 THE WITNESS: The way we designed the basin
20 and with working with both the engineers in each town
21 we've enlarged the basin and it's been designed so not
22 only will the peak rates of runoff will be reduced but
23 the volume of runoff will be reduced as well. So there
24 will be a little less water going into the backyard,
25 but there still will be water. It's not going to cut

1 off the source of water entirely.

2 CHAIRMAN HICKERSON: And it's not possible
3 to take that water that's coming too low and put it in
4 the drain in Hamburg?

5 THE WITNESS: Well, the only way to get
6 water -- water that flows through this area now once it
7 overflows it's all tributary to the drainage system and
8 Fairview Ave. So it would be possible to collect water
9 at this corner of the property and pipe it through that
10 residential property out to the drainage system on
11 Fairview Ave., but that would require that homeowner to
12 grant us an easement to install a pipe in that area.
13 And we made the offer and, you know, it's still a
14 possibility that that could happen, but at this point
15 the homeowner's decided he doesn't want to go forward
16 with it at this time.

17 CHAIRMAN HICKERSON: It can't go out to 23?

18 THE WITNESS: No. There's -- no, none of
19 the water goes out to 23 today. So we would be taking
20 water from water that drained in this direction and
21 piping it into a different drainage basin where that
22 wouldn't comply with the stormwater standards.

23 CHAIRMAN HICKERSON: My concern is, with
24 all the pavement and all the roof structures there's
25 going to be more water going to the detention panel in

1 that area than there is currently.

2 THE WITNESS: That's right -- today some
3 water flows off, some goes into the ground because it's
4 wooded area and some runs off onto these properties.
5 It's generally going to be the same but we're going to
6 hold a little more water in the infiltration basin and
7 the bioretention basin and get that to go into the
8 ground so it reduces the amount of water going onto the
9 adjoining property.

10 CHAIRMAN HICKERSON: I think your previous
11 testimony said it was designed for a one and a half
12 inch storm?

13 THE WITNESS: The area below the lowest
14 outgrow is designed for the one and a half, one and a
15 quarter inch storm.

16 CHAIRMAN HICKERSON: And it would take two
17 days for that water to soak into the ground, I believe
18 is your testimony.

19 THE WITNESS: I don't recall the exact
20 number of days, but it was something less than the 72
21 hours which is the maximum.

22 CHAIRMAN HICKERSON: So if we get a two
23 weeks storm, which we've had plenty of them, from where
24 even 3 inches is not uncommon. You're going to send
25 that inch and a half of water from that entire

1 development out in that overflow and that's going to be
2 a lot more than there is right now. It's got to go
3 somewhere.

4 MR. VREELAND: If I -- maybe I can clarify
5 that, Mr. Chairman, if you'd let me. The DEP has
6 stringent stormwater regulations for developments of
7 which this is. You have to do your design for certain
8 storm events. And one of the storm events is the water
9 quality storm, which is a smaller storm event, it's the
10 inch and a quarter event, inch and a half event, and
11 that's really to address water quality. And the way
12 these basins they're set up they're set up to capture
13 that smaller storm. And I believe actually this one is
14 oversized and goes above and beyond what the DEP
15 requires and will capture and contain the hundred-year
16 storm.

17 So it's not that this basin is going to let
18 out that small storm, it's designed to detain the water
19 and address it. And that number that you heard, that
20 smaller storm was because that's one of the storms that
21 you have to design for from a water quality standpoint,
22 not necessarily from a water quantity standpoint.

23 CHAIRMAN HICKERSON: Okay. I'm just
24 wondering where water's going to?

25 MR. VREELAND: Well, the basin's been

1 designed to accommodate that runoff from the extra
2 impervious surfaces.

3 BOARD MEMBER ALFANO: To the north.

4 BOARD MEMBER CICERALE: I can't find it,
5 I'm going to be honest, with all my papers, but it also
6 mentioned a building for the detention basin that I
7 hadn't noticed previously. Can you explain that,
8 please?

9 THE WITNESS: The building?

10 BOARD MEMBER CICERALE: Yeah.

11 BOARD MEMBER ALFANO: Maybe it's a
12 spillway. Is that what you're thinking?

13 BOARD MEMBER CICERALE: No, it wasn't a
14 spillway, it was a structure.

15 THE WITNESS: It's an outlet structure.
16 It's a concrete structure that --

17 BOARD MEMBER CICERALE: Oh, okay. The
18 structure I took to mean above ground, not to funnel --

19 THE WITNESS: It's within the basin, but it
20 is above ground in the basin. But we're building a
21 concrete structure and that's what allows the water to
22 come out at a certain weight. So we're designing an
23 opening in the structure to control.

24 BOARD MEMBER CICERALE: I was under the
25 impression it was a building. I understand.

1 BOARD MEMBER ALFANO: I have a question.
2 You want to go?

3 BOARD MEMBER ZINCK: I'm just questioning
4 the roof water. Is it all going to go to the detention
5 basin or does it go into four different directions?
6 Like the building in the front does that go to Route
7 23?

8 THE WITNESS: All the roof water is going
9 to be piped -- connected to the pipes that are going to
10 the detention basin.

11 BOARD MEMBER ZINCK: It takes into account
12 all the shingles that are going to go with it?

13 THE WITNESS: I think anything going to the
14 basin is going to be leave guards. I'm not sure the
15 roof material, but I think they're required to have
16 roof guards on the drains. So that's going to be
17 infiltrated.

18 BOARD MEMBER ZINCK: Pretty heavily wooded
19 back there. I see a lot of leaves. I see this whole
20 thing just turning into a swamp.

21 THE WITNESS: That's why we have to
22 generate a maintenance program for it and we put
23 together -- if this is approved we put together a
24 maintenance manual which would go to Mr. Vreeland's
25 office. They'd review it and we would require that

1 they inspect the basin and clean the basin on a regular
2 basis and then report to the town to confirm that
3 they're following those activities. And I think
4 there's something that allows the town to go in if it's
5 not -- if the maintenance isn't followed that they can
6 go in and could go in and maintain the basin. So there
7 are protections.

8 BOARD MEMBER ZINCK: Hamburg or Hardyston?

9 THE WITNESS: It would be Hardyston.

10 BOARD MEMBER ZINCK: Who pays for that?

11 THE WITNESS: I think it's the owner.

12 MR. MOLICA: Well, there would be bonding
13 posted, you know. I'd recommend the Developer's
14 Agreement be entered into if this is approved and
15 bonding would be posted. So you would have moneys in
16 the event of apartment building and/or stormwater
17 management facility -- in the event the apartment
18 building is built, but the stormwater management
19 facility is not.

20 BOARD MEMBER CICERALE: Does the bond have
21 an expiration date? Will it have to be renewed?

22 MR. MOLICA: Well, yes.

23 MR. VREELAND: Generally the regulations
24 are for them to put together an initial two-year
25 maintenance bond. But, you know, anything above and

1 beyond that would be subject to a Developer' Agreement
2 with the governing body.

3 BOARD MEMBER CICERALE: And what is
4 considered maintenance on a retention basin?

5 THE WITNESS: They're supposed to inspect
6 the basin at least on a quarterly basis or any time
7 rainfall over a certain amount occurs. They go in and
8 check the vegetation to make sure that it's still
9 functioning, it's still living, make sure that the
10 basin's draining. They check the drain time which we
11 publish in the manual, and if it takes longer to drain
12 than it's supposed to then they have to take corrective
13 measures. And corrective measures are options.
14 Corrective measures are listed in there would include
15 removing some of the vegetation in the silt and
16 replacing the soil, or removing all the soil and silt
17 and testing the soil beneath to make sure that it meets
18 the drain time.

19 BOARD MEMBER ALFANO: Paul, question on the
20 drainage. I walked the site about two months ago and
21 when I went on the access path I noticed that the
22 terrain went up and the detention pond is going to be
23 about 15, 20 feet above the only house in Hardyston and
24 that's what I'm concerned about. So it goes up about
25 20 feet and then the terrain goes down and there's

1 about a four-foot swale before the backyard.

2 What I noticed is that there's on the
3 opposite side of Kirkwood, the northeast corner before
4 you get into the soil, there's a raised drain, a
5 bicycle grade I think is what it is and when I went on
6 top of it I could hear water actively moving. And it
7 hadn't rained in a couple of days and I noticed that it
8 was swampy area all around it.

9 So my question is, if I read the stormwater
10 reports correctly, in the ten-year storm there's about
11 a cubic yard of water a minute, 29 CFM, I guess you
12 guys go by CFM, that will discharge into the retention
13 pond and then if I read the elevation reports correctly
14 the average groundwater table is about 5 feet
15 underneath the slab of the basement on that home. So
16 what I'm concerned about in a ten-year storm will there
17 be enough hydraulic head where it's going to flood
18 that basement?

19 THE WITNESS: No. And that's one of the
20 changes that we made to the basin design was to ensure
21 that any kind of impacts to the groundwater table
22 resulting from infiltrating water at that location
23 wouldn't extend off of the property. So the water
24 table will fluctuate underneath the basin and around
25 the basin, but it won't fluctuate on the adjoining

1 property.

2 BOARD MEMBER ALFANO: Mike, is that your
3 observation?

4 MR. VREELAND: Yes. You know, the DEP
5 gives you certain tools and there's a worksheet that
6 they require that you utilize for major developments
7 and more properly applied that workbook and
8 demonstrated that there would be no off-site impacts as
9 a result of groundwater management.

10 BOARD MEMBER ALFANO: I guess you use the
11 hydraulic calculator and all that. That was all I was
12 worried about, because like I said the groundwater has
13 dropped 5 feet underneath the slab of that basin and I
14 was just worried about hydraulics coming down. Thanks.

15 THE WITNESS: You're welcome.

16 BOARD MEMBER CAIAZZO: I have a question.
17 What was the result of your meeting with the residents,
18 did everyone embrace the context?

19 THE WITNESS: They realized that it's
20 really up to the homeowner that would be impacted. The
21 one that has the pipe -- would have the pipe on their
22 property. So I think my opinion is that everyone
23 wanted to have that pipe installed, but the homeowner
24 decided against it. But they seem to be, at least in
25 my opinion, appreciative of the additional measures we

1 added on the site, the additional drains and additional
2 infiltration area we added along our property that's
3 beyond what's required but will help them somewhat with
4 the drainage.

5 CHAIRMAN HICKERSON: The detention pond has
6 changed. It was a pond before, now it's an
7 infiltration pond?

8 THE WITNESS: How the pond has changed?

9 CHAIRMAN HICKERSON: Yes. Originally it
10 was just a detention pond, and now it's an --

11 THE WITNESS: It's a bioretention basin.
12 So the infiltration basin has just sand, 6 inches of
13 sand at the bottom. The bioretention basin has
14 18 inches of soil, and then plantings that are adaptive
15 to moisture conditions.

16 CHAIRMAN HICKERSON: And it's going to be
17 maintained quarterly? You could be taken -- because of
18 the trees and leaves, you could be taking the top layer
19 out quarterly?

20 THE WITNESS: I wouldn't expect the top
21 layer to come out quarterly. I think if they maintain
22 it and get the leaves out on a regular basis then it
23 should last for years. It could be years before they
24 have to replace any of this.

25 CHAIRMAN HICKERSON: And the owner of the

1 complex is responsible to maintain it. I'm sure there
2 will be a bond with the town, a Developer's Agreement
3 with the town, and we're talking about two years, but
4 what happens five years down the road? Are we still
5 going to be able to bond this or -- I know there would
6 be an agreement, but if the builder does not submit the
7 information to Hardyston, Hardyston the way I
8 understand it would be responsible to submit the
9 reports to DEP for --

10 MR. VREELAND: Well, ultimately it falls
11 under each municipality's umbrella as the owner and
12 operator of a municipal stormwater system. But it's a
13 privately owned system. So generally what we do is we
14 ask for those privately owned systems for them to
15 provide the maintenance logs and records to the
16 appropriate stormwater program coordinators so that
17 that information can be tracked and logged as a
18 condition of approval, and then also so that we can
19 provide that information to the DEP should they ask
20 during their annual inspection.

21 CHAIRMAN HICKERSON: And what happens if
22 you don't get those records?

23 MR. VREELAND: Well, I mean, it would
24 depend on what we set up in the Developers Agreement.

25 CHAIRMAN HICKERSON: Worst case.

1 MR. VREELAND: I mean, there's provisions
2 that I've seen utilized in other locations where if for
3 some reason the developer does not provide the
4 maintenance the municipality has the right to go in
5 there and do it and then put a lien on the property to
6 recoup any cost that may occur as a result of that.

7 CHAIRMAN HICKERSON: And that will be part
8 of the management agreement between the Township?

9 MR. VREELAND: And the developer.

10 BOARD MEMBER CICERALE: But should a lien
11 occur would you have a lien on the property? Would you
12 have a lien on the bioretention basin?

13 MR. MOLICA: No, it's on the property.

14 BOARD MEMBER CICERALE: The entire project?

15 MR. MOLICA: It can then be foreclosed.

16 BOARD MEMBER CICERALE: The entire project?

17 MR. MOLICA: Well, you can foreclose that
18 kind of lien that you'd have as a municipality to force
19 to sell the property to satisfy your lien.

20 Counsel, did Hamburg require a Developer's
21 Agreement be entered into with the Hamburg Borough?

22 MR. DEL VECCHIO: I don't recall that we
23 specifically spoke about it, but I believe it's in the
24 boiler plate of their Resolution that a Developer's
25 Agreement would be required.

1 BOARD MEMBER GOODSON: Do you have a
2 positive or any negative with the presentation that
3 we're hearing?

4 MR. VREELAND: I mean, the DEP has very
5 stringent stormwater regulations and design
6 requirements, and I think the first submission that was
7 made to the Board I think it was a design that checked
8 most of those boxes, and it was reviewed by both the
9 Hamburg engineer and my office. We met out in the
10 field with the design engineer and we reviewed a couple
11 of things and I think what they came back with is above
12 and beyond what's required by the regulations and I
13 think it's a suitable reasonable design that meets the
14 requirements.

15 BOARD MEMBER GOODSON: Thank you.

16 CHAIRMAN HICKERSON: So obviously we have a
17 concern that the maintenance agreement that the
18 Township and the developer need to work out. We have a
19 concern about where the water is going. They should
20 have that concern too, so I'll leave it at that. Water
21 should be piped into a drain somewhere.

22 BOARD MEMBER ALFANO: Well, there is no
23 drain. I don't know how active that drain is. I can
24 hear the water, but I don't know if it can drain into
25 that. Maybe you know.

1 THE WITNESS: The drain that I think you
2 saw is in the back of the property, back in here.

3 BOARD MEMBER ALFANO: On Kirkwood Avenue
4 between the driveway and then level with the backyard
5 fence just in the opposite and it sticks up?

6 THE WITNESS: Right. And that drain, our
7 property doesn't drain to that drain. We don't drain
8 there now, we don't drain there afterwards. I believe
9 that ends up though in the drainage system that's in
10 Fairview Avenue and our water would eventually get to
11 that drainage system but much farther downstream. And
12 so the elevation-wise in order for us to be able to tie
13 into that drainage system would have to be --

14 BOARD MEMBER ALFANO: I'm not concerned
15 about surface water. Like you said, the percolation,
16 the hydraulic feed is you're 15, 20 feet up. You're
17 draining the pond through the ground and I don't want
18 that to wind up in the basement of the house.

19 BOARD MEMBER ZINCK: Is there any chance
20 that pipe that Tony's talking about is drainage from
21 Penny Rock Estates going into the property now?

22 THE WITNESS: I believe that it goes
23 down -- continues down Kirkwood, what's labeled as
24 Kirkwood on the plan. I don't think that it dumps into
25 our property at all.

1 CHAIRMAN HICKERSON: So any other questions
2 for the engineer? I have some questions too.

3 BOARD MEMBER CAIAZZO: How close is the
4 basin to the house that's in Hardyston in feet?

5 THE WITNESS: It's 80 feet to their
6 property line. So it's probably 150 feet away from the
7 home in Hardyston.

8 BOARD MEMBER CAIAZZO: Could you put your
9 finger -- maybe I just can't see it, put your finger on
10 where the basin is?

11 THE WITNESS: This black line is the limit
12 of the basin.

13 BOARD MEMBER CAIAZZO: Got it.

14 THE WITNESS: And that's the property line.

15 BOARD MEMBER CAIAZZO: Okay.

16 CHAIRMAN HICKERSON: Tom, if we don't have
17 anymore questions for the engineer should we open it to
18 the public while he's still here?

19 MR. MOLICA: Well, I think Mr. Gimigliano
20 said he's going to stay through the entirety of this
21 evening's proceedings. We haven't had any public in
22 the cases I've had yet with you. So I don't know how
23 you were operating with your prior counsel. If you're
24 opening to the public after each witness testifies or
25 if you're doing it collectively at the end?

1 CHAIRMAN HICKERSON: Normally we do it at
2 the end.

3 MR. MOLICA: So you know, it's the Board's
4 preference to follow its own historical procedure, or
5 to allow public questions at this time for Mr.
6 Gimigliano. I mean, how much more testimony do you
7 have, Counsel? You indicated you're going to bring
8 your planner back, correct?

9 MR. DEL VECCHIO: She has less than five
10 minutes to supplement her prior testimony.

11 MR. MOLICA: And is the principal of the
12 applicant business entity testifying this evening?

13 MR. DEL VECCHIO: No.

14 MR. MOLICA: And it's your intention to
15 seek a vote this evening?

16 MR. DEL VECCHIO: That's our intention.

17 CHAIRMAN HICKERSON: Okay. We'll continue
18 then.

19 MR. MOLICA: Continue with the applicant's
20 next witness?

21 CHAIRMAN HICKERSON: And then we'll open to
22 the public at the end.

23 MR. DEL VECCHIO: Right. Mr. Gimigliano
24 please remain in the audience, but thank you.

25 Ms. Keller, if you will return.

1 K A T E K E L L E R, having been
2 previously sworn, testifies as follows:

3 BY MR. DEL VECCHIO:

4 Q. Ms. Keller, you were previously sworn in a
5 prior proceeding, as well as this evening. You remain
6 under oath and you're previously qualified as well.

7 Recognizing that you had previously
8 provided various proofs and supported the "D" Variance,
9 my purpose for re-calling you is to provide an
10 opportunity for you to supplement that testimony in
11 relationship to the new plans and any new information
12 that you've accumulated since your last appearance.

13 So first let's start with the easy part.
14 Has your opinion concerning the necessary proofs you
15 put in to support the "D" Variance diminished in any
16 way since you last appeared?

17 A. No, it has not.

18 Q. Your prior testimony remains in full force
19 and it remains your opinion?

20 A. Yes, it does.

21 Q. If you can tell the Board then how you wish
22 to supplement your testimony?

23 A. Sure. I think, you know, just what we want
24 to look at here is focusing on both the positive and
25 negative criteria. I think that the changes that have

1 been made since we previously appeared before this
2 Board really speak to it, because in terms of the
3 positive criteria we want to look at whether there's
4 particular suitability. And I would go back to
5 testimony that I gave in the previous hearing and also
6 earlier tonight, and really is that this piece of
7 property is inherently tied and remains tied to this
8 adjacent lot in Hamburg.

9 And the way that the applicant has done so
10 here is that they've gotten approvals now in Hamburg.
11 So the adjoining municipality which has the majority of
12 the actual -- the full residential development on it
13 has deemed that particularly suitable. And in this
14 case the stormwater basin which has now been upgraded
15 to a bioretention basin remains essentially an
16 accessory use to this although this Board has
17 determined that it does require principal Use Variance
18 relief.

19 So in that sense I would say that the fact
20 that the applicant has proposed an enhanced stormwater
21 basin in terms of both its actual function, as your
22 engineer just said it is now -- what we're proposing
23 here is above and beyond any NDE requirement. And also
24 it has been moved so that it's further away from
25 residential properties starting from I believe it's 40

1 feet to approximately 80 feet and been designed in a
2 way that will supplement the existing stormwater
3 management impacting those properties and it also will
4 be more -- it will be also aesthetically attractive
5 because of the way that it will be landscaped as a
6 bioretention basin.

7 I see no additional negative impacts to the
8 substantial good or substantial detriment to the Zone
9 Plan or Zoning Ordinance. Actually it is the opposite
10 with the new changes that have been proposed here.

11 Really, I think what we're doing here is
12 we're keeping this -- this property as -- in terms of
13 an accessory use that is contemplated elsewhere in this
14 ordinance for the MIDD-5 Zone, in that stormwater
15 management basins are permitted just not in conjunction
16 with this particular use as this Board has determined
17 tonight. It will -- it's designed to comply with all
18 NJDEP stormwater management rules and minimize the
19 impact on surrounding properties, and it's a benefit of
20 improving the site's ability to retain and manage
21 stormwater and preventing impact onto adjacent
22 properties in Hardyston.

23 So really, my testimony remains the same.
24 I just reiterate that I think the changes that have
25 been made in discussion with neighbors and in

1 discussion with both this Township's Professionals and
2 with the Professionals of neighboring Hamburg maintain
3 that the site is particularly suited for the proposed
4 use and that there will not be a substantial detriment
5 to the public good or Zone Plan or Zoning Ordinance.

6 Q. Ms. Keller, from a planning perspective,
7 focusing on the portion of the property located in
8 Hardyston would you consider a in-ground detention
9 system, essentially a hole in the ground, a depression
10 to be impactful from a planning standpoint to the
11 adjacent uses or users of the property?

12 A. I would not. They constitute a change to
13 the site, because there are areas that are going to be
14 some grading completed. There's going to be new
15 plantings put in place. But in terms of the
16 impactfulness, no, it does not have -- no, it will not
17 be bringing additional, you know, activity to this
18 portion of the site. It will not have -- it does not
19 create additional impervious coverage or any, noise or
20 any of the things that we typically look at when we
21 look at negative impacts.

22 Q. Is a detention basin constructed at this
23 site more or less likely to have planning impacts than
24 the property being developed with single-family homes?

25 A. Less likely. Just looking at this site as

1 an individual -- this lot, this portion of the lot in
2 Hardyston as an individual lot, yes, it is less likely
3 to have impacts in this proposed development.

4 Q. Does the fact that the Hardyston located
5 portion of the tract essentially not fronting on any
6 improved street, play any importance or not in your
7 planning analysis of this site?

8 A. Yes, it does. Because I know this was
9 touched on earlier, but there are wetland conditions
10 most likely in the area of the paper street, meaning
11 that the only way that this site could be accessible
12 would be through either an existing residential lot
13 which is not feasible, or it would be -- have to be
14 through the property in the adjacent portions in
15 Hamburg. Otherwise this would not be considered a
16 developable piece of property under the Municipal Land
17 Use Law under Section 35.

18 MR. DEL VECCHIO: Thank you. I have
19 nothing further for Ms. Keller. Both Ms. Keller and
20 Mr. Gimigliano remain available to answer the Board's
21 questions.

22 CHAIRMAN HICKERSON: Questions from the
23 Board?

24 MR. MOLICA: One question Ms. Keller. When
25 you talk about planning impacts, are you saying that in

1 your opinion the development of the lot as this
2 accessory, or principal stormwater management detention
3 basin is a less intense use than single-family home --

4 THE WITNESS: I am --

5 MR. MOLICA: -- residential development?

6 THE WITNESS: I'm speaking specifically to
7 the fact that this is -- looking at this as a principal
8 permitted use on a Hardyston portion of the lot, Block
9 14, Lot 21.02, yes, it is less impactful to have a
10 stormwater management basin than to have what
11 regardless of the feasibility of whether it can be
12 constructed, whether it be access, but yes it is less
13 impactful than a single-family residence would be. And
14 that's just looking at the Hardyston portion of the
15 property.

16 MR. MOLICA: Thank you.

17 CHAIRMAN HICKERSON: Question?

18 BOARD MEMBER SAVIDIS: I have a question.
19 So you're creating an attractive nuisance that you're
20 going to fence out, and you don't have any access to --
21 easily an access to Hardyston Police Department for
22 that property. What is your answer to the liability
23 question long-term and then the question of the
24 maintenance question long-term?

25 THE WITNESS: I cannot speak to liability.

1 I will speak to the fact that there is access to this,
2 the basin as was testified to previously. The access
3 does go through Hamburg, and the access has been
4 reviewed by your professionals and been determined to
5 be sufficient.

6 In terms of maintenance I will also defer
7 that to our other professionals and to Counsel. I will
8 say that many, many developments are constructed with
9 stormwater management basins and that operation and
10 maintenance manuals are typically a part of that.

11 BOARD MEMBER SAVIDIS: Typically when they
12 are, the Township that has the basin is getting
13 compensated for it through tax revenue. We're not
14 getting compensated for tax revenue. How are we
15 getting compensated?

16 THE WITNESS: I can't speak to that.

17 MR. DEL VECCHIO: Let me see if I can
18 answer some of your questions. First of all, just like
19 the Hardyston Fire Department that will access this
20 site and provide fire service to the site, the police
21 department has full access via Route 23 to the same
22 parking lots and the same structure to gain access to
23 whatever portion of the property they deem necessary.

24 To the extent we need to cover or convey
25 title 39 coverage to Hardyston, as well as Hamburg, we

1 have no objection. We will do that as a matter of
2 course.

3 As it concerns the maintenance manual, the
4 stormwater management regulations require that manual
5 to be recorded in the chain of title once it is
6 approved by your engineer to be complying with the
7 regulations. We fully intend to do that. It is a
8 private basin that will be maintained by the ownership
9 of the apartment complex.

10 We have no objection to treating the
11 property as a single tract as we've said it is. And to
12 the extent a lien is applied against the property it
13 would be applied against the entire property. There
14 will be no reason for Hardyston to spend a single
15 dollar maintaining that maintenance manual, unless
16 there was a default. In which case there's a remedy as
17 expressed by your Counselor earlier to secure
18 reimbursement by anything that may be spent.

19 Finally, I would note the fiscal aspect o
20 this is not one that is appropriate for a Land Use
21 Board, but we are fully committed to maintaining that
22 basin and to maintain them as required by the DEP
23 stormwater regs.

24 BOARD MEMBER CICERALE: Generally when you
25 come before the Board with a project there is an

1 environmental study. Why wasn't one done? You said it
2 contains wetlands.

3 MR. DEL VECCHIO: We are not proposing --

4 THE WITNESS: It's not on our property. I
5 was not speaking about this property in particular.
6 And we're also not proposing any type of structure that
7 would require that type of disturbance. And I believe
8 that -- I don't recall if an environmental impact
9 statement was submitted as part of this application,
10 but if not a waiver would have had to be requested by
11 this Board.

12 BOARD MEMBER CICERALE: It was requested
13 and it hasn't been ruled on yet.

14 MR. MOLICA: Well, it must have been ruled
15 on if the application was deemed complete and we
16 started a public hearing.

17 MR. VREELAND: Yes. I mean, I think we
18 broached that topic early on in the hearing. It's been
19 a long time. It's hard to keep track.

20 MR. DEL VECCHIO: Yes, it has.

21 MR. VREELAND: But I don't disagree with
22 the testimony, the planning testimony that was put on
23 the record.

24 MR. MOLICA: You're talking about the
25 proofs that she discussed, the positive and negative

1 criteria?

2 MR. VREELAND: Yes, that's correct. The
3 one thing that I would maybe just add for the Board,
4 food for thought, typically in these types of
5 situations where a use is not permitted, is substituted
6 -- where a permitted use is substituted with something
7 that's not permitted, in this particular case you would
8 be losing -- potentially losing a single-family home,
9 because that's what's permitted in that zone. But I
10 don't think there's a realistic opportunity to develop
11 that piece in Hardyston with a single-family home given
12 the constraints that are out there. So I don't -- from
13 a planning standpoint I don't really see the loss of
14 the permitted single-family home as a negative, because
15 I don't think realistically one could have been
16 constructed on that piece of property in Hardyston
17 Township.

18 MR. MOLICA: What else would it be used as
19 that property?

20 MR. VREELAND: Again, we didn't do an
21 analysis on the entire property. This is the
22 application that's before us. What they're proposing
23 is less intensive than a single-family home, and I
24 don't think a single-family home could be developed on
25 that piece of property.

1 BOARD MEMBER ALFANO: Is there property tax
2 being paid once this project goes? Will Hardyston at
3 least enjoy some property tax?

4 MR. VREELAND: I would leave that up to the
5 Tax Assessor. He has away of --

6 SECRETARY WILHELM: Just for your
7 information, I did make an inquiry to Mr. Holzhauer
8 regarding taxability of the detention basin, and there
9 will be a tax assessment on the property if the basin
10 is built there.

11 BOARD MEMBER ALFANO: Okay. Thank you.

12 MR. VREELAND: I mean, I think it would be
13 a different application if that lot in the back had
14 frontage and it provided an opportunity for development
15 with a single-family home. But I just don't see that
16 from a planning standpoint.

17 MR. MOLICA: Thanks, Mike.

18 CHAIRMAN HICKERSON: You say you spoke to
19 the Tax Assessor?

20 SECRETARY WILHELM: Yes, I did.

21 CHAIRMAN HICKERSON: And is it going to be
22 taxed as an accessory?

23 SECRETARY WILHELM: He's going to determine
24 the value of the basin, period.

25 CHAIRMAN HICKERSON: Okay. So that would

1 duly sworn, testifies as follows:

2 THE WITNESS: So it is a combination of
3 questions and statements, but the one statement that I
4 want to make is that I believe there was a slight
5 misrepresentation in regards to their meeting with the
6 residents on Fairview Ave. They did not meet with all
7 the residents on Fairview Ave. I personally called the
8 number on the letter and indicated that 10:00 a.m. on a
9 Friday morning is very hard for people to be home. It
10 requires a day off of work to have the meeting. I
11 asked if I could arrange a different time to have some
12 come out -- I might have spoken with you -- to come out
13 and meet with me to address the concerns on my
14 property, and it never happened.

15 So I just want to the clarify that, that
16 all the residents were not met with. My neighbor back
17 there she also was outside all day and nobody came by
18 her. So there not everyone was met with. So I just
19 want to make sure everyone is aware of that.

20 One other thing I wanted to mention is
21 there's a bald eagle that lives back there. I have
22 pictures. So I don't know if an impact study has been
23 done on the animals that live are there, but I know
24 that if any trees are torn down it's against Federal
25 regulation to damage if the trees are torn down. So

1 hopefully it's not there, but gorgeous bird.

2 What I would like to know is, with the
3 quarry being so close there and how it actually damages
4 our homes with their quarry blasting what kind of study
5 was done to ensure that the blasting is not going to
6 impact the integrity of the basin?

7 I also would like to know what is being
8 done for mosquito control. I'm not sure how this type
9 of basin works, but I want to make sure that's covered.

10 In regards to landscaping there's a mention
11 of trees that are going to be planted. How many rows
12 of trees, how tall, right? Are we doing 4-foot trees?

13 MR. MOLICA: I think these are three things
14 that Mark can address if you want to stop now and then
15 continue the questions, but why don't you take them one
16 at a time, Mark?

17 THE WITNESS: Sure. So I think the first
18 question was on a study on the quarry and the impacts
19 to the basin. No study was done on the impacts of the
20 quarry to the basin. What was your second question?

21 MR. DEL VECCHIO: Mosquito control.

22 THE WITNESS: Mosquito control, so the
23 requirement for mosquito control is that the basin has
24 to drain within 72 hours, and it's been designed to
25 comply with that requirement.

1 And then the landscaping. So the
2 landscaping that's proposed in that area are -- there
3 are two rows of Norway Spruce trees.

4 MR. MOLICA: Mark, if you have a plan sheet
5 on the site plan that you're referring to please state
6 it.

7 THE WITNESS: I'm sorry?

8 MR. DEL VECCHIO: State the sheet number.

9 THE WITNESS: Oh, yes. So sheet eight of
10 24 is our landscaping plan. We propose two rows of
11 Norway Spruce trees planted at a height of 6 to 8 feet.

12 MS. LACATENA: And will that restrict the
13 view from the second-story apartment from looking down
14 into my property, or will I be losing my privacy?

15 THE WITNESS: The woods and the trees will
16 limit the view of your property from those second-story
17 apartments. I haven't looked at the specific view line
18 from the second story down to yours.

19 MS. LACATENA: Because the significance of
20 that plays a huge part. I live in Hardyston for a
21 reason and nature and privacy is a huge part of it.

22 You guys mentioned Kirkwood Ave, and I know
23 I'm not quite sure and I just want to clarify. Will
24 that paper road be used for any kind of access into the
25 development for any reason whatsoever?