

PLANNING BOARD
BOROUGH OF WANAQUE

FEBRUARY 21, 2019

REGULAR MEETING

Meeting called to order by Member Platt with a salute to the flag at 8:20 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 and the Herald News 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

ROLL CALL: Members Kevin Platt, Charles Strobel, Jack Crilly, David Slater and Mary Leonard

PRESENT: Attorney Steven Veltri and Engineer Michael Cristaldi

ABSENT: Chairman Gilbert Foulon, Vice Chairman Joseph Graceffo, Mayor Daniel Mahler, Councilman Cortellessa and Member Michael Ryan.

MINUTES: from the January 17, 2019 Meeting

MOTION TO APPROVE: made by Member Leonard, seconded by Member Strobel. Voting yes were Members Platt, Strobel and Slater. Members Crilly and Leonard abstained.

COMMUNICATIONS/REPORTS: None

ENGINEER'S REPORT: Board Secretary handed out a new application for the March Meeting.

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.

APPLICANT'S EXHIBITS

**A-1 Consent Order signed by the Honorable Thomas J. LaConte, P.J.Ch.
and filed on May 4, 2018**

**A-2 Survey of Property known as 35 Tremont Terrace (Block 200.12/Lot 12)
Prepared by Schmidt Surveying and dated May 3, 2015**

Michael Rubin, Esq. of 1330 Hamburg Turnpike, Wayne, NJ, Attorney for the Applicant, Marty Theresa, commented in this application before the Planning Board as to what we call, according to the New Jersey Municipal Land Use Law, a lot line adjustment which, in fact, is really a minor subdivision. What we have before you this evening is a legal issue. There is very little, in my opinion, factual matters. Mr. Theresa is here tonight and will testify in accord to what happened heretofore in this matter, but as far as the factual facts of this case, it is a legal matter and there is very little contest as to the facts. The issue of the lot line adjustment and where the lot line should be has been the subject, as far as I can tell, maybe eight or nine years in the making.

This has been an ongoing controversy starting with Jeff Brusco when he was the Zoning Officer and Construction Code Official in the Borough, coming on to Mr. Theresa's property and figuring out where things should be and where sheds should be located and such. After a number of years and many correspondences back and forth and meetings, Mr. Brusco's successor came upon the property and decided that the sheds on the northerly of Mr. Theresa's property were not appropriate and he filed two complaints. One of them citing the Uniform Construction Code violation and that was a violation that Mr. Theresa didn't have the appropriate permits and such to place the sheds in that area. The second complaint alleged that the zoning code of the Borough was in violation and cited Mr. Theresa was in violation of the code in that the sheds and such were not appropriately placed and they should have been further away from the property line and other issues dealing with the sheds on the north side of Mr. Theresa's property located, so the record is clear, at 31 Tremont Terrace in the Borough. The matters were tried at length in this courtroom and the first case was tried at length with the Judge hearing the case in the Municipal Court and as to the Uniform Construction Code Mr. Theresa was found, after the trial, of being not guilty, so that matter was finished. Mr. Theresa was found guilty of having placed the sheds in a wrongful possession pursuant to the Borough's Zoning Ordinance, and the Judge fined him a certain amount. What we did after the Judge found him guilty, we filed an appeal to the Superior Court of New Jersey, Law Division and we obtained the transcripts and did everything that we were supposed to do and the Superior Court Judge reversed the decision of the Municipal Court and found Mr. Theresa not guilty. Mr. Theresa was found not guilty of both of the violations alleged by the Zoning Officer.

Just to give you background, during all this time our next neighbor Mr. & Mrs. Schneiderman filed a lawsuit against Mr. Theresa alleging that he had gone over the property line with his fence and other improvements, a wall that was placed some time ago. After a lot of discovery and meetings and such, we were before the Judge and we worked out a compromise position and there is a Court Order, which should be put into evidence in this matter. It's the Order of the Court dated May 3, 2018 (Marked as Exhibit A-1). This says, very clearly, that the Plaintiffs, who are the Schneidermans, who own property at 35 Tremont Terrace, known as Lot 15, Block 200.12, shall transfer, which means we'll get a Deed from them, to Mr. Theresa who owns the adjacent property located at 31 Tremont Terrace, a 2-1/2 foot by 125 foot strip of Plaintiffs' property totally 312.5 square feet along the southern border between the parties' properties as depicted on surveys. It goes on to say who is going to pay for what, what surveys are going to be prepared, when it has to be done, what the costs will be and that is on the second page, which really isn't germane to our discussion this evening. What is the main discussion is that the Court Order says that the Schneidermans agree to convey the 2-1/2 feet by 125 feet strip and that this will, hopefully resolve a lot of problems of the neighborhood.

No Board was made party to this agreement or this Court Order so there was no ordering of the Board to do anything. It does say that, in the event that the Board after hearing this case, which is this evening, doesn't agree to allow the lot line adjustment, then we start from ground zero and the last five years are up in the air.

After this Order was done, we ordered new surveys of both properties and we filed them with the planning department in the Borough to show where the 2.5' wide 125' long strip is going to be transferred and we tried to show everything that we could. We hired Steven Eid, a Licensed Surveyor and he did what he had to do for this.

In my opinion, the only issue before this Board this evening is whether the 2.5' wide 125' long strip can be adjusted in that this strip would eventually become part of the Theresa property and the Schneiderman property be less than the 2.5 wide 125' long strip and, as far as I can see, that is what I ask the Board to review and that is my Notice to the neighbors and that was the publication and I believe that the Court Order says this is what we are going to do is in accord with what I've just spoken about and that is the only issue. Now, I understand that there may be some other issues that other neighbors may have but, this is the issue, in my opinion, and the only issue before this Board and that is what I am asking this Board to vote on. You either like the lot line adjustment or you don't; all other issues whether it be violations of the Zoning Ordinance by other neighbors or other issues which others have come up with having nothing to do with the lot line adjustment, are not germane to this application and may be heard on another day, maybe it'll be issues for the new Zoning Officer. In any case, you can't bring any cases or any violations against Mr. Theresa for anything on the northerly side, as we are showing it on the plan, because it has already been found not guilty of any violations. We have a doctrine in New Jersey; once you're found not guilty, you are not guilty forever. That is where we are today. I am going to have Mr. Theresa testify as to all the things I have said, in his own words, and that Mr. Chairman and Members of the Board, is the extent of this case as far as the Applicant is concerned.

Attorney Veltri swore in Martin Theresa.

Attorney Rubin: Mr. Theresa, you heard this statement that I made to the Board as to most of what has happened in the last, at least five to eight years. What I have represented to the Board somewhat accurate from all that was said?

Mr. Theresa answered yes.

Attorney Rubin: After you were sued by Mr. & Mrs. Schneiderman as to the placement of the fence on what we call the northerly side of your and the southerly side of their property, did you retain a surveying company EID Associates to do the survey work?

Mr. Theresa answered yes.

Attorney Rubin: The surveys that you received from EID, are they the surveys that have been filed with the Planning Board as to this application?

Mr. Theresa answered yes.

Attorney Rubin: You are respectfully asking the Planning Board to honor the Consent Order that was signed by the Judge in the Superior Court to allow the lot line to be moved over and that you would actually be buying the 2.5' wide 125' long strip piece of the Schneiderman property? And you have agreed to that and place the money for that in escrow pending the outcome of this application?

Mr. Theresa answered yes to both questions.

Attorney Rubin: That is the only thing that you have been asking for in your application is to adjust the lot line?

Mr. Theresa answered yes.

Attorney Rubin: Have you seen the memorandum that was prepared by Michael Hafner, Acting Construction Official, dated February 8, 2019?

Mr. Theresa answered yes.

Attorney Rubin: Mr. Hafner is asking and making a suggestion that all issues as to your northerly property line be resolved by the Board so that no one has to come back again, and you respectfully ask that your application be amended to allow the sheds to be there as they have for many years?

Mr. Theresa answered yes.

Attorney Rubin: And that would be in accord with what became the not guilty judgment?

Mr. Theresa answered yes.

Attorney Rubin: Mr. Chairman there is an interoffice memorandum dated February 8, 2019 prepared by Mr. Hafner and we have no problem with that going into this case because it really should and we'd like his suggestion of ending this matter with the Board allowing Mr. Theresa to move the lot line and that everything stays the way it is, status quo. I have Michael Cristaldi's memo dated February 21, 2019 and making note of the lot line encroachment and makes reference to other problems either on this property or on the next property. Most respectfully, we've nothing to do with anything else except the lot line adjustment this evening. If there are other issues, we have a new Construction Code Official and if there be problems, I am sure that he will be knocking on our door, if it all, because that's his job. Mr. Hammerle and Mr. Hafner were aware of the not guilty judgments of the municipal court so that issues cannot be revisited on Mr. Theresa. That is the extent of what we have before you.

Attorney Veltri has a couple of questions for either your or your client to answer.

You submitted to the Board a Survey dated August 4, 2018 and then a Land Acquisition Plan, which looks like the Survey with a caption added which reads "Proposed 2.5' wide x

125' long strip to be transferred from Block 200.12, Lot 15 to Block 200.12, Lot 14, Area = 312.5 SF or 0.00717 Acres." That I think is the only thing that's different.

Attorney Rubin answered yes and I asked him to make that adjustment on the plan so that it is clear as to what we were doing.

Attorney Veltri commented the question I have, and I think you call this a lot line adjustment, but I think it is a minor subdivision application.

Attorney Rubin commented I agree with that.

Attorney Veltri continued because it affects both lots, and there is no zone box that tells us what exists and then what is going to change on both lots. This Board really has no way of knowing whether or not there are any existing, or pre-existing, variances on either lot and whether or not this lot line change would affect or trigger any variances on either lot.

Attorney Rubin commented I have a problem on the Schneiderman property. I am not privy to any information regarding it. They've had their own attorney throughout this matter. They allowed us to go on their property for the surveyor to do his thing, but I do not know anything about their property and I don't know if they are here this evening.

Attorney Veltri understands that they are part of the Court Order that is Exhibit A-1, so we need to, I think, at least look at that, but you do have control over your client's and we don't have a zone rundown even on his property. Again, I am looking at what I just described, but I don't see what I normally see on a minor subdivision plan.

Attorney Rubin answered that's because it is somewhat of a hybrid kind of thing. It's not totally a minor subdivision. It is a lot line adjustment and the only thing that we addressed was the lot line.

Attorney Veltri commented I understand but that sort of leaves us in an awkward position in that we don't know the impact of what we are approving.

Attorney Rubin respectfully disagrees with that concept. The only thing before this Board is the adjustment and nothing else.

Attorney Veltri commented we can't make a decision unless we know how it impacts both lots.

Attorney Rubin commented I can't tell you how it impacts Schneiderman; we just don't represent them. We have no information and all I have is a survey. If they have some encroachment or some violation of the Zoning Ordinance, I can't speak for them.

Attorney Veltri stated let me give you an example of what I'm talking about. If they have a side yard variance that exists and now they are giving away property to your client and that aggravates or exacerbates that variance, this Board needs to know about it.

Attorney Rubin commented I wouldn't know that and I don't have that information.

Mr. Theresa commented I have been there over thirty years and I knew five or six of the neighbors before this new family moved in two years ago and there have never been any variances in all the years I've been there. In fact, don't know many people that ever got one in my neighborhood.

Attorney Veltri commented that could be right, but I'm just saying it is not on the plans so, again, from a legal point of view, I can't address whether or not there are any variances that are being triggered by this application. All I see is a survey with a shaded line and a 300+ feet of property being transferred from one lot to the other. How it impacts both lots, we don't have the information.

**Engineer Cristaldi questioned isn't the other property line also getting a subdivision too?
Attorney Veltri commented it impacts both lots.**

Attorney Rubin commented we become bigger and Schneiderman becomes smaller.

Engineer Cristaldi questioned shouldn't he be here too as part of the application?

Attorney Rubin answered I advised their attorney that we were here.

Attorney Veltri commented normally I would say yes Mike. I do respect Attorney Rubin in terms that he does have a consent order so that would tell from a legal point of view that both parties have agreed to this. What I am not seeing is how it impacts both lots.

Attorney Rubin commented I can't really respond because we just don't have any information on Schneiderman. As I said, they have their own attorney and we advised the attorney that was on for tonight and that it would be heard by the Board. I can't do any more than that.

Attorney Veltri commented it is going to up to the Board. Mike I would like to hear your opinion on it. Again, it's just not the normal minor subdivision plan that I've seen.

Attorney Rubin commented most respectfully it's not an engineering issue; it is a legal issue.

Attorney Veltri commented it is a completeness issue and whether we need more information.

Engineer Cristaldi commented you don't know how it affects the other lot. On his lot obviously any variances he has will be reduced because he is gaining property. You don't know what is happening on the other lot at all.

Attorney Rubin commented we know for the two years that these folks have had it, there have been no applications and I've been involved in this matter for maybe five years and nothing happened. What happened twenty years ago, I can't respond, and the Schneidermans probably don't know either. We'd have to do some kind of search.

Engineer Cristaldi commented you would have to look at their Deed. You must have a survey of their property to give their property to your applicant. He must have a survey of his property.

Attorney Rubin commented I have it right here.

Engineer Cristaldi continued so he would take his survey and he would compare it to the Zoning Ordinance and create a zoning table on that lot for what exists on his lot.

Attorney Rubin commented I couldn't put anything on his property. I don't know how to do that without bringing in the other attorney and have them do that.

Attorney Veltri stated or getting your professional engineer/surveyor out there to give us a zone box after he makes the appropriate measurements and looks at both surveys. That is basically what I am looking for so that we clearly have a record of how this impacts both lots.

Engineer Cristaldi commented he could do a zone table right on your map that shows your lot and his lot, the conditions on both lots and any variances and whether or not the lot line adjustment will create any new variances.

Attorney Rubin commented I am the one that is going to have to certify it and I don't know how to certify somebody else's property. I have the survey that we were given by the Schneidermans' attorney, which is dated May 3, 2015, and this is what they sent us to work from and our surveyor used this as a guide to work. I do have it and, just to make things easier, if it does, I will submit this as Exhibit A-2 and give it to the Board Secretary. This survey was prepared for the Schneidermans and their attorney gave it to me so that we

could work on this lot line adjustment application. We then forwarded that survey to the surveyor who prepared the current documents for tonight's presentation, EID Associates. That is all I have.

Member Crilly: I was trying to follow the fact pattern in terms of the legal case, but what was the scope of the Superior Court saying not guilty? Could you please just re-state that the Mr. Theresa was not guilty of what? What is the scope of that?

Attorney Rubin answered they were found not guilty of violating the Zoning Ordinance as to where the sheds were located as against the property line. The testimony was really extensive before the Municipal Court, which is what we use. As to when the sheds were built and when they were erected many years ago that they were under the guidance and jurisdiction of Jeff Brusco, the then Zoning Officer. There was a lot more to it and the Judge did not say exactly why he thought the decision should be reversed, but he did.

Member Strobel: Just for the history of this, when the lot was purchased when you put the buildings in, are these the exact same lines that you had when you brought the property? **Mr. Theresa** answered they are exact. In fact, where the current fence is on the northerly side, I replaced the fence there which I got a permit for and it was replaced in the exact same spot. Because of the sheds, you really couldn't stick it more closer to me. The problem was when the newer people moved in two/three years ago and they had their survey, they felt I was on their property and that's how this all came about. I've always thought that was my property. In fact, the neighbor before him, when I changed the fence, he was a realtor, he told me I understand your changing the fence and I'm glad because the metal posts were all breaking. Just to show in case I ever move, or you, that you own the fence let's make an agreement. So me and him did a written agreement between ourselves that that was my property and my fence. It just all changed when the newer people moved in and they said it was their property, but I always thought it was mine for thirty something years that I've lived there. To get it over with, I was like I'll buy it, the fence is on the line and I'm buying up to the fence and it's all over with. I don't have to hear my neighbor complaining that I took something that was always mine anyway.

Member Strobel: How long have the structures been there?

Mr. Theresa answered it has to be thirty years. I don't know.

Attorney Veltri questioned what about the mis-located fence on the other side of the property?

Mr. Theresa stated I don't know. I just found out that now. I never even really looked at that side on the new surveys.

Attorney Veltri questioned that is your fence?

Mr. Theresa answered yes, the fences are mine. I had an agreement with Dan over the fences.

Attorney Veltri questioned who is Dan?

Mr. Theresa answered Dan Mahler, my next door neighbor.

Attorney Rubin questioned he is the one the fence allegedly encroaches upon?

Mr. Theresa answered yes, from what I am finding out.

Attorney Veltri questioned what is your agreement with Dan?

Mr. Theresa answered the agreement was we had bushes between our property lines and I was about to change the one fence and I said hey I think I'm going to put a fence on the other side too. Do you mind if I rip out the bushes, because we used the bushes as our property line, put a fence in? He said he would ask his wife Marie and then he came back to me and he said there's a tree on your property by my pool in the mid-backyard where the fence almost is, and there is a big tree on the corner in the front of my house but close to the properties, but on my side. He goes if you let me cut the two trees down, because one is getting leaves in my pool and the other one was big, I'll let you rip out the bushes and put the fence in. That was our verbal agreement; nothing more, nothing less.

Attorney Rubin questioned how long has the fence been there now?

Mr. Theresa answered I believe it was done in 2012, 2013 the latest.

Attorney Rubin questioned between 2012 or 2013, in that time frame until today in 2019, have you ever received any communication from any of the Zoning Officers who have been employed by this community, or any Construction Code Official, that there was a problem on what looks to be the south side of your property as to a fence?

Mr. Theresa answered no. In fact I have fence permit when the pool was put in.

Attorney Rubin stated the question was from 2012/2013 when you say the fence was erected to today.

Mr. Theresa commented I never heard anything.

Attorney Rubin questioned have you been summoned by the Zoning Officer or any Official of the Borough that says that you put a fence in the wrong place?

Mr. Theresa answered no. In fact there was one issue that came up. My fence on the left side, if you look at the survey, the front corner of it where it goes to the street, it is a little L, you'll see like an 8' section that sticks out. What had happened originally is that L wasn't there. It was about six months after that, Dan told me that being the Mayor a lot of people come up to me and they think the fence is mine because I have big arborvitae trees there and you really can't tell. One day when I had the gates installed later, that we left a few things out due to construction, I asked the fence company to put that one piece so people would know it's mine so Dan didn't have to hear complaints.

Member Strobel questioned how where the lines determined when that fence, and even the other side of the property, was that from Jeff Brusco, did he determine your lines?

Mr. Theresa answered at the time there were garden walls being put in and I originally hired an engineering firm because I originally wanted to go with a 12' single wall in the east side of the property all the way in the rear of the property line. What happened was, something that was supposed to take one month, went to a year and a half and the engineer went out of business and I never got my money back or anything. Jeff Brusco, Construction Official, approached me because we were talking quite a bit and he said why don't you just build 4' or less walls and put a couple in. Since the engineer disappeared and I had to get the job done because there was severe water damage being done to my property due to the easements back there and the runoff from the hill, I took it then to go according to Jeff's advice and I changed all the plans around because you don't need any permits if you keep it within those specifications and build them with a 2 to 1 setback. I did what he told me to do because he was helping me with anything I needed to take care of my water problems at the time, which actually started this whole problem of me having to do walls and redo my patios. It was all due to water problems coming down the side of the hill from the back of the whole hill that I was getting flooded out. I had 1' of water in my patio

nonstop constantly flowing. This is how bad the water was. I had to run drainage tubes out the back of my yard to the front of the house to get the water out from back there. We couldn't even use the backyard any more. He was one afraid of damage getting done to my foundation from standing water and two it was an emergency. Actually during the wall construction when that was put in, we found in the easement there is an 18" rcp pipe, concrete pipe when we were moving some of the dirt off there we found that the pipe was totally broke, a big chunk was taken out of it, and I actually called Dan and he came over. Dan looked at it and told me not to do anything; don't touch it. I want to show everybody and it appeared to be done wrong.

Engineer Cristaldi questioned, when you built these walls, who staked out your property lines so you knew where to put your improvements to stay on your property? Who staked out the property line?

Mr. Theresa answered when I had the contractor, the engineer at that time, he needed a topographical survey and he got somebody that did the topo.

Engineer Cristaldi stated I am not talking about that. I am talking about when you did the construction, somebody comes out and stakes out your property and shows you where your property corners are so that you know when you are on your property. Someone stakes those out for you because you have your one wall right along the property line on that easterly rear line and then you got another fence 4-1/2' out beyond your property line in front of that wall. When you do all this construction, didn't anybody come out and find your property lines so you could stay on your own property?

Mr. Theresa answered there were a lot of guidelines as I said on the southerly side between me and Dan's house; there was the bush line which we always felt was the property line and that's the way we respected it for thirty something years. The other side had a fence. Attorney Rubin commented you've gone and advised this Board of what happened with everything on the side yard. Is this the same testimony, for the most part, that you gave before the court on these violation issues?

Mr. Theresa answered yes.

Attorney Rubin commented you are repeating everything that went on in court when the Superior Court did find no action against you.

Mr. Theresa stated yes.

Attorney Veltri: I just want to straighten out a couple of things in my mind. The fence that impacts Lot 15, was that put up the same time the fence that borders the Mahler property was put up?

Mr. Theresa answered one was done before the other. I don't remember the order.

Engineer Cristaldi questioned what about the piece in the back all the way along the rear of your property line that goes across that block wall? When was that piece put in because that is 4-1/2' into the neighbor's property?

Mr. Theresa answered that was replaced. They used to be back in the further part that you're talking about on my property which I never saw for many years until we actually cleared it out to do that job. There was huge poison ivy, thick brush back there right before the water concrete swells that run between the upper and lower properties. There was actually a fence back there in the brush that we found even though all the poles were rusted and everything. When the guy came in to do the topo, he actually put pegs around

when he did the topo. He couldn't get back there because of all the brush at the time to put a peg on it. He is the one that told me deep in the brush there is a fence back there and I didn't know there was a fence along the back.

Attorney Veltri questioned did you put the fences up or did you hire a fence guy?

Mr. Theresa answered they were with the property when I brought the property.

Attorney Rubin questioned how long ago was that?

Mr. Theresa answered thirty something years ago.

Attorney Veltri questioned, the fence you put up in 2012/2013 that borders the Mahlers' property, did you put that fence up or did a contractor put it up?

Mr. Theresa answered I had a contractor put it up.

Attorney Veltri questioned did you give him the survey of your property before he put it up?

Mr. Theresa answered I gave him something that I had from the engineer when they did the topos and they outlined something on that along with my original survey.

Attorney Veltri questioned you and your contractor determined where to put the fence up, correct?

Mr. Theresa answered I think he did. I just told him this is my property and I want to enclose the property. We did it in stages because of construction being done.

Attorney Veltri questioned did the Mahlers determine where the fence would be or did you determine where the fence would be?

Mr. Theresa answered other than discussions with Dan that I wanted to run the fence along the property and we both looked at it so I guess it could be mutual.

Attorney Veltri questioned he was there when you staked the fence out and built it?

Mr. Theresa answered yes, a couple of times, sure. He was over the house quite a bit.

Attorney Veltri questioned what about the neighbor on the other side, was he also aware of where you were staking the fence out?

Mr. Theresa answered he only moved in two or three years ago. They moved in after the fact.

Attorney Rubin stated the Schneidermans weren't on the property let.

Mr. Theresa stated he only found out according to when he bought the house. He bought the house in a rush, it was a foreclosure, and he rushed through the survey and never knew that he was buying property that I actually had a fence 2-1/2' onto his property and that's what brought it to light.

Attorney Veltri questioned there is something else on your survey that I am interested in, and it is captioned the "stone slope". Do you see that on the survey? What is that?

Mr. Theresa answered yes. There used to be, instead of a block wall that you would make out of blocks that I did my retaining wall, stones. If you look in front of Dan's house, we have stones that are stacked on top of one another.

Attorney Veltri questioned what is that used for?

Mr. Theresa answered that is used for nothing. It is just a dirt slope with rocks.

Engineer Cristaldi questioned which way does it slope? Towards the Mahlers' property or yours, or straight back?

Mr. Theresa answered you are talking about all the way to the right.

Attorney Veltri commented why don't you look at your survey?

Mr. Theresa commented I was thinking of an older survey.

Attorney Veltri commented we are looking at the survey you presented to the Board. Mr. Theresa commented that is a very rocky area . I landscaped it in rocks that all the rocks from doing the walls and leveling out the lawn back there.

Attorney Veltri questioned what is that used for?

Mr. Theresa answered nothing. It is just pretty much landscaping.

Attorney Veltri questioned isn't there a gravel driveway on the property that is not on the survey?

Mr. Theresa answered I know what you are referring to and me and Jeff had that discussion when I received his initial letter. That was, at the time when I was doing construction, I had a load of gravel dumped in that section over there because I was doing work. It would be right where the second sidewalk cut out is on the right south side.

Attorney Veltri questioned is it near the stone slope?

Mr. Theresa answered no. It is all the way in front of the house by the front walk.

Attorney Veltri questioned is it still there?

Mr. Theresa answered no, that's been out for many years.

Attorney Veltri questioned it's gone if we went on a site inspection?

Mr. Theresa answered yes. It has been brought up a few times by a few of the gentlemen from the inspectors when the problems started happening and I explained to them the reason why Jeff did that was he told me he thought I had a load of gravel that was dumped there and I said no, I have got no gravel by that driveway. After I spoke to him, Jeff goes just disregard it because I past there in between writing the letter and me speaking to you and wound up seeing that it wasn't there.

Attorney Veltri: I just want to be sure Mr. Theresa that I understand you correctly. Your testimony is that there is no gravel driveway on the site, currently. Was there at one point a temporary gravel driveway on the property?

Mr. Theresa answered there was a lot of gravel on the driveway because I used to dump the gravel there to bring it back to do construction work because we couldn't get it up the hill, so we had to wheelbarrow it.

Attorney Veltri: I don't want to make this too complicated. I am sure you know your property a lot better than I'll ever know it. At one point was there a temporary gravel driveway so heavy equipment could access your site?

Mr. Theresa answered I wouldn't call it a temporary driveway. A lot of gravel fell down.

Attorney Veltri questioned is it still there?

Mr. Theresa answered no, it has long been gone. Other than you saying I see a little piece of gravel in the dirt or a couple of gravel pieces together, that's all you are going to find. There is no piles of gravel.

Engineer Cristaldi questioned where is this driveway? Is it coming in next to the utility easement?

Mr. Theresa answered next to the utility easement.

Engineer Cristaldi commented there is no driveway shown there. What is there now? Is it a grassed area?

Mr. Theresa answered it is a grassed area.

Engineer Cristaldi commented you keep calling it a driveway.

Mr. Theresa commented well, it is, because of the fact that I have the apron there for it.

Engineer Cristaldi questioned what is on the property?

Mr. Theresa answered there was never an asphalt, gravel driveway put it on that side. Engineer Cristaldi commented but yet you keep calling it a driveway like there is a driveway.

Mr. Theresa commented because I use it as a driveway.

Engineer Cristaldi questioned still?

Mr. Theresa answered yes.

Engineer Cristaldi questioned what keeps you from sinking into the dirt? That is why people put stone down to stabilize the ground.

Mr. Theresa answered I don't have stone down. Maybe way down through all the mud and maybe from the time of construction stone sunk through the mud and it got hard.

Engineer Cristaldi questioned how far does that driveway come into the property because there is no driveway shown there?

Mr. Theresa answered it is grass and dirt.

Engineer Cristaldi questioned so you just drive onto the lawn?

Mr. Theresa answered if you call it a lawn, yes.

Engineer Cristaldi commented I am asking you; it is your property. It is a lawn or is it a driveway there?

Mr. Theresa answered I go up the apron and I park a vehicle there because we can only park so many vehicles on the street.

Member Platt questioned did you make that apron yourself or was it there?

Mr. Theresa answered that apron was there before I brought the house. It was put in when the development was built. I had asked about it years ago thinking maybe it was a sidewalk or something and everybody told me no because there would be one across the street from it, which there isn't. It wouldn't be that wide and when they redid the streets it would have had to be brought up to ADA standards if it was a crosswalk. I asked the people that did the roads at that time and they said no, it's definitely a driveway apron. We don't have it down as a crosswalk.

Member Crilly questioned there are two aprons? I see two railroad tie walls that is one driveway and then next to the utility easement there is another apron and another area where you park cars.

Mr. Theresa stated yes.

Member Crilly: I have another question as well. I am looking at Exhibit A-2 and Engineer Cristaldi I have a question for you. I am looking at this survey of the Schneiderman property. Visually, that 2-1/2', do we see that triggering any violations? I don't see any structures.

Engineer Cristaldi answered they took it off of this side of the property. I have it upside down because that's the way their map is.

Member Crilly commented I'm just looking at their property because the question is if you shift it 2-1/2'.

Engineer Cristaldi stated right now the home is 16.9' and now you are going to lose 2-1/2' so that structure will be a little closer. I don't remember offhand what the side yard requirement.

Member Crilly stated the only reason I say this is this, I look at this Consent Order that says we pay \$3500 and we have a transaction to be buy that 2-1/2' 150' strip. If I was the

Schneidermans and all of a sudden we agree to this and then it sets off a chain reaction here, what is the validity of this agreement?

Attorney Rubin answered if you deny the adjustment

Member Crilly commented I am not saying that. I'm not talking about our vote tonight. I'm saying if we do approve this tonight, and then the Schneidermans find out that all of a sudden the town is coming after them because now the ripple effect is now they have all of these violations. This clearly was not the intent.

Attorney Rubin stated no, sir.

Member Crilly commented it becomes another legal action, I guess.

Attorney Rubin stated we've only been dealing with this for five to eight years now. Yes, it could be and the Schneidermans have their own attorney who reviewed everything and I have no control over that.

Member Crilly commented I understand that. I know that is not a fair question necessarily but, not being absolutely familiar with this, and if you move it 2-1/2', for purposes of this evening, does this trigger another litigation?

Attorney Rubin commented that would be up to the new Zoning Officer.

Attorney Veltri: I think this, but maybe I'm off base. I think when the Consent Order was entered into, it was assumed that there would be no variances that would be triggered.

Attorney Rubin stated I agree with that and I threw it at their attorney.

Attorney Veltri stated and I think that may be the case, except I don't see it on the plan.

That is what I'm saying. So I don't know that assumption is correct because I don't know a professional has looked at the zoning schedule, compared it to the surveys and is certifying to the Board that that's the case.

Attorney Rubin commented the only thing a surveyor would do is give the dimension of a side yard, front yard, rear yard. He would do that. The surveyor is not going to say whether variances are needed or not. That is not what a surveyor does.

Attorney Veltri commented a planner could do that or an engineer can do that.

Engineer Cristaldi commented I have the zoning table and the R-15 Zone, right off the bat, I'd your lot width is supposed to be 100' and their lot next door is only 75'. By taking 2-1/2' from them.

Mr. Theresa commented almost everybody's is 75'.

Engineer Cristaldi commented it doesn't matter what everybody else is. What matters is that it's required to be 100' and it won't be. It's not 100' now but only 75' and now they are going to lose 2-1/2' more and that goes to the lot, not even the side yards.

Attorney Rubin commented if it was subdivided and that was the dimension of the subdivision at that time, which was thirty years ago, that is what it is. It is grandfathered.

Engineer Cristaldi commented that's fine; we're not changing it, but you're changing it now. 75' is fine, but you just took 2-1/2' more.

Attorney Rubin stated we've taken five to seven years but if you want to start from the beginning again.

Engineer Cristaldi commented I don't want to do anything. I am just looking at what I've been handed here. I would think in five to seven years somebody might have wanted to check that by now.

Attorney Rubin commented I can't do that; it's not our property. I am not privy to all the information on the Schneiderman's property. I can only speak for Marty Theresa's property.

Engineer Cristaldi commented it also looks like they may have a side yard problem too in the R-15. You would need 20' on either side and then a total of 45'; so one side would be 20' and the other would be 25'. Not only are you making the lot more non-conforming, you are also creating an additional non-conforming side yard.

Attorney Rubin commented that my application, the notice that was published and the notice that went to all the neighbors says in the fourth paragraph: "The applicant also requires any and all other necessary variances, waivers, design standard exceptions, or other relief from the Borough of Wanaque Ordinances as may be deemed necessary for this application." If the Board wants this matter resolved after all the years, this is an opportunity to do it by allowing these new variances that were just discovered tonight to be made part of the application so we can move forward.

Attorney Veltri commented but we still to have a plan that tells us exactly what we are getting. We have engineer shooting from the hip, looking at a schedule saying he thinks this and he thinks that. That doesn't certify a plan to the Board, especially a year from now somebody comes in for another application on that lot. We don't have anything filed.

Attorney Rubin commented *res judicata*. Nobody is going to change it. If no one is going to appeal after 45 days, it is the law.

Attorney Veltri commented on any minor subdivision, we get a subdivision plot where the lots are sketched out so we know what we are voting on.

Attorney Rubin commented you have that.

Attorney Veltri and Engineer Cristaldi commented no we don't.

Attorney Veltri stated we have a 2015 survey from a neighbor and a survey from you that only has your property.

Mr. Theresa questioned you are only look at one of my surveys. There are two of them.

Attorney Veltri commented they are the same ones.

Mr. Theresa stated one has the outline where he put the 2-1/2'.

Attorney Veltri commented I read that when I started my comments. The paperwork/print is the same except for that.

Mr. Theresa stated yes because that is the only change we made.

Attorney Veltri commented you don't have a zone box on that either.

Engineer Cristaldi commented you are right. I think they should revise this plan to show the zoning table and how it sizes up against the bulk requirements for this lot and the neighboring lot. We just need a zoning table. We have two surveys and you can use these, but there is no reason why you can't or shouldn't give the Board a simple zoning table.

Attorney Rubin stated that doesn't cure the problem. As Steve was saying, if that triggers a host of other variances, they can be considered by the Board.

Engineer Cristaldi stated that's right. You don't think they should even both looking or knowing which variances that are being added.

Attorney Rubin answered, on this application, absolutely not. Then you're flying in the face of a Court Order and you'd be held in contempt in my opinion.

Attorney Veltri commented this Court Order doesn't say we have to grant any and all variances.

Attorney Rubin answered that is correct. But from the direction that we're going, I would say that this Board should be focusing just on the lot line.

Attorney Veltri commented we will if we knew how it impacted both lots.

Member Platt commented we have encroachments on three sides.

Engineer Cristaldi commented actually four. He has two piers on the driveway that comes out; the railroad tie retaining wall he's got two piers.

Attorney Rubin commented we get a zone table, it shows three or four violations on both lots, who knows how many, and I'll present it back to the Board at a later date. The Board says we don't want to create all of these variances and have the Board look at that. All right, then you have to deny the minor subdivision. You deny the minor subdivision, we have to start all over again and the Zoning Officer will then say, and rightfully say, your sheds and such are encroaching on the lot line. Well, he has already been found not guilty of that. It's *res judicata*, you cannot go back to that so we have to live with what the courts have said. I am trying to clean up a problem and most respectfully, I know everyone is doing their job, but you're making it very complicated. So you are going to have the violation there forever and, of course, it was found not guilty on both counts.

Attorney Veltri commented those violations have nothing to do with the Consent Order that is in front of us.

Attorney Rubin commented that was why the Consent Order was framed, to get off of the property line.

Attorney Veltri commented I understand that, but that's a dispute between the neighbors. This Consent Order has nothing to do with the Borough of Wanaque. That has to do with two neighbors who reached a settlement and the settlement has a lot line change that this Board has a duty to look at and grant or deny a minor subdivision with any attendant variances. That's what we are here for. I can't anticipate what the Building Department is going to do, or not do and what they've done in the past. That has nothing to do with this Board other than the fact we need to see both lots, we need to see how this lot line change affects both lots and then vote on it. That is the way I see it; I don't think it is that complicated. But we don't have in front of us a minor subdivision plan. We have a survey and something called a lot acquisition plan that is nothing more than a survey with four additional sentences added to it. There is no zone table, no zoning analysis, I don't know what the side yards, what the front yards, what the lot areas are going to be when this is all over. This Board, in every case I've ever been involved it, gets at least that from an applicant.

Attorney Rubin commented, most respectfully, I'm not going to repeat everything I've said. It is not need in this application superfluous.

Attorney Veltri commented I respectfully disagree but we can open the public hearing and hear from the other people that are here tonight, if his testimony is completed.

Attorney Rubin stated it is.

Member Platt: Anybody in the audience?

Marie Mahler, 27 Lorrie Lane, Wanaque

Mrs. Mahler commented that even though my address is 27 Lorrie Lane, our property is directly next door to 31 Tremont Terrace. Molinari is above us and Tremont is below and Lorrie Lane shots up to Molinari so our property is at that intersection of Lorrie and

Tremont, which is really a straight road, but an intersection. We brought our house in 1983. We were there before the Theresas were. When we brought our house, there were no external buildings on his lot at all, and there were no external buildings on our lot either. We have a very small piece of property to begin with and the way I understand fencing is you get a survey and then your fence company follows the survey and puts the fence about what 6" to 12" on your property.

Engineer Cristaldi answered they usually keep it 6" to 12" in on your property because when you go to put a post in there is no way to put a post right on the property line without digging a hole and digging up and going on your neighbor's property.

Mrs. Mahler stated there were no fence between our properties when we brought our property and they moved in four or five years after we did. What was between our properties was sort of like a cement gully that came all the up from Molinari down to Tremont because of the water runoff. Then on the Theresa side there were arborvitaes in the front of the property and they ended at a certain point and then there forsythias. You cannot go by bushes and say this is the property line. They were planted. I would think that you would have property surveyed and your fence company, if they are a reputable company, follows your survey and puts it 6" on your property. I am just learning from the Schneiderman's survey that they put it 21.6" on our property, which is almost 2'. I am not willing to sell any of my property. My property is small enough so I would like to see that fence moved back the 6" to his property the way it should have been in the first place.

Mrs. Mahler continued her testimony that the other thing there is a driveway in the front. Now we all have a two car garage and in front of the two car garage is a driveway that would hold four cars. They have a two car garage and it holds four cars in front of it. They put an extra driveway on that we were told was so that they could get a bobcat in the backyard to do excavation work and that it was only temporary. I took pictures of it this morning. There is no apron there; there is macadam that was put in. I have pictures of it if you want to see it.

Attorney Veltri stated you can show counsel and the applicant first and then the Board.

Mrs. Mahler commented I took these pictures this morning and you can see the fresh snow prints there. There is just macadam. There is no apron there.

Engineer Cristaldi questioned did you get a road opening permit to put that apron it?

Mr. Theresa answered that apron was there before I moved in when the sidewalks were originally done.

Mrs. Mahler stated there was no apron there.

Attorney Rubin questioned what is this?

Mrs. Mahler answered that's the driveway that they are using.

Attorney Rubin questioned do you have hard copy of this?

Mrs. Mahler answered I could make a hard copy but I don't have one. I took these this morning when there snow there but then this afternoon when I came home the snow had melted. You can clearly see it is just macadam. They parked a car there every day, sometimes two cars. They are using it as a driveway so they have a driveway in front of their two car garage and then they have another driveway on the other side that we were told was temporary, but they are using it. The car is parked there tonight.

Attorney Veltri questioned when was this temporary driveway put in?

Mrs. Mahler commented it has been an eyesore to have this extra driveway which has only been there the last several years. It was never there before. It's a new driveway.

Attorney Rubin stated, getting to the issue, do you have an objection to the lot line adjustment between the Schneidermans and Therasas?

Mrs. Mahler answered I can't speak to that.

Attorney Rubin commented well that is what we are here for. That is what this application is for, which is a lot line adjustment between the two properties.

Mrs. Mahler questioned if I or the Schneidermans go to sell our houses, any time you sell your house they do a survey. If I were to sell my house and they come in and do a survey and they are going to see that fence is almost 2' on my property and the new people buying our house would say, hey that is 2' of our property.

Attorney Rubin commented again I will ask the question, do you have an objection to this application which is for a lot line adjustment between the Schneiderman property and the Theresa property?

Mrs. Mahler answered I guess I would have to say yes. Because you are making all of our properties smaller then they should be. Our properties are only 75' to begin with.

Attorney Rubin questioned they all are in that area?

Mrs. Mahler answered right. I don't think you should make them any smaller than they already are.

Attorney Rubin questioned you object to the 2.5' going off of the Schneiderman property to the Theresa property?

Mrs. Mahler answered yes.

Attorney Rubin questioned have you seen this plan that was filed with the Planning Board as to the property of Mr. Theresa? Have you seen it?

Mrs. Mahler answered only what I saw here tonight.

Attorney Rubin commented we're all seeing things tonight for the first time. Do you notice on what is the intersection of Lorrie Lane and Tremont Terrace there is an outline of something on the road. I know you are not an engineer or surveyor but does this not depict a driveway entrance on the intersection of Lorrie Lane and Tremont Terrace?

Mrs. Mahler answered I don't know what that is. I have no idea.

Attorney Rubin questioned did you ever have a conversation with Mr. Theresa about the location of the fence back seven or eight years ago?

Mrs. Mahler answered my husband and I agreed that a fence could be put up and that he could take forsythias because I hate the color yellow and forsythias because they take over everything so I had no problem with him taking down the forsythias and putting up this beautiful fence. I do have a problem with it being almost 2' on my property. I just thought that a surveyor would know the property line and a fence company would know where to the property line and that you have to put it 6" on your property. I just thought that they would do the right thing.

Attorney Rubin stated you had this discussion with your husband and you both own your property, did you accompany with your husband when he had the discussion with Mr. Theresa about the location of the fence? Where you there?

Mrs. Mahler answered there were conversations in the backyard, out in the street and they had private conversations that I wasn't in on.

Attorney Rubin questioned so you could not tell this Board that you heard your husband say put the fence in a specific location?

Mrs. Mahler answered I don't believe he ever said.

Attorney Rubin commented I am not saying what you think he said. Did you ever hear him say?

Mrs. Mahler answered no I did not. I never heard him say he could put it 2-1/2' on our property.

Attorney Rubin stated you weren't there, but you heard that he and Mr. Theresa had numerous conversations regarding the property?

Mrs. Mahler answered right, that the fence could be put up. We were in agreement that they could put up the fence and take the down the forsythias.

Attorney Rubin commented we have now gone from seven or eight years ago, or whenever it was in that area, to tonight in 2019. Why did you wait all this time until tonight?

Mrs. Mahler answered I assumed that the fence was on the proper line. That when it was done, it was done properly. We just had a gas generator put on our property on their side of our house and our contractor told us, and I wasn't in favor of it, he said your generator has to be out xx amount of feet from your house and it is sticking out in my side yard, and I'm trying to plant flowers to make it look nice, but the contractor would not put the generator any closer to the house then it could be because he is a good contractor and he's following the law.

Attorney Rubin stated that has nothing to do with this application.

Mrs. Mahler stated it does. A contractor would follow a survey. Our contractor said your generator can't be more than 2' out from the house and he measured it several times and made sure that the generator was out from the house.

Attorney Rubin stated, I'll go back to the original question, why did you wait all these years until tonight to object to where the fence was located?

Mrs. Mahler answered I did not know that it was on our property.

Attorney Rubin questioned and for seven or eight years it did not really bother you, affected you, or caused you to seek out the building inspector?

Mrs. Mahler answered when we put the generator in I just thought we don't have a whole lot of property out here, there's just enough to get a lawn mower around and I always thought the fence seemed a little close but I just assumed that they went by the survey.

Attorney Rubin questioned or you assumed that your husband permitted it?

Mr. Mahler answered he didn't permit it.

Mrs. Mahler answered no, I did not assume that.

Dan Mahler, 27 Lorrie Lane, Wanaque

Mr. Mahler commented that I just want to go over Mr. Theresa's timeline. First of all, the fence on the north end of the property was put up by Mr. John Currie, the Democratic State Chairman, and he lived in that house to the north of Mr. Theresa back in the 80's. We purchased our house in 1983 and he was living there then and he was the original owner. I have to assume that he put it up since he was the original owner the fence was there. When Mr. Theresa put the fence on that side, all he did was take down the existing fence and put up a fence, but it was actually the neighbor's fence that he took down. Mr. Theresa brought the house in 1987 so we've known him for 31 years. There is no curb cut where his second driveway is. What is there is a slab of concrete there between the

sidewalk and the curb and that piece of concrete was put there because there was, what we called, the cement brook. It went up alongside of his house. It was a cement overflow trowel that was usually dry but if it rained a lot it would be full of water and it dumped out right where that piece of concrete was and it would flow out into the road and drop down into the storm drain. Mr. Theresa took that cement brook out many years ago; I don't know how many. The timeline of this was 2013 when Mr. Theresa put the fence up and I'll tell you why. We had a discussion about forsythias and he said he was going to put a fence up along his side of the property line and did I want the forsythias taken out and I said yes. I said you can take them out, I'm fine with that and I did tell him there was a tree I wanted to remove on his side so I paid to remove the tree. There was also a large tree in the front, which was not part of the equation, a few months later, and it was after super storm Sandy which occurred in October of 2013 which was a 40' pine tree and that tree uprooted about 12" ready to topple over. So I called a tree guy and he came in and removed the tree that had nothing to do with anything else. Our discussion about the forsythias and the tree in the back, yes we had a discussion about them, but the discussion was not that he can put the fence on my property. He was going to put the fence on his property along the property line. Myself and Marie first found out that it was on our property when we say this survey. We haven't had our property resurveyed since 1983 and we've had no reason to because we haven't done any construction that would require any kind of permits or surveys. About the sheds in question, those sheds were put up around the time he was doing his wall. Maybe a year or two before that, but they haven't been there for thirty years. There is no curb cut where the driveway is. What happened was when he put in the gravel driveway for the construction, he put macadam between the curb and the street. It is actually in the street and it shouldn't be there, and that should be removed. It is not an apron, it was the piece of cement for the overflow pipe. Like I said, as far as we were concerned, we thought the fence was on the property line or just inside his property. Attorney Rubin is saying why haven't we done anything in five years, well we thought that was the property line. We didn't get it surveyed and now we find out it is on our property. If we go to sell the property, it's going to be a problem. If you look at the whole thing, Mr. Theresa put the fence on three neighbors' properties without regard to any of the neighbors. As to the fence in the back, there was an existing fence there and I remember him showing me that existing fence and he put his fence right where that fence was. Unfortunately, that fence was 4' on his neighbor's property in the back. There is a steep hill to that neighbor and the neighbor can't see that fence and probably doesn't know where his property line is. I am looking at this and saying two things: It is a R-15 Zone so the side yard setbacks are 15' and 20' and we don't know what this Lot 15 is. If there is a subdivision, there should be a survey of both properties. I think somebody brought that up and I agree. The other thing is, if we approve that, then we are condoning a neighbor to just go and put a fence up wherever he feels like and then taking the neighbor to court and saying well I'm going to buy your piece for 2'. It's just not good business to do that; to allow someone to put up fences on someone else's property without doing his due diligence and measuring where it is and, I assume he took this gentleman to court, and got a Court Order saying that we are going to settle it by you paying for his 2'. I don't think that is good policy. You should put the fence on your property and be done with it. I don't care what he does with his agreement with Schneiderman, but on my side, I would like him to move that fence back on

his own property. The question I have for Mr. Rubin is, if a neighbor puts a fence on your property, does it become your fence?

Attorney Rubin answered it is very possible.

Attorney Veltri commented alternatively your property can become his property by adverse possession.

Attorney Rubin said twenty years.

Mr. Mahler questioned if I don't like the fence, I can take my chainsaw and cut it up and put it to the curb.

Attorney Rubin said twenty years.

Mr. Mahler questioned what if I do it now? Twenty yours hasn't' transpired.

Attorney Rubin stated then you would be guilty of destroying somebody else's property.

Mr. Mahler commented it is my property since it's on my property.

Attorney Rubin stated twenty years you have to wait.

Engineer Cristaldi questioned if he gives him permission, does the twenty years still apply?

Mr. Mahler answered it is twenty years to claim adverse possession. Mr. Theresa can claim adverse possession of my 22".

Engineer Cristaldi questioned unless you gave him a license to be there.

Mr. Mahler answered right.

Attorney Rubin commented it would be a question of fact.

Attorney Veltri commented even if the facts are contested, just on the testimony I heard in the last twenty minutes.

Mr. Mahler stated if the fence went in 2013 when it did, twenty years haven't transpired, so it is on my property so therefore it's now my fence. It is my property and I can destroy my own property.

Attorney Rubin commented the fence isn't yours and you would be guilty of destroying somebody else's property. That is not the issue here.

Mr. Mahler stated why is it on my property? Mr. Theresa is pretty calculating; he knows what he is doing.

Attorney Rubin commented and the testimony of Mr. Theresa is that you agreed to put it there.

Mr. Mahler commented I did not agree to put it there.

Attorney Rubin commented that was his testimony.

Mr. Mahler commented he perjured himself. I agreed for him to take down the forsythias trees and I agreed that I would remove the tree that was on his property and that was done. He was going to put the fence along the property line on his side, which obviously was not done. There was no agreement to put the fence on my property whatsoever. I am on the record saying that and that's the way it is.

Engineer Cristaldi, talking to Mr. Mahler, stated you mentioned there was a concrete spillway there. At the easterly end of this when you get to that area where the fence is 4' onto the other guy's property, there is a concrete swale that looks like it used to go over that utility easement and it looks like that's where the water used to flow.

Mr. Mahler answered yes there is and there is also a drainpipe that runs under the easement. One of them is a sanitary sewer pipe and one of them is a storm sewer pipe. I think the storm sewer pipe runs into the sewer drain and the sanitary pipe is the one to the south.

Engineer Cristaldi questioned is Tremont higher than the rear of the property?

Mr. Mahler answered the rear of the property is higher than Tremont. It is flowing towards Tremont. It is runoff, generally, its dry but when it gets real rainy like it is now.

Engineer Cristaldi questioned does still run over the top of the land there?

Mr. Mahler answered I couldn't tell you there is a fence there.

Engineer Cristaldi commented you still have that concrete swale that looks like it was letting water into the property and then I don't know where it would go anymore.

Mr. Mahler stated there is a concrete swale back there and is was put in probably by the developer in the early 70's.

Engineer Cristaldi questioned does the swale run all the way through his property?

Mr. Mahler answered there was the concrete cement gully that was about 3' or 4' wide about 1' deep and for the most part that gully was usually always dry.

Engineer Cristaldi questioned was it in the easement? It looks like it might have been or close to it.

Mr. Mahler answered it was kind of close to it. I'll tell you the truth I really couldn't tell exactly where it is at this point.

Engineer Cristaldi questioned who do you think took that at?

Mr. Mahler answered the owner of Block 200.12/Lot 14. Mr. Theresa took it out. That had to be fifteen or more years ago. It really hasn't flooded there so I don't think that's the issue, but that is the reason why that little concrete pad was there between the curb and the sidewalk because that's where that drainage thing came out, so that is why the developer put that little piece of concrete there. That piece of concrete is not as wide as a driveway, it's about 7' wide, and I'm judging that by the width of the easement versus the width of that thing and it looks about half.

Attorney Rubin questioned you know the application before the Planning Board is for a lot line adjustment between the Schneiderman property and Theresa property and are you objecting to the lot line adjustment application?

Mr. Mahler answered yes.

Attorney Rubin questioned why are you objecting to it?

Mr. Mahler answered a couple of reasons. Number one is that we have no idea what the affect upon Lot 15 is. Number two Mr. Theresa has encroached upon three neighbors and rewarding someone who encroaches upon their neighbors is not the way to resolve the problem.

Attorney Rubin commented we are talking about the lot line adjustment application for Lots 14 and 15. I know you have some problems on one side and you and Marie have made that clear that there is an encroachment on your end, but that's not what we are here for on this application. We are here for an application for an adjustment between the Schneidermans and Therasas. Specifically, why is that grieving you, why is it a problem to be here? I know you want to talk about your site, but that is not the application.

Mr. Mahler stated answered I feel you are setting a bad precedent to allow someone to put a fence wherever they feel like it and sue their neighbor later, which obviously sued Schneiderman.

Attorney Rubin commented they did not. Schneiderman sued Theresa. You have it just the opposite.

Mr. Mahler questioned who decided to put that, did a judge decide it, did Schneiderman decide, like who made that decision? What Schneiderman forced into that decision by a judge or did he agree to it?

Attorney Rubin answered he agreed to it.

Mr. Mahler questioned where is he now to say that?

Attorney Rubin answered his attorney signed the Consent Order. His attorney signed everything off, and that is why I can't make representations as to his property because he has his own attorney and they have been working with us for months on this. As I said before, these matters with the sheds, and what not, have been haunting everyone for at least five years or more.

Mr. Mahler stated I don't think that is true. Did Jeff Brusco every make any comments about the sheds?

Attorney Rubin commented that is not an issue before this Board, and it is not an appropriate question.

Mr. Mahler stated I don't believe he did. Jeff Brusco left the Borough of Wanaque at the end of 2016 so the only issue I know with the sheds would be with Dave Hammerle.

Attorney Rubin stated Dave Hammerle is the one who signed the complaint against Theresa who was found not guilty.

Mr. Mahler stated he became the Building Inspector in January 1, 2017 so it has only been two years, so your timeline is off.

Attorney Rubin commented if we walked away, the sheds, everything stays status quo, and the problem stays just with the town for another five to ten years. I don't think that is what the town wants. I have nothing further.

Engineer Cristaldi questioned the problem stays with the town or with the neighbors?

What problem stays with the town the fact that the fence is somebody else's property?

Attorney Rubin answered there is going to be another lawsuit but this time for sure the town has to be joined and spend some money on trying to resolve this. You can't just make a decision and say because you don't like for other reasons that have nothing to do with the application if you vote against it.

Attorney Veltri: Let me focus this on where my mind is. In my opinion, you have not submitted a site plan/subdivision plot to us showing us the impact of both lots. Secondly, I just look at the application. The application has an Owner's Consent form. Someone typed in both owners of both lots and we only Mr. Theresa signing and I have blanks for Mr. Schneiderman and Ms. Stubbins and that has to be signed.

Attorney Rubin commented we did sign it. You don't have it?

Attorney Veltri answered not in my application.

Attorney Rubin stated the Secretary has it because I submitted it myself.

Attorney Veltri stated okay, that would make me feel a little better about the application.

Attorney Rubin stated I wouldn't be here if Schneiderman didn't sign it.

Attorney Veltri commented what I'm saying, and the Board has spoken at all, is that we need, I believe, more information on both lots and with the information the Board can then vote on the application. They can vote on it tonight; they don't need to listen to me, but I think they should have that information before they vote.

Attorney Rubin commented it would have good to have been advised that it was not a complete application before we came here tonight because then we would have done something.

Attorney Veltri stated I am not on the completion committee. Again, I have to speak my mind when I do see it and that's my feeling but again, they don't need to listen to my advice and I just need to say it so I can sleep at night.

Member Platt commented I agree with him.

Member Platt: Construction Official would you like to speak?

Mike Hafner, Acting Construction Official for Borough of Wanaque

Mr. Hafner commented I was actually interim when Jeff had his heart attack and when Jeff left before Dave Hammerle came in, so I have known this case for quite some time. I met Mr. Theresa probably 2015 or so. I just have a couple of things. I know you have a lot of stuff swimming around and you've got your advice from your professionals and I agree with that. Absolutely, the information that has been submitted is not sufficient. I think that once it is submitted you are going to find that you have additional variances that need to be granted, such as side yards for existing structures because they are going to be violating the setbacks for R-15, but the zoning data table will show you that.

I just want to clear up a couple of things. Attorney Rubin gave a great presentation for his client, but there were a couple of things that weren't presented that I do want to let you know. There were two citations; one citation was a UCC violation for constructing without a permit. The second was for constructing without zoning approval. The Construction Board of Appeals heard the case and they appealed our Notice of Violation for the UCC violation for building without permits. The Construction Board of Appeals heard that case and they brought in testimony from Jeff Brusco and we had letters from Jeff Brusco saying the sheds aren't allowed there, please remove them. What the Construction Board of Appeals finally ordered was that under the UCC a permit is not going to be required for sheds; however, zoning approval absolutely was required. Coming out of that hearing, we were under the understanding that they would be making an application for zoning approval for the sheds. That didn't happen. Dave Hammerle, who was in the position at that time, issued further Notices of Violations and Summonses and that went to Municipal Court. There were two Summonses and one of the Summonses was dismissed, which was the UCC violations Summons because it rightfully so should have been. With the other one, Mr. Theresa was found guilty by Judge Perconti and that was for the zoning violation; not filing for a zoning permit. Attorney Rubin and his client then appealed that and Judge Perconti's ruling was overturned on appeal. I have not had the pleasure of getting that transcript of having his audio reason why, but as I look it back, it appears that it was overturned on a technicality that the wrong zoning citation was on the Summons and I believe that is why it was overturned. It wasn't that Mr. Theresa was found not guilty; it was that Judge Perconti's decision was overturned. There needs to be a distinction there that just because it was overturned doesn't mean that he is not guilty and that he cannot be prosecuted again. I would respectfully disagree with Attorney Rubin, that we can issue another violation under the correct citation for that and prosecute that as well.

Attorney Rubin commented totally 100% illegal. This is such erroneous information I can't like that stand.

Attorney Veltri commented your objection is noted.

Mr. Hafner commented if the lot line adjustment is not granted, Mr. Theresa has a problem because these sheds are actually not contained on his property, which is one of the problems that had. He never actually could make an application before the Zoning Board of Adjustment because you can't make an application for something that is not on your property and that was our concern from the beginning. We finally got a survey that showed that. I am not an orator. I submitted a letter simply asking that if you are going to grant the lot line adjustment, the Board has the power to grant variances. These sheds are not in compliance with the regulations. If the Board so sees fit, please look at granting the variances if you feel that the sheds should stay.

Mr. Hafner commented with regard to the timeline, Mr. Mahler is correct, they have not been there for thirty years nor twenty years. In fact, aerial photos show that they were not there in 2012 and they were there in 2013. Those sheds were not in their correct location in 2012, they are there in 2013 in the aerial photos. They have been there since that point and all this time without the Borough's consent or permission.

Thank You

Attorney Rubin commented my objection still stands. Mr. Hafner absolutely cannot give a legal opinion and that is what he is attempting to do. The Uniform Construction Code was amended before the Judge made his decision. The Uniform Construction Code clearly makes differences as to how many feet and what permits are needed. The Judge made a very good decision as to the UCC by throwing it out and that is what he did and that is *res judicata*. The second one after a lot of testimony in this room over several days' worth of testimony he was found not guilty and you can't change an Appellate Court's not guilty determination. It just doesn't work. He was not guilty of that so he cannot be brought on charges because if he was, I would be back in court immediately to have it vacated and if there is some animus against Mr. Theresa that is a whole other lawsuit against the town. I think what Mr. Hafner has said is filled with inaccurate statements and hopefully the new Zoning Officer/Construction Code Official who will be taking over, I assume, in due course will be able to straighten out the situation as to what is violation and what is not a violation.

Member Slater questioned Attorney Veltri what do we gain and what do we lose by approving this application? Are the sheds still in violation of the setbacks on the side yard since they're not on Theresa's property? The survey that they show on Schneiderman doesn't show enough side line clearance on that house either. It is existing and you can't throw out existing, non-conforming use and you can't add to it theoretically. What do we gain by denying or approving?

Attorney Veltri commented the answer to your question tonight is I don't think you have enough information to vote either way. I don't think you are looking at both sides of the lot line and, without looking at both sides of the lot line, I don't think you have enough information to vote. I do agree with Attorney Rubin. We are here and should be focused on the lot line transition and how that affects both lots. That is what our role is as a

Planning Board. The other issues in terms of what's happened with the Building Department, Municipal Court Judge, Superior Court Judge on those issues, I really don't think are germane to this Board tonight. I do think we need to focus in on the zoning issues that affect both lots. If we do approve the application, what is the impact on both lots and what are we left with on both sides of the lot line. The other issues, obviously, are being pointed out to the Applicant. The Mahlers have made their objections very clear and if we do want to avoid future litigation, I think it is incumbent upon all the parties to talk to each other and try to work those issues out. They are not in front of the Board right now, but they're obvious questions that really need to be resolved, short of going to Superior Court. I am not interested in that and I know Attorney Rubin isn't either. I am interested in focusing on this application, having enough information to vote on it and vote on it and move to the next application.

Member Slater questioned can we set conditions on our approval, such as moving the fence off of the Mahlers' property or reconstructing the fence at the back end of the property? There are a host of violations.

Attorney Veltri answered we will note that we are not approving or condoning anything on the survey or the site plan other than the lot change. That is what we are definitely going to do. I would hope that the parties could individually work through those issues now that they have become apparent to everyone. It is silly to ignore them since they are not going away. Again, I do want to focus in on the application, what we are approving or denying, and why, and what we're not condoning and what we're not approving. That will be clear hopefully in your reasoning and in the Resolution when it is finally adopted.

Member Slater questioned what do we open ourselves up to by approving the motion and creating additional variances needed on the adjoining property?

Attorney Veltri answered nothing because, if you approve it, the other lot owner submitting to the fact that they have reviewed and approved the application so they should know what is being presented and how that impacts their lot.

Member Slater commented they already signed off.

Attorney Veltri commented, if they signed off, they signed off on a survey that doesn't impact their lot because I don't know what they saw on their side of the ledger, which is why maybe they should look at subdivision plan with a zone table on it.

Member Slater questioned should they not be here?

Attorney Veltri answered they sign off, they sign off. Certainly we'd like them here but we can't compel them to be here.

Engineer Cristaldi commented actually when you think about it you could've really put the information of both lots side by side. The houses on both lots, show the dimensions, the same survey that you have here should have been on this drawing right next to it so that you could see what that lot line was doing to both houses and both properties at the same time. The subdivision does affect both properties and you should have shown both properties.

Member Crilly commented that the Schneiderman property, and I know this is a legal agreement, but the disclosure of the ripple effect of their property hasn't been adequately made and I don't know how we can approve an application that is going to trigger issues on someone else's property. That is where I am coming from. I think that the issues on the

other property lines with the other neighbors are independent of this application. I just think we have to focus on that one property line.

Member Strobel commented I guess in my view, what I'm thinking of is basically making sure the Schneidermans know the impact of this move. We just want verification that they know losing the 2-1/2' what variances and other issues are happening on their property. Once we get this, then I don't see a problem. We need to know that they understand what is happening.

Member Crilly agreed.

Member Platt agreed and commented therefore I think we need more information.

Attorney Rubin commented, before we go any further, I just wanted to hand to Attorney Veltri my file copy of the Schneidermans' consent.

Attorney Veltri commented very good. Actually, I guess they signed separately on separate pages.

Attorney Veltri commented, depending on how the Board goes Attorney Rubin, I think we are asking for more information. We're looking for a typical minor subdivision plan with a zoning table so that we can figure out the impact of the lot line change and whether any variances have been triggered. If you could submit that, I think the Board can probably take action at that meeting. Will the Applicant do that is the question?

Attorney Rubin answered yes but it may take a little bit of doing because I have to work through the other attorney's office.

Attorney Veltri commented if you would do that and if you consent to us extending our time to take action on the application, I think we can move on to the next order of business unless you have anything for us.

Attorney Rubin agreed to extension and I just have to figure out the dates. It probably will never make the next meeting.

Board Secretary advised the next meeting date is March 21st.

Attorney Rubin stated getting the new plan and what Mike is saying is he wants a composite really of both lots on one sheet.

Attorney Veltri questioned do you want to extend until the next meeting in April.

Attorney Rubin agreed it would have to be. It would never work.

Board Secretary advised the date would be April 18th. New plans would have to be in by Monday, April 8th.

Attorney Rubin commented if the Board would accept those dates, we will move forward. If there is a further problem, I will let you know.

MOTION TO CARRY APPLICATION TO APRIL 18, 2019 MEETING: made by Member Slater, seconded by Member Crilly. Voting yes were Members Platt, Strobel, Crilly, Slater and Leonard.

PUBLIC DISCUSSION: Let the record show no one came forward.

RESOLUTION: None

VOUCHERS: submitted by Steven J. Veltri, Esq. for attendance at the January 17, 2019 and February 21, 2019 Meetings in the amount of \$800.

MOTION TO APPROVE VOUCHERS: made by Member Slater, seconded by Member Crilly. Voting yes were Members Platt, Strobel, Crilly, Slater and Leonard.

MOTION TO ADJOURN AT 10:22 P.M.: Motion to adjourn meeting made by Member Slater. Motion carried by a voice vote.

**Jennifer A. Fiorito
Planning Board Secretary**