Minutes of the Park Ridge Planning Board
Meeting of October 13, 2010

These minutes have not been approved and are subject to change by the public body at its next meeting.

The regular meeting of the Park Ridge Planning Board was called to order by the Chairman, Raymond Mital, on the above date, time and place.

Chairman called for the Pledge of Allegiance to the Flag.

ROLL CALL: Present: Messrs. Schwamb, Von Bradsky, O'Donoghue, Browne, Mital, Oppelt, Brouwer (8:00pm), Ms. Eisen, Councilman Maguire
Absent: Messrs. Saluzzi, Mesiano
Also Present: John Ten Hoeve, Jr., Esq., Board Atty.
Eve Mancuso, PE, Board Eng.
Brigette Bogart, PP, Planning Consultant

COMPLIANCE STATEMENT:

The Notice for the Special Meeting of Wednesday, October 13, 2010, as required by Section 3(D) of the Open Public Meetings Act has been provided by:

1. On September 16, 2010 posting the same on the Municipal Bulletin Board
2. Faxing Notice of this meeting to the Record, Ridgewood News, Community Life and the Pascack Press
3. Filing a copy of this Notice in the office of the Borough Clerk

ANYONE PRESENT WISHING TO BE HEARD: (non-agenda items

There was no one.

PUBLIC HEARINGS:

Chairman advised those in the audience that the application for Chase Bank was tentatively scheduled for Wednesday, November 3rd in case they were here for that.

MARK PRUSHA – 82 Rivervale Road R-15
Lot: 1 Block: 2007

Chairman announced that the board would now open the continued hearing on the Mark Prusha application.

Andy Del Vecchio, Esq. came forward stating, for the record, that he was representing the applicant and was a member of the firm of Beattie Padovano, Montvale, New Jersey.

DEL VECCHIO: We are here on a continued public hearing. When we last left off on September 15th, Mr. Preiss, our planner, had concluded his direct testimony concerning the variance application and I believe he was being questioned by members of the board and/or their professionals. Mr. Preiss has returned this evening and I will ask him to come forward. He was previously sworn and qualified and remains under Oath. I thing the pick-up point at this point is questions by the board or professionals.

MITAL: I will start out with the board. Does the board have any more or remaining questions?

TEN HOEVE: I have a few questions and I think our planner had already asked questions that she had of this witness.
Some of this I apologize as I may be duplicating some of the questions that were asked before, it has just been some time...

I know you testified that you were consulted before this plan was designed. Is that correct?

PREISS: I was shown a concept plan and was asked to opine as to whether I thought the plan would meet the various requirements and whether a better plan could be formulated for the property.

TEN HOEVE: Did you make any changes to that concept plan?

PREISS: I think ultimately after looking at the plan and reviewing in my own mind a number of alternatives, I think we pretty much agreed to...I agreed that that was the plan that should be filed.

TEN HOEVE: So the plan that you testified to is the same plan that you were shown initially at the concept.

PREISS: Well, there were modifications made based on board input but I think that initial...I think the basic subdivision, the location of the homes and the variances that are before the board were from the plan that I reviewed when it was a conceptual...

TEN HOEVE: My question is not changes that were made by board members or other professionals but whether you specifically changed the design.

PREISS: No, I did not.

TEN HOEVE: You testified, as I recall, that the variances that were required here were justified on a hardship basis, a C1 variance basis, is that correct?

PREISS: Yes, and also I said there were, in the case of two of the lots, the rear two lots, which are proposed lots...

TEN HOEVE: I don't want to interrupt you but I'm not saying only a C1 variance...

PREISS: Yes.

TEN HOEVE: I'm just prefacing my questions so you understand now, that I am just asking about the C1 issue.

PREISS: Yes, I just wanted to make clear that in the case of the first two lots, that's hardship only and in the case of the second two, it is both hardship and where the benefits outweigh the detriments.

TEN HOEVE: By the first two, you mean the two on Rivervale Road?

PREISS: Yes, the two fronting on Rivervale Road, which are proposed Lots 1 and 1.01.

TEN HOEVE: And those are the two that you say are justified on the basis of hardship not on the basis of a C2.

PREISS: Correct.

TEN HOEVE: Isn't is true that in order to qualify for a hardship variance under the Municipal Land Use Law, you need to meet some of the specific tests for hardship, which have to do with the shape of the lot, topographic

conditions that exist on a lot or some extraordinary and exceptional other provision?

PREISS: Yes.

TEN HOEVE: Would you agree that the hardship concept is as it applies to a specific existing piece of property? Or do you believe that an applicant can propose a subdivision fashioned in some manner and then apply the hardship concept to the subdivided lot.

PREISS: I'm not sure I understand your question but I will answer it this way...

TEN HOEVE: It was poorly asked.

PREISS: Yes. If I can clarify what I understand it to be...the hardship has to relate to the specific physical conditions or the circumstances relating to that specific piece of property and I believe those circumstances exist for both Lots 1 and 1.01 because of the width of that property and the inability to meet the frontage requirements, while at the same time having the ability to meet all the other requirements for a subdivision at that lot.

TEN HOEVE: I think that you are saying that you would apply the test to the subdivided parcels as created by an applicant who is submitting the application as opposed to the overall existing parcel, is that correct?

PREISS: Well, that is the only way you can do it. I mean is it possible to develop the property with one house? Absolutely. So we are not saying there is no use what we are basically saying is, under the zoning, if you can subdivide the property in a manner that fully meets the requirements of the zone, then you should do so. However, if there are circumstances that are particular and unique to that property, where the strict application would create a hardship, then you're entitled to the variance.

The strict application is the fact that we only have 187' of frontage for that portion of the lot. Yet we can meet the lot depth requirements, we can meet the area requirements, we can provide two houses that meet all of the setback requirements...the only thing that we can't remedy is the lot frontage for one of those properties because we can't provide a property from either side without creating variances on the other two lots./

TEN HOEVE: Well, that's where I was going. Let's focus on that. If I understood your testimony it's your contention that if you have a single piece of property that fronts on a road and if subdivided in half, would not meet the lot frontage requirement on that roadway, that as long as the property is oversized, a hardship condition exists that justifies the grant of a variance for frontage as long as you can't purchase property from either adjacent parcel?

PREISS: I would say that is the condition in every case. If you had, let's say a lot that is 102' wide and wanted to subdivide it into two 56' lots, I would say you are probably not entitled to a variance. However, in this situation, we're only 13' short and we can meet all the other requirements plus I also took into account the fact that there are a lot of other lots in the same zone and in the adjacent zone, which have the same condition.

TEN HOEVE: That has nothing to do with the hardship question...is that correct?

PREISS: I understand that but I did take it into consideration in saying that the strict application of that standard would not allow us to subdivide

the property into two lots and in my opinion, in this situation, that is a hardship counterbalanced by the fact, that to the extent that were to be done, it would not have a deleterious impact.

TEN HOEVE: I am only asking about the hardship not about the negative criteria...this lot would be 87% of the requirement...

PREISS: No, one of them would be fully conforming at 100' and one would be 87'

TEN HOEVE: What's the cutoff point...how small would it have to be before you would believe a hardship wouldn't exist or would a hardship always exist? If it were 75' would it still be a hardship?

PREISS: Perhaps, yes.

TEN HOEVE: And if it were 65' would it still be a hardship?

PREISS: It's hard to answer in a vacuum. You have to counterbalance that...a hardship is created and that's where I mentioned the negative criteria as well...you have to balance the hardship against the detrimental impact, so a hardship exists in a situation where applying those standards would not allow you to subdivide the property into two parcels.

At the same time you have to recognize and you have to take into account what the character of the surrounding area is, so at some point that lot may be so narrow where yes, it would be a hardship and not be able to subdivide it into two if one of the two resulting lots would be so narrow that it doesn't conform to the established character of the property. So I think you have to look at both of those things.

Where that line actually is I don't know. I would say certainly where you are only 13' short, which is 13% in one case but on the overall frontage it is only 6 ½% and that's clearly the case where that inability to obtain the additional 13' in this case is a hardship in being able to subdivide the property into two lots.

TEN HOEVE: I guess then you would reject an argument that someone who subdivided a piece of property to create a lot with a non-conforming frontage could not be classified as a self-created hardship?

PREISS: No, a self-created hardship is where the applicant has done something himself in his actions to create the hardship and then asked the board to relieve that hardship. I don't think that's the case here.

TEN HOEVE: Well, isn't the applicant creating this subdivision and dividing these lots to create the undersized front?

PREISS: Let's say the applicant had a larger piece of property before and had subdivided off this piece in order to develop another portion realizing that at some point in the future he would have to come back and obtain a variance for one condition or another. That might be a self-created hardship but in this particular circumstance, you have this lot, which he owns which is of a particular size and of a particular configuration and has only 87' of frontage...there is nothing that the applicant has done to create the hardship, the hardship was related to the fact that he just only has 187' of frontage and it can satisfy every other requirement of the zone, the first lot can be in 100% conformance and the other lot is only 13' or 13% short of that frontage...and you balance that with the fact that there are a lot of properties along that street, which likewise are non-conforming. So taking that into consideration, it is not a self-created hardship;.

TEN HOEVE: Ok...do you know of a case that supports that proposition? That indicates that if someone has a piece of property, which if subdivided is going to result in a non-conforming frontage and can't purchase property on either side because those lots would be made non-conforming, is a hardship?

PREISS: You know, I can't cite a particular case but I do know, having read Cox, that is a classic situation and a classic C variance situation.

TEN HOEVE: A classic hardship case?

PREISS: Yes.

DEL VECCHIO: Mr. Ten Hoeve, I refer your attention to Green Meadows, which is a dual lot frontage case involving a C variance under a hardship, to answer your question.

TEN HOEVE: I am familiar with that case and I don't think that was what that case was....

DEL VECCHIO: There was a C variance for frontage for a subdivided lot just as you are clearly suggesting.

TEN HOEVE: Hardship is the question I am asking and I don't think that was the case and I think, in fact, there was discussion in that case querying whether it should be considered a self-created hardship and I don't think the variances were based on that and that is off the top of my head.

DEL VECCHIO: Variances were granted in Green Meadows and by court order under a C variance.

TEN HOEVE: C2 or C1?

DEL VECCHIO: Under a C variance.

TEN HOEVE: A C2 or a C1?

DEL VECCHIO: I can't tell you specifically.

TEN HOEVE: Well, that specific issue was confronted in that case and that is for us to argue about later, not at this point.

PREISS: There is another case that I am aware of...it's a Borough of Spring Lake case in the 1950's where the zoning changed after the person bought the property and the lot frontage requirements were increased and as a result they couldn't subdivide the property.

TEN HOEVE: That's a different situation.

PREISS: I don't know the history of zoning as it relates to this property. I am not sure if the 100' requirement was in effect when this property was subdivided but it may well apply in this particular situation.

TEN HOEVE: The second two lots, was it your contention that a variance is justified for the street frontage for both the hardship and the C2 on those?

PREISS: Yes.

TEN HOEVE: Tell me again what the hardship rationale is.

PREISS: The hardship rationale is that the property is oversized and again the two houses can be provided on the lot with conformance to the rest of the requirements but for the fact that lot frontage cannot be provided for that property, coupled with the fact that the environmental constraints on that property and the DEP regulations would not allow the cul-de-sac to be extended into that property in order to provide sufficient frontage for those two lots.

So my opinion on that basis is that a hardship exists where that property cannot be subdivided into two lots.

TEN HOEVE: So, again you're applying it not to the entire parcel...you're not saying that a hardship exists for this entire parcel but for your arbitrarily created lots that a hardship exists because you don't have the street frontage.

PREISS: It is not arbitrarily created. Remember that the subdivision is being done in conformance, to the extent possible, with your zoning requirements, your zone plan and the Master Plan.

In your Master Plan and your Zoning Ordinance in this particular zone, you are entitled to subdivide your property into 15,000 sq ft lots.

TEN HOEVE: But that's not the only requirement.

PREISS: I understand that. All of the other requirements can stand to be met but for the lot frontage and the lot width and the hardship is related to the circumstances of the property where you have an oversized piece, mid-block with a stub street there and you have the environmental constraints of the wetlands. So you don't have the ability to extend the cul-de-sac into the property because of that to cure those deficiencies.

So it is a combination of the configuration of the lot and the existence of the wetlands that creates the hardship.

TEN HOEVE: Wouldn't that argument then apply to every oversized lot that didn't have access to a rear portion that you wanted to develop on a street or had some limited access to a very small portion of a street?

PREISS: You are asking a very hypothetical question about a situation and I can't respond in a vacuum like that. All I can tell you is that as a planner when you look at this particular property, two functional lots in conformance and compatible with the surrounding residential homes in the subdivision can be created on the lot, but for the fact that you cannot create conformity with respect to the frontage and width.

The circumstances relating to that are, is the property's configuration at which you have a stub street which provides access to the property combined with the wetlands on the property. If this was 28,000 sq ft of property to be subdivided, I would say that is not a hardship but we're dealing with 56,000 sq ft remainder and so, if you were able to extend a cul-de-sac into the property you could easily get two conforming lots but you can't because of the wetlands.

TEN HOEVE; I understand that.

PREISS: Exactly and I pointed out the hardship because of the wetland.

TEN HOEVE: And I ask you that same question...wouldn't that same argument apply to virtually any oversized property that either didn't have access or had short access...let's say there was 20 or 25' of access...just

enough to put a driveway in, you're saying the hardship argument would have to apply there, are you not?

PREISS: Again, it very well may but you have to look at the particular circumstance. I think if you have an oversized property similarly that could meet all of the other requirements it very well may be eligible for hardship variance.

TEN HOEVE: I'm not sure of the exact testimony that you gave...but you testified that the fact that the DEP thought the sites could accommodate homes without a negative impact upon the wetlands somehow factored into the zoning analysis. Is that accurate?

PREISS: No, it factors into the negative criteria.

TEN HOEVE: Well, the DEP doesn't care about zoning issues, is that correct?

PREISS: But it does care about the impact upon the wetlands.

TEN HOEVE: Right, but they don't care how much street frontage you have or what the size of your lot is or where a house is going to be on a lot as long as it doesn't impact the wetlands. They don't look at zoning concerns, right?

PREISS: Yes, but the only point that I was trying to make is you can't utilize the fact that there is going to be some filling or disturbance of the wetlands to say that the applicant is not entitled to his lot.

What I did say was in so far as the negative impacts are concerned, if the DEP allows two lots on the property, and they have jurisdiction and regulation over those wetlands over and above the municipality and if they are willing to give the permits, then, in my opinion, if they're satisfied that that can be done, then I think the municipality has to look at it and say *if the DEP says you can do this and there is no detrimental impact on the land...*

TEN HOEVE: But only from an environmental perspective, not from any zoning or planning perspective.

PREISS: I would agree with you on that.

TEN HOEVE: Do you know of any other lots that have 25' frontage on a street in Park Ridge?

PREISS: Not within this particular...

TEN HOEVE: Anywhere?

PREISS: I haven't looked at the whole of Park Ridge, so I don't know. There may be some flag lots and there may be some access off of stub streets similar to this.

TEN HOEVE: But you do not know of any?

PREISS: I don't know of any in Park Ridge. This kind of situation is not uncommon where you have a stub road and there is an agreement on the part of the municipality as well as the developer that rather than extend a full cul-de-sac into the property, it is better to just extend a driveway or a shared driveway or a flag lot driveway onto the property to access those two lots because thereby you are not extending a street that has to be

maintained, you're not having all of the impervious surface coverage, you don't have all of the stormwater drainage, so it is not an uncommon situation. I don't know and I will admit I have not looked at Park Ridge to determine if this exists.

There are other municipalities that I am aware of where this has been permitted precisely for those reasons.

TEN HOEVE: Wouldn't all those arguments support any flag lot application...the argument that you don't have a street that is wide, that you don't have an impact on trees. The impacts that you described as being negative, would support every flag application.

PREISS: Insofar as those arguments are concerned, yes.

TEN HOEVE: Right.

When you did the analysis that you testified to, you do not know what the actual extent of any of the non-conforming conditions were, is that right?

PREISS: I didn't do a numerical quantitative analysis. Let me just address that issue. As I indicated in the...and let's just take a for instance...in the situation of the two lots that front on Rivervale Road, one is 100' and the other one is, let's refer to page 7 of the handouts...and you can see that within the lots that's subdivided on Rivervale Road, we have Lot 1.01, which is 87' and we have Lot 1, which is 100',..

TEN HOEVE: Hold on...my question is...

PREISS: Look across the street, you have the two 50' lots so we are 13' short, with respect to that one which is...

TEN HOEVE: I don't want to cut you off and I am sure Mr. Del Vecchio will ask you these questions so you can provide some additional testimony...my questions are dealing with the two 25' lots, that's the area that I want to ask you about.

PREISS: Ok, but let me point out in that particular situation that it is very misleading and I think that quite frankly we should not get hung up on the strict technical measurement of frontage because you have a stub street here, which provides 25' of frontage for each lot.

The effect of which at that particular line is substantially greater than 25' and d the effective lot width in both of those situations Is substantially more than 25'. That's the area where the driveway goes through but the lot is not that narrow in those particular situations. Those lots are 79' almost 80' and 97' wide so...

TEN HOEVE: I understand that, Mr. Preiss, you are just not letting me get to my questions.

PREISS: I'm sorry.

TEN HOEVE: Don't focus on those areas. When you did this analysis, you selected two, what I guess I would call neighborhoods...you called them properties but one analysis was based upon properties within a 200' radius and one was based upon properties fronting on Rivervale Road.

PREISS: Yes, it was an arbitrary selection...

TEN HOEVE: I didn't say it was.

PREISS: Let me explain the reason and rationale, it is not arbitrary. The Municipal Land Use Law basically, in my opinion, says for the grant of the variance you have to look at the impact on the public good. The most immediate impact can be measured on the neighborhood in two ways...one is, lots within 200' and the other more narrow definition is, all the lots that front on the same street within a reasonable distance between the two streets on either side.

And so, I say, if one wants to look at the impact on the neighborhood, one can look at the neighborhood in those two different ways. That was the reason why I selected those areas.

TEN HOEVE: Ok, my first question is, do you believe then, that the Municipal Land Use Law contemplated a definition of neighborhood from a planning perspective when it defined it as being properties within 200'?

PREISS: Well, let me explain exactly how I arrived at that. It doesn't define or specify a neighborhood, however, you look at the Notice requirements for a variance for site plan and it is properties within 200'...so if you read between the lines, if you try and interpret it, the Municipal Land Use Law is saying that people who live within 200' are entitled to Notice and that must mean that the Municipal Land Use Law believes that that is the area that is most impacted or potentially subject to the most impact if a variance is granted or if the site plan is granted. That is the reason why I arrived at it.

TEN HOEVE: Would you agree that it is more appropriate to analyze a neighborhood in terms of a pattern of development or the existence of zoning districts or the types of houses that are constructed, that other factors are more important that simply whether it is within 200'?

PREISS: If one takes that into consideration but you still have to define the area where you have the impact. So yes, you look at the lot configuration, the types of houses, you have to look at the pattern of development but what is the neighborhood and that is the question.

TEN HOEVE: Which leads me to the question that I wanted to get to and that is, do you believe it is appropriate with regard to the two 25' lot frontage lots, to be analyzed in terms of those two criteria that you used, when if you look at your sketches the green properties, which I guess are the non-conforming lot width properties, are all at the opposite upper half as opposed to the areas where the 25' frontage lots are?

PREISS: Yes.

TEN HOEVE: Why would you have selected those neighborhood definitions rather than ones that might have had a greater impact on the area in which the lower lots are located? That is my question.

PREISS: Again, because in terms of the 200' definition that's the one aspect of the definition and in terms of the impact on lot frontage, I only chose the Rivervale portion between Lillian and Morningside to gauge the impact on Rivervale Road because those frontages actually have their visibility, their driveways on Rivervale Road.

You have a unique circumstance in regard to the subdivision or the two lots that front on Local Road because the stub road ends where the two properties begin. So in that particular situation it doesn't have the same impact in terms of street frontage and visibility. In fact, you probably don't have a substantial impact for that very reason because the houses on those lots are hidden and not perceived as being part of that street.

TEN HOEVE: But all of those appear to have complying lot frontages, is that correct?

PREISS: They do and as I pointed out, one of the unique factors is that the zone line, which separates the R-15 from the R-10, runs along that boundary so if you talk about impact on neighborhood character, as I mentioned before, the effect of lot width for Lots 1.02 and 1.03 are 80' and 97' and you will notice that with the exception of Lots 2 and Lot 3 on Local Street, Lot 7, Lot 8, Lot 1 and Lot 2 of Block 1918 and 3 through 6, none of those have frontages anywhere close to that...so, yes, it is non-conforming with respect to zoning but in terms of conformity with the character of the zone, the lots which are proposed to be subdivided, will be larger and have wider lots than all of those lots in that neighborhood.

TEN HOEVE: But they will be substantially different with regard to frontage on an improved street. No?

PREISS: Yes, their de-facto lot width is the same as the frontage, where in this particular situation while the width is 87' and 96', the strict application and measurements of the ordinance requirement is only at the public street so the effect of frontage is only 25'.

TEN HOEVE: I have no other questions, thank you.

MITAL: If there are no other questions from the board or our professionals, we will move to the public for their questions.

TEN HOEVE: (to applicant's attorney) Do you have any other witnesses? I'm only asking the question in terms of expediting the process. Rather than only have the public ask questions at this time, would you object to letting them make statements as well.

DEL VECCHIO: I would prefer that we do the questions at this point so I can close Mr. Preiss out and move on.

MITAL: So please only questions.

TEN HOEVE: You do not need to be sworn just identify yourself and use the black microphone.

Diane Manzion, 81 Lillian Street.

MANCIONE: My first question is a simple one. What is the block number of the proposed subdivision?

PREISS: 2010.

MANCIONE: No, it is 2007. Your eight pages are all incorrect. Block 2010 is located in the upper right hand page...

PREISS: Ok, I apologize.

MANCIONE: I didn't know if that affected any of your other data. I just wanted to point that out.

The 187' on Rivervale Road...why would you not divide it completely in half as opposed to 100' and 87'?

PREISS: Because I think what we have attempted to do is comply with the ordinance requirements with respect to the first lot and only to have 87' for the second lot. Now, if for some reason, the board felt that it was a better

idea to cut it in half and grant two variances, one for each of the properties for lot width and lot frontage, I think we be amenable to that.

MANCIONE: In your drawings, you show, as a lay person I would call them rectangles on a piece of paper...you talk about fitting in with the neighborhood...from what I have seen of the plans I think you are talking about 4,700 sq ft homes being built, how do they fit in with what is already in that neighborhood?

PREISS: My testimony is related solely to the proposed subdivision. So what we are talking about here is the variance related to the subdivision and compliance with the bulk requirements of the zone. My sense is that the lots in question can conform to the character of the neighborhood. There are restrictions in Park Ridge related to what size of the house you can put on the property and I think we have shown, conceptually on the plan that if the subdivision is granted, the applicant will have to comply with those regulations and, if he doesn't, will have to return to the board for a variance.

So, my sense is that if he can comply with those requirements, then according to the zoning that would fit in with the character of the neighborhood.

Xandra Wilhovsky, 74 Rivervale Road.

WILHOVSKY: Two questions actually. I'm not sure if Mr. Del Vecchio should answer this or perhaps Mr. Ten Hoeve.

I asked this question probably two meetings ago...the documentation concerning this 1973 easement on Local Street onto the Prusha property states that no permanent structure should be built on the easement. Has that been resolved with Rob Mancinelli? I think you were going to send that to Rob Mancinelli to answer.

MANCUSO: In general the borough does not allow any permanent structure on an easement even a shed. I've listed my concerns all along that if work was needed on the culvert in the future on the easement, there is a driveway, there are curbs, a retaining wall, there's a guide rail and there are utilities...so that remains my primary concern.

I am not so sure that Mr. Mancinelli has had the opportunity to investigate that.

TEN HOEVE: I just don't recall. Do you have any information on that, Mr. Del Vecchio?

DEL VECCHIO: For the record, I did, after the meeting that was referenced, and I don't have the date but I can look it up, send a letter to Mr. Mancinelli and I believe I copied you on it...sending him the actual easement document. I spoke to him briefly subsequent to sending it to him and asking him if he had any concerns about it...he said, initially he didn't have any concerns but he had to talk to his client some more and he would get back to me and I have never heard from him since.

It is obviously the applicant's position that a driveway does not constitute a permanent structure the equivalent of a house or shed and in addition to the extent that there is any concern about those type of improvements being installed, 1) we would grant the borough an easement to correct the deficiency of having its improvements off our easement and therefore in violation of that document and 2) but also and more importantly, we agree that we would be responsible to restore any of the improvements made to the easement area as a result of our subdivision if any maintenance in the future had to be accommodated by the borough's use of the easement area for maintenance purposes.

I think in the applicant's position we have addressed the issue no matter which way the borough or its attorney may come down on the question by agreeing to provide the restoration and ultimate maintenance of that area.

TEN HOEVE: I guess when you say "applicant" you mean by way of some deed restriction.

DEL VECCHIO: Absolutely. I knew you would want one.

TEN HOEVE: (to board engineer) Who maintains that drainage pipe now? Is that a borough responsibility?

MANCUSO: Yes and that is part of the problem as well. When you have an easement of any sort, you have an easy access to the easement that a vehicle. Here even if you have any type of minor problem there isn't even clear access for a vehicle to access the culver in order to do even minor work. Any type of work that is going to be required for this culvert will become a major project.

TEN HOEVE: I guess the answer is *no* that we haven't received a response from Mr. Mancinelli.

WILHOVSKY: Part of that question also entails, perhaps, the reason why Park Ridge never extended Local Street. Perhaps that easement stopped them from extending the roadway because they considered that permanent structure. I've lived there for 60 years and from what I know, Park Ridge has always gone into the property to maintain the pipe from Local Street.

I have one more question. I mentioned previously there are two drains on 75 Local Street, which is the last house on the left before the Prusha property. The borough actually constructed two drains to take in rain water and those two drains, supposedly, are connected to the 36" drain.

TEN HOEVE: Again, this is question period. I can't permit you to give testimony at this time. You can ask a question of the witness. If you want to say these things later when you are under Oath you can certainly do that.

WILHOVSKY: My question is, why is the main water coming out of the drain instead of coming into the 36" drain pipe?

DEL VECCHIO: That is beyond Mr. Preiss' scope of testimony.

TEN HOEVE: Mr. Del Vecchio can't testify at all and Mr. Preiss is a planner. The engineer is not here tonight, he would have been the only one who could have answered that question. Were you here when he testified?

WILHOVSKY: I believe I brought this up when he was here once before.

Mike Santoro, 73 Local Street.

SANTORO: I've been to most of these meetings and the one thing I still can't get my head around and maybe you can help me with it, is why is there a problem building three houses on the property and not building four? And why is there a problem having an access through Rivervale Road and not through Local Street? Why can you not build three when you can build four, I can't understand that?

PREISS: Well, certainly the applicant can, as in any subdivision, refuse to build less ...

SANTORO: Basically you testified that to do three is harder than to do four.

PREISS: No, I didn't do that.

SANTORO: You didn't, I thought I heard that.

PREISS: If you permit me to answer the question maybe I can help you. An applicant in any situation can make a choice to subdivide a property into few lots than he would ordinarily be entitled to but in this situation, in my opinion, the applicant is entitled basically under the Municipal Land Use Law, based on the proofs that are necessary for the grant of the variance, to obtain four lots.

He's chosen, therefore, to make an application for the variances to obtain four lots.

SANTORO: My follow-up then is that it would be easier to do three lots, not that you want to do three lots, but that it would be easier from my point of view with all the variances.

PREISS: I disagree.

MITAL: Are there anymore questions for the planner from the public?

TEN HOEVE: Did you have any more witnesses?

DEL VECCHIO: I do not have any more witnesses and at this time I do not have any objection if the board wishes to open to the public.

TEN HOEVE: I think some of the professionals wanted to testify so I'll probably ask them to do that before the public does and then the public would have an opportunity at the very end.

BEER: Mr. Mital, may I suggest that the professionals take the two empty seats in front of microphones so everybody would be able to hear them?

MITAL: Yes, please.

TEN HOEVE: We will start with the engineer, Eve Mancuso.

Eve Mancuso, PE, Brooker Engineering was sworn stating her position with the board was as board and borough engineer.

MANCUSO: Just to give a brief update on what has occurred during the last four or five weeks. I did have the opportunity to meet with Rick Eichenlaub on site and this is with reference to the issues of the culvert and the drainage on-site, specifically the condition of the culvert and my ongoing concerns about the age and integrity of the culvert and the positioning on the property.

Mr. Eichenlaub did commit on behalf of the owner-applicant that during the course of construction if it is determined that any structural problems needed to be resolved in terms of the integrity of the pipe; they would be willing to upgrade the pipe and address it at that point in time. So that is one of my concerns.

But my primary concern is as I stated earlier, typically when there is this type of easement, drainage easement, sanitary easement, any easement at all in which the borough in which the borough has

responsibility to provide maintenance to the system; we do not allow any type of permanent improvement. That would include the Building Department as well as engineering in terms of approving a plot plan for construction or for any applications that would come before a board.

We don't consider only dwellings or only sheds a permanent improvement, that would stretch as far as even a fence. It would be anything that would hinder the borough from performing their duty to either access or maintain or carry on with the process of (?) without having any undue blockage or any hindrance to get into that easement.

So as I stated in my earlier reviews I always had concern of the fence and the improvements that were being constructed over the easement, not only in that it would hinder any type of replacement or major repairs but also that it hinders the day to day access other than a person on foot crossing the property to visually inspect the site.

And in terms of minor maintenance in terms of removing tree limbs or debris or silt there really wasn't any easy means of access for the vehicles. So that continues to be my primary concern that the improvements that are proposed are really hindering access to the maintenance of the easement, which is the borough responsibility at this point in time and more so, if the pipe would have to be replaced it would be a very expensive venture for the borough to have to reconstruct a driveway, curbs and that's a minor issue, the retaining walls, the guide rails and you have the lateral connection to two dwellings and it continues to be my concern.

MITAL: Thank you. Any board members have any questions of the engineer's testimony? Mr. Del Vecchio?

MAGUIRE: So the concern about the construction in the event of a replacement, that's the pipe itself...if the pipe had to be dug up the cost of reconstructing that would be borne by the borough?

MANCUSO: Well typically, if the conveyance is within an easement to the borough, Yes...that would be the borough cost. But typically the easements are only covered by topsoil and seed, essentially no physical improvement. So the access point and the restoration and actually the excavation costs are much different than having to remove these types of major improvements.

MAGUIRE: How often are these pipes replaced?

MANCUSO: As committed to by Mr. Eichenlaub, I don't foresee any need to replace them in the near future. The useful life of a system like this can be 20 years, so for the short term I don't foresee that you would really have to do any major replacement though it is likely that you would have to do maintenance on a regular basis and that could be as often as yearly. Looking down the road in 20 years or it may be sooner, you will have a real problem in having to replace that pipe.

(Mr. Brouwer arrived at this time)

MITAL: I don't recall and I don't have a set of plans in front of me, what is the construction of that pipe? What type of pipe is it?

MANCUSO: Right now it is corrugated metal and that was my primary concern because as you know the useful life of corrugated metal is probably only about 30 years and it was my understanding that this pipe had been in place for some time. That is why I was interested in seeing the current condition to see if it was, in fact, going to be replaced in its entirety with a concrete culvert.

If that was the case, you could get 40 or 50 years out of a concrete culvert built today but there was no commitment made to replace it only to ensure that what was there would not be damaged.

MITAL: In your opinion if there was any construction would that take any kind of dead load?

MANCUSO: Oh, most likely. That is my concern because as the structure on Lot 1, which is the existing dwelling that is to be expanded and renovated is built, there is going to be full activity crossing the pipe constantly bringing in new materials, excavating during the demolition, removing that debris and bringing in the new building materials, during the grading...there is much opportunity for heavily loaded trucks to cross over it.

VON BRADSKY: Yes, in terms of maintenance...the general yearly maintenance, if it was a concrete pipe could you describe what that might be...is it just moving silt?

MANCUSO: Essentially it could be a blockage of the structure from vegetative material since that was a wooded area. There is a good flow from the pipe so I didn't see much of an accumulation of any type of silt. It would be more from tree limbs, things of that nature. Heavy vegetative material.

MITAL: Nothing else from the board? Mr. Del Vecchio?

DEL VECCHIO: You indicated you were concerned about access to the easement area. Can you get a truck over the easement area now?

MANCUSO: Yes.

DEL VECCHIO: How?

MANCUSO: You can come right in from the end of Local Street.

DEL VECCHIO: And stay within the easement area and negotiate around the trees?

MANCUSO: For a portion of it, not for the full length.

DEL VECCHIO: For about what distance off of Local Street before you hit your first set of trees that block access?

MANCUSO: Probably about 50' to 70' before you reach that cluster about near where 132 is and then you would have to go in with a wheelbarrow or something like that.

DEL VECCHIO: I am going to direct your attention to tree 890, which is right about where the proposed driveway for the lot closest to Local Street exists. You can get a truck around that tree and stay within the easement area?

MANCUSO: It looks like to the east of it...

DEL VECCHIO: Is that grade flat there or on a slope?

MANCUSO: (several board members talking into their microphones, could not hear reply)

DEL VECCHIO: So the truck would kind of go sideways and have to go around a tree...and are you going to be able to do that with a substantially sized truck?

MANCUSO: I wouldn't say it had that much of a pitch to it...it is not like you were going to fall off but there is a slope to the area.

DEL VECCHIO: It is not a road there, it is all scrub growth and trees and vegetation. There is no road there.

MANCUSO: Actually what is there now is a graded area with a lot of fill and a lot of wood chips.

DEL VECCHIO: And would that support the weight of a dump truck?

MANCUSO: That I am not sure of. It depends on how wet the soil was at that time since it is a very wet boggy area and under wet conditions I would say, No. Under dry conditions you probably could.

DEL VECCHIO: If you had your choice between driving in a wet boggy condition and having to jog around trees with a truck or driving up a driveway to gain access to the easement area, which would provide better access?

MANCUSO: Oh, I would like a nice road to be able to access the pipe but unfortunately, trucks can't get over curbs and guide rails and that is a concern. If it was a level graded, easily accessed easement there wouldn't be any room for concern but unfortunately there are improvements there that are substantial enough to block access.

DEL VECCHIO: Well, let's touch on that since we jumped into that area. If the applicant were willing to grade out the easement area per your direction and clear it any way you would like to provide you with the access you seek, would that resolve the problem?

MANCUSO: That would provide a means of access but doesn't address the fact the improvements that go into it.

DEL VECCHIO: We'll get to the improvements.

MANCUSO: That would address one issue but it wouldn't address the other issues.

DEL VECCHIO: Would the access be acceptable to you if we created an access point somewhere around the radius of the driveway from proposed Lot 1.03 into that easement area?

MANCUSO: I don't think the (could not understand or hear) the wetlands area.

DEL VECCHIO: I am actually referring to the westerly side and gaining access on that inside curb return.

MANCUSO: In order to grade off the westerly side you would have to grade off the easterly side of the road. That's the area they were specifically holding the grade to allow for the new culvert going through that intermediate resource wetlands so there's no grade to tie them together.

DEL VECCHIO: The grade is relatively flat though from the driveway coming off of proposed Lot 1.03...there is a level point along the common

driveway as you come up the driveway further...would that be a better access point? If the guiderail and the curb were pulled back, the contour is 133 and 134, almost located directly across from the southerly corner of the proposed new home.

MANCUSO: At proposed 134 on 1.03...the driveway is from the end of Local Street at 138...and coming down there is a gradual slope to that driveway and you come down you're increasing that grade substantially.

DEL VECCHIO: I'm actually moving my access point farther up the common driveway away from the driveway for Lot 1.03 and the access point I am referring to on the common driveway is between proposed contours 136 and 135 on the driveway.

I guess maybe we can ask the question a better way. Is there any point on the driveway or elsewhere within the property where we can provide an access easement that would satisfy your concern?

MANCUSO: I'm not sure without seeing some revised grading plan.

DEL VECCHIO: But you have the existing grading plans in front of you and as an engineer you can't interpret those grades to make a judgment as to whether an access could be provided?

MANCUSO: No, because it all ties in to the access to the other lot as well and the proposed drainage system that comes from the wetlands area. They are all tied in together; it's not as simplistic as just holding an existing grade and calling it a day. There's a lot of analysis given by Mr. Eichenlaub's office to make the drainage work.

DEL VECCHIO: Do you believe that if you sat down with Mr. Eichenlaub to address this issue and come up with an acceptable means of access that you could do so?

MANCUSO: We could try. I couldn't confirm that we could be successful in doing it given the existing configuration of the drainage easement and the fact that it cuts through pretty much the middle of your proposed Lot 1.03.

DEL VECCHIO: On behalf of the applicant we would offer that opportunity to resolve your concern and welcome an opportunity for you and Mr. Eichenlaub to address access. I would have to assume that any access that could be provided over the driveway or through a paved area would be better than driving through the boggy area as you described it.

With regard to your interpretation with regard to what constitutes a "structure", can you tell me which part of the borough ordinance I can find that interpretation?

MANCUSO: I didn't say a *structure.* I said a *permanent improvement.*

DEL VECCHIO: In terms of the easement document that has been talked about that exists on this property, have you reviewed it?

MANCUSO: I leave that up to the attorney.

DEL VECCHIO: So you don't know whether it's a structure or permanent improvement in it?

MANCUSO: No, I didn't investigate that. That is really a legal matter not an engineering one.

DEL VECCHIO: And in terms of the borough's interpretation of easements in the past, you used the term *permanent improvement?*

MANCUSO: Correct.

DEL VECCHIO: And we do consider a *permanent improvement* different from a *structure?*

MANCUSO: It could be different.

DEL VECCHIO: You indicated regardless of whether we are talking about a permanent improvement or a structure, that one of your concerns was the reconstruction expense of the proposed improvements that may cross over the easement area, would that concern be addressed if the applicant agreed to assume that cost?

MANCUSO: Yes.

DEL VECCHIO: And that would no longer be an issue then.

MANCUSO: Well, I think it would be a tremendous issue because I don't see that, and again it may be a legal issue, that that individual burden can be put placed on a structure without having a substantial amount of money set aside in some sort of escrow account or something of that nature.

DEL VECCHIO: If the property owner, who ultimately owns proposed Lot 1.02 agrees to accept that responsibility is your concern addressed?

MANCUSO: No.

DEL VECCHIO: Why not?

MANCUSO: For the reason I just stated. If something were to happen and the borough determined that pipe was damaged and needed to be replaced and then said, *Ok, Mr. Property owner of Lot 1.03, this pipe needs to be replaced and the price tag for your contribution is $50,000 or $75,000*...you would have to have a guarantee that that money would be readily available to contribute to the project.

DEL VECCHIO: Well, now I am confused because it isn't the property owner's obligation nor has the applicant agreed to assume the maintenance cost and replacement cost of the pipe after it is put in working order, so all we're talking about is replacing and restoring the improvements, which are the driveway, the guardrail, and essentially the curbing.

MANCUSO: It is going to include removal of those items, disposal of those items and reconstruction of those items.

DEL VECCHIO: Well, the borough would not be responsible for reconstruction, it would not have to spend a dime to put those back in place, it could merely grade the property back off and leave it. So not to incur those expenses.

TEN HOEVE: You're suggesting that they could just go in and do that?

DEL VECCHIO: Absolutely.

TEN HOEVE: If the property owner objected, without any litigation?

DEL VECCHIO: If that was a deed restriction contained in the record, there is no problem in doing that and every easement that requires the property owner to reinstall its driveway is handled in just that fashion.

MANCUSO: I think the Health Department would have an issue with disconnecting the water line, sewer line, gas line and the electric line.

DEL VECCHIO: Well, now you've hit the nail on the head. Isn't that, in fact, your enforcement mechanism? The property owner would not be able to use that home because the Health Department would, in fact, if services were disconnected require the home to be vacated as an unsafe structure. So the property owner has every incentive in the world to make sure his obligation is met because otherwise the property is not functionally viable or useable.

MANCUSO: Are you suggesting that the borough would want to put the full burden on a property owner?

DEL VECCHIO: I am suggesting that unless the borough has excess monies and you have an applicant in front of you who is willing to assume that burden, I'm not sure why the burden wouldn't be placed upon the property owner.

MAGUIRE: Let me make sure I have this clear. You are saying that if at some point down the road, the pipe needs to be replaced; the borough could come in and dig up that person's driveway, their front lawn, replace the pipe and just grade it back.

DEL VECCHIO: If the borough were to encounter a recalcitrant or reluctant property owner, absolutely I'm suggesting that. I assume in the spirit of dealing with a homeowner and the homeowner accedes or says tell me what I owe and I will take care of putting it back, the arrangements would be made and the improvement would take place but in the case of a recalcitrant owner, sure and we would include the appropriate deed restriction to be very clear about that up front so that nobody would buy into something they didn't know they were getting into.

We would be happy to make that restriction subject to the board and municipality's attorney review for that very purpose.

And since we are in the Santa Claus mode right now, in terms of Eve's concern about the pipe...and would you identify which area of the pipe you are concerned may be degraded by construction activity?

MANCUSO: Since it was a confined entry situation, neither Rick nor I were willing to crawl through the pipe so I don't have a specific location.

DEL VECCHIO: I'm actually not asking that question but it's close though. There's an area of the pipe that is going to be crossed by the easement that I think you are concerned about. You're not identifying that it has a hole or is degraded but you have concerns, as I understood your comment.

MANCUSO: Yes, my concern is a general one knowing the nature of the material and the life of a corrugated metal pipe and its inability to carry heavy loads...

DEL VECCHIO: I'm trying to get from you, if you could identify, the area that that would be crossed by the improvements over that pipe area that could be degraded or could be harmed, by identifying a point A and a point B of that pipe. Obviously other areas of that pipe may have issues but the area that is within the easement that could be degraded by construction

activity or the placement of improvements on top, can you generally identify that for me?

MANCUSO: Generally, it's probably the first 100' of the pipe.

DEL VECCHIO: That would be from its Local Street start and 100' into the property.

MANCUSO: Approximately past the area where the driveway for proposed Lot 1 and that pipe and within the area of those physical construction of those improvements.

DEL VECCHIO: So, do you have the drawings in front of you?

MANCUSO: Yes.

DEL VECCHIO: Could you turn to Sheet 4, Grading and Drainage? If you look at the pipe, it is labeled 36" CMP and right about the area that I think you are talking about hitting the 100' mark...am I correctly interpreting your comments?

MANCUSO: No, more toward the area that says 15' wide drainage easement...more towards that area...erosion swale...

DEL VECCHIO: Ok, I'm putting a scale to it and my scale tells me it is about 150' as opposed to 100', am I close?

MANCUSO: You have a scale?

DEL VECCHIO: Yes, and I would like you to check me with your scale.

MANCUSO: I don't have one here with me.

DEL VECCHIO: I'll lend you mind.

MANCUSO: Thank you, I will borrow yours.
From the end of Local Street over to my concern, I agree with you, are approximately 150'.

DEL VECCHIO: If Santa Claus delivered to you concrete pipe replacement does that further resolve your concerns?

MANCUSO: For the short term, Yes.

DEL VECCHIO: In terms of structural integrity etc.?

MANCUSO: Yes, concrete pipe is considerably better than corrugated metal.

DEL VECCHIO: And that would alleviate any of the construction degradation concerns as well?

MANCUSO: For the short term, yes.

DEL VECCHIO: What would be the long term concern?

MANCUSO: It's not a matter of if it is going to be replaced, it's a matter of when. The corrugated metal has a shorter life, concrete has a longer life but eventually every pipe has to be serviced and replaced in its day. By

that time I will be retired and won't be quite as concerned but I think the next person sitting here will have a concern.

DEL VECCHIO: Well, unfortunately I have a two-year old at home so I will be doing applications still when that time comes, so I am going to be careful about it.

The concrete pipe, if the applicant stipulated to it, would it substantially alleviate the concern, if it is properly constructed to withstand the load conditions on the driveway other than the inevitable need to replace anything in life?

MANCUSO: The concrete pipe has a greater structural load capacity than the corrugated metal pipe.

DEL VECCHIO: On behalf of the applicant we will stipulate to providing, if you so require, 150' of RCP pipe to address that concern.

We have also stipulated to the replacement of the improvements in the appropriate deed restriction to be reviewed by either or both the board and borough attorney to place the obligation of the reconstruction of any improvements over the easement area that may be necessitated onto the property designated as proposed Lot 1.02.

Concrete pipe would have to be replaced how often do you think...what is its anticipated life span?

MANCUSO: 40 to 50 years.

The utilities that are coming in over that driveway from Local Street also have to be (?) on Lot 1.

DEL VECCHIO: Proposed Lot 1.03? Lot 1 is up on Rivervale Road.

MANCUSO: "Wait a minute, proposed Lot 1.02...1.03 is subject house immediately adjacent to the easement on Lot 1.02 and both have utilities serviced through Local Street and over the existing culvert.

DEL VECCHIO: I'm looking at the utility services all coming in on the north side of proposed Lot 1.03, none of which are near the pipe, they barely touch the side of the easement. Gas, water, sewer, electric and telephone all coming in off the side there, which utility are we referring to that may be impacted on 1.03?

MANCUSO: When you do an excavation of a pipe of that size and at that depth, the excavation trench is considerably wide and both will be impacted.

DEL VECCHIO: Would it help if we moved those utilities further to the west coming in off of Local Street in order to service the homes.

MANCUSO: That would help....

DEL VECCHIO: 1.03 is the only one I am looking to help. I understand the utilities on 1.02 and we can't...

MANCUSO: 1.02 will be severely impacted.

DEL VECCHIO: We would agree to move the utility connections for 1.03 to a point that you deem appropriate in order to minimize any impact to those utilities in the case of any excavation and I would note that we probably...and can you tell, Ms. Mancuso, how far any of those potential utility connections are into the easement area itself?

MANCUSO: The water, gas, sanitary sewer, electric and telephone for lot 1.02 are all within that easement...

DEL VECCHIO: By how much?

MANCUSO: In it, fully.

DEL VECCHIO: Right, but by how much? How much would have to be moved in order to come out of the easement? I'm sorry, not for 1.02, I'm talking about Lot 1.03.

MANCUSO: That's going to be a function of the water line existing right now and it is pretty much in the center of Local Street. So unless you change the existing water line that is servicing that lateral you have to go into the easement.

DEL VECCHIO: That cross into the easement would take place at its connection out in Local Street.

MANCUSO: Same thing as the sanitary.

DEL VECCHIO; How far would they have to be moved to be pushed out of the easement?

MANCUSO: You would have to trace it back to the prior manhole in terms of the sanitary; you can't just change a length of pipe without interfering with the flow.

DEL VECCHIO: Understood, but how far...the proposed connections, the lateral all can be moved. It's a function of, as you indicated, perhaps reworking the existing sanitary in Local Street. I guess my question is how far into the easements are the proposed connections or how far would they have to be moved in a westerly direction to come out of the easement or to minimize any contact with the easement?

DEL VECCHIO: I understand the question and it depends on how much pipe work has to be done on Local Street to facilitate those movements. You can't just offset the lateral; you have to move the main from which you are tapping.

DEL VECCHIO: I understand. Assuming we are willing to do that to satisfy your concern...

MANCUSO: The manhole up the road, which is a little less than 70' from termination of Local Street.

DEL VECCHIO: And if that manhole was reworked, all the utilities can come out of the easement area on the property?

MANCUSO: No, we are talking about the sanitary sewer. We have to investigate the same with the water and the gas. Each utility would have to evaluate where the line would be able to be shifted and serviced.

DEL VECCHIO; We would agree, on behalf of the applicant, to do that investigation or allow you and Mr. Eichenlaub to discuss how best to accommodate that concern to either remove or minimize any of the utilities on Lot 1.03 from the easement area.

You said you had a concern about the maintenance of the pipe. Can you tell me the last time when the Borough of Park Ridge entered upon the easement area to perform maintenance?

MANCUSO: No, I couldn't.

DEL VECCHIO: Was there any indication from when you were out there that you could tell if it has happened within the last five years?

MANCUSO: No, there was so much disturbance in the area I couldn't determine who disturbed the area whether it was, in fact, a maintenance operation or temporary.

DEL VECCHIO: Do you have any knowledge of when the Borough of Park Ridge last inspected that pipe to determine whether maintenance was even needed?

MANCUSO: No, you'd have to ask the Road Department.

DEL VECCHIO: So you have no knowledge as to whether an inspection or any maintenance has ever been done on this pipe at all.

MANCUSO: No.

DEL VECCHIO: Given the testimony or the comment, I should say, by one of the neighbors about the inlets in Local Street overflowing from their grates, is it likely that that pipe is in need of maintenance?

MANCUSO: I don't recall the testimony about the overflowing of an inlet.

DEL VECCHIO: I believe Ms. Wilhovsky testified that there were two inlets off-site that were overflowing...

TEN HOEVE: She didn't testify, she was questioning your witness at the time.

DEL VECCHIO: She made a statement of her observation, not under Oath, at the time indicating her observation. If that observation is true, would you believe that maintenance on that pipe is currently required?

MANCUSO: It could be overflowing for different reasons; it could be something as simple as a pile of leaves stacked over the drain.

DEL VECCHIO: Is there any other condition or concession that you would like from the applicant to address any of the concerns you've raised in your testimony?

MANCUSO: Not to have any improvements over the easement.

DEL VECCHIO: And short of no development?

MANCUSO: I didn't say *no development*, I said no improvements on the easement. There are other opportunities to develop this piece of property.

DEL VECCHIO: Would you agree that a portion of the borough's pipe lies outside of the easement area?

MANCUSO: Yes, I believe in my first letter I asked you to realign the easement to follow the pipe.

DEL VECCHIO: Would it be within the property owner's right to ask the borough to realign its pipe as opposed to us realigning the easement?

MANCUSO: That's a legal issue.

DEL VECCHIO: Do you know how the pipe became located outside of the easement area in the first place?

MANCUSO: No, I couldn't say.

DEL VECCHIOI: Looking at the pipe and its connection, could the pipe itself be relocated or reconfigured on the property from Local Street in a different manner so as to minimize access and maintenance concerns that you have expressed? For instance, if the connection to the manhole out in Local Street were shifted farther to the west and then run into the property?

MANCUSO: Well, I think you would have the issue of the wetlands disturbance.

DEL VECCHIO: I'm talking about moving west.

MANCUSO; You're suggesting reconstructing the pipe and the drainage easement? I'm not sure what your question is...

DEL VECCHIO: That's exactly what it is. Since Santa Claus has already delivered a new concrete pipe for 150' and we're going to be putting it in, would it be better placed in a different location, disregarding the easement so as to minimize the concerns you've expressed in your testimony?

MANCUSO: If you were to shift it west you'd be impacting your proposed dwelling.

DEL VECCHIO: Well, I'm suggesting that we move it west to the edge of the r-o-w at Local Street, run it in a southerly direction and perhaps put a manhole to slightly change course and then continue running it south so that we are only crossing the throat of the proposed driveway for Lot 1.03.

MANCUSO: Are you suggesting that the structure is going to be built immediately adjacent to the easement?

DEL VECCHIO: When you say structure, which structure?

MANCUSO: You're saying the throat of the driveway...

DEL VECCHIO: The throat as it connects with the common driveway. The private driveway for Lot 1.03 and its connection point to the common driveway servicing ... if you don't mind I will just point to where I am referring to...it's here and run it across the front of the driveway here at this point outside of the common driveway and then shift.

MANCUSO: No, I would not recommend that. In the future that would really impact the structural integrity of the dwelling if that pipe would ever have to be replaced.

DEL VECCHIO: Well, isn't the edge of that pipe already at the edge of the radius for that driveway? You're not moving it any closer, you're essentially bending it across the front of that driveway.

MANCUSO: Are you suggesting you shift it west?

DEL VECCHIO: Correct.

MANCUSO: Right now the pipe is headed in an easterly direction, a north/easterly direction and you're suggesting you shift it south/west, which would bring it that much closer to the dwelling.

DEL VECCHIO: I am going to hold up a set of the drawings that were marked A-9...the area highlighted in orange generally reflects the pipe, do you agree?

MANCUSO: Yes.

DEL VECCHIO: The pipe at its closest point to the driveway for 1.03 is right here, correct?

MANCUSO: Ok.

DEL VECCHIO: If the pipe were to be relocated from the existing inlet on Local Street, on the west side, which is right here, do you agree that is where the inlet is?

MANCUSO: Yes.

DEL VECCHIO: If that pipe were to be connected this way so as to not have the common driveway, the guardrail, the curbing that you raised concerns about...if the pipe were to be relocated in that fashion and reconstructed would that provide better means and lessen your concerns as you have expressed them?

MANCUSO: No, then I would also need an easement from off-site Lot 3, if we ever in the future needed to reconstruct that pipe.

DEL VECCHIO: I'm not sure why because the edge of that pipe would start from the applicant's property and would never enter upon Lot 3.

MANCUSO: Correct.

DEL VECCHIO: And the existing inlet is there so the connection point already exists, you would not be exasperating or changing the property right's condition at that location.

MANCUSO: Typically when you have any type of easement, the pipe is centered in the easement to facilitate a trench to be constructed. If the pipe were to be on the far western edge of the easement it is physically impossible to ever excavate that pipe without getting another easement from Lot 3.

MITAL: I'm sorry; I would like to just interrupt here for a second. We started early this evening at 7:00pm because we have two applications and we are certainly making a real good effort to try to get to you this evening.

This drainage issue, we're kind of doing hydraulic designing here off the cuff and this probably could go on for a while. I just want to make you aware we are going to carry on this particular issue until about 8:45 because we really do need to get to the next application.

We will have to hear our planner's testimony at the next meeting and then we will have to go back again to the public for any kind of questions and then statements.

TEN HOEVE: Just so you understand. The second application was told that they would start at 8:15pm.

DEL VECCHIO: In order to move on, I will agree and stipulate for the record that we would agree to move the easement and the pipe connection, given our offer to also replace the first 150' of pipe, to a different location to be agreed upon between the engineers in an effort to further minimize any concerns that have been raised by the borough engineer.

And with that, I would conclude by questioning of Ms. Mancuso.

MITAL: Then we can probably ask the public if they have any questions for our engineer and everything that she has testified to.

Michael Santoro, 73 Local Street.

SANTORO: The current pipe, the easement back there, right now it's open, it's not connected, are they talking about connecting this pipe and closing it up or would it still be open where the water would still be coming out of the easement ?

MANCUSO: Within that easement a portion of it is piped and then it is an open channel. The open channel is to remain, a portion of the pipe section will be reconstructed to facilitate the construction of the driveway.

SANTORO: So the water would still flow out of the pipe and then flow into another pipe, the way it currently is.

MANCUSO: It would be a flow through the existing pipe that is there now and continue to flow into the open channel and the other drainage swale that was coming down from Rivervale Road, north of proposed Lot 1.01 would follow the property line down and then cross under the road in a pipe and the once again become an open channel and join up with the open channel that's at the southern end of the property. It will be partially piped and partially open channel.

SANTORO: And when they were just talking about the pipe, would that make the pipe bigger than it currently is?

MANCUSO: Well, the study would have to be provided to see...

SANTORO: Well, we don't think the pipe is big enough right now and that's why a lot of the water is backing up onto everybody and there is a lot of flooding going on, a lot.

MITAL: Before that would be done, I'm sure there would be some more engineering done.

Ethel Prusha, 82 Rivervale Road.

PRUSHA: My question is, this has been going on for eight months, why wasn't this addressed earlier?

MANCUSO: It has been in my review letter from the first.

PRUSHA: What?

MANCUSO: The comment was raised in one of my first review letters months ago. It has been an ongoing concern.

PRUSHA: Ok, I hadn't known. It's been going on long enough.

MITAL: Is there anyone else?

TEN HOEVE: In an effort to not have you have to bring your planner back, who I assume wants to be here when our planner testifies, I think the board is willing to go another 15 minutes. Hopefully by 9:00pm we can...well, I don't know if we will get to the public comments because the other applicant was told to be here at 8:15pm and we did start at 7:00pm so we could accommodate you.

Brigette Bogart, PP, Burgis Associates, Borough Planner was sworn in.

BOGART: The applicant's planner specifically testified on a site specific analysis. He was hired to deal with this specific project and review this project based upon the existing neighborhood and this site.

I am going to talk a little bit broader given the fact that I have been the borough planner for the last ten years and have recently prepared the Master Plan document.

I am going to take you back to the 1985 Master Plan document and the reason I want to do that is because there were a number of goals and objectives in that document that has carried through to today's Master Plan document and goals and objectives.

The reason they are relevant to this application is because they all deal with the understanding that the last remaining developable parcels in the municipality have environmental constraints on them. Specifically in 1985 the document notes that the large parcels that were to be redeveloped had environmental issues and that they may not be able to be developed in accordance with their zoning potential and that the borough wants to ensure that the development of these sites are consistent with the quality and character of the surrounding development pattern.

That concept has played through to the 1997 Reexamination report where it talks a little bit further about the large parcels with environmental constraints and one of the goals there is to ensure that any perspective development or redevelopment is responsive to the Park Ridge environmental features and that it can be accommodated within the community's infrastructure.

That document sets forth a specific policy that says that the Borough seeks to encourage development sensitive to the community's physical characteristics, preserve sensitive environmental element and in particular suggests that the Borough encourages development and preserves these areas defined as maintaining a 10% grade, wetlands, floodplains, retain vegetation.

Additionally it says that the Borough is cognizant of the fact that there are numerous sites in the municipality that are typified by environmentally sensitive features and therefore, may not be able to accommodate their full zone development potential.

That goal and policy has not only been in the '85 document, the '97 document but also in the borough's 2003 Open Space Plan and most recently the 2009 Comprehensive Master Plan. I think it is important here because those specific goals pertain particularly to the characteristics of this parcel and goes to the heart of this application.

In addition to those two specific policy statements and goals pertaining to the environmental characteristics of the site, there are a couple of other land use goals that are identified in the 2009 document, which also relates to this application.

Specifically, regarding the purposes of zoning on page 16 of the 2009 Master Plan, it talks about to ensure and promote the establishment of appropriate densities and concentrations that will contribute to the wellbeing of persons, neighborhoods, communities, regions and the preservation of the environment. That is also a specific goal and purpose of the Municipal Land Use Law.

Further on page 17 of the document it talks about ensuring that prospective development or redevelopment is responsive to Park Ridge's environmental features, including steep slopes and flatlands.

And lastly, under the residential goals and policies, it specifically states that the Borough wishes to discourage the creation of residential lots that are designed as flag lots and through lots in the Borough.

The reason I bring up these specific goals is because these are all the goals that are relevant to this application, that should be reviewed when the board is looking to analyze the variances that are required for this application and none of these goals were brought up by the applicant and I think you can see the relevancy here with this application.

In addition, there are two more specific goals that the Master Plan identifies pertaining to the lot development and the compatibility of the surrounding development patterns. You heard the applicant testify a lot about the neighborhood and how this proposal is going to fit into the neighborhood given the lack of street frontage and the lack of lot widths, however, the policy statements not only pertain to the size, scale and location of the structures but also talks about the orientation of the lots. The Master Plan further details how the lots should be consistent with the surrounding development pattern to ensure the compatibility of the neighborhood.

I have concerns from a planning perspective that given the odd configuration of proposal, the minimal street frontages, the lack of lot width, that the proposal doesn't seem to be consistent with those goals and policies but this is an issue for the board to review.

Further as you just heard, the Master Plan specifically discourages flat lots. When I had indicated that the 1985 document and 1997 document specifically suggested that maybe an oversized property cannot be developed into its full potential, that actually goes directly inconsistent with the applicant's testimony where he suggested that because the lot has 60,000 sq ft of lot area that it should be entitled to those four lots because they would meet the minimum lot area requirements. My concern is, in light of those goals and objectives and then you look at the five variances that are required for this application, lot width and street frontage for two lots, you have five variances there so it is not only the lot area regulation that this board has to look at, it has to look at all the area and bulk regulations.

This board is well aware that it is not just one regulation that makes or breaks an application. That's why we have numerous zoning regulations including setback and FAR and as you heard testimony previously, there are five variances required, two waivers and one variance from Section 101-15A, which requires minimum street frontage on an improved street.

Moving on from the Master Plan Goals and Objectives and what the board has to review in light of the Borough's planning document, I want to talk a little bit about the analysis of this site specifically.

The applicant's planner has suggested that he started this application from the very beginning, however, the analysis reveals that most of the planning review set forth a site that was divided already into two lots, the western portion and the eastern portion. From my perspective, if I was going to look at this site, I would be looking at it as a whole. From the beginning of the application I would be pulling out the environmental constraints, looking to preserve them to the greatest extent possible and then seeing what else can be developed. Right off the bat the applicant has suggested it be divided into two and then try and create different set of arguments for each of those two separate lots.

I think one of the things this board has to consider is that right now it is a whole site and the arguments and review and the planning analysis should be based upon this site as a whole. That is just a general planning opinion.

With regard to arguments that were made for both the eastern portion of the site on Rivervale Road and the western portion of the site, I have two main concerns. One pertains to the eastern portion on Rivervale Road. There was discussion about how it is compatible with the neighborhood. Given my experience with that neighborhood and a review of that streetscape, I am not sure I completely agree with the planner's definition of neighborhood and I am concerned with the lot width proposal and its consistency with that streetscape particularly in light of the fact that there has been no testimony to the fact of the actual lot widths that exist up and down Rivervale Road.

The second portion of the applicant's testimony pertains to the western side of the site and how because DEP has permitted their proposal that there are no environmental impacts. I have three concerns with that argument. I agree that if DEP permits is, then it can be permitted and the applicant is entitled to do it based upon those regulations, however, we know that DEP is not concerned with zoning regulations, the applicant has testified to that, and it is up to the local level to uphold zoning regulations, Master Plan Goals and Objectives. The fact that DEP has suggested that a house could go there does not mean that a house should go there.

And lastly, there has been no testimony as far as is this the least intrusive means to develop this property. Maybe it is permitted but there might be a better alternative to do that and the applicant has suggested that it is least intrusive as opposed to permitting an entire cul-de-sac, however, there has been no concept plan shown, there has been no street design identified, it seems as if there are a couple of different open questions here as far as, yes, it could be permitted but is this most appropriate when taking into consideration Master Plan Goals, Zoning Regulations, neighborhood compatibility and protecting the environment.

So, all in all, I think my analysis of this application is a lot different than the applicant's in terms of (?) perspective and it goes back historically because I have been the borough planner for ten years and have access to these documents but I think the board needs to be aware of all these documents and needs to understand them in order to review this proposal and the variances required.

MITAL: Thank you, Ms. Bogart. Does anyone from the board have any questions for our planner's testimony?

MAGUIRE: You mentioned in terms of the neighborhood, the neighborhood surrounding this area is mixed, right? There's some R-10, there's R-15, how does this proposed subdivision fit into that neighborhood with the four lots that are proposed?

BOGART: I'm not sure how much the board members are familiar with this neighborhood as far as the lot widths and the street frontages and the street widths and right of ways and pavement widths but north of the site there is an R-10 zone and most of the lots are very small over there between 25 and 40' in width, the paved areas are a lot smaller, it is a more intimate neighborhood and it generally runs north of this specific site and west.

Once you are in the front of the subject site and south/east and south/west the lots become bigger and most of the street pavement widths are wider, there's a clear distinction where that northern boundary line is and the neighborhoods north of there versus south of there.

MITAL: Now that it is 9:00pm and we had our planner give her testimony, I think we are going to have to come back on October 27th to finish up your questions.

DEL VECCHIO: With the board's permission, I need less than two minutes and I do have cross-examination of Ms. Bogart but if the board would permit, I would like to ask Mr. Preiss two questions on re-direct in order to avoid having to bring him back.

MITAL: You have your two minutes.

DEL VECCHIO: Mr. Preiss, in terms of the C-2 variance you were asked on cross-examination about whether or not you found any of the purposes of the Municipal Land Use Law to be advanced. Did you have a chance to revisit that and have you determined whether or not the purposes of the MLUL would be advanced if the C-2 variance were to be approved?

PREISS: Yes.

TEN HOEVE: Was this tonight he was asked this question?

DEL VECCHIO: You asked him that question, Mr. Ten Hoeve, at the last meeting.

TEN HOEVE: Oh, at the last meeting? I recall, that's when he said there were no other reasons, these are the two reasons that he believed existed.

DEL VECCHIO: Yes, and I asked him to go back and take a second look at that.

PREISS: Yes, I believe that there are three purposes of the Land Use Law that would be advanced. The first is, it promotes, what I consider a creative development techniques and good civic design given the variety of constraints that exist on the property in terms of frontage, access, environmental constraints and what the applicant is proposing to do to provide access to the property and to subdivide it. He is in my opinion creating a desirable visual environment and is a creative development technique that allows the property to be developed in a manner which is less intrusive on the environmental constraints that if you had a conforming subdivision with a cul-de-sac going into the property.

And then I think the provision of the four lots would meet the purpose of the Land Use Law, which requires that one of the things is to serve the residential, commercial and open space needs of the residents of New Jersey and obviously the provision of the housing would help to meet that particular goal.

And then in general, given, what I believe to be, the lack of impact on the surrounding neighborhood and the general appropriateness of the way in which the subdivision has been planned and the fact that the DEP is willing to grant the permits for that, I believe it promotes the general health and welfare of the surrounding area.

TEN HOEVE: I have a couple of questions and just so you know I may ask the planner if she has any comments on those but we are not going to be able to do that tonight.

DEL VECCHIO; That's fine.

TEN HOEVE: Two quick questions. If I understood what you just said, you said that it promotes a goal because it creates a more desirable visual environment and it is less intrusive to the environmentally protected areas than a cul-de-sac would be. Accurate?

PREISS: Yes.

TEN HOEVE: But didn't you testify that you couldn't put a cul-de-sac in because the DEP would not permit that?

PREISS: That is true but I mean this is a situation in which you are subdividing the property in a manner which lessens the impact on the environment.

TEN HOEVE: Less than what? Less than something that's not permitted?

PREISS: It is possible that you could extend, let's say a cul-de-sac bulb into the property and subdivide it from that point of view or for example, provide access from Rivervale Road by extending a road in, so in my opinion, providing driveways as opposed to extending a road into the property is a less intrusive alternative than anything else.

TEN HOEVE: Another quick question. You testified earlier when a member of the public asked you the question if you put three lots in it would have less of an impact on the zoning ordinance...if you put three lots in wouldn't all of those goals and objectives that you claim exist also be attained?

PREISS: Yes, the same as no development would have an even greater impact, as I indicated you have to balance the two. My opinion is you can subdivide the property into four lots and still attain those goals.

TEN HOEVE: Those are my only questions.

MITAL: Thank you very much. This will be continued on Wednesday, October 27th at 8:00pm.

TEN HOEVE: Do we have an extension?

BEER: No, we don't but Mr. Del Vecchio will give us one, I'm sure.

DEL VECCHIO: Obviously, we extend to the October 27th meeting. I would ask the board's permission to allow Mr. Eichenlaub to discuss with Ms. Mancuso the items of stipulation that the applicant has agreed to during the course of the evening this evening in hopes of putting greater clarity and definiteness on the drainage issue.

MITAL: Sure.

BEER: For the record, both Mr. O'Donoghue and Ms. Eisen have certified as to having read the transcripts of the last meeting and are now eligible to participate.

TEN HOEVE: There are still some other members that do have to review the transcripts.

I have also asked some board members informally whether it was possible to begin at 7:00pm for the next meeting and there were some negative nods.

Anyone who is here in connection with this application, it will be continued on October 27th at 8:00pm.

MITAL: With that I would like to bring up the next application.

70-72 PARK AVENUE, LLC – (Krell Bldg) - 70-72 Park Ave – NBD
Lots: 1&2 Block: 1604

Greg Meese, Esq., Woodcliff Lake came forward representing the applicant 70-72 Park Avenue, LLC.

MEESE: This matter was testified to at length back at the September 15th meeting and as you know, Mr. Eichenlaub would rather be golfing tonight than being here so his revised plans are here and revised plans are in line with his testimony at the last meeting.

Let me just state how they have been revised. You can see on the board that the dumpster has been moved off of the borough property.

The area in the front has been shifted back to make room for a 4' walkway, which was the testimony requested from the board. What you have there now is a 4' walk, 2'6" of pavers and an 8" curb. The entire plan had a 3'6" walks with 2' of pavers and 8" curb so that now conforms to the plan.

As a result of the shift of the dumpster, there was a loss of one parking space so now there's 30 parking spaces rather than 31 and in addition the parking layout here shifted slightly to narrow this gap between the property line and the first stall to 2', where it had been 4'.

In addition, if you notice on Mr. Eichenlaub's site plan, there is now steps onto the municipal property as well as the sidewalk to connect to the municipal property.

In addition, Mr. Eichenlaub did meet with Marybeth Quinn, she was the resident who had a question with respect to her personal drainage issue at the last meeting. He actually went to her unit, found that her unit was up against the railroad and there are some water issues related to her unit but Mr. Eichenlaub found that this property and this project had nothing to do with it given the location of where she is.

MITAL: She is down the street.

MEESE: There is no connection.

With respect to the drainage we are proposing to leave it as testified to and as reviewed by Ms. Mancuso. I believe she approved the drainage design and as the board will recall the existing site is 100% impervious with no drainage and here we are reducing the impervious area and we are collecting the water all on site.

In addition, both Mr. Eichenlaub's office and I have spoken to the County. The County has indicated verbally to me that it has no problems with the plan as currently prepared. The one detail they wanted was the actual centerline of the road shown on the plan but other than that they indicated they were going to forward it for approval by the County for the County's meeting on the second week in November.

Lastly, I did speak with Mr. Mancinelli. I understand the Mayor and Council met last night and Councilman Maguire was present and the Council has agreed to sell the property to the applicant and also to allow the applicant to take access to it and utilize it during the period of time until the borough's Green Acres inventory is revised to get the property out of the Green Acre program. It wasn't supposed to be in it and Mr. Mancinelli indicated I could speak with Ms. Bogart about it and we would work together to get the property out of it. It would be a contract of sale and we would be able to get occupancy of it during that period of time.

Since the plans have been revised to remove any of the commercial features from the land and there shouldn't be a violation there anyway but this would clean it all up.

With that, I think those were all of the issues that were open from the last meeting and we are actually anxious to get moving on the project and we would hope that the board would vote on it.

If you have any questions, I will try to answer them. The architect is here to answer any of those questions and with that I think we would like to clean up downtown.

MITAL: Let's see if we have any questions from the board.

MAGUIRE: I have no comments but I will confirm Mr. Meese's testimony about the discussion about the strip of property along the easterly side of the property.

EISEN: That small hook on the bottom is that 4' of No Parking area on the street?

MEESE: Yes, that is the area that was extended to prohibit anyone parking up against the corner. That increases the line of sight.

MITAL: Do our professionals have any questions?

BOGART: I have some minor comments on the landscape plan but I think that can be addressed in the resolution.

MANCUSO: Yes, I would just like to confirm that I did meet with Rick Eichenlaub and we did review the drainage situation and I personally did go to the neighbor on the adjoining site, who did voice a concern about the mold and flooding of her storage area and I do want to confirm that unit, in particular, was to the extreme east of their development and was not in any proximity to the proposed detention system. Additionally, as stated by Mr. Meese, the regulations actually don't require any drainage improvements to be constructed for the site as there is a reduction in impervious area. The drainage system provided in terms of the underground infiltration system is only a benefit to the site to address a lot of the existing situation that was occurring there with the excessive runoff but it is not required by Code. It is sort of a perk to the borough to have that addressed.

I did do a brief review of the resubmitted plans and I only have three comments. Two of them were carryovers from the last letter, which just states that soil testing is required at time of construction, which we know. Certain approvals are needed by outside agencies, which we know.

The only new comment is there are two details, which I would like to see on the plans, sort of a housekeeping item. That's all I had to add.

MITAL: Thank you. If anyone from the public has questions or comments.

Hazel Greenberg, 105B So. Maple Avenue, was previously sworn and remained under Oath.

GREENBERG: I have one question, I don't quite understand how you improved our access from South Maple Avenue to Park because of that corner and the building. It is very difficult for us to get out of there. Has any improvement been made?

MEESE: Yes, as testified at the last meeting a couple of things...one, the building itself has been moved back from the curb line to where it is today. Secondly, as it is today, there is nothing that would prevent, other than a sign, a car to be parked up to the intersection. There is a physical barrier now proposed from the intersection back 47' that would prevent anyone from parking a car that would block your view.

GREENBERG: That would help.

MEESE: Now, when you come to the corner that is now clear for you to look to the east so that any car coming from the east you could see before you have to pull out. If you are looking to the west, that view is already pretty clear.

GREENBERG: Ok. I believe that this building will be very attractive and an asset to Park Ridge and Park Avenue but I hope that the board would take into consideration really the comments that were previously made at previous meetings and protect us. Park Ridge Crossings has 114 families not including the other housing on the street and we welcome the new building, hopefully you will provide us with a noise barrier and some greenery to protect us because we do need that building but we have to be protected as well. I hope you keep that in the back of your mind. Thank you.

TEN HOEVE: I am not sure if you are familiar with how this board generally acts. Normally what happens is the board never takes any action until an actual formal resolution is prepared. After the resolution is prepared and reviewed by all board members, then they take action. It is not a memorializing resolution it is the actual action of the board. We usually discuss the application at the work session following the hearing but since your application didn't take as much time as was expected, it may be possible for the board to discuss it later this evening and if so, perhaps have a resolution at the next meeting.

MITAL: The hearing is officially closed.

The board convened to discuss the application and testimony. Various board members felt the applicant had done a very nice job and the property was a key one in the center of town. Felt it fit in well particularly with the tie in to Veterans' Park.

The general impression of the board was that the applicant had done an outstanding job in both concept and testimony and all felt that the application should be deemed favorable. One of the board members indicated that as the long-time member of the board it was one of the best applications in his memory.

Councilman Maguire commented that it was the first application under the new Neighborhood Business District and the applicant had set the bar for all those to come after.

Members commented on the improvements that have been made to the site with regard to sight line, drainage and the parking on Park Avenue issue.

Board attorney was authorized to prepare a resolution for the board's review.

APPROVAL OF MINUTES:

Motion made by Mr. Oppelt and seconded by Mr. Browne that the minutes of September 15, 2010 be approved as written.

AYES: Messrs. Browne, Mital, O'Donoghue, Oppelt, Schwamb, Von Bradsky, Ms. Eisen, Councilman Maguire
ABSTAIN: Mr. Brouwer

APPROVAL OF VOUCHERS:

Burgis Assoc. PP
70-72 Park Avenue, LLC $1,950.00

Motion made by Mr. O'Donoghue and seconded by Mr. Oppelt that the voucher be authorized for payment.

AYES: Messrs. Browne, Brouwer, Mital, O'Donoghue, Oppelt, Schwamb, Von Bradsky, Councilman Maguire, Ms. Eisen

By motion of Councilman Maguire with second by Mr. Browne the board went into closed session at 9:25pm to discuss litigation.

By motion of Mr. Von Bradsky and seconded by Mr. Browne the board came out of closed session at 9:51pm.

ADJOURN;

There being no further business to come before the board a motion was made by Mr. Oppelt that the meeting be adjourned.
Second by Browne.
Carried unanimously.

Respectfully Submitted,

Helyn N. Beer
Secretary

9:52pm