

**REGULAR MEETING**

Meeting called to order by Chairman Foulon with a salute to the flag at 8:07 P.M.

**READING: Open Public Meeting Announcement**

This is the Regular Meeting of the Wanaque Planning Board and adequate notice has been given and it has been duly advertised by the placement of a notice in the Suburban Trends on January 30, 2019 and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque and a copy thereof has been on file with the Borough Clerk

Mayor Mahler Swore In New Member Donald Pasquariello, III and Member David Slater

**ROLL CALL: Chairman Gilbert Foulon, Vice Chairman Joseph Graceffo, Mayor Daniel Mahler, Councilman Dominick Cortellessa, Members Kevin Platt, Charles Strobel, David Slater, Jack Jordan, Donald Pasquariello and Mary Leonard**

**PRESENT: Attorney Steven Veltri and Engineer Michael Cristaldi**

**ABSENT: Member Jack Crilly**

**MINUTES: from the May 16, 2019 Meeting**

**MOTION TO APPROVE MINUTES: made by Member Strobel, seconded by Member Platt. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Councilman Cortellessa, Members Platt, Strobel, Slater, Jordan and Leonard.**

Mayor Mahler and Member Pasquariello abstained.

Vice Chairman Graceffo and Member Leonard voted yes since they listened to the tape of the meeting and read the Minutes.

**COMMUNICATIONS/REPORTS: Mayor Mahler spoke about:**

1. On Monday, June 24, 2019, the County will be holding a meeting here at Borough Hall at 7pm. They have a \$1.5 million grant from the federal government and they want to do bicycle and hiking trail on the old railroad bed and they are calling it the Highlands Rail Trail from Union Avenue by the Roar of the Crowd/Celtic Knot north to Ringwood Avenue just past the new Jewish Synagogue. It is about 9,000 linear feet long and they are making a 10' wide path. This is what they are proposing and they supposedly sent out notifications

to everybody within 200' of the path and the public hearing is on the 24<sup>th</sup> if anybody would like to attend.

2. Tilcon is trying to get an application in and I don't think they are going to make the July meeting but are interested in an August meeting. We may be having a Special Meeting probably on August 15<sup>th</sup>.

**ENGINEER'S REPORT:** No new applications; just what we have tonight.

**APPLICATION #PB2019-01 – Martin R. Theresa**

**Property Address: 31 Tremont Terrace (Block 200.12/Lot 14)**

**Application For Minor Subdivision - Lot Line Adjustment**

**Authorized Agent: A. Michael Rubin, Esq.**

Mayor Mahler stepped down from the dais and recused himself from this Application.

**Attorney Rubin:** You have heard from the Applicant over the last several meetings and the last time we were here, there was a discussion among the Board as to what affect this application would have for our neighbor. As you recall, there is an agreement between these two neighbors as to an adjustment of their lot line and a question was raised as to what affect did it all have as to the Schneiderman property. That is where we left it off at the last meeting and the Board asked whether Mr. Schneiderman could be here and his counsel. You have a new map that was presented a month ago, which the Board asked for, which showed the two lots together and the 2.5'. This would be the third hearing night for this application and, as I've been saying right from the beginning, it is 2.5', that's what we are looking for as a lot line adjustment. To me, in the law we call it *de minimis*, which is very small. In any case, you asked that counsel be here for the neighbor and he is here.

Albert J. Seibert, Esq. from Steven A. Varano's Office on behalf of the Schneidermans.

**Attorney Seibert:** I would like to add that the whole reason this application and the Complaint in the Superior Court was filed to begin is because Mr. Schneiderman is actually looking to sell the property. He cannot do that without clear title to it. That is the whole reason we filed this to begin with. I wasn't at the prior meeting, but I understand that one of the concerns was the precedent it would set. However, I don't think it would necessarily set any bad precedent here. As Attorney Rubin noted, it is very small adjustment we are looking for here. If anybody has any questions that they would like me to answer, I will do so. By the way, we could have gone about this a couple different ways. This wasn't a situation where the fence was placed there and Mr. Schneiderman just allowed this to happen. We could have gone a number of ways in the lawsuit. We could have continued on and perhaps sought to have the fence removed. However, we were able to come to an agreement, in part, to save everybody some time and, maybe just as if not more importantly, legal fees. We were able to come to an agreement here where everybody was happy.

**Chairman Foulon:** Not everybody is happy.

**Attorney Seibert:** I understand, but we also have a Court Order. I understand it is a Consent Order, but that doesn't carry any less weight.

**Chairman Foulon:** You have a Court Order; but we don't have a Court Order.

**Attorney Veltri:** Let me try to clear up any misunderstandings. The two parties entered into a Settlement Agreement and a Court Order subject to, and contingent upon this Board granting a Minor Subdivision.

**Attorney Seibert:** That's not necessarily true. The way the Order reads, it shall that "it shall be transferred to defendants." There is no wiggle room there.

**Chairman Foulon:** Then what we are doing here.

**Attorney Veltri:** A Superior Court Judge, in my opinion, does not have jurisdiction over this Board to mandate a Minor Subdivision approval. If you have case law that says that, I'd like to know what case you are relying on.

**Attorney Seibert:** If that's the case, and this ends up being denied, the next step, quite frankly, is we're going to have a file Motion to compel it and potentially name the Borough.

**Attorney Veltri:** You are welcome to do that and, if you have case law, I'd like to know what it is.

**Attorney Rubin:** What is counsel is saying is obviously correct. However, when we first saw what was happening and the dynamics of the community, I counseled our client to come here since I thought it was the right thing to do. I thought it was the appropriate thing to do to come before the Planning Board and show a conventional lot line adjustment. I thought, mistakenly obviously, that with 2.5' we would be done in about fifteen minutes, the Board would vote on it and we would be done. Apparently that is not what happened. In any case, we thought, and I certainly thought, having practiced land use for more years than I would like to think about, that this was the right way to do it; come to the Board, let the Board look at a map and eventually vote thinking that it was a minor issue. That's why I counseled our client to come here; he spent the money for the surveys and the application fee and obviously for counsel and comes here and respectfully asks for a lot line adjustment of 2.5'. Are there are other problems that may be lurking on this lot for other neighbors on another side of the property, maybe. We heard some talk of one of our neighbors saying that there was a problem on the other side of the property. It is not what we are here for. If there is a problem, the neighbor can take it up any way they wish. However, the matter here before this Board this evening is a 2.5' lot adjustment and nothing else.

**Chairman Foulon:** I can't totally agree with you and that we had a public hearing and we had other property owners up here and say that he has also encroached on their property, which makes it all encompassing as far as I'm concerned.

**Attorney Rubin:** It doesn't. It isn't the issue. There is only one issue and that's 2.5'.

**Chairman Foulon:** I think the easiest solution to the problem is move the fence. It is the simplest solution there is. Put the fence back where it belongs.

**Attorney Rubin:** There was another issue too about something in an easement. The easement is easy because there is an agreement. I believe it's a town easement because that is the best we could find out. If the easement ever has to be removed, taken apart, dug up, anything, the homeowner would take care of it. It is called an "if and when" agreement. If it is every needed by the town, they will take care of it.

**Chairman Foulon:** What does that have to do with moving the fence where it belongs?

**Attorney Rubin:** Because the homeowner gave two reasons why they objected. One was that there was something in the easement area and secondly that there was a fence. I recall those two aspects of the objections. However, the objection has no bearing on this case. It doesn't.

**Vice Chairman Graceffo:** Well, it is an obvious problem though because, as I see it, the basic laws have been infringed upon and not just on the northern side. There has been infringement on the south side of the property and on the back part of the property. There has been infringement into the borough street. It would have served the property owner to probably get a surveyor and stake his property so none of this would have been an issue today. That would have been far the easiest. Plus I have a problem with the location of the shed, which really causes a major problem in terms of what the town ordinance requires.

**Attorney Rubin:** That matter has already been adjudicated and the town lost.

**Vice Chairman Graceffo:** They did not lose. You are saying that, but I cannot believe that a judge, whether it be our local judge or the appellate judge, can rule on something that is clear as black and white that no structure can be within 10' of a principal building and also on the side yard.

**Attorney Rubin:** First of all, the State of New Jersey disagrees with you. The State says you don't need a permit.

**Vice Chairman Graceffo:** That wasn't the point. If you want to argue about the permit, the permit was a question of whether or not you needed one. The town said yes you do need a permit if the building was over 100 square feet. The judge ruled he didn't need a permit because it was less than 100 square feet. I don't believe that shed is less than 100 square feet. In fact, I believe it is 120 square feet.

**Attorney Rubin:** There is a concept in the law called *res judicata* and that means whatever the decision is, it stands. You can't change it.

**Vice Chairman Graceffo:** It seems to me that someone is being negligent here and maybe the judicial branch of our government because how can you allow outright defiance of a simple ordinance and let it stand. Maybe the problem with the judge is that he didn't see what it looks like.

**Attorney Rubin:** We were here at least four or maybe five times on the case and it went on and on with the testimony.

**Vice Chairman Graceffo:** It is irritating because I feel that the property owner has been abusive in taking advantage of his neighbors and of the community. So I don't think that is what we have to sanction by allowing a property owner just to take advantage by his own doing.

**Attorney Rubin:** You are not sanctioning it with a 2.5' lot line.

**Vice Chairman Graceffo:** I agree with the 2.5'. I have no problem in giving the 2.5' and doing the minor subdivision because, I agree, it is a minor operation. However, I do want to provide the property owner with clear title, but there are so many other abuses in this application and in this subdivision and in the way this has been handled over the last four/five/six years, but this is our first approach with it.

**Attorney Rubin:** Let me say this, this Board, be it a Planning Board or a Board of Adjustment, is not an enforcement agency. That is why you hire a Zoning Officer to do. You are not a Zoning Officer; you do not enforce law. You're not the policemen of the town. You have to make decisions based upon applications.

**Vice Chairman Graceffo:** I am aware of that and hear what you are saying. However, I am going to ask the Building Inspector to continue looking at this piece of property and to be certain to follow through as to whether or not the property owner has followed the law in putting up these structures on the property.

**Attorney Rubin:** That is fine because the first thing before he signs any complaints, he really should be speak to the town attorney to make sure he's not getting himself into a problem.

**Vice Chairman Graceffo:** I am tired of being threatened by the fact that we have to worry. The structure is illegal according to what our ordinances are. If the gentleman was really concerned as a resident of our community, what he probably would do would be move the structure and put it possibly where it belongs. Or better yet, even take away the macadam in front the spillway. But no, he is making use of that as another driveway or another parking space, when there are constant abuses being taken place here.

**Attorney Rubin:** Well that one I don't know about.

**Vice Chairman Graceffo:** If he really wants this subdivision, maybe we can make some accommodations to the property owner do the right things.

**Attorney Rubin:** The biggest accommodation is he came here. He came here.

**Chairman Foulon:** Only because the judge told him he had to come here.

**Attorney Rubin:** We agreed to it.

**Attorney Veltri:** I think the one thing we can agree with is, in the event this Board approves this minor subdivision, we are not blessing any other conditions on the property.

**Attorney Rubin:** We are not asking you to because you can't do that.

**Attorney Veltri:** We know that and we can't and we won't.

**Attorney Rubin:** Totally agree with you, not a question. The only thing I am asking is for a 2.5' lot adjustment for Mr. Schneiderman wants to go sell his property and you are putting he and his family in the middle of this.

**Chairman Foulon:** We are not. His neighbor has done it. To me, it is like stealing something. You stole property and you got caught and now you want to make it right. I, in my right mind, cannot say that we should approve this but nobody else in town can do it. What we are saying as far as I'm concerned is that every resident, every property owner in this town can expand their property by 2' in every direction and all they have to do is, if the neighbor complains, well I'll pay you for it. That is not right.

**Attorney Seibert:** Respectfully Chairman, that's not the case here either way. As I said before, we could have approached this a number of different ways once we filed the complaint. We could have pushed further in the Superior Court to maybe have the judge order the fence to be moved or something along those lines. However, we figured in the interest of saving everybody some time and money here and saving extraordinary legal fees pursuing this case further, that we could come to a different resolution which we were able to do.

**Chairman Foulon:** I can't see us jut arbitrarily moving lot lines to suit somebody who took property.

**Attorney Seibert:** I don't think it's arbitrary necessarily. I think we have an Order here and we came to an agreement.

**Councilman Cortellessa:** I have a real simple question and I believe you raised it before. We talked about cost, going to court, why didn't you just move the fences? You may think it's funny but the question really is, you went to court, you spent money, worked out a deal and all the attorneys got paid, when the simple solution would have been to move the damn fence.

**Attorney Seibert:** I think what you are talking about is a little circular there because that is the reason why we filed the complaint.

**Councilman Cortellessa:** The sheds are a separate issue.

**Vice Chairman Graceffo:** They can take them down. Take it out. It doesn't belong there by code.

**Attorney Rubin:** The code has already been found not guilty.

**Vice Chairman Graceffo:** You keep on saying that. I do not by that Mr. Rubin. That is your view of the decision. In Municipal Court he did not win on that, the shed was found to be illegal. As far as permit, whether he legally got one or not, he was found not guilty on that and that to me is even in question because of the amount of square footage. According to the plot plan here, it is not 100 square feet and if it is over 100 square feet he did require a permit.

**Attorney Rubin:** How do you resolve that there was a placard signed by the then building inspector that said it was approved. How do you counter that one? You can't.

**Vice Chairman Graceffo:** I cannot believe that to be true. When was the shed built?

**What year? Approximately within 5 years**

**Attorney Rubin:** I didn't come prepared, but about several years ago.

**Vice Chairman Graceffo:** This ordinance was in effect since 2003 and I can't believe that a building inspector would allow someone to put up a structure in a side yard within less than 10' of the building.

**Attorney Rubin:** The State decided last year that this was no longer a violation.

**Chairman Foulon:** On a technicality.

**Attorney Rubin:** Not on a technicality.

**Attorney Veltri:** I want to put this on the record. The Chairman put forth a statement that this could set a bad precedent that anyone come in and move a lot line 2.5'. This Board, and every Board, looks at every application separately based upon the circumstances, variances and other issues that are inherent in every application. So there are some strange occurrences in this application. There was a municipal court issue, Attorney Rubin thinks he won and there's a *res judicata* issue; and whether there is and isn't it is the circumstance in this case that probably won't be in the next case. So, if you grant a subdivision in this case based upon all the circumstances, that include the shed, that include the history of this case, you are not going to be bound to the same conclusion in the next minor subdivision case. You have to look at each case, specifically with all the circumstances, and you make a decision based upon all of the circumstances in that case. I just wanted to put that on the record because we are throwing out a lot of general statements and I know that all the Board Members are listening and I just need to clear it up from a legal point.

**Member Leonard:** Did anyone actually measure to find out what the measurement of that shed is?

**Vice Chairman Graceffo:** It is on the plan and it's about 120 square feet.

**Member Slater:** Is our position as the Planning Board to adjudicate, right or wrong, on existing conditions and whether or not they were properly permitted or properly designated or spelled out as to size in the application or are we supposed to be dealing with the resolution of this kind of messy situation that the attorney just said cannot be used as a he said, she said type of thing; well you did it last month so you have to do it this month? We are not bound by that and it appears to be no simple resolution to this other than what has already been worked out and agreed to by both parties. We are not rubber stamping what they're doing, we saying (a) what effect is it going to have on the town, (b) what effect is it going to have on the two properties and (c) the other matters with the neighbor to the left and to the rear need to be handled between themselves.

**Attorney Veltri:** Let me clarify it because it is a somewhat complicated case. There is a Court Order in this case. It is a Consent Order; it's a settlement order drafter by the attorneys and signed by the judge. In my mind, no Consent Order can mandate and can tell this Board to do anything that we don't want to do. You have jurisdiction to grant minor subdivisions, you have jurisdiction to grant the variances that are included in this application. Not two attorneys settling a case in Superior Court. That's why I disagree with what was said earlier. Having said that, that is also a special circumstance in this case. You have neighbors consenting to this, in writing, with attorneys present, knowing what the conditions of both lots are going to be if this is approved. That's somewhat unusual; that sometimes doesn't happen. That is another special circumstance that we need to evaluate in this case, you need to look at the zone, you need to look at the size of the lots and, to me, you need to look at the subdivision application presented to you on this sketch plat. 2.5', 125' in depth, that's the application, period. Anything else on that site that you don't agree with, you are not blessing if you approve this application. The building inspector has full jurisdiction if he thinks he has the right to go out and issue summonses tomorrow on this. We are not saying if you approve the application we bless the entire site and everything done on that site is correct. That's never going to happen and it's not going to be said, and we don't even have the power to say that. I just hope it clarifies it because we have a lot of things going on here that are unusual.

**Councilman Cortellessa:** Can you clarify the other part of it, which is the question about the other encroachments on other properties. If we approve something like this, and I understand the legal issues of it that people agreed to it and decided to do that and we have the right to say yes or no. But we also have three other issues regarding encroachments on properties. What is the implication of that?

**Attorney Veltri:** Everyone has their legal rights, which we are not infringing upon. So if there are other encroachments, adverse possession issues, I think the neighbors have clearly indicated that they don't agree with those conditions. Now, what happens is next really depends upon what the neighbors want to do. All I can say is this Board is not telling Mr. Theresa that all of that is okay, if this is approved.

**Councilman Cortellessa:** That is my concern and can we, as a Board, or the construction official, turn around and say move the remaining fences that are encroaching.

**Attorney Veltri:** You can ask, but I don't know if it is going to be a requirement. If you want a condition and approval based upon that, maybe the conditions will be challenged. But, again, that's not, as Mr. Ruin did say, part of the application. It is part of the property as it exists but it's not what remedy he is asking us for.

**Councilman Cortellessa:** I understand that part of it, I'm just trying to get a sense from our attorney what are the implications for the entire environment there, if any.

**Chairman Foulon:** If the other neighbors take him to court, and they don't want to sell their property, then he is going to have to move his fence. He is going to have to move three pieces of fence so why not move it all and put your property back to where it belongs. To me that seems like the most common sense solution to the problem. Put your fences on your own property and all of this goes away and everybody is happy.

**Attorney Rubin:** Things are not that simple though because, as you heard in one of our past hearings, and this is not the appropriate place for it, but the testimony will be that both of those neighbors consented to where the fence would be today. That is the testimony given and that is somebody else's case.

**Chairman Foulon:** We have sworn testimony that says it's not the case.

**Attorney Rubin:** He said/she said and that's not up to you to decide. That is somebody else to decide. Maybe if the building inspector decides that this is a matter to go before the municipal court so be it. I have raised the issue that the matter has been resolved in court and it's *res judicata*. This is not easy and I know you want it resolved.

**Chairman Foulon:** Look where I am coming from. The very best solution is to go back to your own property and the easiest solution. There is no more court, no more judges, just put the fence on your own property and everybody is happy and it goes away.

**Attorney Seibert:** Again, that is the reason why we ended filing the complaint and again part of the reason that the agreement ended working out is because, since we had to spend to the money to file the complaint, the payment from him for the property now helps kind of offset that with the costs.

**Chairman Foulon:** So all he is doing is losing "x" amount of square footage of property and he is only breaking even on it because he had to take the guy to court to get it.

**Attorney Seibert:** Correct. Again, the whole point he wants to sell the property and he can't do that with the current cloud on title.

**Member Jordan:** The official approved this. That's what you said last month Mr. Schneiderman. He went to the Borough for help and the Borough didn't help him so they should have done this then. You should do whatever you have to do to make Mr. Schneiderman happy. Get it over with. So if he is happy with Marty's proposal, I say let him do it because he has been jerked around too long. He is here with a lawyer for no good reason.

**Vice Chairman Graceffo:** I notice on the property there is construction materials. Does the property owner have any intent to expand on his property more? Is the property owner here?

**Attorney Rubin:** Sure, he's right here sitting at the table.

**Attorney Veltri:** Just for the record, he has been sworn in previously and he remains under oath today.

**Mr. Theresa:** I'll answer to the fact that it was continuation work, which Jeff Brusco had approved, in the front portion of the corner of the lot between mine and Dan's where that

block was supposed to be used for my driveway. I stopped doing anything because of the problems that came about.

Vice Chairman Graceffo: You wanted to put a paved driveway on that right side?

Mr. Theresa: No.

Chairman Foulon: What did Jeff Brusco approve?

Mr. Theresa: This is very involved and I can't get into that. I'm just explaining.

Vice Chairman Graceffo: We know this is very involved but it keeps on moving along the wrong direction. My question is what is that material going to be used and how long has it been sitting there?

Mr. Theresa: It has been sitting there since the town had brought the complaints against me. I couldn't use it because we couldn't discuss me doing anything further. Mr. Brusco was gone already so I cannot go to him, the new guy had complaints against me so he doesn't want to hear anything about the new projects, so everything laid dormant.

Attorney Rubin: So you stopped any work?

Mr. Theresa: Yes, in fear of having a problem of somebody complaining about me touching something else.

Vice Chairman Graceffo: The appearance is that you are trying to put a driveway in.

Mr. Theresa: No, no that has nothing to do with it.

Vice Chairman Graceffo: Then move the materials since that itself is an eyesore for the community, especially if it has been there for several years.

Mr. Theresa: If this would have been cleared up earlier and years ago we wouldn't have the problem.

Chairman Foulon: That's right, but no permits were ever issued for anything that you have done.

Mr. Theresa: The fence has a permit. I got that with my pool. Mr. Brusco specifically told me to put it in that way.

Chairman Foulon: Another he said/she said situation.

Mr. Theresa: He had all the surveys of my property at that time.

Vice Chairman Graceffo: Having the surveys is one thing, but following the surveys is something. If you have a proper survey and it is posted, I am sure a surveyor would not have put 2.5' off the survey line. If you said to me I have a survey and the building inspector approved it. He probably did because you are showing him a plan that is on your property with a fence being a built on your property. But after its constructed, it is not on your property.

Mr. Theresa: The only concern I feel is with the lot line adjustment. That fence on that side was always an existing fence from before I brought the property. When the fence was replaced, I put it exactly where it is. In fact, I had an agreement with the prior neighbor when that was done, which is in writing, to change the fence. And all I did was change the broken fence that was there with a vinyl fence on the properties that are in question for the lot line adjustment. There was always an existing fence there. Nothing was changed as far as movement further onto the other property or less onto my property.

Vice Chairman Graceffo: That's not true. You have a property line and you have it surveyed there is only one place to put the fence. No doubt, having a pool you are required to have a fence, but the fence is required to be on your property. If it is properly surveyed and notarized as being appropriate, that fence never would be where it is right now.

**Mr. Theresa:** I just explained that the fence was there for since before I brought the home and it was always acknowledged that was my property even the neighbor, who I believe was in real estate at the time, advised me to make an agreement with him because if he ever moved, in writing it would state that I own the fence, not that the newer person would've owned the fence. So we made an agreement between both of us that I could change the fence and that it was my fence.

**Engineer Cristaldi:** If he gives the fence to the neighbor, then it's the neighbor's fence and it is on his property and there is no more encroachment, right? Why doesn't he just give him that piece of fence to the neighbor? He just said he had all types of agreements with the previous owner that he allowed you to put the fence there and it was going to be your fence. Make an agreement with this guy that the fence is now his and that is the end of the encroachment.

**Mr. Theresa:** The fence was always mine. The guy had no problem letting me change the fence.

**Engineer Cristaldi:** I am just saying instead of going through all this, why didn't you just give him that line of the fence. Give it to him.

**Mr. Theresa:** No, because there is nothing stopping somebody from removing it then. It is my fence, I paid for it and I did everything proper to replace an existing fence in the same exact location as that current fence.

**Attorney Rubin:** By the way, for whatever it means, I did submit that agreement to the inspector who came after Jeff Brusco. I submitted it to that building inspector who obviously isn't here anymore.

**Mr. Theresa:** It was actually part of the case we are on right now which lead us to the lot line adjustment. It was submitted in that material also.

**Attorney Rubin:** It's not a secret to anyone. It was submitted to the Borough.

**Mr. Theresa:** There are a lot of things nobody knows and these are things that are really very involved, and I've got good answers for it if we have the time.

**MOTION TO OPEN THE PUBLIC HEARING ON THIS APPLICATION:** made by Councilman Cortellessa, seconded by Member Strobel. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Councilman Cortellessa, Members Platt, Strobel, Slater, Jordan, Pasquariello and Leonard.

**Chairman Foulon:** Anyone in the audience wishing to address the Planning Board, the Attorneys or the Applicant on this Application and only this Application, please step forward and state your name and address.

**Marie Mahler, 27 Lorrie Lane, Wanaque**

**Mrs. Mahler:** First of all I would like to quote Ronald Reagan, "Mr. Gorbachev take down that fence." I have a letter here and I will give a copy to Mr. Rubin, Mr. Theresa and the Secretary. I am asking Mr. Theresa to take the fence down off of my property or I will take it down for him. (Mrs. Mahler handed the letters out to the named persons).

As far as it being a mere 24” on my property, last week I went to Home Depot and measured vegetable garden that I would like to put in and it’s 2’, so there is my garden. It’s not a small piece of property; it’s mine property and I would like it back.

**Dan Mahler, 27 Lorrie Lane, Wanaque**

Mr. Mahler: I wasn’t going to speak again tonight but my attorney used to tell me and he had a saying “a verbal agreement is as good as the paper it’s written on”. But there was no verbal agreement and I want to reiterate that there was absolutely no verbal agreement. One comment Mr. Theresa made about the fence. The fence was originally put up by John Curry and John lived there when I brought my property in 1983 and he put the fence up because he had an inground pool and was required by statute to put up a fence, and he did, and that is the fence that Mr. Theresa replaced whether it was Mr. Curry’s fence or subsequent property owners. Mr. Rubin talked about an agreement and I’d like to ask Mr. Schneiderman didn’t you contact the previous owner who said he never signed an agreement?

Attorney Seibert: I’m not sure actually what you are getting at.

Mr. Mahler: I looked at the agreement because it is in the file and it is notarized but it is notarized by Mr. Theresa’s wife and I am a notary and we can’t notarize something for your own family. That is illegal and she can actually lose her notary license for that.

Attorney Seibert: This agreement wasn’t filed anywhere either.

Mr. Mahler: It wasn’t filed and that is another issue. You may or may not want to comment on it.

Attorney Seibert: When he originally purchased the property during, I suppose the attorney review period, the attorney he was using at the time had a survey drawn and, I don’t like to speak badly about other attorneys, but he didn’t pick up on the encroachment at the time. That is why the sale ended up going through and Mr. Schneiderman had no idea at the time, so he was innocent in all of this. Now he just wants to sell the property.

**James Pantelopoulos, 67 Molinari Drive, Wanaque** (Property right behind The Therasas)

Mr. Pantelopoulos: In reality, he is encroaching on four peoples’ property with the fence, not three. I just want to bring up one point that he brings up about *res judicata*, the legal term he is using, but in reality, before that, Marty has come in here with, with what they call “unclean hands”. He comes here with many violations, many things he has done on his property in bad faith. So, in your decision for the lot line, just consider that he’s not really here in a “clean manner” where he has fulfilled all of his obligations. As to the Consent Order, two people can consent but it doesn’t make it a law or rule that imposes you to follow. They can consent to do illegal activities, but if it pertains to the city or town, they have to rule on it and it’s contingent on that ruling. The property line adjustment that he is asking for, as the Board said, is really his arbitrary markings by making fences and now he is coming here and asking us why don’t we just make the adjustment based on my fence line. I don’t think the Board wants neighbors coming in every other day “hey I just took a foot may can you adjust this guy’s lot, or just adjust this line”. I mean the whole subdivision there we are all 75x125 conforming lots and now he has a non-conforming lot and that is going to throw the whole subdivision off. Another thing is that he does need his fence up there for the pool. I am advising Marty will be receiving a few letters from me saying that I’ll be taking the fence down or he has to take the fence down, or I’ll be taking

it down. Eventually the fence has to go back or otherwise he will be in violation of not having a fence for his pool. It is one or the other Marty. You can take it down and put everything on your side and do it right.

**Mike Hafner, Construction Official for the Borough of Wanaque**

**Mr. Hafner:** As the attorney had brought up some points just to clear them up and I just wanted to bring up a couple points just so the Board was aware. First, the Chairman had brought up about moving the fence back to the lot line and it is all done. That's not that easy only because the sheds, the shed and the gazebo both encroach on this gentleman's property as well. So it is not only the fence that's encroaching. I just wanted to make that clarification. With regards to when the sheds were put there, they appeared between 2012 and 2013 and at the time the building code required permits for sheds over 100 square feet. Subsequently, the building code has changed and in 2018 they raised that to 200 square feet. So Attorney Rubin, when he makes a statement that a permit is not required, technically by today's regulations, a UCC Permit is not required. However, a Zoning Permit was always required and is still required for any of those structures.

**Chairman Foulon:** Anyone else? I'll entertain a Motion to close the public hearing.

**MOTION TO CLOSE THE PUBLIC HEARING ON THIS APPLICATION:** made by Member Slater, seconded by Member Platt. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Councilman Cortellessa, Members Platt, Strobel, Slater, Jordan, Pasquariello and Leonard.

**Attorney Veltri:** Mr. Rubin do you have any other witnesses or would you like to make a closing statement?

**Attorney Rubin:** We don't have any other witnesses. You heard from all our witnesses the last time. Most respectfully, as I said earlier, I thought 2.5' for a lot line adjustment was a minor application before this Board or any Board, but apparently, it has gotten a little bit out of hand. If the other neighbors who have testified want to do something as the Schneidermans did or whatever they are going to do, that is their right and they can do that obviously. But, and there's a big but, it has nothing to do with this application. This application has to stand on its own merits. We gave you the maps as you requested and did the maps over again as you requested. The application is just a change to adjust the lot line as agreed between two neighbors and they have memorialized what they have done in a Court Order and had a judge sign it. What more could you ask for? No one is blessing anything; however, what we did and what counsel for the Schneidermans and ourselves did is we made it as binding as we could under the circumstances to have it reduced to writing and having a judge sign off on it. Will that bind this Board? Well, that's a question that I don't know the answer to because that's something under general laws Attorney Veltri is correct that the court can't really mind the land use agency to do something unless under extraordinary circumstances. Counsel for Schneiderman points out that maybe that's what this Consent Order really says that the Board has to approve this lot line adjustment. I don't know the answer to that and that's only going to be answered hopefully not by a judge, but if it has to be, that's the next step is to follow procedure that allows these things to happen and the municipality is brought into the case and that would be the next step.

We don't want that, this is a simplistic thing that is causing two neighbors who have agreed to spend more money and Mr. Chairman and Members of the Board that's not fair. The two neighbors who are affected by this application agreed to a certain cause of action. We are not talking about building a new building, or building a shopping center, we are talking about moving a boundary line 2.5'; *de minimis*, it's minor in the scope of things. Most respectfully I am asking you to allow it to go forward, allow this subdivision to occur and, of these several neighbors wish to do something or anything that's not up to this Board. This Board is not an enforcement agency. There is an enforcement agency but it's the Building Inspector, Municipal Court and obviously there is a whole problem there because these matters have already been adjudicated. In any case, that's not up to this Board to decide that is maybe somebody else's problem. Right now, the only thing before this Board is a 2.5' adjustment and most respectfully ask that you allow the adjustment to occur.

**Chairman Foulon:** Let's take a count as to who is eligible to vote.

**Attorney Veltri:** We want to announce who the eligible Members are who can vote on this.  
**Board Secretary:** Chairman Foulon can, Vice Chairman Graceffo, Councilman Cortellessa, Member Platt, Member Strobel, Member Slater, Member Jordan and Member Leonard. Any Member that was not at the one or the two previous meetings have signed that they have listened to the tape as well as read the Minutes and I have notarized their signatures and that is why everyone, except for the new member, is eligible to vote.

**Councilman Cortellessa:** All of these encroachments have increased the size of that property about 1200 square feet. That is a lot of increase. That's a little disturbing.  
**Chairman Foulon:** And he hasn't paid a penny of taxes on either. His neighbors are paying his taxes for him. That is very disturbing. Okay it is time to vote.

**MOTION TO APPROVE THERESA APPLICATION:** made by Chairman Foulon, seconded by Member Leonard.

Voting yes were Members Platt, Strobel, Slater and Jordan.

Voting no were Chairman Foulon, Vice Chairman Graceffo, Councilman Cortellessa and Member Leonard.

**Chairman Foulon:** I in good conscience cannot possibly vote for this and I vote no.

**Vice Chairman Graceffo:** I find that the subdivision adversely affects the zoning in the area and I also vote no.

**Councilman Cortellessa:** I am in sort of the same position in terms what is going on here and I vote no.

**Member Leonard:** I can't vote yes in good conscience.

4 – No            4 – Yes            1 – Abstained (New Member)

This Vote does not equate to an approval

**MOTION DENIED**

## **RESOLUTIONS:**

### **PB2019-02 – Charles E. Huber**

**Attorney Veltri: Minor Subdivision/Lot Line Alteration between two adjacent lots seeking to swap property along the side yard line and create two newly configured lots. We voted on that at the May 16, 2019 meeting by a 6-0 vote in favor of approving the application. The application and the new lots are outlined on a site plan prepared by J.P. Miceli dated 10/23/18 consisting of one page. We granted that subject to the following condition: (a) that all representations and stipulations made to the Planning Board are true; (b) that they would obtain Passaic County Planning Board any other necessary county, state approvals; (c) they would comply with the conditions set forth in Engineer's Report dated February 21, 2019; (d) and they would submit Subdivision Deeds for approval by myself and the Engineer. This was introduced by Commissioner Platt and seconded by Commissioner Strobel.**

**Let the record reflect that Mayor Mahler returned to the dais at this time.**

**MOTION TO APPROVE RESOLUTION: made by Member Strobel, seconded by Member Platt. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Strobel, Slater, Jordan and Leonard.**

### **#PB2019-04 – Crown Castle**

**Attorney Veltri: They appeared before our Board for Site Plan Approval to erect a replacement wireless telecommunications facility at the property known as 579 Ringwood Avenue, Wanaque. We voted on that Site Plan Approval on May 16, 2019 and approved it by a 8-0 vote in favor of the application. The Site Plan Application was set forth on plans entitled Crown Castle Site, Prepared by French & Parrello Associates, Peter J. Tardy, Professional Engineer dated January 30, 2019 consisting of five sheets. They propose to modify an existing telecommunications facility by removing and replacing the flag pole for a new 107.6" stealth flag pole. The new antenna will be approximately 2' taller than the existing antenna. The maximum height of 130' is permitted. The replacement facility will be slightly larger in diameter. The existing facility is 20.5" in diameter and the proposed replacement facility will be 36" in diameter in order to provide the necessary space for the carriers' antenna modifications and add the potential for colocation. During the construction of the new tower, a temporary antenna will be constructed behind the existing monument. Several parking spaces at the location will be temporarily blocked. The project period of construction is approximately 30 to 45 days.**

**We granted the approval based upon the following condition: (a) that all representations and stipulations made to the Planning Board are true; (b) that they would obtain Passaic County Planning Board any other necessary county, state approvals; (c) that all the conditions in the Engineer's Report dated April 15, 2019 be complied with; and (d) that they provide structural calculations to the Building Department signed and sealed by a Professional Engineer for the foundation of the temporary antenna and the adequacy of the existing footing for the new antenna; and (e) we did receive a letter from the Police**

Department dated that they are to comply with that letter which we intend to attach to the Resolution. This letter is dated June 10, 2019.

**Chairman Foulon:** The process is they will put up a temporary tower, take down the existing tower, put up the new one and then take down the temporary.

**Councilman Cortellessa:** I assume they are going to be well insured in case the temporary tower crashes down and then the new tower needs to be adequately insured as well in terms of putting that up. The Chief's letter has to comply with any impact on the access to information that he would have.

**MOTION TO APPROVE RESOLUTION:** made by Member Slater, seconded by Member Leonard. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Strobel, Slater, Jordan and Leonard.

**PUBLIC DISCUSSION:** Anyone in the audience wishing to address the Planning Board on any Planning Board matter, please step forward and state your name and address. Let the record show no one came forward.

**VOUCHERS:** submitted by Steven J. Veltri, Esq. for the Crown Castle Application in the amount of \$750 and for the Huber Application in the amount of \$975; and submitted by Alaimo Engineering for the Crown Castle Application in the amount of \$1,140 and the MRAN Haskill LLC (Taco Bell) Application in the amount of \$155.

**MOTION TO APPROVE VOUCHERS:** made by Vice Chairman Graceffo, seconded by Member Slater. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Councilman Cortellessa, Members Platt, Strobel, Slater, Jordan, Pasquariello and Leonard. Mayor Mahler abstained.

**MOTION TO ADJOURN AT 9:20 P.M.:** Motion to adjourn meeting made by Member Slater, seconded by Councilman Cortellessa. Motion carried by a voice vote.

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Jennifer A. Fiorito  
Planning Board Secretary