

MINUTES

CRESSKILL PLANNING BOARD

JUNE 11, 2013

Mr. Vaccaro opened the meeting at 7:33 PM and announced the requirements of the Open Public Meetings Act had been fulfilled.

Members present at roll call: Mayor Romeo, Councilwoman Tsigounis, Mr. Vaccaro, Ms. Bauer, Mr. Galdi, Mr. Morgan, Mr. Calder and Mrs. Schultz. Also present were Mr. Paul Azzolina, Borough Engineer, and Mr. Steven Schuster, Board Attorney.

Mr. Morgan made a motion to approve the minutes of the May 28, 2013, meeting. The motion was seconded by Mr. Galdi. All present were in favor of the motion. Motion approved.

Correspondence

Application for Soil Erosion and Sediment Control Plan Certification for Borough of Cresskill 2012 Road Improvement Program, Fourth Street, Fifth Street, Tenth Street and Huyler Landing Road. File.

Application for Soil Erosion and Sediment Control Plan Certification for Application #1432, 236 Grant Avenue, 236 Grant Avenue, LLC. File.

Notice from the Borough of Tenafly, Tenafly Planning Board, amending its annual meeting schedule. The Tenafly Planning Board work session scheduled for Wednesday, June 12, 2013, at 8:00 PM, will be converted to a special public meeting held in the Council Chambers in order that the Tenafly Planning Board may conduct a public hearing on the proposed 2013 Land Use Plan Element of the Master Plan and Periodic Reexamination Report of the Master Plan. File.

Memo from Ms. Barbara Nasuto regarding the League of Municipalities Convention being held on November 19-21, 2013. If interested on attending, please let Ms. Nasuto know so she can make hotel reservations.

Letter of Introduction from Mr. Edward M. Rossi, Construction Official, dated May 29, 2013, sending Watchtrust Inc. to this Board for approval. They would like to move their business, which is a watch dealer, wholesale and internet, to 100 Union Avenue. No one was present.

Subdivision Committee

Councilwoman Tsigounis noted that Application #1433, 229 10th Street, 15 Wakelee Drive Corp., c/o Mario Valenti, was received on May 29, 2013.

Old Business

Mayor Romeo noted that there was a meeting between the Mayor, the Chief of Police, Mrs. Sweta Shah, and Mr. John Manfredonia and they came to some sort of an accommodation to see if they can relieve the parking that is down there by the Farmhouse and the difficulty that they are having. It appears now that they will be putting up signs asking not to park on their property. Mr. Manfredonia will be moving part of his island out to give the area by the Farmhouse another six spots. Between that, they are going to hope that this will work out for both sides. He doesn't think that Mrs. Shah really wants to give anybody a ticket or have their car towed away. From what he gathered from the meeting, he thinks they came to an understanding and they are going to try this and it will be approached peacefully. They have talked to the people at Mooseheads and they have asked everybody to back off and progress slowly and try to make this work for both sides. What they want is the most business they can in town and everybody wants to protect their side. The two landlords have agreed to try this first before we go any further.

Mr. Farrell was confused as to what the measuring metric would be since it is sort of like let's try this and see if this works. If it works to accomplish what? To have them not park in their spaces. Mayor Romeo said Mr. Manfredonia has already measured it out and he is getting six more spots on his lot, so they are hoping that relieves it a little, plus the fact that they will be putting up a sign asking that they not park there. They have gone over to Kings asking if the overflow could be put in there. He understands that they are going to just wink and nod and turn their head and say yes. Between that, maybe they have enough to accommodate everybody. Mr. Farrell stated that there is no measuring device to see if it is successful. It's just let's see what happens. Mayor Romeo noted that there will be measuring devices because he will hear Mr. Kipperman yelling and he will hear Mrs. Shah yelling and he will hear everybody. He will know.

Mr. Farrell stated that the other question that they spoke about, separate from this, as far as the other parking for the other retail establishments, as far as the three or four seats per spot, and that he was going to address the situation with Ray's and some of the other places who come nowhere close to that. Mayor Romeo stated that we have not enforced parking for a re-oc in this town since he has been in office because we can't. Mr. Farrell agrees, but what he is saying is the same body, five or six years ago, when they were approaching buying Bondi's, recommended very strongly that they do not do it because due to the lack of parking that would accommodate their ability to put in no more than 12 seats. Mayor Romeo noted that they would have ended up in the same position that the Farmhouse is in now, they would have been parking in the bank without permission. Mr. Farrell noted that he approached the bank about working something out, but once the Board said they didn't have the space, the backed off in buying that building, which would have been, between the price, the three liquor licenses and being on the main drag and the corner, would have been a slam dunk. But they were prohibited because of lack of parking, but then other people come in, circumvent the rule, and then go even further by building an extension to the building that eliminates two other parking spots, which basically leaves him with two spots. Mr. Vaccaro noted that that was approved by the construction official. Mr. Farrell stated that the issue is, in his experience, in doing stuff at his house, you need a variance to go against the code. He never saw a variance, Richie never saw a variance and they are within 200 feet of where they built it.

Mayor Romeo asked Mr. Farrell if he had enough spots in his restaurant. Mr. Farrell noted that he did, but there is a fence that is constantly being broken through. Mr. Dippolito owns the fence. Mr. Farrell noted that Mr. Dippolito is not going to spend the money to fix the fence. He wants to know if there is any way to force Mr. Dippolito to fix the fence. Mr. Vaccaro noted that they have talked to him many times. Mr. Farrell noted that he did replace the fence, but what happens is some of the other venues that share that fence continue to cut it open. He thinks it is Ray but he has never seen him. He is the one who benefits the best. The fence is right behind the deli that separates the mall from the parking right behind Ray's pizzeria where the dumpsters are. Mr. Farrell noted that if you look at it from by the dumpsters, you will see that it is constantly being cut back. He has actually never seen who is cutting it. Mr. Farrell has an easement to use six or seven spots in the mall parking lot. The easement is to use the entrance and exits because if there was no easement there, when you come in the entrance by the nail place you can go straight through and go out the back entrance. Mr. Farrell stated that if someone can fix the fence and

keep it fixed, he will be happy. Mayor Romeo asked Mr. Vaccaro to go look at the fence tomorrow and see what needs to be done.

Mrs. Shah presented the Board with samples of the signs she plans on putting up. Mrs. Shah said that the sign says Madison Plaza parking only. Mayor Romeo said that the town has no say in this. This is private property. Mooseheads has promised to cooperate. Mr. Manfredonia is on board so he thinks that they are OK. Mr. Galdi thinks the sign is ambiguous the way it is written "customer parking only." He thinks they should put down "customer doing business with ABC." Mrs. Shah says it says Madison Plaza which is the sign on the building.

Mayor Romeo asked Mr. Nathan Kipperman if Mr. Manfredonia has showed him any plans of what he plans on doing to help him out. Mr. Kipperman doesn't think this is going to solve the issue of the parking because the Farmhouse is getting busier and busier. They also have a take-out business. It is successful. They committed a crime by opening a business in Cresskill that has become successful. Is he supposed to apologize and say he is really sorry for being successful. He is also a tenant at Mom's Cooking. The last few weeks there have been a few incidents. One mother that took her son for a haircut, went over to buy a coffee and somebody from Mooseheads said to her "Lady you are not supposed to park here." She came and said to them, what the hell is going on. A friend of his, who is an eye surgeon from Tenafly, knows already about the problem so he parked in Kings and walks with his mother and his son and Sweta said to them "where are you going?" He said he was going to the Farmhouse and she tells him they are not supposed to walk here. Mrs. Shah said she did not say that. Mr. Kipperman said he was walking with his mother who is 80 years old. He said Mrs. Shah parked her car a couple Sundays ago in the middle of the parking lot, and he has pictures. She called the police and the police even said to her "lady don't call anymore, he is not here only for her." All he is saying is, he is looking for a logical way out to resolve this, because those people, if the cars are going to be towed away are going to come to him and say what is going on. They will go to Mom's Cooking and buy a bottle of water because there is no time limitation. All he is saying is that this issue is not being resolved in good faith understanding that we walked into the 21st century. Cresskill was doing business for 100 years. A new business opened and it is busy and people are coming.

Mayor Romeo stated that Mr. Manfredonia has also approached Kings about paying him a rental fee for some spots in the Kings parking lot. He asked Mr. Kipperman if he was aware of that. Mr. Kipperman was not aware of the rental fee. He wanted to say that he prefer if the people coming to the Farmhouse would park other places and walk. It is absolutely not to his interest people assuming that the parking lot in the mall belongs to the Farmhouse. Until now, it wasn't an issue. He can say that there is a lady that parks in Mr. Manfredonia's driveway every night and it doesn't belong there. He doesn't know who it is. That day he was there with his car and she was so upset that he took her spot. Meanwhile it is not her spot. So people develop certain habits of parking in a certain spot. Mayor Romeo asked if it was the upstairs apartment from his office. Mr. Kipperman stated that it wasn't.

Mr. Kipperman stated that when he opened the place, he was also counting on the parking on the street on E. Madison, which was another eight to ten spots. They are not there. Mayor Romeo noted that it became unsafe. Mr. Kipperman understood. He is sorry that the place is busy. Mayor Romeo noted that he shouldn't apologize for that but they are trying to work this out. He sat there and watched people park in Scofield's and walk around. Mr. Kipperman noted that the problem is for about an hour and a half at lunch time. On Sunday, for example, the mini-mall is dead, nobody is there, everything is closed. His neighbor, Danny, is just upset because his people can't park in front of the bar. He now put cones. For him, being a tenant at Mom's Cooking, he wants to say one second. He takes the whole front and puts cones and has people enforcing it by standing outside and making sure that nobody parks there and one guy even had the audacity almost every day to park his truck with the stinking stuff that he is collecting (grass) and it smells, and purposely he is parking it exactly where people are sitting so nobody is going to be able to sit outside. It is becoming vicious.

Mayor Romeo stated that that is why they are trying to alleviate this. He asked Mr. Kipperman to picture if all the guys at the bar pulled in and took all his spots (at the Farmhouse) and walked over to the bar. Mr. Kipperman noted that we are not talking about wars. Mayor Romeo agreed that we are trying to alleviate

wars. That is why there was a very productive meeting with the two landlords. We are going to try this as step one first. He asked Mr. Kipperman to be patient. Mr. Kipperman noted that he is being patient. Mr. Manfredonia asked him not to go to the meeting. He said he was just trying to resolve the next step because he thinks by putting a sign, please don't park here, people are going to just look at it and say forget about it, because they have habits of parking there. Until you reinforce it by some kind of law, then people might think twice about doing it. Then they are going to say they are going to park on Union Street. The people that have businesses on Union Avenue, he assumes, don't own the spot in front of their business. He once made a point that when he goes to Cresskill Bagels for a bagel in the morning, there are 50 people inside and he only has two spots in the front. So, people are parking everywhere and it is like live and let live. That's how it was all the time because otherwise, you can't do any more business in Cresskill. The town has reached the point where it is saturated and he understands that they tipped the iceberg, even though a lot of people that park in the mini-mall, not everybody is going to the Farmhouse. At lunchtime, people are going to Ray's pizza, Cresskill Pizza, and crossing the street. He doesn't say anything because that's what it is.

Mayor Romeo noted that his point is well taken. He wants to let this sit for two weeks and try it this way and see where it goes. Mr. Kipperman wanted to thank the Board for listening and trying. He understands. He just feels bad because he is dealing with harassment. He is being told "you dumbass, go back where you came from." It is almost a story for a movie. A guy came from Manhattan to open a business and suddenly they are dealing with animosity. At a certain point with the bar, if people are going to have this kind of attitude, this is a bar and they drink, he is not going to sit idle.

Mr. Farrell introduced himself to Mr. Kipperman. He doesn't want to start a range war. He doesn't think that is fair and doesn't think anyone wants that. Anyone that is harassing Mr. Kipperman's customers or using racial epithets isn't right. The Mayor asked a question about how you would feel if the people from Mooseheads or from Cresskill Pizza parked in your spot, walked over the island and came into the store. He would be upset also. By the same token, one of the reasons probably that he went into Mom's, which used to be Cresskill Pizza, was because of the adequacy of the parking for a venue like that. The reason they came into Cresskill Pizza and then moved across the way to where they are now, is because of the adequacy of the parking and the fact that it is being nibbled away and he understands that there is a parking issue in town and there has always been and that is a fact of life. The issue is you talk about how we can make this into a movie, he can make the same movie. Here he has two kids that grew up in Cresskill, own a business in town, and are being pushed out because they can't park. So there are movies all over the place. Let's play well together. He asked if there could be a time limit put on the signs. Mayor Romeo stated that it is private property so it is up to the owner.

Mr. Morgan asked about the Sunday parking when the stores are closed. Mr. Farrell noted that not all the stores are closed. He is open. Mr. Schuster stated that everybody has to understand that if the town has to enforce the parking ordinance strictly, nobody is going to be happy, he guarantees it. It is much better if this can be worked out. If the town is going to hold your feet to the fire about what the occupancy requires for all these uses, nobody will be happy.

Report from the Borough Engineer's Office

Mr. Azzolina noted that Application #1433, 229 10th Street, 15 Wakelee Drive Corp., c/o Mario Valenti, was received on May 29, 2013. This plan is new and it is not new. They submitted plans back in January or February. The Board did an informal review. The lot is a corner lot. The house is oriented in such a way that the Board found that they had to reduce the footprint of the dwelling in order to apply the FAR within the 125 feet based on the direction the house was facing. He received a revised plan, revised through April 23, 2013, which addresses the comments of the Board, as well as the initial comments of his office. He spoke to Mr. Valenti this afternoon. He told him that the plan was OK, but further minor revisions need to be done to add a fence or railing on top of the retaining wall where it is higher than four feet and to submit a copy of the Bergen County Soil Conservation District approval that was reissued. They had one initially issued in 2006 that has expired. They are in the process of having it recertified.

With the understanding that plan will be revised to incorporate the railings, he recommends that the Board approve the plan.

Mr. Galdi asked, with the topography of the land and the two seepage pits, does he think that an overflow pipe from the seepage to that catch basin or to the street would be beneficial. Mr. Azzolina noted that there is really nothing to tie into. There is a manhole for the sanitary sewer and there is not a storm drain on that side of the street. Mr. Galdi doesn't know if those are going to be sufficient. Mr. Azzolina noted that there are two 1,000 gallon seepage pits. He believes it will be sufficient for the impervious area, which is really just the roof area of the dwelling. You also have to realize there used to be a pretty big house and patio on this property. The increase is negligible. He thinks two 1,000 gallons will handle the roof area and any overflow will travel over land, hit 10th Street and will eventually make it into the storm drain. Mr. Galdi asked if he was going to do a permeability test when this gets underway. Mr. Azzolina noted that they will monitor the construction. Mr. Galdi noted that if there is porosity in the ground it can accept it but if there is any hard pack, clay or something, that you might require a third pit. Mr. Azzolina noted that there is currently soil moving ongoing on the site and it looks to be pretty sandy. Mr. Galdi said that because of the topography, there is going to be a lot of flow down there.

Mr. Galdi made a motion to approve, with a note that they will look at the seepage pits when construction gets under way because that is a point of interest. Mr. Azzolina noted that the plans can be signed and he will note on the plans the revisions necessary. Mr. Morgan seconded the motion. All present were in favor. Motion approved.

New Business

Ms. Christine Kerr, the property manager of 100 Union Avenue, owned by Devonshire Associates, LLC, was present. She was before the Board for a new tenant, Watchtrust Inc. Watchtrust Inc. basically buy and sell Swiss mechanical timepieces. They sell through their website. They don't have a lot of foot traffic because everything is done through the web these days. They don't have a lot of packages going in and out because they have warehouses in Brooklyn and Philadelphia. They currently are located in Englewood Cliffs and are looking forward to moving into Cresskill. This will just be an office. There will be four employees. Mr. Galdi made a motion to approve, seconded by Mrs. Schultz. They will be taking 1,000 square feet. All present were in favor. Motion approved. Letter sent to Devonshire Associates, LLC stating the Board's approval, with copies to Ms. Nasuto and Mr. Rossi.

Other Business

Mr. Mark Maryanski was present, along with Mr. Avi Lavon. Mr. Maryanski noted that they were here at the last meeting and they were going to try to resolve their issue with the neighbor, Mr. Guenther. He was contacted by Mr. Thomas Loman, a local attorney. They had several conversations over the last couple of days. They discussed every option that was discussed at the last meeting. Their preference is to go with what the Board Engineer had come up with as far as putting a garage on the other side of the house and they kind of pushed the issue on that to the point where they were offering, for \$15,000, which was what Mr. Guenther had offered to purchase five feet of the property on the other side, they were going to build him a new garage and take down his old garage and remove the macadam driveway on the other side of the house all for \$15,000. He rejected that. He is adamant about not doing anything on the other side of the house. He doesn't want the garage over there. He said it would compromise the access for his tenant. He is not sure how, but that was one of the reasons. Also, he would lose windows in his living room. He wanted to purchase five feet where the driveway is now of Mr. Lavon's property, which was excessive. They didn't want to sell him that much. He reduced it to four feet, which is still more than they wanted to sell him. They moved off of that figure. They never could agree on price or the amount of property to purchase. Their final proposal was for him to purchase two feet from the street all the way

back to the rear of the property for \$30,000 and he wouldn't move off of four feet. The attorney indicated that maybe if they would go for a little less, but never the two feet. They could never agree on either one. The way they left it, he spoke with Mr. Loman at 6:00 this evening and he told him their proposal, otherwise they were going to let the Board do what they see fit. He indicated that he wasn't sure what his client would do as far as exercising his legal rights. You can see from his letter that he indicates in there that he mentions "so his client will need to exert his adverse possessory rights in a judicial situation if necessary." Clearly he's indicating that he will be willing to do whatever he has to do. Their feeling is he has in essence taken this Board off the hook.

Mr. Vaccaro asked Mr. Schuster, being there are attorneys involved, if we should be getting into this discussion. Mayor Romeo wanted to hear this. Mr. Maryanski feels that this Board can act on this application and the Board would not be affecting Mr. Guenther's legal rights in any way. He has clearly indicated he will exercise them if necessary, if he feels the need. Mr. Schuster noted that that is not really true. They are affected. In fact, you are developing a property which he claims he has an interest. That is the dilemma. Mr. Maryanski noted that he could file tomorrow for his adverse possessory rights and seek whatever regress he wants in the courts, regardless of what this Board does. He has indicated a willingness to do that. Mr. Schuster noted that the problem then is, can they give the necessary documentation that gives you the right to develop the property in total. In other words, there is a question about whether or not you have the right and title you want to build. Mr. Maryanski stated that that is not their opinion. In their opinion, they have every right to develop it. Mr. Schuster noted that there is a claim that they don't. That is what this thing is all about. Mr. Maryanski noted that anybody can make any claim without any type of proof. He hasn't provided any proof.

Mr. Schuster stated that we don't know if he has any proof. Mr. Maryanski stated that Mr. Guenther has the burden of proof. If he is asserting some type of right to his client's property, he has the burden of proof. Mr. Schuster feels that the burden of proof is on them to prove they have the right to develop the property. Mr. Lavon can prove ownership and title search when he purchased the property. Mr. Maryanski can present to the Board that there was no legal instrument of record that would give any rights to Mr. Guenther to this piece of property. Mr. Schuster noted that that was a matter of what the title search would show.

Mr. Lavon stated that they were trying for the past month to speak and negotiate and did whatever he could and Mr. Guenther never responded. The first time he heard from him was today. Mayor Romeo noted that Mr. Guenther is afraid. He asked Mr. Lavon to step back a minute and think about what Mr. Guenther is going through. Mr. Lavon noted that he offered Mr. Guenther to still drive on his property from the first time he purchased the lot. He told him don't worry. Now, after a month of not being able to speak with him, he finally hears from him this morning through his attorney. Mayor Romeo asked if he could sell him three feet to the back of the garage. Mr. Lavon stated that the narrowest part of the driveway would be 9.4, and then he has 11.4 and 15.3. His car is six feet wide. He has a Volkswagen Jetta. He only wants to sell him two feet because he doesn't need three feet. He is going to have a driveway of 11.4 for a one car garage for a car that is only six feet wide. Mr. Maryanski stated that he Googled the Volkswagen Jetta and the whole fleet is less than six feet wide.

Mayor Romeo noted that there is no right or wrong here. We have an 85-year-old man who has one heir from Germany and no other living relatives who is now afraid of his property being taken from him. Mr. Lavon stated that the property was never his. Mayor Romeo explained that there has to be a way out of this because the Board is not going to issue a permit until this is resolved as advised by the Planning Board Attorney and the Borough Attorney. There is pending litigation. Mr. Vaccaro asked if this is going to interfere in what Mr. Lavon wants to build. Mr. Maryanski noted that they are not giving him anything. Mr. Lavon stated that it is not interfering. He is 20 feet from the setback. He also discussed previously a temporary easement and he rejected that also.

Mr. Maryanski noted that there is a limit to how much they have to bend over backwards for Mr. Guenther. He understands that he is afraid, but he has legal counsel. He has threatened to take legal action to assert his legal rights. What bothers them is he is clearly using this Board as leverage to get something that he should have to pay for or exercise his legal rights normally. He could have gone in to court any

time over the last 60 years and asserted this legal right and made it formal to verify the legal rights that he claims he has. But he didn't do that. Now he's taking the opportunity because Mr. Lavon is before this Board, to have this Board act as his intermediary to get these formal legal rights that he did not want to assert through normal channels. Mr. Vaccaro asked if he bought the three feet, would it interfere in what Mr. Lavon wants to build. Mr. Maryanski stated that Mr. Guenther couldn't agree on the three feet and he couldn't agree on the price. Mayor Romeo stated that Mr. Guenther is afraid that if he doesn't have a deed in his hand, it's not legal to him. That is his mentality.

Mr. Lavon said that if it is recorded in the deed that he is having a temporary easement, he can drive there, what is the problem with that? Mr. Maryanski noted that they discussed the temporary easement. Mr. Schuster stated that it would have a right of reverter. Mr. Lavon noted that he told Mr. Guenther that they were going to record it for him, lifetime or as long as he resides in the house. He told him without any payment. Mr. Guenther rejected it. Mr. Maryanski said it would be temporary just for Mr. Guenther, for his life or as long as he resides there. Mr. Lavon stated that he rejected every single offer, with paying or without paying. They are in a deadlock. They were explained to him by his attorney. Mr. Maryanski noted that he thought Mr. Loman was in favor of the garage on the other side of the property, but he couldn't convince Mr. Guenther of that. That seemed to be the best proposal all the way around. Everything was through counsel. Mayor Romeo noted that he is afraid if he has an easement, when he goes to sell the property, it makes it difficult for him to sell it because the next guy inherits the same problem that you have now. Unless it is a knockdown, the person buying it is not going to buy it because the easement will terminate. Mr. Maryanski noted that he is no worse off than he is right now. If he went to sell the property now, they would ask about that common driveway and check the record and see if there is no recorded agreement and they would be in the same position. Mayor Romeo pointed out that in Mr. Guenther's mind, he doesn't believe that they are going to buy the house and not tear it down. Common sense tells you that someone is going to buy the house and tear it down, so all of this is going to be mute. He thinks that this house is going to stay forever.

Mr. Lavon explained that the first time he met Mr. Guenther, he didn't tell him there is an easement or an arrangement, he asked him if he was willing to sell him a portion of his property. What he is trying to say is he told him he doesn't have to spend his money, go ahead and use it, he is far enough, don't worry about it. And then everything started. Now, his attorney said, he is using the Board without even presenting to the Board. This is the second meeting he did not present. He is rejecting all their offers, with money or without money, and just using the Board to block them off. Mr. Maryanski noted that they started out when they first approached the subject, Mr. Lavon told him, don't worry about, he is building at the other end of the property and he can continue to use that portion of the driveway for nothing. Mr. Lavon noted that he changed the plans because of Mr. Guenther. They said leave everything the way it is and continue using it and don't worry about it. Mr. Maryanski told his attorney that is still on the table and they would just leave everything alone and he could continue to use it and they wouldn't touch his portion of the driveway and they wouldn't bother him. Now Mr. Guenther is going beyond that because they are before the Board and he is saying he wants more, he wants a piece of paper, he wants the legal rights that he doesn't have right now. He wants it to be formal. But he doesn't want to pay for it. In fact, Mr. Loman used the word "leverage" in their conversation. He feels he has leverage.

Mr. Schuster noted he may have the legal right to use it. Mr. Maryanski noted that he would have to assert those legal rights. He would have to go to court and he doesn't want to do that. You would have to pay an attorney probably as much as he would have to pay to buy the property. Mr. Lavon said that for the temporary easement, he didn't ask for any payment. Mr. Vaccaro asked if there was some sort of a compromise that can be worked out. Mr. Lavon noted that for a temporary easement he doesn't need his money. Mayor Romeo feels that he wants three feet so he feels that he is safe and he wants to pay for it. Mr. Lavon noted that it started at five feet and then went down to four. He keeps changing his mind. Mr. Maryanski stated that they never confirmed three feet. They were at two feet and Mr. Guenther came to four. They never got to three feet.

Mr. Lavon is suggesting giving him a temporary easement and he doesn't need his money. Mr. Maryanski said he can get a temporary easement as long as he lives there or as long as he is alive. He is getting that for nothing and that protects him for the use of that driveway. It puts it in writing and it

formalizes it and it is recorded. That protects him. It gives him rights for free that he doesn't have right now that you would have to go to court and spend a fortune to enforce. To go beyond that is really unfair. You are having Mr. Lavon to have to prove that Mr. Guenther doesn't have rights in the property. Mayor Romeo stated that in the beginning the easement wasn't for free. Mr. Maryanski agreed that for a permanent easement, it wasn't for free. For a temporary easement, for just for his life, it's free. Mayor Romeo explained that he moved them off the dime from money to free. Now they have offered a temporary easement until he dies or as long as he resides in the house or he buys a little strip of land and pays something like three feet for \$20,000 to the back of the garage. Mayor Romeo asked if either one of those are acceptable or not. Mr. Lavon stated that to his understanding, a nine foot driveway is fair enough. If you ask him his preference, he doesn't want to sell him anything. He paid full price for the property and it's clean, with no easement or anything. He doesn't want to sell him anything. What he is trying to say is a nine feet driveway at the narrow side, because then it gets wider to 11 and 15, he thinks it is fair enough. He cannot ask for more than that. He is willing to give it to him without a dime.

Mayor Romeo noted that the sticking point is this. He is saying that when he comes out, he is going on to Mr. Lavon's property. He doesn't want to go onto his property. Mr. Lavon said that he is not. The same way he is using his property, the nine feet is where he is just driving straight forward. Mayor Romeo asked Mr. Lavon if he would take \$20,000 for three feet. Mr. Lavon said he would not. He has a 75 foot wide lot. He is building a house and would like to sell. Why would he lose money and decrease his property value because of Mr. Guenther, which he is trying to accommodate. He doesn't want to sell to him, he doesn't need his money, and he is accommodating Mr. Guenther. He understands the problem. He is willing to give the temporary easement. He understands he is an old guy, he understands it is a big change and he understands everything, but still he feels that after a month where has offered him almost everything and still the guy doesn't show up and even doesn't answer. Mr. Maryanski offered Mr. Loman the easement for free and told him it was discussed with the Board's attorney and that it was done on another property and that was a suggestion as another possibility. Mr. Loman indicated to him that he was not in favor of easements. He would rather do the sale. Mr. Lavon is not in favor of a sale. He is in favor of a temporary easement. He thinks that by selling he is shrinking his property for no reason. If he is forced to sell it, he gave him an offer and he rejected it.

Mr. Vaccaro asked how he arrived at \$30,000. Mr. Lavon explained that he took the square footage and the number paid, the value of the property and that's how he got the number. Honestly, he doesn't want to sell. Mr. Azzolina noted that the one thing that should come into play here also is you can't just sell the property. There would have to be a minor subdivision, which is another cost that somebody is going to have to bear. Mr. Lavon also explained that for the price they were willing to pay the first time, the \$15,000, he will take care of all the work, including taking down the old garage, rip up the driveway, put up the new garage and the new driveway. He will do everything and Mr. Guenther is worry free. Mr. Guenther said no.

Mr. Maryanski said that if the Board would put in a temporary easement, that gives him something for nothing. It protects him and you have made arrangements to try to accommodate him. He can always come back to us then and renegotiate about buying. He can go to court and assert his rights and his attorney has indicated he might. And he told him over the phone that he doesn't know what he would do. If he weighs the cost of doing that versus buying and paying what Mr. Lavon wants for the strip, he might reconsider. Mayor Romeo indicated that in court he may have a real leg to stand on. Councilwoman Tsigounis stated that that is his problem. She feels that we should let them develop the land, give them the temporary easement for his residency there and whatever he wants to do he can. Mr. Maryanski stated that what this Board does doesn't affect his rights. Mayor Romeo suggested Mr. Schuster give Mr. Loman a call in the morning and he will also call him. Mayor Romeo thought the original offer was that Mr. Lavon would do the work at cost, build the garage, etc. Mr. Lavon said that Mr. Guenther offered the \$15,000 for the land and he said he would take the \$15,000 and remove the driveway, build a new garage and driveway on the other side of the house and remove the old garage. He didn't care how much it was going to cost him, \$15,000 was the price. Then Mr. Guenther rejected it. Mr. Lavon explained that this would increase the property value by having an attached garage. He would have a wider front. There would be no easement. Everything is clear cut. And if he is going to sell it, he would have no problem. Mr. Guenther said no.

Mr. Maryanski thought that Mr. Loman thought this was the best option and he thought he could sell Mr. Guenther on the garage idea. Mr. Loman is a reasonable man. Mr. Lavon noted that he is being held up for over two months for no reason, paying taxes, and not working, he is a resident of Cresskill and he feels that this Board is not protecting him as a resident of Cresskill because someone cannot make up his mind and he is playing with the Board. He is using his age for sympathy. Mr. Lavon is a resident of Cresskill and he paid full price for the lot. He did what he had to do. He did a title search. He did everything and now it is going from two weeks to two weeks and it's not fair. Mr. Maryanski stated that they are shifting the burden from what should be Mr. Guenther's burden to exercise his rights to Mr. Lavon because he happens to be before this Board. He is going beyond trying to accommodate him now. Mr. Lavon wanted to know, now that Mr. Guenther has an attorney, why the attorney is not here in front of the Board representing Mr. Guenther. That is why he feels he is using the Board.

Mayor Romeo explained that in the last two cases this has happened, what they are willing to give is exactly what the other two owners gave. The last two cases, on Jefferson and on Broadway, is exactly what they were granted. What started out at \$80,000 is now down to an easement for free until he leaves the house. Mr. Lavon noted that he was offered that from the beginning, from day 1. Mr. Maryanski explained that he was concerned for his own use that he wanted that piece of paper for himself. They gave him that and then he said well what if he sells the property. He keeps going beyond.

Mayor Romeo said that they have made their point quite clear and it is what was granted on Jefferson and Broadway. Mr. Schuster noted that the one of Jefferson was worked out between the attorneys and we really didn't get involved in that one too much. Mayor Romeo stated that both he and Mr. Schuster will call Mr. Loman tomorrow and get it resolved. Mr. Maryanski asked if there was some kind of time limit for this. Mayor Romeo noted that they will get it settled tomorrow. Mr. Lavon asked if he could get an approval because he has been stuck for over two months when he has done nothing wrong. He is not asking for any variances. Mr. Azzolina noted that there are no variances. He received revised plans on Thursday or Friday of last week via e-mail. The engineer addressed most, but not all of his comments. He notes that they still don't have their Bergen County Soil Conservation approval yet. Theoretically, the plans can't be approved until that's in place. Mr. Lavon asked if the Soil Conservation can be subject to the building permit because he is trying to move forward and he needs the Board's help. Mr. Schuster noted that he can get a demo permit. Mr. Lavon would like to start building. Could he get an approval subject to Mr. Azzolina's approval? He will bring the Soil Conservation approval to Mr. Azzolina tomorrow. What he is asking is to get the Board's approval subject to building permit approval from Mr. Azzolina and the temporary easement.

Mr. Azzolina noted that the issues he had were minor in scope and it is something that he can discuss further with their engineer if necessary. Soil Conservation, if they made application, should come shortly. To him, the biggest issue with this property was that driveway. Mayor Romeo noted that the Borough Attorney said not to issue a permit until this thing was resolved. This is going to have to be resolved one way or another in the next week. Mr. Morgan agrees with the Borough Attorney and hold for the next meeting to give everybody a chance to work on it and two more weeks is not going to kill anybody. Mr. Maryanski said that if it was conditional on that, and there is no easement, they can't move forward. If you make a condition on getting a signed recorded easement, they can't get a permit.

Mr. Galdi thinks they should talk to Mr. Azzolina and get everything in order and if they get things settled with Mr. Guenther, we can approve it subject to Mr. Azzolina approving everything else. Mayor Romeo agrees with that scenario. Mr. Maryanski noted that they can start work based on them granting Mr. Guenther the easement. You don't need his approval to grant him the easement. As far as the Board is concerned, they can grant him an easement whether he wants it or not. Mr. Schuster said that he has to accept it, obviously.

Mr. Azzolina noted that from the plan, he just had one discussion relative to the retaining wall design. There was a detail on the first plan that is no longer on the revised plan. Mr. Galdi suggested getting everything needed to Mr. Azzolina and they can approve it subject to the previous conditions stated. Mr. Lavon prefers the temporary easement. The backup plan is two feet for \$30,000. He doesn't want to

shrink the property. He doesn't think there is any reason to discuss three feet. He doesn't think he needs it. Mr. Galdi thinks that \$15,000 with the new garage is the best thing. Then he will have no easement. Mrs. Schultz agreed that if he ever wants to sell the house, there is no easement to worry about.

Mr. Lavon asked Mr. Azzolina to send him the list of items missing from the plans so he can get them resolved.

Additional Report from the Borough Engineer's Office

Mr. Azzolina reported that he received revised plans for Application #1432, 236 Grant Avenue, Ezra Sofer & Orna Ben-Or. The plan is revised in accordance with the comments contained in his memo dated May 14, 2013. They have received their Soil Conservation District approval. They have not submitted revisions to the Board. Revision date on the plans is May 24, 2013. Subject to them submitting the plans to the Board for signature, he recommends that the plan be approved as presented. They reduced the fence height along Short Place and the drainage has been approved. Mr. Galdi made a motion to approve, seconded by Mrs. Schultz. All present were in favor.

Additional Old Business

Mr. Vaccaro noted that they finally got an answer from Verizon on Allen Street. There is a contract coming back that the Mayor has to sign for \$35,000 for the study. They have two costs. One cost is the wires going underground and one cost is for the wire going above. Mr. Azzolina noted that approximately the cost for the whole project for underground utilities is probably between \$1 million and \$1.5 million. With the utilities above ground, it would be about \$750,000. The question is would the Board like to go underground or above ground. You are talking about a difference of about ¾ of a million dollars. We have to make a recommendation to the Mayor and Council. Mr. Schuster asked if going above ground would cut down on some of the parking. Mr. Azzolina said it would not because they build around the poles. It won't impact the parking space count. It is really an aesthetic thing. Mr. Galdi said that a lot of towns are looking into putting the services underground because of storms and everything else.

Mr. Vaccaro explained that it is a bonded thing, it's a long time project that you are paying for over the years, and his recommendation is to go for underground utilities. Mr. Calder asked what was improving if it is staying above ground. Mr. Azzolina noted that it is aesthetics. Mr. Calder asked what was being done for \$750,000 if the utilities were staying above ground. It was explained that they are all being replaced with new cables. Mr. Galdi asked if FIOS would be brought into town with this. Mr. Azzolina explained that that is not happening. Apparently in order for that to happen it has to come from the switching station which is actually in Englewood as opposed to the nearest connection point, which is in Demarest. In order for FIOS to be run here, they have to come from Englewood, which is 3-4 miles away and that is a whole other cost element that Verizon is not willing to assume.

Mr. Morgan asked if the cable is staying where it is, when can they get started on the project? Mr. Azzolina noted that it is hard to say at this time. There are so many parties. There is Verizon, Orange and Rockland and Cablevision. There are three separate utilities that you are dealing with. You have to do some utility relocations no matter what. The design of the parking lot is basically complete. The work that needs to be done is the coordination with the utilities. On the optimistic side, you are looking at six months to a year.

Mr. Vaccaro noted that we don't make the decision. The final decision is the Mayor and Council. They are the ones that bond for the money. Ours is just the recommendation to the Mayor and Council. Mayor Romeo recommends underground. Councilwoman Tsigounis agrees. Mr. Vaccaro, Mrs. Schultz, Mr. Morgan, Mr. Galdi, Ms. Bauer and Mr. Calder all were in agreement. Mr. Vaccaro will bring it to the Mayor and Council tomorrow night and let them know what the Board recommends.

Mr. Vaccaro opened the meeting to the public. No public wished to be heard.

Motion was made by Mr. Galdi to adjourn the meeting at 8:55 PM, seconded by Mr. Morgan. All present were in favor. Motion approved.

The next four regular Planning Board meetings are scheduled for June 25, July 9, July 23, and August 13, 2013, at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo
Recording Secretary