

**BOARD OF ADJUSTMENT**  
**JUNE 1, 2011**

**MINUTES**

**REGULAR MEETING**

**Salute to Flag: 8:05 p.m.**

**OPENING STATEMENT:**

This is a Regular Meeting of the Wanaque Board of Adjustment and adequate notice has been given and it has been duly advertised by the placement of a notice in the Suburban Trends and Herald News on January 12, 2011 and a notice thereof has been posted on the bulletin board in the Municipal Building and a copy thereof is on file with the Borough Clerk.

**ROLL CALL: Chairman Jack Dunning, Members Joseph D'Alessio, Peter Hoffman, Don Ludwig, Michael Levine, Attorney Ronald Mondello, and Engineer Christopher Nash.**

Vice Chairman Grygus arrived at 8:15 p.m.

Member Frank Covelli arrived at 8:20 p.m.

**ABSENT: Members Eric Willse and Jaime Landis.**

**MOTION TO APPROVE APRIL 6, 2011 MINUTES: made by Member Ludwig, seconded by Member D'Alessio. Voting yes were Chairman Dunning, Members D'Alessio, Ludwig and Levine. Member Hoffman abstained.**

**ENGINEER'S REPORT: Nothing new to report.**

**VOUCHERS: submitted by Ronald P. Mondello, Esq. for Attendance at June 1, 2011 Meeting in the amount of \$300.**

**MOTION TO APPROVE: made by Member Ludwig, seconded by Member Levine. Voting yes were Chairman Dunning, Members D'Alessio, Ludwig, and Levine. Member Hoffman abstained.**

**CORRESPONDENCE: None**

**RESOLUTIONS:** None for tonight's meeting. Attorney Mondello will have Lang and Moon for the next meeting.

**PUBLIC DISCUSSION:** See and hearing none, public portion closed.

Board recessed at 8:09 p.m.

Board reconvened at 8:19 p.m. with all Members present from original Roll Call, as well as Vice Chairman Grygus who arrived at 8:15 p.m.

**APPLICATION:** #ZBA-2010-01 – Robert A. Heitzman, Jr.

**LOCATION:** 27 Borman Drive, Wanaque, NJ (Block 261/Lot 12)

**VARIANCE:** Bulk Area Variance (CD 7/23//2010)

**REMAND:** Judge Graziano remanded case back to the Board by Court Order dated January 19, 2011

Attorney Mondello gave a brief synopsis of this application.

There was a previous hearing regarding this application on September 1, 2010. The Board heard testimony from the applicant, and from individuals that either supported or objected the application. The Board voted to deny the relief sought by the applicant. Shortly thereafter, the applicant filed what is known as a Prerogative Writs, which is a Complaint to a Superior Court Judge alleging that the Board made the wrong decision, and that the Board acted arbitrarily or acted capriciously in their judgment and/or decision. The Complaint went before Judge Graziano. He had an opportunity to review the 22 page Resolution that was put together in support of the Board's decision and he also heard from Attorney Martin and myself. Judge Graziano decided to send (remand) the case back to the Board. The Judge's reasoning behind this was he felt that the Board was missing some additional information to supplement the record that would have better assisted the Board in making its decision. Therefore, we are here tonight. Attorney Martin is prepared to supplement the record. This means we do not go back to all of the testimony and witnesses from the last hearing, and this includes both those individuals who supported the application and those individuals who objected to it. Although these individuals will have a right to ask questions of the new witnesses, they are not to go back and re-hash the comments they made at the prior hearing. Tonight's hearing is to supplement the record.

Attorney Mondello reviewed the Hearing Notice, Affidavit of Service and Notice for Publication and deemed the Application complete for the sole purpose of supplementing the record.

Let the record show Member Covelli has arrived for the hearing at 8:20 p.m.

Attorney Martin called Lisa Mahle-Greco as an expert witness in the field of engineering. Attorney Mondello swore in Lisa Mahle-Greco, Johnson Soils, 66 Glen Avenue, Glen Rock, NJ Credentials: BS Civil Engineering from Drexel University; MS Civil Engineering with

**Structural & Geo-Technical Major from Manhattan College; PE License from New Jersey; 15 years experience in field of engineering; Testimony before Boards in North Bergen in Hudson County, Alpine and Englewood in Bergen County. Professional work experience is mostly in geo-technical engineering doing borings and inspections for various projects from housing to large commercial buildings all over the metropolitan area. Presently employed by Johnson Soils and have been since 1998. I did take a small hiatus to have my son from 2004 to 2005. I was employed by Johnson Soils in 2007 and 2009.**

**Attorney Mondello marked (A-4) a series of reports from Lisa V. Mahle-Greco, P.E. dated June 06, 2007, June 12, 2007, June 18, 2007, June 20, 2007, June 22, 2007, June 26, 2007, June 28, 2007, July 03, 2007, July 09, 2007, July 12, 2007, July 18, 2007 and June 1, 2009.**

**Exhibits A-4 are letters of inspections from the site at 27 Borman Drive in Wanaque and bear Ms. Greco's signature. Ms. Greco read the June 06, 2007 report into the record. Except for the June 1, 2009 report, all my other reports are similar to the one I just read. Each report represents someone going to the site and looking at the placement of the fill, checking the compaction, and making sure it was done properly. Each time we go to a site, a report is generated that we have been to the site. We were checking the fill that was being placed behind the wall. The back fill used should generally be a granular fill, which is what the DGA is, and it was compacted with a large vibratory roller. DGA is the abbreviation for "Dense Graded Aggregate". I did not go out personally to the site to view the work done. Jim O'Dowd did the inspections for Johnson Soils. Jim has worked for Johnson Soils for approximately 25 years. I am confident in his abilities and routinely rely on the information given by Jim when I finalize these reports for Johnson Soils. Jim writes a report and we usually talk about the different sites that he has been to and go over what is happening at the sites so I am up-to-date on what is happening. He is my "eyes and ears" when he is on the site to let me know what is going on and, if there were any problems on the site, he would call me. Jim is the Project Manager.**

**Attorney Martin questioned Ms. Greco about the role of Johnson Soils on this project. The witness advised that, to the best of her knowledge, it was only to check the placement of fill and the compaction of the fill.**

**Ms. Greco read the June 1, 2009 report into the record. This report was generated when Jim went to the site and dug a test pit in the grid area to find out exactly what type of grid was used and find out the length of the actual grid that was placed. The contractor requested this. We checked to make sure that the backfill again was the DGA, which it was, and the density of the backfill.**

**Attorney Martin asked Ms. Greco if the opinions she was giving tonight were all within a reasonable degree of engineering certainty, and as far as she was concerned, the wall was built to those specifications noted in the June 9, 2009 report. She replied "yes".**

**Engineer Nash questioned if it was safe to assume that because you went to the site on a series of days that the wall was getting taller with each additional inspection because it doesn't state that in the reports. Ms. Greco answered "yes".**

Engineer Nash questioned if they went out all those times in 2007, why did you again go back two years later? Did you inspect the grid or witness the grid being installed? Ms. Greco was not positive, but Jim can probably answer more specifically for that. We did not inspect the grid specifically, just the compaction of the soil. Were any photos taken during the inspections? Ms. Greco does not remember seeing any photos, and would have to check in the file.

Member Ludwig asked if photos being taken were customary? Engineer Nash responded no, not necessarily. You would have field notes and the plan.

Engineer Nash asked, since there were two plans with different grid arrangements and depth of the grid, which field plan did you use? Ms. Greco said they most likely used the plan that was in the field with the contractor at the time. She did not know which one specifically.

Attorney Martin questioned Engineer Nash if he was talking about the plan for the 15' wall? Engineer Nash said "yes". Attorney Martin does not believe that plan would have been at the site.

Engineer Nash advised that when an inspection is made, they are inspecting, not just what is being put in the ground, but they have a reference as to what the design is. Ms. Greco stated that they were only asking us to check the compaction and the type of material and that is why on June 1, 2009 we did the test pit to check the grid at that point.

Vice Chairman Grygus asked how deep the test pit was and how long? Ms. Greco said Jim would have to be asked that.

Member Hoffman questioned when the inspection was being done, you had no inspection of the grid at all, only the backfill? Ms. Greco stated she believed so but can check with Jim.

Member Levine questioned, since Mr. O'Dowd is not a professional engineer, and you are taking responsibility for the work that is being done on the site, to what criteria did he use so that he could come back and explain to you what was done? Ms. Greco stated she usually has to be told what type of material that is out there and the compaction of the material that is being placed.

Member Ludwig wanted to clarify that Ms. Greco was testifying that the compaction levels were as required. She answered "yes". So, you are not really testifying that the wall was built completely to specs, so now what is your liability? Ms. Greco stated they went back in 2009 and did the test pit.

Chairman Dunning questioned how deep would the engineer want the test pit to be to see where the grids? Ms. Greco stated you would have to go the full length of the wall. Chairman Dunning said you would have to go down to the deepest end, say 15'. She answered "yes". You would have to verify each layer. What drawing did you use to know how many grids were suppose to be there? It would have to be the drawing that was out in

the field. So, you have no documentation in your office in your file? It was all out in the field at the time. So, you relied on a document you never saw.

Attorney Martin commented that, in the Minutes of the September 1 meeting, an issue was raised as to why I did not have a representative from Johnson Soils here. At that time, I explained what their role was and that the reports spoke for themselves and that certain questions being asked I didn't think Johnson Soils really could respond to. Now, because there were so many concerns from the Board that Johnson Soils wasn't there, now they are here, but it doesn't mean that now they have all this additional knowledge that I said back in September I didn't think they had, which is why I didn't call them in the first place.

Member Hoffman asked who would have the knowledge of who put the grid in and how much? Would the contractor have that? If someone drew a drawing that had a specific material that was required for that drawing, someone should have been able to say that that material was placed properly. If it isn't Johnson Soils, who is it?

Vice Chairman Grygus – So nobody is really signing off to say that the wall was built to the specifications on the plan? The only thing they are really signing off on is the compaction.

Engineer Nash – Can we get a certification from either Johnson Soils or Mr. Marks that certifies that the wall is built in accordance with x, y and z? Attorney Mondello and Attorney Martin stated that this was discussed the last time and was one of the conditions. Attorney Martin stated he could ask Ms. Greco about this after the hearing. However, when we were at the end of the last meeting, this exact issue was discussed for quite some time. I believe Mr. Marks testified (and I can check with him tomorrow) that he would be willing to offer such a certification. He would go out and do whatever was necessary to offer such a certification. I retained Mr. Marks for that reason. He was not involved in the project originally. My client paid him to appear here, testify, give opinions and he'll continue doing that if necessary. He is an engineer who has already been certified by this Board as being an expert. Again, I brought Ms. Greco tonight because of some concerns the Board had about the compaction and things that came up that Mr. Marks could not answer. Now, Ms. Greco is being asked questions about things I believe were addressed by Mr. Marks, but if not, he certainly could offer that certification as he stated in September.

Chairman Dunning – Didn't Mr. Marks testify that he only provided a drawing, he was never at the site? Attorney Martin answered you are correct. Mr. Marks provided the calculations to indicate that the wall, as built 15' 6", using that particular block, etc. was acceptable. That was part of the record.

Attorney Mondello stated that, Mr. Marks, in summary, had indicated that the wall is safe as constructed, you can check the angle of repose, there was some type of visual inspection, and he indicated that he would provide a certification as to the safety. Our Board Engineer brought up an issue as to compaction and that is why this engineer is here. Mr. Marks was not informed of the difference between the 10 and 15 feet. I believe what Attorney Martin is representing to the Board is accurate.

Engineer Nash stated that one of the conditions of the Motion that was made was providing the certification. Attorney Martin said that is correct. Attorney Mondello stated Mr. Marks said a test pit could be dug to check the posting to verify that these things have been installed. Attorney Martin, referencing the Minutes, stated there was a reference to the fact that Engineer Nash and Mr. Marks could get together on what Mr. Marks would have to do that would be acceptable to Engineer Nash. Engineer Nash thinks between what Johnson Soils has done and the results of their test pit, you could almost put two and two together to come up with a certification, plus the fact that four years have gone by and the wall has not moved. That is what we are looking for regardless of how the vote went.

To refresh everyone's memory, Member Covelli stated Mr. Marks was the engineer whose firm initially designed the wall only, but did not do any inspections, and he appeared at the hearing and made the representation that he could certify the wall. Now Johnson Soils is here, and they were the "missing link" between the design, Mr. Marks' testifying in September and what transpired between the design of the wall and the fact there is a wall standing there today. A contractor and an on-site engineering firm through their field Project Manager were there during the construction.

Engineer Nash clarified that the real issue is Mr. Marks' designed a 10' wall and a 15' wall was built, so what happened in between is a little cloudy. That's what the whole problem is. The fact that Johnson Soils was there during the construction of the 15' wall brings a higher level of comfort that the wall is structurally sound.

Member Covelli added also and the fact Mr. Marks' testified that he could provide a certification.

Attorney Mondello read from the Resolution: "The Board suggested that Lisa V. Mahle-Greco, P.E., from Johnson Soils Company should be present at this hearing. The Board is permitted to draw a negative inference at the Applicant's failure to present essential witnesses." Attorney Martin has presented this witness as requested.

Member Ludwig questioned what the typical lift that you come out and test for? Usually between eight and twelve inches. Chairman Dunning questioned as the wall exceeded the drawing of ten feet, now there are more layers to inspect, would that raise a flag? Or contractually, the general contractor called you to come and inspect, your field man goes out and checks it, it is okay and a report is made. Ms. Greco says that is exactly right. We are on call, not on the job site every day for eight hours a day.

Chairman Dunning opened the proceedings to the public to directly question this expert only on her testimony. No one appeared and the public portion was closed.

Attorney Mondello swore in James O'Dowd, Johnson Soils, 66 Glen Avenue, Glen Rock, NJ Credentials: Employed by Johnson Soils Company for 25 or 26 years. BS in Environmental Science with Geology Concentration. I am currently the Project Manager and regularly report to the Professional Engineers at Johnson Soils, including Lisa Greco. I heard Ms. Greco's testimony and agree with it about our working relationship that I

report to her about my site/field visits. I have a vague recollection of this project and have seen the reports referred to in Ms. Greco's testimony and marked as an Exhibit.

Referencing the June 6, 2007 report, Attorney Martin questioned how the report comes to be? I would go to the site, look at the area that is being compacted, check it with a probe, make sure there is no soft areas, watch the compactor go over it and generate the report. I have been doing this work the whole time I have been employed by Johnson Soils. I was at the site for possibly an hour each of the times I was there. A report was generated each time I was at the site.

Attorney Martin questioned, "other than the issues that are commented on in the reports, are there any other things you are checking, inspecting, analyzing?" Jim answered backfill and compaction. That is all we were asked to do. I did not take measurements of the height of the wall.

Referencing the June 9, 2009 report, I vaguely remember going out, looking at a test pit, seeing the grid, measuring back from the face of the wall how long the grid was. This is my best recollection.

Vice Chairman Grygus asked if he knew how deep the pit was and how long? Jim answered "no". Believes it was a single test pit. How far back from the face of the wall was it? I believe it was ten feet. It would be crazy to dig through the grid behind the wall so you would want to go to the back of the grid. Would you also have verified the crushed stone behind the face of the wall? I probably saw that, but didn't write it down. Was that part of your test? No, but it is something I generally do look for. It is part of the material that's being placed behind the block. When I did the test probe, I randomly did check the length and width of where the grid would be for each layer.

Member Levine questioned that the whole inspection was based on a 10' wall, would it be any different if the design was for a 15' wall? Not for what I did. How about the area that you checked for the compaction? No, it is standard for what I do. I usually see a grid and I know that is the grid area behind the wall. I had no specific dimensions to check. I am checking the compaction in the grid area only. Engineer Nash questioned if this was a typical type of inspection. If we are asked to just do compaction then is it. If we are asked to do a complete inspection of a wall, than it is different. Engineer Nash asked if he had field notes from the test pit. No, everything went into the report.

Chairman Dunning questioned if he remembered where the test pit was—was it on the low side of the ten foot or high side fifteen foot? If I remember correctly, it was straight back from the driveway area – if you are in Heitzman's front yard, the left area (high side).

Chairman Dunning opened the proceedings to the public to directly question this witness only on his testimony.

**Attorney Mondello swore in Sandra Hanrahan, 5 Stafford Drive, Wanaque, NJ**

**She wanted to know how you could come out and perform a test pit evaluation and not have any specifics on exactly where you did the test off the wall and dimensions?**

**We were asked to go out there and find out how far the grid was off the wall and that is what we did. I did not dig the test pit either, that had been previously dug for me. I went to look at the grid, determine the grid distance off the wall, the type of grid and the material the grid was in.**

**Chairman Dunning asked if anyone else in the public had any questions of this witness? No one appeared and the public portion was closed.**

**Attorney Martin has no other witnesses.**

**Board Members asked if the builder of the wall was contacted. Attorney Martin advised he is not someone that he could readily have here.**

**Chairman Dunning asked who ordered the test pit to be dug, do we know? Attorney Martin advised that there was testimony that it was the contractor, and I assume that means CDS Landscaping. Discussions were held about the Board issuing a subpoena to the builder of the wall. Attorney Mondello advised that the Board could subpoena, but the Board would have no recourse if he didn't show up.**

**Attorney Mondello advised that the Board Members have some questions for the applicant. Attorney Mondello swore in Robert Heitzman.**

**Attorney Martin asked Mr. Heitzman about his recollection of the issue of the test pits. Mr. Heitzman advised that there were 3 test pits; one was on the backside of the pool, the one that Mr. O'Dowd was talking about and then there was also one towards the beginning of the driveway. I believe CDS Landscaping did the test pits. I did see Mr. O'Dowd on site a few times, but I wasn't aware of who he was.**

**Vice Chairman Grygus asked if the test pits were all perpendicular to the wall or was one further out than the other because you said one was by the driveway? It was dug out to where the end of the grid would be. I guess it would be perpendicular then. So they were all ten feet in different locations? Correct. Do you recall how deep they were? I remember putting a tape measure in, but I don't want to be held to it, I am going to say between 24" and 36".**

**Member Hoffman asked if Mr. Heitzman took photographs. I did and I brought them to the last hearing. I can supply them again if need be.**

**Member Covelli questioned if, in fact, it was fair to say that Johnson Soils was retained by the contractor and not by you? That is correct. Who retained Mr. Marks? Originally, he was retained through CDS also.**

**Member D'Alessio stated this requires a "C" Variance. What are the ramifications and qualifications for a C Variance? Attorney Mondello explained that you take the positives and the negatives and, if the positives outweigh the negatives, you grant the variance. I can tell you that courts throughout New Jersey are fairly lenient when it comes to C Variances, bulk and dimensional variances. Use Variances are a different breed altogether. But when it comes to bulk variances, my impression is that the courts in New Jersey are fairly liberal and that is probably why the judge remanded the matter. Member Ludwig questioned that if this matter had been brought to us before the wall was built, wouldn't he have to prove the hardship and all that? Hardship is a C-1 Variance which only comes into play when you are zeroing on the topography. You are saying that my lot is shaped like a triangle so I really do need that bulk variance, or side yard variance, because I do not have a rectangle. I am not exactly sure that a C-1 Variance applies here. [Example: The slopping of the property is so extreme that this particular applicant needed to adjust it from 10' to 15', whatever the case may be, sure that is a C-1 Variance.] You don't see too many of them, but certainly this application could apply. That is the hardship and either one, or both, C-1 or C-2 could apply.**

**Member Covelli stated that, at the end of the day, this man had replaced a wall that had deteriorated so the hardship is there needs to be a retaining wall. The question really boils down to the height and the slope or the usefulness of the property with the now constructed wall, which is probably a fair statement that anyone in that situation is going to try to maximum the usable space. Attorney Mondello doesn't disagree.**

**Chairman Dunning opened the proceedings to the public to directly question this witness only on his testimony given tonight on the test pits. No one appeared and the public portion was closed.**

**Vice Chairman Grygus questioned Engineer Nash – If you were retained to certify that the wall was built to the design criteria, could you explain to us what would have to be done now in order to put you in a position to certify? We talked about this at the last meeting and it is spelled out in the Resolution. If I was going to do it, basically perform an overall visual inspection of the wall to see how it is performing, especially since it has been there for four years. Secondly, I would want to know about the compaction and the geo grid. I probably would not rely on another engineer's compaction test. I would have to have one myself. We would have to go dig a test pit, probably a boring, because the test pit is just too destructive. If I was going to dig down the full depth of the wall, I would prefer a bore. If you do a boring, it is tough to find out what the geo grid levels are. There may have to be a test pit also because you don't want to dig through the zone. Because the wall itself is the compacted soil and you need to dig a test pit on the fringe of it to count the geo grid layers and get a semblance of the compaction. My comfort level would be a whole lot higher given the fact that Johnson Soils was at the site at almost every foot of the wall.**

**Vice Chairman Grygus asked Engineer Nash if he was comfortable digging a three or four foot wide test pit the full depth of the wall and then make the assumption that if I count ten layers of geo grid my assumption is going to be that if they did here, I am sure that they did it the full length of the wall. Engineer Nash said exactly, but the whole mystery here is the**

wall was designed to be 10' high and that was what the building permit was issued for. However, the wall was built higher and I would be looking to verify that it is a 15' foot design since the design for the 10' wall shows 7' geo grid every third course and the design for the 15' wall is a 10' geo grid every other course.

Attorney Mondello emphasized that not the entire wall is 15', only a very small portion of the wall was built at 15'.

Vice Chairman Grygus questioned Attorney Mondello if the Resolution had contained any information as far as plantings to soften up the wall a little bit. Attorney Mondello advised that there were some discussions with that, but it would not be put in a Resolution where the Board votes to deny because how do you deny the relief and say we want these conditions, even though the Motion was to Approve. Vice Chairman Grygus was questioning how the new Motion was to be presented. Attorney Mondello said the Judge vacated the Board's decision, so it does not exist, so somebody is going to be making a Motion to grant or deny the relief sought by the applicant.

Member Covelli questioned Mr. Heitzman if he would be willing to put some plantings at the base of the wall if we were to receive some positive feedback from the adjoining property owners. I believe this issue was brought up at the end of the last meeting and you were favorable to this idea. Mr. Heitzman said the area was pretty fully grown in now, and the wall that faces 25 Borman Drive is not on my property anymore and that is a big face of the wall that shows to Ms. Hanrahan's property and I think that is what she is seeing mostly. Mr. Heitzman did agree that if a neighbor requested and gave him permission to plant something, he would do it.

Member Hoffman, because of a water runoff issue, questioned Mr. Heitzman if there was any way he could control any extra runoff from the back of his property. Attorney Martin believes the water runoff issue was brought up in the public portion of the last meeting, but he retained an expert on that issue only. Member Hoffman believes that if there is a water issue, it should be addressed. Engineer Nash commented that a site engineer testified to the contributing drainage area to the back of the wall, and I believe it was reported that it was a smaller drainage area now, then it was previously.

Engineer Nash said that he was very comfortable having Mr. Marks certify the wall as he agreed to do at the last meeting, but the Motion did not pass. Mr. Marks had agreed in principal that he would put himself in the position of providing the certification so he will perform the necessary tests to be comfortable to write a certification. Attorney Mondello read, "When the Board required that a certificate as to the structural integrity of the wall be issued by Mr. Marks, he testified he would check the angle of repose, do a visual inspection, test pit would be dug to verify that the appropriate posts were installed."

**PUBLIC DISCUSSION/COMMENTS ON THIS APPLICATION:**

Sandra Hanrahan – Attorney Mondello stated she remains sworn  
She doesn't understand that, if it was completely knocked down, and we are starting over, we can't bring in any other information.

Attorney Mondello explained to Ms. Hanrahan that just the decision of the Board was vacated. The Judge remanded it with the sole specific objective to add to the record; to supplement the record.

Ms. Hanrahan referred to Mr. Marks' testimony that he was unaware the wall was built to 15'. Chairman Dunning explained that Mr. Marks was not hired to inspect the wall, so he had no knowledge of what was built. He supplied a drawing only; he designed the wall. Ms. Hanrahan stated the old railroad tie wall was more than like 35' away from where this wall was built.

Ms. Hanrahan supplied some pictures of some of the drainage that was put in and also there are quite a few trees that are starting to die. There is an extensive amount of water that comes off of the two properties and there is water being diverted from a rental property onto the outside of the road and corroding the road. Attorney Mondello quoted her comment from the last hearing, "The wall has caused an excessive amount of water runoff onto the left side of her property which it cannot handle." "The wall is massive and acts like a sieve." She advised it is now going into the streets. She believes the neighbors should be applying for a C Variance because it is causing a hardship to our properties.

Attorney Mondello asked if Ms. Hanrahan had anything as far as the supplemental testimony that was given this evening? She just wanted to show updated pictures of the drainage to the Board. Attorney Martin had an objection to the relevance because they do not show his client's property, nor do they show the objector's property, but because they are meaningless I'll let the Board see them. Attorney Mondello advised the Board that Ms. Hanrahan testified that she has been trying to pursue this problem since 2007 and water does come through the pipes and presumably these pictures are going to be similar to previously supplied pictures.

Vice Chairman Grygus questioned Ms. Hanrahan if the water runoff could be coming from somewhere other than the applicant's property. His property does not even border yours. Looking at the lot and block map, it appears it doesn't even come to a four way corner there.

Attorney Martin stated it is unfortunate the way this application has played out on a number of levels for everybody. I am concerned that, because of the lapse of time since the September 1, 2010 meeting, I would like to remind the Board that I retained an expert on this exact issue. I don't believe there was any expert testimony that really challenged Mr. Newkirk. We are talking about a bulk variance application, and many citizens appear without experts. In our case, we hired Mr. Marks, a structural engineer, hired Mr. Newkirk to do an analysis of drainage and he testified that the drainage is actually better than it would have been prior. I have now brought in two experts from Johnson Soils and I also hired a Professional Planner who explained the differences between a C-1 and C-2 Variance and opined with a reasonable degree of certainty that this application meets both of those criteria. I feel that my client has expended a lot of time, energy and money on bringing experts to try to explain some of these issues that we are now talking about again, and it sort of sounds like we have not presented any evidence about some of this. I can't think of any more evidence I can bring in regarding this application and I hope that is one of the reasons Judge Graziano sent the matter back here.

Attorney Mondello stated the record speaks for itself and the arguments you are making are, in fact, are part of the record. Your comment about folks coming before the board for bulk variances *pro se* and without experts is true. However, not many of them come before the board after they have already constructed something that requires a bulk variance and that may be why you needed some of the witnesses, but I am not sure. I don't disagree with everything that you said. It is part of the record and I believe the only expert testimony that the Board had to contradict was the Planner in, at least, one very small area. Your Planner did discuss the C-1 and C-2 Variance and his testimony is part of the record in the Resolution.

Board recessed at 9:50 p.m.

Board reconvened at 10:00 p.m. with all Members present that was present before.

Does anyone else have additional statements, comments or questions on this application? Seeing and hearing none, the public portion is closed.

**MOTION TO APPROVE A C BULK AREA VARIANCE FOR A RETAINING WALL LOCATED AT 27 BORMAN DRIVE, WANAQUE, NEW JERSEY:** Motion made by Member D'Alessio, and seconded by Vice Chairman Grygus.

**DISCUSSION:**

Chairman Dunning wants to add into the Motion the prior comments from Mr. Marks that he would produce a certification of this existing wall.

Vice Chairman Grygus would want to add that the engineer will provide certification to our engineer's satisfaction as to the stability of the wall and possibly provide an as-built drawing.

Engineer Nash referred to the certification as a Structural Stability Certification.

Chairman Dunning stated, between the two engineers, they are going to come up with a Certification that protects the applicant, the neighbors and the Borough of Wanaque, that this wall is safe. I think this is what everyone is looking for.

Attorney Martin stated he has no problem with this, but I just want to comment that I have not spoken with Mr. Marks, but if he is no longer available for some reason, can it be any engineer? Engineer Nash says any Professional Engineer.

Attorney Mondello says that, it should be clear that, whichever engineer does the work for Mr. Heitzman, if he and Engineer Nash cannot come to some resolution, the applicant must return to the Board.

Vice Chairman Grygus would also like to add, as was discussed in the prior testimony, that the applicant had agreed to whatever type of plantings that he can put in on the property that he controls to soften the wall twelve months of the year. Attorney Mondello would like

to see something a bit more specific. Vice Chairman Grygus would like to see him go at least from the highest elevation to the point where it reaches ten feet (where the wall is ten feet and higher).

Member Ludwig recommended a time limit be agreed upon for the applicant to show that he has hired an engineer. Engineer Nash said it would really be up to the other engineer's schedule since he is doing all the work. Member Covelli recommended that the matter be completed in 180 days.

Attorney Mondello stated that the engineering portion be completed within six months. Engineer Nash indicated that it was more than reasonable.

Another discussion took place about the plantings. It was agreed that from the where the ten foot wall meets the fifteen foot and length of fifteen foot, arborvitae plantings every five feet.

**MOTION TO APPROVE WITH ADDITIONAL CONDITIONS:** Motion made by Member D'Alessio, and seconded by Vice Chairman Grygus. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, D'Alessio, Hoffman and Ludwig. Motion Carries.

**DISCUSSION:** None

**MOTION TO ADJOURN AT 10:13P.M.:** Motion made by Member Covelli, and seconded by Member Ludwig. Motion carried by a voice vote.

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Jennifer A. Fiorito  
Board of Adjustment