

**Township Of Chatham Board Of Adjustment**  
**May 20, 2010** **Regular Meeting**

Meeting Called To Order – 7:30 P.M with the reading of the Open Public Meetings Act

**Roll Call:**

Mr. Lawrence Dalziel	Mr. Parker Godwin	Mrs. Therese Hough
Mrs. Francine Alcorn	Mr. Karl Schmidt x	Mrs. Kathryn Kenny
<b>Mr. Philip Vivona, Alt.#1 ( 8 pm)</b>		

Minutes – March 18<sup>th</sup> – motion made by Mr. Godwin, seconded by Mrs. Hough to accept minutes as submitted.  
All in favor.

**Resolution of Denial**

**Mr. & Mrs. Hoie**  
**2 Rolling Hill Road**  
**Block 102.2 Lot 31.**

**Calendar Boa 09-102.2-31**

A motion was made by Mrs. Alcorn, seconded by Mrs. Hough to approve the Resolution of Denial as presented.  
Roll Call: Dalziel, Hough, Alcorn, Kenny

**Mcgrath's Paint & Hardware, Inc.**  
**Block: 48.23 Lot: 126.04.**

**Calendar Boa 08-48.23-126.04**

Mr. Shaw said that this application has been in an incomplete status for over a year. The applicant was contacted and advised that the Board would be taking action tonight to dismiss their application without prejudice.

Mrs. Hough pointed out that correspondence had been received dated April 27<sup>th</sup> withdrawing the application.

Mr. Shaw then noted that the application should then be considered as withdrawn. I will make sure that the zoning officer is informed that the application has been withdrawn.

**Village Supermarkets**  
**Shunpike Road**  
**Block 48.17 Lot 126.04**

**Calendar Boa 08-48.17-126.04 641**

Mr. J. Delaney, Attorney

We are here for a small modification/clarification to one of the conditions of the February 19, 2010 Resolution of approval. We have published/served notice and filed with the Board. We are because I was advised of a new watering system with a hidden hose in the back. Upper management said they were not sure if it was in compliance. I called Mr. Shaw and he suggested that I come before you. We are here regarding the watering as it is stated in the Resolution that the watering would be by portable watering unit instead of a hose in order to prevent tripping hazards. The applicant seeks a clarification/modification of this condition to permit a concealed hose which placement will avoid tripping hazards and excessive time/physical burdens associated with portable watering units. I also suggested that as we are in the middle of the year maybe this could be carried for a year so you wouldn't have to come out twice. My suggestion, as I said to Mr. Shaw, that a site visit might be appropriate to see what it looks like.

Mr. Dalziel – is there any kind of visual description of what it is because I don't really know what you are talking about.

Mr. Delaney – it is very simple – you have a hose that runs behind the plants, goes up a wand and it sprays instead of a portable watering can. A site visit is more than a picture can describe.

Mr. Dalziel – there should be some document that demonstrates in some way what you are describing. A graphic. A description of how it is concealed, etc. Where will the hose come from? Will it be above ground – those kind of things should be defined.

Mr. Delaney – we can do that.

Mr. Dalziel – it is for the record.

Mr. Shaw – suggested a schematic showing its location.

Mr. Delaney said a schematic will be done.

Mr. Shaw – there was a suggestion made by counsel, rather than having us all back again in December for another site visit to confirm that they are acting in conformance if the board wanted to avoid that subsequent inspection in December you actually might have a busier location at this point to check compliance.

Mr. Godwin felt he would like to maintain the December inspection. Mr. Dalziel felt that he would not want to waive this inspection either.

Mr. Dalziel felt it would be appropriate to go out for a site visit (he assumed this proposed operation was not currently being utilized). A site visit was scheduled for the 5<sup>th</sup> of June at 9 am and carried to the next Board meeting on June 17<sup>th</sup> without further notice.

**Mrs. Cvijic**  
**6 Ferndale Road**  
**Block: 117 Lot: 22**

**Calendar Boa 10-117-22**

Mr. Barry Osmun, Attorney

This application is a proposal to reconstruct/expand an existing patio, regrade the yard with a tiered wall system, conduct a second patio on the upper level and install an new lawn and landscaping. The variance required pertain to slopes. In this case it is in the greater than 55% which limits the disturbance to 500 sq. ft. and request 2235 sf or a 1735 greater than what is allowed in the zone. The proofs submitted will show that the grant of the requested variance will advance the specific purpose of the Municipal Land Use Law by creating a desirable, visual environment. We could also argue that in addition to a C2 variance this might also might qualify for a C1 (hardship) which arise out of the topographic conditions of the property. The proofs will also show that there will be no net increase in the storm water runoff. With that I would like to call David Cvijic.

Mr. Cvijic (sworn) said that right now the rear of the property is not functional for his family. The existing patio is small and can barely accommodate a table and chairs. We would like to expand it by pushing the wall back a bit further and creating a second patio level by terracing the steep slope and then creating a yard with grass on the upper level. Presently there is a small patio area and a retaining wall and a mound of dirt about 10 ft. high. Submitted were 8 photos (Exhibit A24 ) which I took and they accurately show the existing conditions. Some trees were removed last year but no more will be taken out. The landscaping planned includes a good amount of shrubbery and plantings. We did submit a plan which lays out what is proposed. We have someone from Coviello Brothers will explain the plan (Mark DelPrato)

Mr. Dalziel – the drawing from Benjamin Worzek shows a proposed lawn area on the upslope. There are trees, etc. up there can you talk about that.

Mr. Cvijic – the trees up there we propose to keep. The plan is to try to clear the area and create a lawn right now.

Mr. Dalziel asked for question from the audience. None heard.

Mr. Tom Benjamin, Engineer - (sworn) – referred to page one of the site plan dated 3/29/10 – this was a result of a final topographical survey that was presented to the Township Engineer for approval of compliance with the original lot grading plan. We have designated the different areas of slope on the plan, the steep slope area being right behind the house/wall. There are little pluses in there – that is the 25% and greater slope. The 15-20% is shaded in gray and the 20-25% is found right in the front yard by the street. Going to the proposed conditions – that shows the construction of two walls the lower wall almost following the existing wall with a little bend in it to make a little bit larger area down below and then a secondary wall that encompasses the upper patio area. We are calling the disturbance of the entire steep slope area as being disturbed which in fact is 2235 sf. I would like to point out that in reality the altering of contours really takes place in the vicinity of the wall. This steep slope area over here is being disturbed because of landscaping/planting of 8 trees is going to be occurring. More that the existing steep slope will be restored as we are not changing the grade. In the area where we are disturbing the steep slope is where we are flattening it which would have the result of making runoff from the site lessen. The velocity will slow as a result of the terracing. As you can see we have also added two lawn drains in the area which will collect any added runoff from the patios and will be directed to the drywell. We had sent Mr. Ruschke a report on the capacity of the drywell. Keep in mind that we are not exceeding total lot coverage. I would also point out that the project is centered on the property so it is not a situation that would be a nuisance to a neighbor. As far as runoff, we are containing it all on site. This lawn area on the upper part is an area that does not involve steep slopes. It is just low vegetation, leaves, etc. sort of an unkempt area. Going to page two – you will see the lawn area. The general size of the existing patio is 25 by approx. 10 ft. Also on page two you will see where the lawn grades are located, the landscaping in the vicinity of the walls/patios around the house and the trees/shrubbery to be planted.

Mr. Dalziel – have a couple of questions regarding grading – it indicates spot grades with respect to top/bottom of the wall but you are missing something as you have not actually shown the change from the existing grade to proposed grade. I can't really tell what you are proposing in terms of grading.

Mr. Benjamin – quite frankly, over here we are not changing the grade.

Mr. Dalziel – the existing grade somehow meets the wall

Mr. Benjamin – those contours meet the top of the wall just as they are. That is the way the wall is designed. Between the walls – the bottom of the wall and the top of the bottom wall don't even create a contour because of the small differential in elevation. We are showing one foot contours.

Mr. Dalziel – then I extend that question to the proposed inlets as to how grading actually flows to those drains.

Mr. Benjamin – we have a top of grade (2098) and then the patio is 2108 right behind the house on the left hand side. That's the pitch in from there. Again, we are not changing any grades along side of the house as they already exist. There is sort of a gentle swale along side of the house to maintain the flow of the water. The other thing we are capturing in there to is behind the wall there are wall drains. The inlet area is existing topography. When it rains there is a little puddle there.

Mr. Kenny – ref. page 1 to page 2 – the trees seem to disappear. On the second page there is on one 20 inch tree in the proposed lawn area.

Mr. Benjamin – this is the way it is right now. This was prior to the removal of trees.

Mr. Shaw - being this is the first hearing are your experts also going to be available for the second hearing?

Mr. Osmun – certainly.

Mr. Dalziel – addressing Mr. Ruschke – when this house was built were there any steep slope issues?

Mr. Ruschke – no.

Mr. Dalziel – so the grading shown is basically what was existing?

Mr. Ruschke – Correct.

Mr. Dalziel asked for question from the public. None were heard.

Mr. Osmun called Mr. DelPrato as his next witness.

Mr. Mark DelPrato, Coviello Brothers, (Sworn) – when I sat down with the homeowners they specifically expressed their 3 objectives. One was to create a space to have table/chairs, second was to provide some lawn area for the children and the third was to nicely enhance the landscaping. They were very specific in not wanting to go out of the box. With the use of mostly native plant material they will stay within the boundaries. We were trying to screen specific areas and provide color. Regarding the tree removal, I was asked to take a look at the property. There were several trees that were split, diseased, lightning hits and a situation where there was between 4 and 7 trees that were in question. Before we touched the trees we had the town come out and look at them.

Mr. Dalziel asked Mr. DelPrato to explain how they met their objective with the various arrangements/plantings.

Mr. DelPrato – due to the existing conditions it was difficult to create a square shape of a patio so we enlarge it to allow for the placement of furniture. The idea is to come out the doors in the back and have a small sitting area to the right and a smaller sitting area to the left. In between the tiers we set a leg out so that they could have a small table. We created 3 intimate sitting areas. Second, we proposed a viable lawn areas where they could play with the children and the best place was up in this area here. The landscaping was the most important thing. There is some screening across the back. Instead of creating hedges on the property line we have just a nice balance of small/medium evergreen shrubs enhancing the walls and around the patio. There are still some beautiful existing trees on the property which we are trying to preserve.

Mr. Ruschke said he did want to clarify his statement before, I do recall that as part of the original lot grading he did have the steep slope areas staked out by a land surveyor and a fence in place so he didn't disturb anything but noted that there were 2 small areas disturbed - One small area in front of the property and one in the rear. The lot grading permit did have some steep slope disturbance but it was within the permitted limits.

Mr. Dalziel asked for questions from the public/Board.

Public:

Mrs. Hoag, Long Hill Lane was wondering where the cutting end of the steep slopes/wall – would there be any damage done to the roots of the existing remaining trees. She was advised that the answer was no. The closest sizable tree to that area is a beech which is a minimum of 15 ft. from the wall. We are not cutting into the area. The tree is on top so we are building up to the base of the tree.

As there were no other questions from the public Mr. Dalziel advised that the site visit would be on June 5<sup>th</sup> at approximately 9:30. He asked that the areas in question be staked out. This application will be carried to the June 17<sup>th</sup> meeting without further notice.

**Chatham Day School  
700 Shunpike Road  
Block 135, Lots 1 & 9.**

**Calendar Boa-09-135-1 & 9**

**Mr. Schaeffer , Attorney**

**Mr. Schaeffer** – noted this was the third meeting for this application. The 2 last time we had our engineer, Mr. Redington, testify. So far that is the only witness we have gotten thru so far. Just to quickly frame out the balance of the application we do have six experts in this application; a site plan engineer, an environmental engineer, traffic engineer, acoustical engineer and a planner, some architectural testimony and some factual witnesses from the School. I would like to respectfully, make one request of all interested parties. We would like to streamline the questioning because we might get double digit meetings in which I don't feel is anyone's better interest. We, the applicant, will try to do a better job ourselves to stream our presentation. In connection with this request I would like to point out a section in the Municipal Land Use Law which contemplated long drawn out hearings which legislation did not believe was in the best interest to the public – section 40:55D-10 subsection D & E, when the legislator has given the chairman and the board discretion to impose reasonable limitation as to time/number of witness and also provides the board with discussion to streamline presentations by excluding irrelevant and unduly repetitious evidence. I just hope everybody/interested parties, as well as the applicant, is guided accordingly with that guideline. I felt compelled to bring this up tonight only because we had our several experts here the last time and we do need to keep the application moving.

I did want to remind everyone that there was a two page outlined (A47) handed out which summarizes our application. We also wanted to remind that the applicant has applied for an LOI because wetlands are always an issue. We do have absence letter. In terms of what is going to happen tonight we have Mr. Redington who we are going to have walk thru the updated plans which were submitted on May 10<sup>th</sup>. That will hopefully only take 5-10 minutes and then Mr. Simon my want to continue his cross examination. Then hopefully the bulk of tonight will be our Environmental Engineer who is here. In terms of procedure I would just want to check with Mr. Ruschke and address the Municipal Reports. We thought the Site and Environmental Engineer could address these as the majority of the comments of the professionals deal with those two aspects. That is our intent. We also have, in the audience, our landscape architect, Bruce Davies, because we know there are a lot of questions regarding trees, buffering, etc. In the next meetings we hope to present his landscape plan. He is here tonight to hear everyone's input so its not just our clients direction but would take in to account everyone's concern/comments to come up with a landscape plan that will have a lot of due diligence and encompass most of what everyone wants. I would ask that Mr. Redington come up to complete his testimony and to go over the revised plan submitted on May 10<sup>th</sup> which highlighted the changes.

Mr. Dalziel – before you start I will reiterate that anybody/everybody who is speaking please speak up so we can record the meeting appropriately.

Mr. Redington – We have submitted a revise plan which outlines all of our changes which had been presented at the last meeting. We also include a letter everyone has seen and to summarize it – there were questions regarding the existing parking spaces so we actually restriped the existing parking spaces so they are all in conformance. There are approx. 14 parking spaces that we are proposing to be small car employee only parking and will be labeled as such. All of those spaces comply with parking requirements. We had discussed your engineers point about the limit of disturbance where it did not allow for construction access. We have revised the soil erosion/sediment control plan to show the disturbance for construction access. We removed the stock piled fill for the remediation area. The intention is now to have the remediation area returned to its existing grade. We adjusted the stockpile locations accordingly to show that we weren't going to be stock piling material

on the remediation area. We also adjusted stockpile locations for the topsoil and included a separate stockpile location with 1200 yards with onsite material that we are hoping to utilize toward the material that the remediation process will remove from the site. We have show temporary construction access for phase 2 that corresponds to the limit of disturbance areas. We changed inlet detail as requested by the engineer. We included a very perforated PC pipe in the grass of the parking areas that had been the suggested, We included a note that there would be no striping on the grass parking area. There were 2 tree count adjustments, one was because of the limit of disturbance being changed and additional trees would need to be cut down and also found a mathematical error on the last handout. This error did not affect the total density in trees which is the item your ordinance responds to. Last adjustment was in landscaping. It now includes planting specifications, particularly in the bottom of the retention basin. That really summarizes the change in the drawings. We did make one other commitment at the last meeting and that was at the response of Mr. Simon, which was to show the steep slope disturbance by phase. The parking lot information had always been on the drawing. It had been delineated by phase. The legend is shown at the bottom of the sheet. I made another drawing which might be a little more clear (A64) – Slope Disturbance Plan – Phase 2 Sheet 11 revised 5/7/10. The limit of disturbance for Phase 1 on this sheet had always been surrounded by a equally dashed line (red area), the limited area of Phase 2 had always been delineated by a wider spaced line (Green) and the limited disturbance (remediation) area had been indicated by the dotted line (blue).

Mr. Dalziel – questions from the Board? Public? None Heard.

Mr. Dalziel – addressing Mr. Simon said he would reiterate Mr. Schaeffer’s earlier discussion where we will keep this concise and to the point please.

Mr. Simon – we have tried to keep it concise and to the point and its our intention to continue to do that. I am well aware of the land use law Mr. Schaeffer has cited.

Mr. Simon – thanked Mr. Redington for the new markup. In regard to the disturbance – phase 1 vs phase 2 – (red vs. green) Please identify for me where phase 1 where the steep slopes grade greater than 25% is being disturbed.

Mr. Redington – the steepest slopes are shown and have always been shown as the darker shade of gray.

Mr. Simon – going back to your May 10<sup>th</sup> letter – number 1, you identified certain parking for employees only, what about the parking to the south, next to the building? (A52) Are those intended to be for employee parking only?

Mr. Redington said they were.

Mr. Simon then asked if there was a reason why they were not delineated as such as compared to the ones you have delineated to the left.

Mr. Redington – we only delineated the parking spaces for small cars. These are size for any size car.

Mr. Simon – you don’t intend to reduce the size of those parking spaces?

Mr. Redington – No.

Mr. Simon – re: sheet 9 on the new plan, it shows the construction access? It appears to contemplate a time when Phase 2 buildings are constructed. I am a little confused. What is the access for Phase 1? Is it the same?

Mr. Redington – it is intended to depict the road the construction vehicles will use when the build phase 2. That road will not be constructed until Phase 2 is under construction.

Mr. Simon – how would the construction people accessing the “Gym” area for purposes of constructing phase 1?

Mr. Redington – Sheet #8 – Soil Erosion Sediment Control Phase 1 – it is accessible right off the existing parking lot.

Mr. Shaw – interrupted the meeting to advise the public that generally photographs are not taken during our sessions - Mr. Dalziel – asked that the flashes be disabled

Mr. Simon – you said an additional 3 trees are going to be removed.

Mr. Redington – said the additional trees to be removed are reflective of the additional limit of disturbance area as we discussed previously – directly east of the proposed gym. When questioned about the mathematical error previously mentioned Mr. Redington explained that on the sheets passed out last month, the last two numbers had been added incorrectly – it should have been 1365. The density item on the last sheet was calculated in response to the ordinance requirement and that only takes into consideration trees 12 inches or greater and that number was not affected by our error.

Mr. Simon – I will not be asking any further questions of Mr. Redington regarding the landscaping, trees, etc as it seems that would be more appropriately handled by the landscape architect. That being said, lets talk a little about the fence along Peach Tree Lane.

Mr. Redington – Re: Site Plan Phase 1 – Sheet 3 – the purpose of the fence is to act as a buffer. It is in regard to the neighbors to provide them the privacy that they appear to want. It’s also a security issue. It borders a public road and the Roselli north east property corner. It’s a security against people watching children, taking children, people coming on to the property. The fence ends at the shrubs. I believe it may be contiguous to an old fence there but you would have to ask the school. The fence can screen the parking area if need be. We have no maintenance plan for the fence at this time. The fence will be constructed as per ordinance. The fence is approx. 560 x 6 ft. or 3620 +- sq ft in area. The height of the ordinance is what is permitted by ordinance. To my knowledge there is no door/opening in the fence shown.

Mr. Simon questioned as to how many fences there were in the R2 zone that size or how many 6 ft. fences are located in front yards, up against front lot lines. Do you know where the fence, as proposed, including new/existing where it ends.

Mr. Redington said he did not know about existing fences but as to the ending of the new fence, it is shown on the plans –560 feet to the west of our northeast corner. He was not aware of the height of the existing fence. As to vegetation that would have to be addressed by the landscape architect.

Mr. Simon – on your plan you identify certain existing shrubs to the south of the new proposed fence.

Mr. Simon -My recollection one of the sheets indicate that some of the shrubs might be dying. Do you know if there is any intention for the school to replace/replant those shrubs? Mr. Redington said that would probably be addressed with the landscape architect.

Mr. Godwin – I thought we were not asking Landscape Questions of this witness?

Mr. Simon – I am asking – that is why I was very specific...

Mr. Godwin – they are still landscaping questions and should be reserved for the landscape architect. You are not moving this along as you said you would.

Mr. Simon asked what the composition of the fence was.

Mr. Schaeffer said in order to keep things moving perhaps John Manilo (previously sworn) who also worked on the plan could address some of the questions.

Mr. Simon asked Mr. Manilo if he knew why the color white was chosen.

Mr. Manilo – was not sure why the color was chosen by the vinyl was chosen for maintenance purposes. Wooden fences are more difficult to maintain.

Mr. Simon – was there any consideration for placing fencing on the surrounding newly created slopes specifically near the gym and the new parking area?

Mr. Manilo – We felt the fence by the border line addressed the concern

Mr. Simon – re: lighting plan

Mr. Dalziel – said he would like to ask a question before he moved on. Addressing Mr. Redington he said he was a little surprised by some of your answers. These are your plans that show your intention buy you are – it seems the answers I am hearing are answers that you tend to indicate you don't know the answer to. I am surprised that you don't know why things that are on your plan are shown the way they are. Please explain that for me.

Mr. Redington – I am a little on guard. This is the first time I have ever had a cross examination and I am hesitant to express my opinion when my client says “Hey Greg, please put a fence on the property line and make it a 6’ white vinyl fence, because that it what we want.” I am hesitant to express their opinion during a cross examination. If my owner says they want a swimming pool in the middle of their parking lot, I will put it on the plans but when you ask why, I may not know the answer. I am not trying to avoid I am just trying to be considerate. I remember every detail we put on this plan – some have been there for 2 years.

Mr. Simon – all I am asking is for this witness to do is tell the truth and answer the question honestly. Nothing more. If he doesn't know then just say he doesn't know. If you do know then in your role as a professional engineer, preparing the plans, to testify as part of this application – do you understand that?

Mr. Simon – take out the lighting plan please –

Mr. Redington - Sheet 7 - done originally 12/4 this plan not revised even though it reflects a revised 5/7/10.

Mr. Simon - To clarify – even if only one sheet is revised you still carry the revision to the remainder of the plan. This was confirmed by Mr. Redington. Mr. Simon – you identify the light fixtures as a,b,c,d and e. – Who is going to testify to this plan. He was advised it would be Mr. Manilo.

Mr. Simon – the lighting closest to the Borough of Madison is “A” & “B” and they will only be in the upper parking lot. They will be used during special events at night when the parking lot is in use. On this plan or any other plan is there any security lighting in place.

Mr. Manilo said that was correct. As to security lighting there is none in place.

Mr. Simon.- the upper parking lots will be used for special events. Mr. Manilo said that was correct.

Mr. Simon – do you have an understanding as an engineer as to the number of evening events the school will hold each year? Do you know if the lighting will be used on the weekends? In the Summer? Mr. Manilo said he did not know.

Mr. Simon - From your perspective why is there a need for permanent commercial lighting for a section of the parking lot that is only going to be used for special events. Mr. Manilo said it was required by ordinance.

Mr. Simon – I am asking you as a professional engineer, if it wasn't required by the ordinance, in your opinion, would you see a need for lighting of this sort to be installed if its only used for special events. (Permanent by my definition being a structure that will be fixed, into the ground with cement and will be there forever.)

Mr. Manilo – Yes, I think there is. A temporary light would be hard to design.

Mr. Simon – forget about the ordinance for the moment – I am talking about renting or purchasing lights and use them during special events in the upper lot.

Mr. Manilo – No.

Mr. Simon – back to the ordinance – does it contemplate lights that are being used less than full time?

Mr Manilo – No.

Mr. Simon – This Chatham Day School is a private school, right? Mr. Manilo – yes.

Mr. Simon – and the public is not typically invited. Mr. Manilo – that is not a question for me.

Mr. Simon – I see there is a sidewalk, have you considered using cap lighting? Mr. Manilo – no.

Mr. Simon – are you aware of any type of crime/security issue associated with the existing parking lot? Mr. Manilo – not that I am aware of.

Mr. Simon – Is there any safety concern with the existing parking lot? Mr. Manilo – no.

Mr.Simon – In terms of fixtures A & B – I recall in the notes a switch for a timer. Could you explain that. Mr. Manilo – when the school is holding special events the lights will be on with a timer that will turn off an hour after the event is over. Mr. Manilo went on, as requested, to explain how to turn the timer/switch on/off.

Mr. Simon asked if sensor lighting had been considered. Mr. Manilo said they had been considered but they would be more of a nuisance to the neighbors with their going on and off.

Mr. Simon – asked the heights of the lights? Mr. Manilo said the top of the fixture is 18 ft. above grade. He pointed out that the grades varied. The highest topography is a 342.5. If you add the 18 to that you are at 360.

Mr. Simon – back to lighting – why were these particular lights chosen? Mr. Manilo – lighting can go from 60 watt like used in a house to 1000 watt. 400 is typical to the area. Closer to the tennis area are 150 watt – more like path lights.

Mr. Simon went on to question various lights, sizes, heights, etc of lights.

Mr. Schaeffer – I am going to make an objection here. We design a plan in accordance with the ordinance, lighting foot candles, etc. If the objectors want to propose a different plan and present it in to the Board as a better plan they have the right to do that. But to ask the engineers repeated questions like did you consider this, did you consider that – they drew plans that complied with the ordinance that made sense. If somebody has a difference of opinion that is fair then they can present that. But it is not proper to cross examine using hypothetical's. If they have something in mind then I think it is incumbent on them in their direct case to come forward.

Mr. Simon – I am going to disagree. In your ordinance they talk about lights, height of lights. Height is talked about in terms of maximum. If the ordinance said minimum of inches/feet and I started asking question as to why they weren't 12 feet the answer would be "because the ordinance says". In this case the ordinance says a maximum. It also talks about foot candle levels which I will get to in a minute. These lights are close to my clients property, they will have an affect on his property and I think its appropriate that I ask direct questions, which I am asking addressing lighting. I am not asking for hypothetical's for any other reason than trying to get some answers.

Mr. Schaeffer – I repeat, these plans were submitted, were reviewed by the professionals, it is all there for the public. You can design a lighting plan any number of ways to comply with the ordinance. This is what we chose. Now to keep asking question to consider this and that, I submit that let them do that on their direct case.

Mr. Simon – I think Mr. Schaeffer, with all due respect, it would be putting land use law on its head if the law and the proper procedure was that no member of the public was allowed to cross examine a witness because he prepared a plan and instead have it be incumbent upon the public to go out and retain designers/engineers to look at those plans. Very often where I have sat as a board chairman/attorney/applicant/objector or to cause examination to determine and realize that there is a better way to design a particular plan which is better for the general welfare of the community. That is the purpose of my cross examination.

When asked if asking for the definition of maintenance further the general cause. Mr. Simon felt it did.

Mrs. Alcorn asked what the reason to ask why we should look at something as if the ordinances were not in place.

Mr. Simon thought that was a good question. The reason for that is that your ordinance directly contemplates that the lighting is permanent that is going to be used on a regular basis. I am talking about the upper parking lot. It is only going to be used for special events.

Mr. Shaw – I would say in regard to that issue, an applicant is required to design in accordance with the ordinances as they exist. I am certain Mr. Ruschke, in reviewing the lighting plan and the fact that it will be used only for special events, would not alter the facts that the standards are the municipal standards. In terms of focusing your arguments on lighting perhaps rather than focusing – have you reviewed something in the structure of your questioning where you could pose it in less the hypothetical sense in terms of your questions.

Mr. Schaeffer – Isn't the point the requirement as to the respect – what does it matter how many light you have? If you shield it and the affect is the required affect and you have "0" foot candles. We could put 40 lights there with "0" affect at the property line. We could sit here and talk about how many lights/height from now until next year.

Mr. Simon – my response would be that there are things that go beyond foot candles and height of lights. All the questions are simply directed to very sensitive issues for my clients. I assure you I would not be wasting a second of the time if I didn't think it needed to be addressed.

Mr. Schaeffer – we have 2 environmental engineers here for the second time. Could you just tell me about how much longer you think you are going to be so maybe we can stop with Greg here and put on the environmental people. Does that make sense?

Mr. Simon said he was fine with that. If you want to make Mr. Redington available so we can address him privately about some issues that would work.

Mr. Schaeffer said he had no problem with that.

Mr. Dalziel did not feel that was the greatest plan.

Mr. Schaeffer said this application could take 15 meetings and I don't think that is anyone's interest. So Joe came to me and said can we have the engineers meet and talk about our concerns and the meeting happened. He also said that he doesn't want to put this hearing in quick sand. I don't have any problem unless the chair objects for Mr. Simon speaking with my engineer.

Mr. Dalziel – my only concern is that the board be apprised of what the essences of those meetings are.

Mr. Shaw – I think to some extent the applicant and the objectors could meet together to try to cut the issues down so we are not here for 15 nights. Certainly if there are any substantive change there will be revised plans submitted to the Board for any changes.

Mr. Dalziel – if results come out of those discussions we must be apprised.

Mr. Schaeffer – any changes agreed upon will be submitted.

Mr. Simon – I certainly have a lot of question for Mr. Redington but I am sensitive to the need to introduce the other witnesses. I will step down for the moment so that Mr. Schaeffer can move on.

Mr. Dalziel – that I find but my only concerns is that we jump around on this application.

Mr. Schaeffer – this is a unique situation because we have Hatch McDonalds additional engineer; we had both of them sitting here last time and I also think that you want to hear from them so we can have a site visit for a visual on the site. I am afraid we might not reach them again.

Mr. Schmidt – I think Mr. Simons appear to go to his basic understanding of the plan in terms fence lengths/lights/elevations so it may be beneficial for him to meet with the engineer because those types of questions might further my understanding of the application/plans.

Mr. Dalziel – I think I would agree with that statement that the answers are on the plans. If you look at the plans they will answer your questions.

Mr. Godwin – that's why he wants it on the record – in case there is potential litigation later on. I presume you are a litigator as you certainly come across that way.

Mr. Simon – I am primarily a litigator.

Mr. Godwin – the way you are going right now, if you continue to do it at this pace, every current student at Chatham Day School would have graduated from college before we get to the next witness.

Mrs. Alcorn – just one more question on the fencing – for clarification. Mr. Simon, you had asked if there would be a gate on the fence (northern boundary). Are you asking this because you want one or not want one.

Mr. Manilo – it is not designed with a gate.

Mrs. Alcorn – in response to the fence height which is determined by ordinance - Do your neighbors want this height?

Mr. Simon – the existing fencing is not on the plan and as a result of that the detail of the fencing is not on the plan. In other words, the proposed fencing which is 6 ft high and shown on the plan goes for 560 ft. At that point there is other fencing but it is unclear from the plan how high it is, how long, etc.

Mr. Shaw – so your objection is that the plan doesn't have details depicting the existing fencing?

Mr. Simon – to answer your question directly it is unclear what specifically this fencing is and if its appropriate for my clients. It seems to me that it is very high and very close.

Mr. Manilo – there are two fences. One deer fence which is in front of the fence and then there is a chain link fence on the property line. I think it's about 6 ft. high. We are proposing a 6 ft. fence on the same line but different material.

Mr. Simon – I am a little concerned with a solid 6 ft. fence that's right up against the property line. It is not see through. Right now there is no solid 6 ft. fence.

Mrs. Alcorn – I understand that but I thought that one of the people who got up and spoke objected to seeing the children on the playground. Perhaps it would screen in some of the activity on the property if there was a solid fence rather than a see through fence. That seemed to be some of the objections to the school in particular when this application was in its early stages.

Mr. Godwin – the original application, prior to this one, one of the objections on the original site visit was that the play ground was back there and they were subjected to hearing/seeing the kids on the playground.

It was also pointed out that the solid fence also blocks the light, the height of the fence blocks the disbursement of the light, blocks noise, blocks everything which makes the solid fence a better choice because that is what was brought up as a concern.

Mr. Redington – the light poles at the top of the phase 2 parking lot – the grade there is approximately 342 and the grade on Peach Tree Lane (border) is 354 so where the light pole is located is 12 feet below Peach Tree Lane. The top of this pole will be at a 6 foot height to someone standing on Peach Tree Lane which is exactly the height of the fence. That is probably the worst case condition. This light pole, which is totally shielded and pointing straight down is 75 ft. away from a property line, which is 10 feet away from the roadway of Peach Tree land which is roughly head high. This is intended to be approximately in the same plane as the existing fence.

Mr. Simon – I think the issue might be the appropriate location of the fence.

Mr. Godwin – asked Mr. Ruschke if this fence in violation of any code of the Township.

Mr. Ruschke – No.

Mr. Godwin – then why are we dancing here.

Mr. Schaeffer – asked if we should continue with this witness or should we move on.

Mr. Dalziel – Because of the involvement here I don't want to come back four times. We need some consistency here. I don't have a problem but I don't want to jump all over.

Mr. Michaels – just wanted to make one comment/clarification regarding the ordinance and lighting standards. The ordinance has specific lighting standards for multifamily and institutional developments. The ordinance contemplates the type of use and lighting standards that the applicant has presented.

Mr. Dalziel – and you reviewed this plan and terms of its compliance with that ordinance.

Mr. Michaels – yes. They appear to meet the standards. In another section of the ordinance addresses shielding against a residential zone and they also comply with that.

Mr. Dalziel said he had no problem moving away from this particular testimony. He then opened the meeting to the public for a few minutes for any question on testimony presented so far.

Public – Questions only.

Mrs. Jenkins, Gibbons Place, Green Village – will the fencing on the back part of the property be removed? She was advised that there were no plans to change that fence. Re: Lighting – with the remediation that may be occurring and the clearing of trees etc, will the parking lighting be replaced. She was advised it would not.

Antonio Eimni, Alma Place, Madison, – Why can't an open fence be placed there. The fence only goes a portion of the way. Where it bends it slopes down. Mr. Redington said he thought that some of his neighbors want privacy. The intention was only to put the new fence where the new development was and leave the existing fence. The existing property wasn't going to change.

Mr. Eimini – re: lighting – how far from the property line will the light be (upper parking lot). Mr. Redington said approx 73-74 ft. to the property line. The light is facing down, has a metal shield with the back side facing your property, the top of that light is approx. head high of someone standing in the street so, if as you say your property is level you should not be able to see that light at all. You should get no light on your property.

James Northrop, 2 Clare Ct – Question on how you arrived at 18 ft. height of the poles. Mr. Redington said it was a balance between the total number of poles needed to adequately cast a glow in the parking lot vs. the height. Mr. Northrop asked if a 17 ft. pole could be considered and was advised that it could. Mr. Northrop then asked if it could be goose necked type that could hide the bulb and was advised that this fixture does hide the bulb.

Mr. Schmidt – if you were to reduce the pole to 12 ft. how would be the ground at street level. How would it change the number of lights you would need for proper illumination for the parking lot.

Mr. Redington said he would have to do a calculation –

Mrs. Hoag, is there any chance you could have 2 different type of timers. One for evening use which doesn't need the upper parking area and another one for the upper parking area only when the upper lot is in use.

Mr. Redington – yes

Mr. Ruschke – one issue – we did have a meeting with the Madison Engineer on April 27<sup>th</sup> and a valid question was raised about an alternative we could look at regarding the issue of the parking lot. The applicant did offer to provide Madison of the 30 different designs that they looked at. I hoped Madison could review them. I can work with them and the Madison Engineer and come back with a condensed presentation with what that resulted in with the Board. Madison has not received those as yet. Mr. Schaeffer said he had sent them to Madison on April 30<sup>th</sup>. They were addressed to Hartley Dodge Memorial, Kings Rd, Madison, NJ and I followed up with Bob but I have not received a call back. They are renovating the building but all the mail should have been sent up.

Mr. Schaeffer called his Environmental Engineer, Mr. Barry Skoultchi, Whitman Engineering (sworn)

Mr. Skoultchi – gave his credential. He went on to say he was the Environment Consultant for Chatham Day School. We submitted a 7 page site remediation plan, last revised 3/1/10. We also prepared the Environmental Impact Statement dated December 2009 and revised March 20, 2010. I will be summarizing pages 4-6 of this statement.

Environmental Investigations are step by process. You don't do everything at once. In this case it was actually done by another firm that had been retained by another prospective purchaser. That firm was Equal Sciences out

of Rockaway NJ, a well respected firm. In fact we refer work to each other when we have conflicts. So it is a firm that I personally know the principals and have a lot of confidence in the quality of their work. Equal Sciences initially did a phase one environmental assessment. This is a non invasive environmental assessment of the entire property – its existing condition but the history from an operational environmental prospective. The results of phase one focused primarily on two items. 1) The historical use of a portion of the property thru agricultural farming and also the presence of what they term as several susceptibility on the property. Equal Sciences proceeded to do a Phase 2 where you go to the areas that you have identified as potential environmental concerns and you look to see if in fact there are environmental issues present. They proceeded to do soil samples in the area shown as the farm. There is actually a protocol that the department has for investigating the farmed properties and it is based on the size of the property. There is a sliding scale frequency, namely that the first 10 ac., 2 ac and then subsequently and then 5 acres. It is a prescribed testament if you are looking for target contaminates, specifically pesticides, herbicides and several metals (used in pesticide materials) They did a number of samples on the property and had them laboratory analyzed. They identified several locations with the presence of two pesticides which are commonly found in farmed properties. They also did a series of tests in suspect waste areas and they identified non-indigenous material that was used to kill an area which can either be localized as in this case or in certain urban areas over an entire property. They did take flood samples and did identify some contaminates that are associated with historical fill. These are not horrific items. Underground leaking as shown in the poster on the wall is a more hazardous issue/situation than what we are doing here. We can't ignore what was found but on a scale of hazardness it is not that bad. These conditions are found throughout the state of New Jersey and typically you find them together because properties that were historically farmed it was a common practice for farmers to dispose of their waste on site. In this case it may have been old buildings etc., we are not entirely certain, but the presence of the two together is not surprising. That was the work of Equal Sciences. At that point we stepped in to further the investigation. We proceeded to take the next step by expanding the areas from a testing perspective to delineate both the horizontal/vertical extent of contamination. The pesticide areas we did that through additional borings. Collectively there were probably 30-40 borings. We tested samples in a step fashion. You test and then you build on it. Referring to exhibit A65 – Sheet 2 of 7 – Soil Erosion & Sediment Control Plan. I would also like to mention about test site contamination is that it's the only time the DEP allows you to blend contaminated and non-contaminated soil to reduce contamination. The area we identified is roughly 19160 sf area towards the western portion of the property. With respect to the pesticide area we found it present to just about 4.5 ft. which is typical. Through the borings we identified the horizontal extent. With respect to the areas of historical fill we identified 3 areas. We did some additional testing. What we primarily did was a series of trenching to visual define/delineate the extent of the fill and that is without question accepted by the DEP. At some point when we move it we will test to show its gone but for the purpose of delineating you can see where it is and where it isn't. We did a series of test pits and identified 3 general areas. The area closest to the pesticide area is approx. 2860 sf and goes to a depth of 4 – 5 ft. There is another area to the east of those areas which is roughly 2650 sf and also goes roughly to a depth of 4-5 ft. The area to the north is about 1300 sf and its shallow. Once we define the extent of contamination what we did we conferred with our client as to what we should do about it. A couple of things were made clear. Number one – it was the intent of the school to obtain a no further action order from DEP and ideally to obtain it unrestricted, no further action. By that I mean, not having any encumbrances on the property. We did discuss, what if we don't do anything. Frankly, that is not an option. There are instances where the DEP approves contamination remaining on the property. When that occurs there are typically 2 requirements. One that ground water cannot be ... (plans rattling); Two – that there has to be engineering controls in place; Three – there actually has to be an item that indicates where the contamination is, what it is and there is a series of steps that have to go with that. If you disturb the area there are procedure that have to be followed. Recently there have been some changes where actually there is an annual fee that will be charged (permit fee), there are operation/maintenance requirements, financial insurance requirements, etc. When we heard the desire of the school to obtain the no further action letter we only had one option. That option was to propose a permanent remedy – in this case it was in two forms. Form one with respect to the pesticide area **soilblending** (sorry plans rattling so that is what I thought I heard). As I stated earlier with pesticides the department allow mixing of soils. Based on the concentrations we saw what we propose was to loosen up the top 2.5 feet of material and basically till down to a depth of 3.5 ft. and do a series of test to demonstrate that we are below the appropriate

soil..... With respect to the 3 historical fill areas our remedy would involve the removal of several trees. In the remediation area we counted 55 trees that would have to be removed, not only for the remedial action but also for the appropriate access areas and trucking pads. We have subsequently identified 18 trees that we think we may be able to leave in place. What we would do is put appropriate protection round them. The best case scenario there will be only 37 trees.

Mr. Schaeffer asked if all the areas/problems of concern had been delineated according to industry standards and are you satisfied that that has been accomplished?

Mr. Skoultchi – We didn't sample every square inch so that is difficult to answer. Personally I am satisfied, taking into account all the work we and Equal Sciences has done. I think we have characterized the property.

Mr. Schaeffer – at some point, in terms of remediation that you proposed you developed a plan that you have submitted to DEP.

Mr. Skoultchi – after we devised our proposal for the property we prepared a document and submitted it to the DEP and I believe that was submitted in 2007. That document described a permanent remedy to remediate the areas. That was approved. They were fully aware of all of the use of the property. We believe from a schedule prospective, not including taking down the trees, that our actual site activities between restoration will take 9-10 days. This is not a six month environmental thing. Two weeks at most. Subsequent to the approval we had submitted extensions (2) as were required. Our current extension expires on August 1<sup>st</sup>. We require a tree permit from the municipality as well as a soil erosion/sediment control plan. We are not disturbing steep slopes as we will be restoring that area to grade and we will be vegetating in accordance with the plans. The other thing I would like to point out that is relevant is that the total volume of soil that we are taking out is roughly 1200 yards (1800 tons) or 80 trucks - Nothing from the pesticide area. The replacement soil will be certified clean fill. Also relevant, subsequent to the submission of our plan, the Department actually came up with a document of Presumptive Remedies Guidelines (A66) that is affective as of May 10<sup>th</sup>. There are various contaminates which the Department had developed a matrix of presumptive remedy goals for schools, childcare centers, residential, single families and residential apartment buildings. A portion applied to us. Historical fill – this more consistent with what is on this property – the presumptive remedy is restricted use in leaving it in place. That really is not an option for us because when you leave it in place they want you to add anywhere 1-3 ft. of fill on top of the historical fill. If we were to do that it would kill the trees. Secondly, while the department allows a restricted use as a presumptive remedy, their preference is always a permanent end. That is what we are doing. We are actually doing more than what is required as a minimum by the department. Frankly, I think the school should be commended for that. That does not occur often. We are proposing, while not a restricted use, it is something the department would encourage. If you turn to the historic pesticide areas and you look at (last page) the use the presumptive remedy talks about soil blending. So it is line with what the department thinking. Again, a restricted use is not something that would physically work here because it requires placement of fill consistent with historical fill requirements and if we put 2 ft. of fill around trees it would kill the root system. Not only did we propose what I feel is the most responsible remedy which was approved by the department but the department came out with guidelines which more or less is consistent with what we proposed.

Mr. Schaeffer – you touched upon this – there are two other options. One of them was deed restriction. The other is to cap it.

Mr. Skoultchi – right. They normally go hand in hand. There is a deed note if you leave any contaminates in place in excess of department criteria. The engineering controls are typically required as well. They can vary. The guidance hear is capping. Fencing is an alternative but there is not a guarantee that the department would approve it. If there were fencing, and based on my experience, you would have to isolate each of the areas and prevent access. You would also have to put up signage which is not necessarily pretty (danger, hazardous contaminants etc) and not really what you want for a school. You would probably have a notification requirement. There are also financial and liability issues that good along with this. There will be a continuing

obligation with fees, operation/maintenance, etc. There are everlasting liabilities. When its removed the liability goes away.

Mr. Schaeffer – in layman’s terms is it correct to say that you either permanently remediate it, you deed notice it, cap it, which in our case is a concern because of the forested area, or fence and put up hazardous signs?

Mr. Skoultchi – correct, and that is a alternative that would have to be approved by the department. It is not a standard. The first option of course is do nothing and in this case it is not an option’s.

Mr. Schaeffer - In order to do that tradeoff by doing what we suggest we need a steep slope ordinance. Re: page 1 of the submitted plan it is laid out for the board and the public the remediation only, the slope disturbance in the 25% area.

Mr. Skoultchi – the disturbance of 2790 sf = 2.43% where 1% is allowable. I know Greg Redington, the site engineer has a better feel for the slope disturbances but if we are talking about the option you chose, the permanent remediation is best.

Mr. Schaeffer – my point is this – this is the option you chose and we need a steep slope variance.

Mr.Skoultchi – that is correct.

Mr. Schaeffer – in you delineation did you find any impact on ground water.

Mr. Skoultchi – we did not encounter ground water in any of the areas that we tested. Ground water is not an issue.

Mr. Schaeffer - you are aware that part of this property sits above an acknowledge aquifer

Mr. Skoultchi – yes. With respect to the aquifer I would say that it is not an issue and based on data I have seen and the site conditions we do not believe there is any impact. Frankly if there was that concern the department would have us address it. Slopes being disturbed are going to be returned to grade. We are not removing/replacing any materials. To summarize, feel we understand the issues and this is not an overly significant issue but one that has to be and needs to be addressed. The extent/duration is approx. 10 days which I think is a conservative estimate. We are not stock piling soils. The soils will be directly loaded into sites and taken off site. We minimize the potential for dust and it is the most efficient and time duration for the project. As to any environmental issues, there are always options. I feel that even though we have to remove some trees I believe what has been proposed is the most responsible and best not only for the school but for the public and the students. I believe that any other alternative would either have a detrimental affect to the trees over time or would cause the area to be unsightly with fencing/signage. I also think its important that the Presumptive Remedy Guidance is pretty much in line with what we are proposing. This is not a difficult – this is pretty straight forward – environmental 101. The areas will be restored with a mixture of grasses etc and is not a staging for anything in the future. Over time it will probably be reforested again.

Mr. Dalziel – are any of these chemicals – they were detected in 2004? Are any of these chemicals of a nature that will tend to migrate with ground water or leach underground.

Mr. Skoultchi – they were detected in 2004 – 2007. Testing was done in steps. As to them migrating/leaching the answer is no. The contaminates in the historic sill for intents and purposes are almost insoluble, they stick, they don’t move or migrate. They may travel with erosion, in fact that is one of the dangers of putting a fence up and not putting a cap because the material is at the surface. It could travel with rain water, not ground water.

Mrs. Alcorn - so theoretically, if this contamination migrated down, it might go toward Gibbons Place?

Mr. Skoulchi – no we tested. Twenty years ago, maybe. Bear in mind that when we do our work we are doing a series of post excavations for remedial soil samples. We have to show DEP that we have gotten everything or that we have blended this area successfully. This is a benefit to the general public.

Discussion on previous owners and what they should/should not have done with the property. Mr. Skoulchi – in reply said Regardless of the use, if the intent was to have an unrestricted property without a deed notice, the same thing would happen.

Mr. Schmidt – if we remove any other criteria, whether its trees or steep slope, signage, deed restriction and we look at this just simply from environmental perspective, yours as a professional or the DEP, what is the best remediation for this property. Is it do nothing? Is it what you have proposed? Or is it something other like capping?

Mr. Skoulchi – do nothing is not an alternative and should be taken off the table. That is not responsible and I think not a legal...(inaudible)... With respect to the other options, first and foremost it really depends on the objectives of the entity doing the work. If they want an unrestricted piece of property then they have to remediate.

Mr. Schmidt – I understand that but I am trying to remove the property owners desires from what is the best purely environmental remediation.

Mr. Skoulchi – I think that when its feasible the most appropriate alternative is an affirmative remedy. There are always inherent dangers/risks when you leave the foundation in place. Having said that, it happens.

Mr. Dalziel – why is lot 1 not part of this discussion. Doesn't it extend into that area?

Mr. Skoulchi – we do believe it does. We will do soil tests if that is in fact the case. We have clean samples.. Equal Sciences did not test in this area either. If for some reasons there is a hot sample we will do more.

Mr. Shaw – as a result that lot line is just that. Should not this board want to know how far out you are extending?

Mr. Skoulchi – we believe this representation accurate as to how far out we are going. I can't testify to you that I am not going to go a foot here or there. This is based on the data we have.

Mr. Dalziel – thought that without any data on lot 1 you don't know. You are right up against the lot line for 150 ft.

Mr. Skoulchi – I understand but we have tested close to lot 1. We have done samples. If you look at the work plans we have a number of samples that we took that were close to that lot line, including one by Equal Sciences. There was no issue.

Mr. Shaw – the area in blue signifies how far you believe your blending will go.

Mr. Skoulchi - agreed.

Mr. Dalziel – is there something that shows where samples were taken and what was found in those samples? Possibly a boring plan.

Mr. Skoulchi – in our work plan. We can prepare a plan with all the data from our testing and Equal Sciences.

Mr. Ruschke – referred to sheet four – Remedial Action Work Plan.

Mr. Skoulchi – said it may not include Equal Sciences data.

Mr. Schaeffer – said we would have all this information for next time.

**Mr. Koch**, Environment Specialist, Hatch Mott – addressing Mr. Skoulchi – in line with some of the questions that the chairman is making it appears that the basis of Equal Sciences historical pesticides use for farming based on historical areas – these photographs could be years/decades apart and I am not the best farmer but farming fields change, they rotate, etc., I don't recall seeing Equal Science going beyond that fence line. Its like they arbitrarily picked that and we are not crossing it. All of lot one does not seem to be investigated much less where the children actually are in the day care center.

Mr. Skoulchi – they did do a sample along lot one that was clean and we did several other sample inward, Equal Sciences did do testing outside this area. I don't know if they went to the day care area. Bear in mind, if the site has been developed, chances are they are not there anymore.

Mr. Koch – I believe that if typically you go to a field that is continued to be farmed, continued mixed soils which justifies the means of dilution, however, once they stop farming on the eastern side of the site, if they farmed it, they would start a use for development purposes, I doubt it would have mixed away just because the grass covered it.

Mr. Skoulchi – this was an estate at one point and this is where the homes were. All I can tell you is that they did the testing outside area number 2. I can tell you there were an appropriate number of samples in accordance with DEP requirements.

Mr. Koch – did they consider the entire site as lot one when they used the numbers or just the green area.

Mr. Skoulchi – 6 samples would have been sufficient and I believe they did 8. They did other samples outside. Again I can provide that information. They did samples on either side of what they termed as office building – they went quite a bit to the west.

Mr. Schaeffer – If we submitted something to DEP. If DEP didn't think it was satisfactorily delineated wouldn't they have said something?

Mr. Koch – thought the summary table can shorten any discussions and will illustrate for everyone to see.

Mr. Shaw – addressing Mr. Ruschke – for the record I think it was attachment 1 of the Equal Science report – Phase I. Phase 2 is attachment 2.

Mr. Koch – asked why the applicant was disturbing 2 times the area that is being mediated.

Mr. Skoulchi – access. We have tracking pads, we have to get around the area. When asked why there wasn't a truck in the area being mediated with a path for the truck to go in and out Mr. Skoulchi said we would excavate areas, move the truck around, move the excavator around. This is not a small back up. This is not a small machine. This is what we have outlined. Now, having said that, if we can make it smaller in the field that is great.

Mr. Ruschke – it doesn't seem like there is a necessity – you seem to have it well defined with the exact dimensions – even a medium sized excavator has a reach where you can set him in the area of remediation and excavate right into a truck.

Mr. Skoulchi – we will do what we can to minimize the area and do it in a safe manner. If we can not make these areas that large that is fine. There are certain things I need to do.

Mr. Ruschke – I think you should show the areas that are proposed to be remediated vs. the area disturbed. Referred to sheet 4.

Mr. Schaeffer – everything is being restored to what it was. In the areas you are talking about there are no trees being removed.

Mr. Ruschke – it seems like you are disturbing a very large area for something that can be minimized. I am not disputing that the areas can be excavated/removed but they could be smaller.

Mr. Skoulchi – I would be very happy if prior to mobilizing if Kevin, you want to meet at the site, we could try work together.

Mr. Koch – page 6 of EIS – indicates that there are 323 12” dia. Or greater trees in the remediation area with 55 trees proposed to be removed. You are going to try to protect 18 of them. Can you explain what you are doing to approx. 275 trees.

Mr. Skoulchi – I think they are outside of the disturbed area. There are not 323 trees that are going to be disturbed.

Mr. Koch – regarding the areas where you are remediating have you considered things such as moving the soils in and around the tree, hiring an arborist to tell you what you can safely do, go out to the drip line to minimize the damage to the tree etc.

Mr. Skoulchi – theoretically its an option, practically it is not an option. We would be out there for months and it doesn't address the other areas. I have not spoke with an arborist at this time. Our landscape architect should be better able to answer the question.

Mr. Koch – re. page 13 of EIS – it appears that you are in the area where a species of bat. There is a ban on cutting trees, since its breeding season. It will be difficult to work there because of school time

Mr. Skoulchi – they are on vacation so it should give us sufficient time to do the work we have to do.

Mr. Koch – re: page 23 – it appears that you have to do a back clearing.

Mr. Skoulchi – we are in discussions with the Fish Game and Wildlife about that. That will be at the Site in June. We will do whatever is required.

Mr. Koch – it appears there was a monitoring well system out there to monitor the old septic system. Are you aware of all the wells? Has anyone re-sampled the wells? They still look open, and if they are is there a plan to close them properly? The white PVC pipe is not a well?

Mr. Skoulchi – I don't recall. There are abandoned wells on the property.

Mr. Dalziel – any questions from the Public.

Mrs. Rachel,, 11 Gibbons Place - question unclear - believe it related to samples done on property.

James Mercher, 2 Burn Ct. – have 6 or 7 question and I hate to keep you. He asked if Mr. Skoulchi would be here at the next meeting. He was advised he would be. With that Mr. Mercher said he would return for the next meeting.

Susan Hoag, Long Hill Lane – can you describe to me the no deed restriction. I understand why the school would not want a deed restriction. In this case what type of deed restriction are we talking about?

Mr. Skoulchi – the deed would describe where the contaminates is, how much is there, what is it. It will lay out procedures which will have to be done.

Mrs. Hoag – how far is the large blue area from (inaudible) – and its currently forested between that area and the school. Mr. Skoulchi – thought it was

Mrs. Hoag – if there was a fence around it with signage it would not be visible from the parking lot.

Mr. Skoulchi – I don't really know.

Mrs. Hoag – The specific area where you are cutting the trees – will that literally be clear cut?

Mr. Skoulchi – I need access to the area so yes.

Mrs. Hoag – you said you had either 37 or 55 trees greater than 12 in. diameter .and that there are a fair amount of trees that are less than 12 inches.

Mr. Manilo – there are 53 trees less than 12 inches.

Mrs. Hoag – we are talking over a hundred trees to come down, how many will be replaced.

Mr. Skouchi - cannot answer.

Mrs. Hoag – were there other levels of remediation that would result in a no further action result.

Mr. Skoulchi – capping – we have talked about the alternate plan. This is the only plan presented to the DEP.

Andrew Verillo, Gibbons Place – presuming that you chose the signage could it be visible from Gibbons Place.

Mr. Skoulchi – it could be. The signs are meant to be read – to give notice.

A resident requested that the Board members travel up Gibbons place so when it came to judgment about impact of traffic you will be aware of the problems.

Joseph Santoro, 26 Rachel Ave – thought it would be relevant if the board were to come by Rachel Ave. and take a look at where they are proposing to put the fence. This 6 ft. high and hundreds of feet long will become the front yard of quite a few of the neighbors in Madison so I think you should see what is being proposed and the impact on the residential area.

Mr. Dalziel asked if you could walk from the site to Rachel Ave and was advised that he would probably have to drive around.

Mr. Santoro – said there were quite a lot of houses on corners and that 6 ft. fence faces their properties. In Madison you cannot have a 6 ft. fence facing someone's front yard. That is relevant.

Mr. Godwin – we are not Madison.

Mr. Santoro – it doesn't matter. Its your house with a 6 ft. fence in the front yard that would be a problem.

Mr. Godwin – I understand your concern, however, we have to deal with the zoning regulations applicable to our town.

Mr. Santoro – I don't think that is relevant. I think what is relevant that people with homes do not want a 500 fence in their front yard when you open the front door.

Mr. Shaw – I would just note that that is information which can be observed probably from the other side of the property. I have been on the site. You comment about the importance of the fence is for public comment – not right now.

Mr. Santoro – we just wanted you to know that everyone wants a fence in their front yard.

Mr. Dalziel advised the applicant that the site visit would be on June 5<sup>th</sup> at approx. 10 am. He asked that the areas discussed tonight be staked/marked.

Mr. Schaeffer asked if a special meeting could be scheduled for June 9<sup>th</sup>. Meeting Scheduled.

Application will carry forward without further notice – Mr. Shaw advised the public that the next hearing will be a special meeting on the 9<sup>th</sup> of June and carried thru to the 17<sup>th</sup>

Mr. Simon – confirmed all meeting dates/site visits

Meeting adjourned - 11:30 pm

Respectfully submitted

Mary Ann Fasano  
Transcribing Secretary

