

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
April 28, 2009
Regular Meeting

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:48p.m. The Board Secretary read the Legal Notice.

Pledge

The Chairman asked all in attendance to join in the Pledge of Allegiance

Roll Call

Present: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, Vivienne Erk and Robert Brady

Also Present: Stephen Glatt, Board Attorney, William Drew, Board Planner, Robert Kirkpatrick, Substitute Planner and Denyse Todd, Board Secretary

Absent: Arthur McQuaid, James Olivo, and Richard McFadden

Mr. Brady asked Vivienne Erk to sit in for Mr. McQuaid who is not in attendance for the meeting. Mr. Brady explained the Board of Adjustment and the Open Meeting Act; he also introduced the Board Attorney, Stephen Glatt and explained the agenda.

MEMORIALIZATIONS

RESOLUTION NO. 6-2009

Appointment of Robert Kirkpatrick as Board Substitute Planner

Motion by Ada Erik to memorialize Resolution No. 6-2009

Second by Gian Severini

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, Vivienne Erk and Robert Brady

No: None

The Chairman pointed out that there is an agenda item that has a typo the Nicholson application states it as being a Major Site Plan and it should be a Minor Site Plan. The Board Members' agendas were the only ones with the error.

YOUR HOME TEAM, LLC

BULK VARIANCE #0830-0822

Block 2312; Lot 16

Papscoe Road, LR Zone

The Chairman advised all in attendance that Ms. Erk has been present for all of the testimony for this application and will be seated at the dais. William Drew recused himself for the application and Robert Kirkpatrick took over as the planner.

Mr. Murray, attorney for Your Home Team, LLC spoke about the previous meeting. There was clarification that the opposing neighbor was to provide additional testimony regarding the value of the property. Mr. Glatt asked if Mr. Murray had additional witnesses and there is a rebuttal witness for the appraisal. There is nothing further on planning or engineering. Mr. Somers will have the chance to present testimony on planning and engineering. Mr. Murray was just given a report from Mr. Somer's expert regarding zoning and planning. It appears to be an indictment of the septic and well

application, which he objects to, as it is a Health Department issue. Mr. Murray has nothing further on planning and zoning.

Daniel Somers, Esq., attorney for Mr. & Mrs. DeMaio who own three lots in the vicinity of the parcel in question. He brought an engineering and planning expert. Mr. Glatt asked Mr. Murray whether or not he wanted to rebut at this time or go to the other testimony of Mr. Somers and Mr. Murray said he would defer to Mr. Glatt. Mr. Somers feels it should be his opportunity to present his testimony on planning and engineering since Your Home Team, LLC rested.

Mr. Glatt wanted to review the report that was prepared by Mr. Thonet, the expert. Mr. Glatt asked if discussion in the report would be about the septic and other Board of Health issues. If that is presented it is not within the purview of this Board. Mr. Somers responded saying that they were addressing the negative criteria. Mr. Somers said the Board has to keep in mind that the Board cannot grant any relief to an applicant that is in violation of the State's Water Pollution Control Act which governs installation of construction of septic and his expert will establish that this plan as approved by the Board of Health is in violation of the Act. The Board is not in position to grant relief. The information provided is inaccurate that was provided by the applicant to the ZBOA and the Board of Health with regard to the location. Mr. Glatt said if they want to raise an issue about the location they might want to have it clarified on a site plan but whether the system is approved or not or if it violates as it relates to the Board of Health, this Board cannot make a determination. Mr. Somers said the Board should be cognizant of the fact if variances are granted.

Mr. Glatt said the Board always has the ability to impose conditions on the approvals and they can decide different aspects of the dwelling. Mr. Glatt explained that if the applicant doesn't satisfy the Board of Health that the project doesn't move forward. Mr. Somers went back to the Master Plan to explain why the Board should be concerned. Mr. Glatt said again that the Board does not decide septic matters. Mr. Glatt tried to explain why the Board couldn't hear it.

Mr. Glatt asked him to proceed with the testimony and when it gets to the point of the septic testimony to please give a heads up to the Board so they could decide. Mr. Somers said that the information provided to the Board was inaccurate with regard to the location of the septic. Mr. Glatt asked how the information regarding the septic field was provided and Mr. Thonet and his septic contractor were together when the inspection took place. Mr. Glatt said it was hearsay as Mr. Thonet is not an expert on the septic. Mr. Glatt's recommendation to the Chairman is that unless Mr. Somer's can show that the witness testimony could supercede the testimony of the Board of Health that the Board of Adjustment should not hear it because it could possibly taint the Board's determination of what is going on as far as the septic is concerned. There is a presumption that the Board of Health is correct and if there was a problem someone should have been to the Board of Health for whatever appeal practice might be in place. There is an appellate division case stating that a Board of Adjustment cannot approve an application that will cause a development to be in violation of the Water Pollution Control Act. Mr. Glatt said there was not information to back up the case information. Mr. Murray objected to the report because it is mostly Board of Health issues. Mr. Glatt explained that nobody else except for him has seen the report and in light of what is going on the report should not be given to the Board members. Mr. Glatt said Mr. Thonet should give his testimony and the applicant's attorney can object. Mr. Glatt asked if he could see the case it is ***Dowell Associates vs Harmony Twp. 403NJ Super 1 New Jersey Appellate Division, 2008***. Mr. Glatt read the information provided. There is nothing additional in the information given specific enough to be able to use it as proof. Mr. Glatt thought the full decision should have been provided so all parties would be able to look at it. It was confirmed that the site was on record. It seems that the negative criteria is discussion surrounding the septic system, which is not within the domain of this Board. The Board of Health will decide septic and well issues.

Mr. Somers was trying to tell the Board that the septic system was located incorrectly on the plan. Mr. Murray asked to place a general objection over the testimony of Mr.

Thonet and the Chairman's reply that if the testimony got off of measurements that he would object and stop the testimony he also said if it heads towards septic field information, he would need to go to the Board of Health. Mr. Somers feels the Board needs to know that the information that has been given to the Board is false or incorrect. Mr. Brady asked for the witness to testify.

John Thonet was sworn in by the Board Attorney his company is located at 14 Upper Kingtown Road, Pittstown, NJ. He has a BS and MS from The State of New York College of Environmental Science and Forestry at Syracuse University, Forestry and Civil Engineering, Licensed Professional Engineer and Licensed Professional Planner. He was the planner for West Milford for eight or nine months before William H. Drew, P.P., AICP was hired, in business since 1980. Mr. Brady asked if he testified before Zoning Boards, and he has and also in West Milford. For the record Mr. Kirkpatrick wanted it known that he was not presenting himself as a licensed surveyor. He was accepted as a witness.

Mr. Somers asked for Mr. Thonet's report to be disseminated. Mr. Glatt said the best evidence is his testimony and the report is hearsay. There appears to be contention by Mr. Murray that the great majority of the report relates to what was discussed earlier and it might be improper.

Mr. Thonet was asked to look at the application with regard to the negative criteria in particular as a professional planner if the application could be granted without substantial detriment to the public good and without substantially impairing the intent and purposes of the zone plan and ordinance. He visited the site the passed Monday and Friday of the previous week, which would be April 20 and April 24, 2009. He reviewed the files of the Board of Adjustment and also Board of Health files for this application. He was looking for the locations of septic and wells on all adjacent properties. He also went to Engineering to find out about storm water drainage in this neighborhood. He also looked at Township Ordinances, Master Plan and Re-Examination reports in particular the Lake Residential zone and why it is zoned the way it is. He also reviewed the appraisal that was submitted at the previous hearing. He was looking for separation distances for sub surface disposals.

Mr. Thonet was asked by Mr. Somers to talk about the applicant's lot. Exhibit, O-2 was brought into evidence, it is the applicant's map entitled Site Plan, variance plan, grading plan Variance Map, Papscoe Rd. Mr. Thonet colored the map showing the applicant's proposals in orange along with existing roads in the neighborhood. He sketched driveways for impervious coverage. He added to the applicant's map and it is hearsay. Mr. Somer's thinks that all Mr. Thonet did was color it. Mr. Thonet corrected him. Mr. Glatt asked for clarity with regard to all statements. Mr. Thonet can discuss certain things as an expert other things not like measurements. The Board has to give it probative value and give it the weight it deserves. Mr. Glatt told Mr. Somers if he feels that the plan of the applicant is incorrect that he should have brought in a surveyor. Accuracy is required when talking about the locations of septic and wells.

Mr. Thonet explained his locations for the driveways. He took photographs of the other driveways and feels it is an accurate representation of impervious coverage. The applicant's attorney objected to the testimony and Mr. Glatt feels that it is approximate and allowed it. **Mr. Kirkpatrick explained that there is a site plan rule under regulations that govern the practice of engineering and land surveying that delineates what can be shown by the design professionals including architects, landscape architects, planners engineers and surveyors existing conditions with respect to property lines can only be shown by licensed land surveyors.**

Mr. Thonet began discussing the plan again and Mr. & Mrs. DeMaio's lots are colored in yellow. Mr. Thonet described the applicant's property. Mr. Somer's asked about the north arrow, which is pointed in the wrong direction on the plan, which is incorrect. There is photograph which he wants to show to the Board and it is showing the applicant's property and that some work was done. The photograph shows the DeMaio's house and in the lower portion is Mr. Leonescu's lot. There are a number of

photographs that Mr. Glatt is marking into evidence they are marked O-3 through O-12. Mr. Thonet explained his clients (DeMaio) properties which there are 3. Lot 14 is an irregular lot which has frontage on Hampton Road and a narrow strip which fronts on Papscoe Road. That lot is 17,500 square feet plus or minus which has a house, well and septic. The other lots are explained, which are vacant his client's other lots are in green. Vacant lot 15 is a wooded lot, which is over 27,000 sf in area and the only conforming lot in the area. Lot 16; Block 2311 which is between 17 & 18 thousand square feet, this is the lot that the applicant has no interest in. Exhibit O-13 depicts a photo taken by the appraiser of Chickadee Lane and the lower photo is Lot 15 taken from Papscoe Road.

Mr. Somers asked Mr. Thonet to look at his map and asked about the well location. The applicant's engineer located the well on his client's property on the right hand side of their home near front corner on right side which is being marked with an X, a circle and wrong well. Mr. Thonet has check with the Health Department and found no records. Mr. Thonet then asked Mrs. DeMaio and she told him it was closer to lot 12. He marked this on the map of the applicant's that he colored in. Mr. Glatt does not feel that using words like actual and wrong are too definitive. The well appears to be on the upper left side of the house as opposed to the upper right side of the house. The Chairman asked if it was farther away from the lot or closer to it. Mr. Thonet said it isn't really closer or farther just to the left. Mr. Somer's wanted the Board to know where the well might actually be as opposed to what they were told previously. Mr. Thonet was explaining about the septic system location of the applicant's engineer, which is about 20 feet off of the rear left corner of the house shown as a circle there is no septic disposal field shown. Mr. Hannan said it was probably a cesspool and the records are inaccurate as his personal septic was shown to be under his addition. Also it would not be in front of this Board under this jurisdiction. The Health Department did not have records for this property, but all other properties were there. Neighboring properties are probably updated to septic fields.

Mr. Thonet inspected the property, observed location of the septic system which he said was readily apparent that it was not where the applicant's engineer showed it on the plans, and even though he isn't a surveyor, could tell the difference between 20 feet and 40 feet away. Mr. Thonet said the actual tank is at least twice the distance from the same corner of the house and marked it on the colored plan. It is closer to Papscoe and closer to lot 17 then to lot 12. The top was vandalized and gone and exposed to the weather and readily visible. Mr. Somers asked if there was a septic field and Mr. Brady asked him to move on as it was not to be discussed. Mr. Thonet said it is a feasibility issue. Mr. Brady said again the septic field would not be discussed as it is out of the venue of the Board; it is a Health Department issue. Distances only to be discussed. Mr. Somers wants the Board to know there is possibly a septic field that the Board doesn't know about. Mr. Brady asked even though there is none on record there is one now? Mr. Somers said there has been one since the 1950's and offered to bring in a surveyor. Mr. Brady said there would be no discussion without his surveyor present.

There was a motion and a second to take a break at 8:59pm.

There was one member opposed to take a break. Break for 10 minutes.

9:15pm return from break

Mr. Brady asked for the other 2 applications to request postponement and a 60 day time extension from Ms Chiarmonte and Ms. Kemp. It was explained why they could get their variance by default. They requested it to be postponed and signed a time extension. No further noticing.

Motion by Ada Erik to postpone the application to the next meeting of May 26, 2009

Second by Gian Severini

All in favor to postpone application #0930-0824 no need for further notice.

Otto Blazsek is the attorney for Patricia Nicholson and was called forward, August 4, 2009 deadline. Mr. Blazsek is not signing a time extension at this time. Mr. Blazsek requested the application to be postponed until the May 26, 2009 meeting.

Motion by Ada Erik to postpone Minor Site Plan Application #0820-0313 and Bulk Variance Application #0830-0799 to May 26 meeting.

Second by Gian Severini

All in favor to postpone no need for further notice.

Mr. Somers returned to the septic location on Lot 14. Mr. Thonet believes the septic tank is located approximately 4 feet off the property line in the "flagstaff" part of the lot. Mr. Glatt explained why they were allowing Mr. Thonet to continue with the septic testimony. Mr. Somers said that it is the applicant's burden to establish where the various precise locations of facilities are located. Mr. Glatt explained that the Board of Health has reviewed the locations of the septic and well shown on this plan and approved it. This Board cannot override the Board of Health. There is a professional engineer certifying to the location of the septic and well. This testimony is from a layperson in this particular area. Their client could tell the Board directly. Mr. Glatt summed up to the Board that this location error of the professional should be taken into consideration with regard to the negative criteria for the application. Mr. Somers doesn't believe that the expertise of the applicant is any better than that of Mr. Thonet and the applicant's Engineer gave approximate locations. Mr. Kirkpatrick said that the plan indicates that those things were done by the licensed surveyor if this is the case then the map misrepresents the conditions. Mr. Somers discussed that the Engineer who drew these plans has not been present to testify to the plans. Mr. Glatt feels he may be correct but why didn't they have a survey done of their client's property or bring in a surveyor to dispute the plan. The Chairman said if the septic is down on that little bit of land then doesn't it make it impossible for the applicant to purchase to add that to his property. Lot 14 would not solve the problem.

Mr. Somers said that the Board of Health does not have records verifying any of this information so this is new information. Mr. Glatt tried to explain that the Health Department gave a permit. Mr. Glatt would like to get to the point of the application. The purpose is to eliminate small lots. The applicant sent them a letter to sell part of their land. A reasonable price should be arrived at. All of the money used for the attorneys for this could have been used to purchase the property.

Mr. Somers asked if in addition to the septic tank if there was also a disposal field and he said yes and began to discuss buy/sell. Mr. Thonet began telling a story that Mrs. DeMaio supposedly told him about the disposal field location. Mr. Glatt asked how much hearsay he was testifying to and Mr. Thonet continued explaining that he hired a septic contractor to show him where it was. Now he knows that the section in question can't be sold and then was asking if it could be moved. Mr. Glatt interrupted and asked if the expert could come in where the Board could question him about where it could be relocated and if they have the right to have 4 feet off of the property line and can it be encumbered from future development. There will be no more hearsay where the Board or the applicant have the right to question someone about it and can't. Mr. Murray conceded that the portion of the lot could not be purchased. Mr. Glatt recommended that the hearsay has to stop now.

Mr. Glatt told the attorneys that there is a way to do these hearings and reports should be sent to applicant's attorney ahead of time, lists of witnesses, portions of cases to the Board Attorney. Bring the evidence or bring the professional. Come to a reasonable price. Bring on evidence have his client testify. Bring the documents directly. Attorneys have a way of presenting something in an orderly fashion and this is not the way it should be done.

Mr. Glatt explained that if it is not evidence just stop. Mr. Somers said that Mr. Thonet was at the site with the expert and it doesn't matter the Board cannot question anyone. Mr. Thonet said he needed to speak up as he has been asked as an engineer where people can put their septic. There will be no evidence of the septic contractor. Exhibit 0-

14 will be marked into evidence as receipts given by the DeMaio's to Mr. Thonet. Mr. Glatt asked why doesn't their client come and testify to it. Mr. Glatt by looking at the receipts that it could be that they hired someone to bulldoze the property and then bought a septic tank and pipes, it doesn't say it was installed and doesn't say where but proves something, the Board will give it the probative value it deserves and the Board will look at it. Mr. Glatt asked if any more testimony will be about 0-14 (receipt copy) and if there are any more documents. Mr. Glatt asked Mr. Somers if it would be all right to ask our Engineer a few questions about this document and he said fine. Mr. Glatt swore in Robert Kirkpatrick as the Engineer, Robert C. Kirkpatrick, Jr. 16 Cary Way, Morristown, NJ he is the substitute planner for this Board and a Licensed Engineer and qualified before other Boards as both an Engineer and a Planner. Mr. Somers is in agreement to discuss this with Mr. Kirkpatrick as the Engineer for this evidence. Mr. Glatt asked Mr. Kirkpatrick what he can determine from the documents. Mr. Kirkpatrick said it talks about a 500-pound septic and 8 length of 4-inch OB. The assumption is that there is a field but it isn't much pipe and it might have been the pipe to connect house to the 500-gallon tank, which is in evidence. When Mr. Thonet said the lid was gone and what looked like a puddle, if there was field of any value there wouldn't be water to the top of it. The fact that there is a field is not established by this document unless there was excavation in the area to find the material that would be in a field and parallel pipes to represent some portion of a field. Back in 1954 there were many cesspools that were used in lieu of fields and septic fields were new in 1950's and 1960's. A Board Member asked Mr. Kirkpatrick if it could be a seepage pit. Mr. Kirkpatrick said it was more possible to be a seepage pit unless there is another document indicating excavation and the placement of a lot more pipe. There was an explanation of a seepage pit. Mr. Somers asked if septic tanks were made of steel and Mr. Kirkpatrick said they didn't last long and they could be made of steel. Mr. Somers is asking questions of Mr. Kirkpatrick about perforations in the tanks, length of pipe and materials used in the 1950's. No plastic pipes then so they had to be long enough but short enough for people to handle. Not all contractors had machines to move them around. Was it likely to have a pipe from a tank into a bed of stone and Mr. Kirkpatrick said it was possible. Mr. Somers asked if he were a contractor and found a bed of stone would it indicate it was a disposal field or not? Mr. Kirkpatrick said it might. Mr. Somers asked if Mr. Thonet was an engineer and he said yes he is familiar with him over the years. Mr. Somers asked if Mr. Kirkpatrick was trying to determine if there was a septic field or disposal field in connection with a septic tank would it be plausible or appropriate for him to utilize the services of a septic contractor, Mr. Kirkpatrick said he would need a contractor not necessarily a septic contractor, engineers don't do a lot of digging any more. Mr. Kirkpatrick feels that by itself the document doesn't establish that there was a field. Mr. Somers said they will concede that the document doesn't on its own, however with a contractor and digging would it help to reach a conclusion. Mr. Kirkpatrick said it depends on what he said he found and what it was and what it looked like. It would be his responsibility to observe, listen to the contractor and reach his own conclusion. Mr. Somers asked if after that would he be able to reach an opinion on whether a septic field was located there. Mr. Kirkpatrick said he would be in a better position but it depends upon the evidence available, the stone could have been immediately adjacent to the tank, the concrete piece and the pipe could have been and it would be an enlarged cesspool. He explained how a septic field works. Mr. Somers asked a hypothetical about stones. Mr. Glatt stopped him again. Mr. Glatt wants the expert who dug it up, who was there and photographs and discussion of the remains for the Board. If there is a report it should be brought up. Mr. Somers said he was bringing him up with his sketch. Mr. Glatt said on the record there is a deadline date of June 30, 2009 and it will be decided by the June meeting. Why is this testimony going on if the expert was going to be brought in. There was additional discussion between Mr. Somers and Mr. Glatt about that. Ms. Erik, a Board Member stepped in and said the application was heard a few months ago and it fell down to a buy/sell and that was the purpose of the attorney being there. If the little extension of the flag lot has a septic system of whatever type it can't be sold. If lot 15 were broken up wouldn't it be a self-imposed hardship? So either it is buying a piece or done now. Ms. Erik wanted to make a motion to rule as is. Mr. Brady said it couldn't be voted on now.

Mr. Somers asked about the opinion of Mr. Thonet and where the bed was and the Board said he already did give the approximate location. Mr. Somers wants Mr. Thonet to explain why Lot 16 shouldn't be developed. Mr. Thonet discussed that you need to know the surrounding septic. The only available area for a septic disposal bed under the regulations is approximately ½ of the field shown. A Board Member asked if the applicant could apply for a DEP waiver and was told yes. Mr. Glatt asked if his client's septic is working and Mr. Thonet doesn't know. There is a state regulation of minimum distance between septic fields and it is 50 feet. The difference between the proposed septic fields to the common boundary is 29 or 31 feet based on the plan. Septic design plans are 29 feet. They would need to ensure that there is not a septic facility on Lot 14 closer than 14 feet from common boundary so if within the proposed plan is non conforming which are the rules and regulations.

Mr. Somers wants Mr. Thonet to discuss his concerns about the non-compliance with the Master Plan. He took photographs of the neighborhood they are marked into evidence as O-4 to O-12. Mr. Thonet took the photographs on Friday April 24, 2009, they all front Papscoe, Hampton or Chickadee. He wanted to show what the other homes looked like. A Board Member pointed out that there are many lots the size of the applicant's lot in that area. Mr. Thonet said that in the immediate vicinity there weren't any lots as small as the applicant's lot. There are small sized lots with houses on them. Mr. Thonet said the Township was trying to encourage larger lots in the Zone and that was why the zoning was changed to 20,000 square feet and the Township is experiencing problems with water and sewer because of the lots added. Mr. Glatt confirmed that the photographs show the style and size of houses but do not show the size of the property and how the houses sit on the lots. The Board can extrapolate from the site plan but the photos are representative of the size and look of the house. Mr. Thonet put the lots on the photos so that the Board could use the site plan and the photos.

Mr. Somers asked if the application for development is out of character with the surrounding neighborhood would that be a failure to satisfy a negative criteria. Mr. Thonet 's response was that it would have to be substantially out of character, not enough for it to be a little smaller, but it would have to be so much smaller it is out of character with the neighborhood and Mr. Thonet said that could be a basis for denying a hardship variance. Mr. Hannan asked what he was considering the neighborhood just the 4 or 5 houses around it or the whole neighborhood. Mr. Thonet said the localized neighborhood and the Board Member did not agree the surrounding streets should be considered as well. Mr. Thonet said again that the purpose of the zone and the lot size was for wells and septic tanks not to be clustered too closely. Mr. Thonet said he feels you need to be site specific with this. Is it aggravating a situation that the ordinance is trying to correct. From the testimony it is still not known where the septic system is. Mr. Somers asked if appearances could allow the Board to deny the variance and he said yes because there is small and really small. Mr. Thonet is explaining the nonconformities in the LR Zone. Mr. Glatt wants Mr. Thonet to give him a reason the Board can deny the application. It would be the negative versus the positive. Mr. Thonet said that they have to locate septic and wells. Mr. Thonet thinks that the property size would allow the Board to deny the application and Mr. Glatt replied you cannot as a Planner deny it just for that basis.

Mr. Somers interjected that he wanted to bring to the Board's attention the **Case of Simeon vs The Board of Adjustment of the Township of East Hanover, Appellate Division decided in May, 2005 377NJ Super 1 (is his recollection), opinion of Judge Bosinellas, the Court's conclusion was they do not have to accept the plan that is presented to it they can control the size of the house or deny the hardship. Mr. Glatt said he recalled saying that the Board had the ability to control the size of the house.** Mr. Glatt said that he does not know of a case that just because it is a small lot that they could deny the hardship. Mr. Glatt asked if the opposing neighbors could get together and purchase the lot to put theirs in conformity. Mr. Thonet said if they could pay fair market value but they wouldn't know what to offer because they wouldn't know how many bedrooms would be allowed. The appraiser put a 2 bedroom home because that is what the applicant has on his plans. Since the wells and septic

systems might not be correct you don't know the separation distances. Mr. Thonet said it is the applicant's responsibility to accurately locate the septic systems and wells.

Mr. Glatt read the case from Mr. Somers and it was a self-imposed hard ship and they were putting a big house on the property.

Ms. Erik mentioned the appraisal and asked if Mr. Somers commissioned it and he said yes on behalf of his client. Better than 50% of the lots in the appraisal are the same size or smaller than Mr. Leonescu's lot. Ms. Erik said it was a buy/sell issue the man paid a price and if his client wants to buy the property from Mr. Leonescu he is allowed to recoup his soft costs also. Mr. Glatt said the buy/sell issue is off now. The Board will make the decision whether or not it is fair market value or not and they need to present the negative and positive criteria. Mr. Hannan to the Board suggested if there were any other questions to write them down to move things along.

Mr. Somers asked Mr. Thonet to go over the application and the variances and the ordinance. The preexisting conditions according to Mr. Thonet are, the minimum lot area is 37 ½ % of what is required and the minimum lot frontage is 62 ½ % of what is required, minimum lot width is 62 ½ % of what is required and the minimum lot depth is 66.7% of what is required. He then went over the other variances that are on the plan. With a smaller project it could reduce some of the variances. The impervious coverage was reduced from 20% to 10%. The overall neighborhood impact with the variances is that there will be one very small house in that section of the neighborhood. Mr. Thonet does not feel the project meets the goals and objectives of the Master Plan because it would cluster 3 septic systems in close proximity and they would have impact on the water supply and the nearest well to be impacted would be his client.

Mr. Glatt asked about the "pole" section of the lot and the septic field and tank is there. The client cannot develop it. Mr. Thonet did not hear the previous meetings or know what the positive criteria were. Mr. Glatt explained to Mr. Thonet that he couldn't say if his negative criteria out weighed the positive. Mr. Thonet agreed.

Mr. Murray gave Mr. Glatt two documents, which are the approvals from the Health Department. Mr. Glatt asked if he was going rebut. Mr. Murray brought exhibits A-6 and A-7 into evidence. Mr. Somers said that he assumes it is an official copy that was approved. A-6 is the DEP approval also to drill the well. A-7 is the approval from the Township. There were no objections from Mr. Somers but Mr. Somers wanted to bring to the Board's attention that the drilling permit had a backside, which wasn't provided to the Board that was the only thing given to the applicant and the Planning Department would not have it. Mr. Leonescu is to provide the full permit to the Secretary. Mr. Somers asked for the report of the Planner, Mr. Thonet, to be put into evidence and Mr. Glatt said for reasons stated before and because Mr. Thonet gave testimony to it, that he wasn't going to have the Board Chairman admit it into evidence. It will be marked for identification only as O-15 not for the Board. It is only in file for appeal purposes.

Mr. Brady opened the meeting to the public.

Mr. Glatt swore in Mr. Rezzonico 45 Hampton Road which is across the street would like to know when the lots were plotted out and it is believed to be in the 1940's. He then asked when it was changed in the late 1980's to 20,000 square foot lots. He asked Mr. Leonescu if before he purchased the property did he try to purchase surrounding land and he said that he has letters going back 10 years offering to purchase property from the DeMaio's. He feels that he purchased it and caused his own problem because it was an undersized lot. Mr. Glatt explained that he purchased it but because it doesn't conform to zoning it is not a self-imposed hardship.

Pam Yevchak 158 Papscoe Road was sworn in by the Board Attorney. They are about a mile from the lake near the state forest. The houses are three and four bedrooms colonials and bi-levels. She has ¾ of an acre the woods are across from her. All of the houses are nice sizes on nice lots. She feels that the value of her house will go down. She combined 10 or 12 lots together and then they were able to build according to the

Town request. She doesn't want it to be built. The public portion will be continued at the next meeting because there is no new testimony after 11:00 p.m.

There was discussion regarding changing the date of the meeting however, it was not changed.

Mr. Drew returned to the meeting.

There was a draft of the Annual Report submitted with the packets; Mr. Hannan wanted something else added regarding an as-built survey to be submitted when a foundation is finished being built. Mr. Drew added additional information about a specific application that this would have effected.

Motion by Francis Hannan to approve the annual report draft with addendums
Second by Barry Wieser
All in favor

Motion by Ada Erik to approve the invoices for the Board Attorney, Stephen Glatt.
Second by Gian Severini
Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, Vivienne Erk, Robert Brady

No: none

Motion by Gian Severini to approve the invoices for the Board Planner William H. Drew, P.P., AICP
Second by Ada Erik
Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, Vivienne Erk, Robert Brady

No: none

There was a copy of the final judgment regarding Vincent Lanza, Mr. Glatt said the Court affirmed the Board. He believes Mr. Lanza sent a letter to the judge asking him to reconsider but hasn't received any other information. He has 45 days to appeal to the Appellate Division so he either will need to seek a Use Variance or he will need to follow the guidelines of the Ordinance.

Motion by Ada Erik to approve the minutes for the March 24, 2009 meeting
Second by Gian Severini
All in favor

Motion and second to adjourn the meeting
All in favor

Meeting adjourned at 11:15 p.m.
Adopted: May 26, 2009

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment