

JOINT MEETING OF THE HARDYSTON TOWNSHIP  
JOINT LAND USE BOARD AND HAMBURG BOROUGH LAND USE BOARD  
April 14, 2025 – 7 p.m.

I call the meeting to order.

Statement of Compliance: Pursuant to the Open Public Meetings Act, Chapter 231 Pl 1975, “adequate notice” is defined by Section 3D, Chapter 231 Pl 1975, as made to the New Jersey Herald posted on the bulletin board at the Hardyston Township Municipal Building.

Roll Call:      Frank Minski, Absent  
                 Paul Miller, Absent  
                 Jim Homa – yup  
                 Sally Goodson – yup, here  
                 Tony Alfano – yup  
                 Carl Paladino – here  
                 Joshua Raff – here  
                 Valerie Cicarel – here  
                 And Ed Zink is absent  
                 James Caiazzo – here  
                 Savas Savidis– yup  
                 Leon [inaudible] - yup

Hamburg’s Roll Call:

Graham – here  
Georgen Endres – here  
[inaudible] - here  
William Oehler – here  
Davey Roberts – here  
Jeanette Tempe – here  
Sam Villagomez – here  
Chairman Daniel Hall – here

Flag Salute

Hearings

The Whispering Woods hearing – SMS Hamburg LLC vs. Hardyston Township Joint Land Use Board and Hamburg Land Use Board, Docket No. SSX-L-000384-24 entering final site approval.

Woods at Hardyston, Block 36, Lot 2, Borough of Hamburg, Lot 14, Lot 21.02, Township of Hardyston, NJ, State Highway Rt. 23, Sussex County, NJ.

Good evening Board members. Thank you for being here this evening. My name is Thomas J. Mollica, Jr., and I represent the Hardyston Township joint land use. As you know, we are here tonight for a Whispering Woods settlement hearing the SMS Hamburg LLC application, which involves property located in Hamburg and in Hardyston. So the applicant is here tonight with its settlement plan. Again, this is a settlement that is emanated from a litigated matter docketed in the Superior Court of New Jersey in Sussex, SSX-L-384-24. In that regard, a settlement agreement has been into and we're here tonight to hear the settlement plan and ultimately vote to adjudicate and presumably approve the application pursuant to the express terms of the settlement agreement and testimony that the applicant will put on this evening describing the settlement plan. The application has two witnesses. It has noticed for this evening. The notice materials are acceptable in form and content and again the applicant has two witnesses. You will hear questions from the Hamburg Board and then the Hardyston Board after both witnesses have testified and then any questions from the public will be entertained at that point and then we will vote on the application. Okay? So with that, the attorney is Glenn C. Kienz from the Weiner Law Group is sitting to my left. He represents the Hamburg Land Use Board. And we have the Hardyston and Hamburg Land Use Board planning and engineering professionals here with us tonight. So again, thank you, and with that, to move matters forward, I'd like the applicant's counsel, Antimo DelVecchio, to come forward and place his appearance on the record and begin tonight's application appearance.

I would just add a couple of things. If anybody does have questions, certainly ask them of counsel. We are going to reserve questions of the witnesses until they're done. Since we don't have a stenographer here tonight, if you have questions, just make sure you speak into the mic so we get a good tape 'cause we're going to have that transcribed. Okay? Anybody have any questions before we get started? Counsellor?

ADV: Good evening. My name's Andy DelVecchio. I'm a member of the firm of Beattie Padovano on behalf of the applicant, SMS Hamburg LLC. As indicated, we are here on a Whispering Woods hearing and I believe your counsel has already placed on the record letting them know that you agree to the terms and scope of why we're here this evening. As you may recall, some time has passed, so let me just set the stage again. The property that we are discussing is block 36, lot 2 in Hamburg, and block 14, lot 21.02 located in Hardyston. The Hamburg property is approximately 3.4 acres in size; the Hardyston parcel is approximately 1.4 acres in size. The Hamburg property is split zone. The front portion is located in Highway Commercial; the rear is located in the Residential Rural zone. For Hardyston, the zoning is the mid 5 zone. And we are here this evening to make some adjustments to the plans that each of you had previously seen – for Hamburg it's a plan that you approved but we will be modifying. And for Hardyston the plan was denied, which we will be modifying. The essential modifications are as follows: We are now proposing three buildings to be located in the Borough of Hamburg, still totaling 30 units. The buildings were repositioned a little bit in order to make room for a retention basin or file retention basin has been relocated from the Hardyston portion of the property onto the Hamburg portion of the property. And in Hardyston we have now relocated some units. We are proposing 6 units to be located in Hardyston, one of which is proposed to be an affordable housing unit to be I believe a rental unit as per the settlement agreement.

GK: Counsellor, just one second. I think we should just note for the record that in both municipalities in Class I and Class III members, the Mayor and the Council members have all stepped up.

ADV: Thank you. For purposes of moving tonight's testimony a little more expeditiously, I'd like to pre-mark the following exhibits, which will be discussed by the witnesses as they come forward. I'd like to mark the Affidavit of Notice document as A-1 first.

GK: Why are we marking stuff that's already on the record? Let's only mark the stuff that's coming up for the hearing unless you want to do it differently.

GK: No, that's okay Andy. We've already confirmed that's acceptable.

ADV: Okay.

So just give us your main exhibits. We'll start with A-1.

ADV: We'll mark them as we go along?

Absolutely.

ADV: I'll ask Mr. Bruno to come forward. Mr. Bruno's our project architect. He was previously sworn and qualified. I will ask him one qualification question and then additional ones only if you have questions regarding his qualifications.

Mr. DelVecchio, if he's gonna testify over there can he talk right into this mic?

ADV: Mr. Bruno, when you appeared before these Boards.....

GK: You're not doing anything yet. You gonna swear him in?

GK: Yeah. Raise your right hand please sir. State your full name for the record please.

Joseph J. Bruno.

GK: Thank you. Professional affiliation?

Bruno: I'm an architect in NJ.

GK: Do you swear and affirm that any testimony you may give in this matter is the truth, the whole truth and nothing but the truth so help you God?

Bruno: Yes I do.

GK: Your witness counsel.

ADV: Mr. Bruno, when you previously appeared before both of these Boards you were sworn and qualified as an expert in the field of architecture primarily based upon your licensing in the State of NJ and the fact that it remained in good standing at that time. Does your license currently remain in good standing as we appear here this evening?

Bruno: Yes, it does.

ADV: Unless the Board would like to hear additional qualifications...

GK: We qualified – it's all on the record. This isn't a do-over. So he's qualified as long as he's still licensed.

ADV: Mr. Bruno, you heard me provide the brief overview of the settlement plan as it pertains to architecture only. Were any changes made to the exterior of the buildings that were previously proposed?

Bruno: The only real change was we added elevator lobbies and stairs to traverse the grade between the fronts of the buildings and the rear of the buildings...to traverse between the garage level and the living level of the first-floor apartments.

ADV: Otherwise the buildings remain the same?

Bruno: Yes, they do.

ADV: And in terms of the 6-unit building proposed in Hardyston now, can you give us a general overview of what that is and the one affordable housing unit that is contained in that building.

Bruno: Right, it's a 6-unit building as you alluded and each unit has living and dining space, kitchen, laundry, two bedrooms in it as well as a garage.

ADV: And the affordable unit?

Bruno: The affordable unit is the same.

ADV: And access to that building is achieved how?

Bruno: It's achieved at grade at the higher end of the elevation and then from the back side or where the garages are accessed the main entrance level is accessed from the elevators that we added.

ADV: And there's also an elevator on the Hardyston building?

Bruno: Yes, all of the buildings within the complex will have one.

ADV: And can you just provide us with a brief explanation of how that elevator would work – both for the residents and the guests that might visit the property?



Bruno: Yes. At the garage side in the case of the 6-unit building, we would enter at the lowest level – which is the garage level on the exterior. So there's a vestibule, the elevator which would take one up to the first floor of the living space above. There's also an exterior staircase in case somebody wanted to just take a shortcut but not use the elevator.

ADV: Is the elevator fully accessed to everybody?

Bruno: Yes, it is.

ADV: And are there any controls for restricted use so that someone who's not intended to be a guest on the property doesn't use it?

Bruno: Yes. The unit owners or the unit occupants would have a key access and then for guests, that could be controlled by the unit even if owners that were the unit occupants on as needed-be basis.

ADV: Materials remain the same you said?

Bruno: Yes, they do.

ADV: And the overall height, finishes, etc., all remain the same?

Bruno: Yes, there were no changes to that.

ADV: And you've placed on the easel a color elevation from the prior hearing of what the building was to look like and will look like under the settlement plan, correct?

Bruno: Yes, that is correct.

ADV: I don't have any further questions of Mr. Bruno. I will call my next witness unless.....

And elevation is the same as what was part of the first application?

ADV: Correct. All right, thank you Mr. Bruno.

State your full name for the record and your professional affiliation.

MG: My name is Mark Gimigliano. I'm a professional engineer.

GK: Do you swear and affirm that any testimony made in this matter is the truth, the whole truth, and nothing but the truth?

MG: Yes, I do.

ADV: Mark, you were previously sworn and qualified before both of these Boards in the underlying application, and the predicate for that was that you are a licensed engineer in good standing with the state of NJ. As we are here this evening, does your license remain in good standing and active in the state of NJ?

Mark: Yes, it does.

ADV: Unless the Board would like to delve again, I submit Mr. Gimigliano is an expert in the field of engineering. Mark, you prepared the settlement plans and related documents that you are presenting this evening in the hopes of settling the underlying matter, and those documents were either prepared by you or under your supervision?

Mark: That's correct.

ADV: As you have heard sitting in the audience the purpose of tonight's hearing is a Whispering Woods hearing for purposes of settlement and that requires us to place on the record the changes on the plans from what was previously seen by each of these Boards during their underlying application. So from an engineering standpoint, can you tell us what changed on the drawings?

Mark: Sure. I brought an exhibit with me tonight that I'll refer to during my testimony. It's a colorized version of the site layout plan and the latest site plans that you have. It also shows the landscaping that's proposed throughout the site.

So we'll mark that as A-1 with today's date please.

Mark, at some point can you generate a second copy so that the two municipalities have a copy of that?

Mark: Yes.

Thank you. And it's a colorized rendering of what sheet, Mark?

Mark: It's a colorized rendering of the site layout plan – as part of the site plan. It's dated, which is sheet 4 of the site plans. And this version (this exhibit) is dated 4/14/25. It shows the four buildings that are proposed throughout the site. The buildings are shown in orange. And I'll just go through the buildings individually so you can see and understand what changed. Building #1 is located at the front of the property facing Rt. 23. That building did not change. It was 8 units before and it's gonna be 8 units now. There was no change to the location or the orientation of the elevation of that building. Building #2 is located at the northwest side of the property and it faces to the northwest. That building was previously 12 dwelling units. It's been reduced to 10. But the location and the orientation and elevation of that building are all still basically the same. Building #3 – which was previously Building #4 – is located facing the southeast part of the property. This is a building closest to the residential dwellings on Fairview Avenue. This building previously was 10 units. It has been increased in size to 12 units. But the main difference is this building has been rotated so it's no longer parallel to the back of the properties on Fairview Avenue. The previous building was about 84 feet from the neighboring property lines. This

building is about 82 feet at the closest corner, but the farther corner on the right side is about 151 feet, so you can see that it's been changed quite a bit, at least on one side. The roadway has also been pulled in with the building so the roadway and the retaining walls that were previously parallel to the neighboring properties are now much farther from those lots. And then Building 3, which is now labeled Building 4, is a 6-unit building that's been moved from Hamburg into Hardyston. That building, as you heard the engineer testify, is the same building that was proposed before, it's just at a different location. The project still has a loop road throughout the development with access from Rt. 23 and that loop road provides access to all the garage units and all the buildings. Each unit has a single car garage and a parking space outside, and that's the same thing for the new building or the relocated building in Hardyston. In Hardyston there are 6 garage spaces and 6 parking spaces for the residents. There's also 4 common parking spaces for visitors and guests as well as a centralized track and recycling area and turnaround area for garbage trucks and any kind of Amazon-type delivery vehicles. The buyer retention basin that was previously located in Hardyston has been moved into Hamburg. You can see it's in the lighter color on the plan. This is the same basin that you saw before and we discussed in the prior meetings. It's been designed to collect stormwater runoff for most of the development. It'll be held in the basin and there'll be plantings in the bottom of the basin – a mixture of trees and shrubs which are adapted to more moist conditions. Water will be infiltrated into the ground to provide water quality treatment and groundwater recharge. And then for larger storm vents, water will be slowly released to a swale that's located along the back of the property through a series of drains at the south corner of the property where water flows today. The basin's been designed to meet the state stormwater management standards. Landscaping has been generally maintained but adjusted along the southeast property line. Instead of a double-tiered retaining wall with landscaping between the walls, we just have one 4-foot wall along the stacked property line, which is about 25 feet from the property line. There is still a row of evergreen trees proposed along that wall to screen the development from the neighbors. But then the second wall has been moved with the roadway and on the other side of the basin so that's farther away, and the giant green arborvide that will previously proposed are still proposed along that wall to screen the development from the neighbors as well. On the Hardyston side, there will be still the double row of evergreen trees between the neighbors and the property line as well as some plantings around the building and the other improvements that we're proposing in that area. Overall, the impervious coverage has been increased by 3,283 square feet, so that changes the overall impervious coverage from 37.3% to 38.8%. Basically, the impervious coverage increased because we spread the development out a little bit so the roadways needed to get a little bit longer, so it is a slight increase in impervious cover. The impervious cover though in Hamburg has been reduced by over 13,000 square feet, and that cover has been moved into Hardyston. And again, all of the stormwater runoff from the impervious areas will be discharged to the stormwater management basin.

ADV: Mark, a couple of follow-up questions, if I can. First, with regard to the bioretention basin, what is the depth of that basin?

Mark: The basin is under 3 feet. I believe it's 2.6 or 2.7 feet deep at its maximum.

ADV: And that basin is not meant to stay wet all the time, correct?

Mark: That's correct.

ADV: We had a lot of discussion particularly in Hamburg concerning the drainage that ran behind the Fairview residence. You went out with the respective \_\_\_\_\_ engineers to meet with the neighbors to come up with a plan. The plan was accepted in Hamburg and has not changed at all by virtue of what we have done here.

Mark: No, the design is still the same. It will still be managed in the same way. The discharge will be the same and the ultimate location of the stormwater discharge has not changed.

ADV: In terms of lighting on this site, the lighting has actually been pulled farther away now from the Fairview residence side of the property, correct?

Mark: That's correct. The lighting's been pulled away and then spread out to cover the overall development. We propose light poles around the driveway and parking lot with some lights on the buildings. We did extent those light poles into Hardyston. The original proposal is for 18-foot-high poles, but I understand that the Hardyston ordinance has a maximum light pole mounting height of 16 feet, so we'll adjust that to comply with the Hardyston requirements on that side of the development.

ADV: And there were a couple of review letters issued in advance of tonight's meeting. One from Mott McDonald, the other from J. Caldwell Associates. You've seen those documents?

Mark: Yes, I have.

ADV: Are there any requirements in those documents that cannot be accommodated by the applicant?

Mark: No, we'd be happy to address all of the comments in those documents.

ADV: I have no further questions of Mr. Gimigliano. I make him available to the Board and its professionals for any questions you may have.

I have a question: What's the line of sight in the building in Hardyston? Is it visible?

TM: Excuse me one second. We wanted to let Hamburg have first questions only because the extent of the development in Hamburg.

GK: The other thing is – how small minds don't think alike – identify yourself on the record because it.....

TM: Yeah, we need each person to identify themselves for the accuracy of the audio recording and subsequent transcription.

GK: Okay, so Hamburg, do you have any questions? Essentially what you've got is a development that has one less building. It moved some stuff internal so it actually addressed

some of the issues that the citizens along Fairview were raising during the hearing process. [inaudible] took the applicant's positions overall to better plan. Do you have any comments at all?

[inaudible]

Has the applicant's engineer agreed to comply with our letter? I do have one question though. Last year there was a fire professional who looked at the previous application and issued a review letter. He had a few comments regarding the sprinkler system be installed in the building, a hose stream connection and fire department connection within 100 feet of the fire hydrant – and I just wanted to check that these would be addressed.

Mark: Yes, we did have a meeting after the application was approved in Hamburg with the fire official and our fire expert and all of the items discussed at that meeting will be included in the design and as part of a plan.

William Oehler: Looking through the paperwork I see you define that the Hardyston building has one affordable housing unit and nothing was mentioned about any of the ones in Hamburg and my recollection when we were approving that is that they were also going to have whatever Hamburg requires – if my memory serves me correctly, 3 or 4 units in Hamburg.

ADV: That's how the application had started in Hamburg and at some point let's just say our arm was twisted a little bit about how much density was being proposed and we lowered the density of the project but sacrificed the affordables in the process. So the final plan that was approved did not have any affordables in Hamburg. And there is no requirement that I'm aware of to be constructed by your ordinance.

I thought I remembered...

ADV: Too much time has passed on this one. I get it.

Jeanette Tempe from Hamburg Board: So you won't even give us one affordance unit?

ADV: That was not part of the settlement. It was not built into the plans that are being presented this evening.

Jeanette Tempe: So you can't make the change.

ADV: It'd be hard to add to a building at this point in time.

Graham(?): You just said the units were increased by two in Hamburg?

ADV: No. The overall unit count did not change. The pieces of the puzzle moved but the total in Hamburg essentially remains the same.

Well there were 36 units in Hamburg before. There are 36 units now. Now there's 30 units in Hamburg. So six of the units have been moved into Hardyston.



On the loop road, one-way traffic or two-way traffic?

MG: It's a two-way loop around all the roadways.

Villagomez (Hamburg): Again, you mentioned it, but just to clear it up that this will be helping the people on Fairview Ave. It won't be causing more water problems for them.

MG: No, we designed it to ensure there's gonna be no adverse impacts for the neighbors.

You guys moved that basin over there; obviously, more water will be flowing in that section in that area. So we want to make sure that they're not – and again, the lighting ..... you guys deem that you moved everything back a little bit will now be blessed because you're cutting 18 to 16.

That's right. The area closest to the neighbors will be lower than it was.

The loop around is wide enough/big enough for deliveries (Amazon), fire trucks?

MG: Yes.

Dan. I'm a firefighter. I'm always concerned about water and in this book that I read you only need to require 20 gallons per minute. Is that per unit or is that total – I didn't quite understand how that was worded.

MG: I'm not sure what you're reading in there, but I think the discussions we had at the time were that there was only a 4-inch water main on Rt. 23 in front of this property. So what we agreed to do is extend the 8-inch water main that ends at the intersection of Fairview and Rt. 23 up to the site and then we'll have the entire system analyzed to make sure that there is proper pressure for those domestic use and firefighting.

Erika: Just want to confirm – I know stormwater got brought up a couple of times – so will you be reviewing that area with the bioretention basin to double check that stormwater from the [inaudible] analysis will not be out through that.....

MG: Yeah. We had gotten the review letter and based on the comments we're going to make some adjustments to the location of the infiltration area at the center of the basin to move it a little farther away, but we'll be able to show that the mound from the basin and any changes in groundwater will dissipate before it reaches a property line. So there will be no impact to the groundwater mound in that swale along the property line as well as on the neighbors' property.

Erika: And then similarly with that one basin at the low points – I think it was basin #6 – where it's at that low point so if it was surcharging the water could potentially go over that wall.

MG: Yeah, we'll take a look at that and make sure it has the capacity to get all the water from the 100-year storm into that. If we need an additional storm drain in that area, we'll have that to make sure we comply with that.



TM: How about Hardyston – does Hardyston have questions?

Jim Homa from Hardyston: The line of sight on the top of that 6-apartment building, is that visible from the house in Hardyston?

MG: There are existing trees that'll remain between the homes in Hardyston and the development. Most of them are deciduous trees so in the wintertime you'll be able to see through the trees and see the building. What we're proposing is a double row of evergreen trees, and once they're planted it will screen the bottom level of the building but within 5 to 10 years they'll fully screen the entire building. So when it's first constructed, it will be seen in the winter time, but as the landscaping matures, it will be screened from the neighbors.

Where's the majority of the runoff from the storms go on that piece of property?

Right now, the majority of the runoff runs down to the south corner of the property and behind the homes in Hamburg and that pattern is going to be maintained.

What happens if the bubble – the mound underneath this retention pond – affects the houses? Any recourse for the homeowners to take to get this repaired?

ADV: I think that's outside of Mr. Gimigliano's field of expertise.

He designed it.

ADV: He designed it, but you're asking a legal question on it.

[inaudible]

ADV: I mean obviously we're going to build it, it will be bonded, it will be maintenance bonds, your engineers will review it to make sure it's built as designed so that every precaution will be taken up front so it acts just like everyone thinks it will once it's installed and there's that initial period where there is a bond in place to cover any changes that need to be done.

How long is a bond in place for?

ADV: A regular bond is as long as it takes for construction. And then there's a 2-year maintenance bond that gets placed after that.

That would cover any problems?

ADV: It would cover the retention basins. I won't say "any" problems.

Well any problems with water saturation of the residential homes.

ADV: It will cover the detention basin and any problems that arise from it.

Bill Hickerson (Hardyston): One quick question: You said no impact to the Hamburg homes on the bottom. Would you include the Hardyston – we have 1 and a half lots there.

That's right. That also includes the Hardyston homes and it somewhat has been designed so there's no adverse impact to any if the adjoining property.

I have some OEM issues that missed the chair. If you can address them, I'll yield to you. I don't know if you have any.

No? So I'm Tony Alfano from Hardyston and I'm looking at Building #4 and I see that if that goes on fire and the Hardyston engineer said there is no sprinkler system, I haven't heard if there's a fire hydrant anywhere nearby. And I'm assuming that if that building goes on fire, it's a joint OEM response from Hardyston and Hamburg because Hamburg is the only entrance – who goes and puts out that fire and how does the fire engine turn around to get more water if there's no fire hydrant? So Paul, maybe you can walk me through the fire suppressant system and maybe an OEM possible scenario.

MG: Yeah, I'm looking at the plan and there is a fire hydrant proposed in front of that building.

Tony: In the back where the garages are?

MG: Yes, the front of the building. Has an OEM agreement been discussed between Hardyston and Hamburg – who actually responds first – who has right of way first since the entrance is Hamburg?

No, but I think we can refer that to a fire chief. We have OEM agreements.

Okay, so it's a non concern?

Not a concern.

Okay, and Mike, as far as stormwater, I looked at the stormwater management – it didn't seem like there was any kind of 10-year storm problem or anything. Have you reviewed the groundwater level rise and I'm assuming we're using the same manning (?) numbers as before.

Tp. Hardyston Eng: We did have an opportunity to review the stormwater design and we believe that it generally conforms with the DEP stormwater regulations. We believe that the review comments make \_\_\_ with regard to some additional testing and modifications to the system are reasonable and the applicant's engineer has agreed to.

Yeah, I didn't see any issues either. I think we're okay.

Savidis (Hardyston): I have a question on the utilities and sewer water [inaudible] and for the sewer water or the fresh water either to hook up or to continue [inaudible].

I'm sorry.

ADV: There was too much paper rustling. We couldn't really hear him.

My name is Savis Savidis. I'm from Hardyston. Are there any charges to Hardyston for the fresh water hookup and usage or the sewer water usage and hookup?

I don't think there's any stormwater charges for -----

No. Fresh water or sewer water, not the stormwater. [inaudible]

ADV: As far as I'm aware, any charges that would be incurred would be between the developer and Hamburg, the provider of water and/or sewer we can't get sewer because the stormwater or the wastewater management plan can't be modified and we have the ability to put septic on that portion at the back.

So the sewer hasn't been approved yet?

ADV: No, it'll require an amendment to the wastewater management plan, which is an undertaking by itself.

Another question I have is about the traffic [inaudible]. We were supposed to get a separate letter about that – I never received one.

Mr. Gimigliano's expert letter references a Stonefield engineering letter dated September 1, 2023. Is that part of the original Hamburg filing?

ADV: Yes it was.

If you could make that part of the record in this case?

ADV: Yes.

Couple questions Mark if the Board members are done – so as part of that lighting as-built plan that'll include the lighting in Hardyston? And the applicant would agree to an "as-constructed" field visit to evaluate the lighting and if there's any modifications that may need to be made as a result of impacts on the neighboring property?

MG: Yes, we would agree to that.

A stormwater OEM manual is going to be required. We assume the developer is going to be the responsible party?

MG: Yes, that's correct.

And can a copy of that final manual also be provided to Hardyston Township?

MG: Yes, it will.

Specifically, a stormwater coordinator.

There was a comment in the report about delineating the access to the retention basin. Along with that we suggested maybe considering drop curb along that access drive.

MG: Okay, yes, we can add that.

Then given the fact that the one unit on the end of the building nearest the elevator is going to be – I assume – the affordable unit because it has to be accessible – we would imagine that the corresponding garage would also be at end unit and we would ask that you review the grading and provide some additional information to ensure that an accessible route is provided from that garage to that.

MG: Yeah, we can do that. We can make some adjustments to make sure we comply with the ADA access requirements.

ADV: Yeah, I just want to be clear and just double check – I'm not sure that your assumption that the end unit is the affordable is correct. It would probably be one of the middle units.

Conceptually, I think it was shown as an end unit, but regardless....

I just want to make sure there's an accessible route from the garage that's going to be associated with the affordable unit to the front door of the affordable unit.

ADV: Understood.

Any other questions from the Hardyston Board?

Yes. Jim Criazo. You have two above and underground basins. What are their functions and where are they located?

The two aboveground basins – all the basins are intended to collect stormwater and infiltrate it into the ground and reduce the rate the water drains off the site. There's a small infiltration basin at the front of the property near the entrance. That water will collect runoff and infiltrate some and discharge the rest into the drainage system on Rt. 23. The main basin is the one I discussed as located in the center of the property in Hamburg that will collect water and drain the water along the back of the property to the south corner of the property where it currently goes today. The third basin, the underground basin, is located beneath the pavement in front of Building #4. That water will collect runoff from the roof and let some of it go into the ground but the rest will overflow into the main stormwater basin and drain out with the rest of the water from that basin.

Have any changes been made since the original applicants came before the Board? Did you make any modifications since the initial presentation by the applicant to the stormwater management system other than the biobasin that you pointed out?

MG: The infiltration area for the roof area of Building #4 was the only change that was made.

Thank you.

Any other Hardyston Board members questions?

Are we ready for public questions? I think we are. I think everyone has [inaudible]. I don't have any questions.

GK: I don't either but the public questions and comments is very narrow. It's on the settlement and it's only on those items that we discussed and obviously responding to questions from Board members, so nothing beyond that. And we will help to administer [inaudible].

At this time we open this hearing on this application to the public. Seeing no public comment, we'll close the session to the public.

Counsel, why don't you provide a summation please?

ADV: Yes, thank you. I think there may be somebody in the back – I'm not sure if they're going to reopen for us which is fine but.....

GK: We are going to reopen. For the record, we're reopening it to the public.

My name is Karen Niedergall.

Raise your right hand please. State your full name for the record.

My name is Karen Niedergall.

Do you swear and affirm that any testimony you may give in this matter is the truth, the whole truth and nothing but the truth so help you God?

KN: Yes, I do.

GK: Thank you. Please provide your address for the record.

KN: I live at 15 Fairview Ave., Hamburg, NJ. First of all, I'd just like to say I've been almost a 40-year resident of Hamburg and I've lived in Penny Rock where my husband and I are the backyard neighbors of Air Gas and I do want to think that a lot of work was done because we are the neighbors that have received the most damage to the property being the backyard neighbor's. We have extensive damage because the property behind us was sold and the person just came in and wiped out all the trees and it has extensively damaged our property. Our whole shed was uprooted, all our fencing posts and all the concrete was all uprooted and we've had so much water we couldn't even get to our backdoor shed and we've had mosquito problems, everything. So I do thank you for the adjustments that have been heard and I thank you Mr. Homa for your

comments because, as homeowners, we were proposed something, but my husband and I spent an extreme amount of money and hired a private person to come in and repair our property, which cost us a lot of money, and they did propose something, the housing development, to help fix it but it was like one and done. So I do thank you for the adjustments, but we are still, as homeowners, extremely concerned because there's always extra water. When you plow these piles around places, they're gonna melt and these basins and everything – water, let's face it, comes down. So we've got our water for the most part under control, but it can only house what we have fixed. It really can't still fix everything. And we not only have the water problems still a little bit, but also we have the blasting problem – our home is continually damaged from the blasting and everything – so I know this sounds like a done deal and everything like that, but I am just really begging to really consider this because the water will come down and we are still suffering the damages from it. And also, I'm very concerned, I know they did a traffic study, but if you don't really live there 24/7 – I just figured it's 72 cars. I understand what you're going to say and say they all leave at different times. Right now, with the problem of 80 being closed right and stuff right now it's so dangerous getting out of our development. So I can't even imagine adding 72 cars. So, at any rate, but I just want to still voice my concern. I'm sure, I know development goes on, but I'm sorry. My husband and I are really not for this. That's it.

Thank you. Any other public? At this time, we close the meeting to the public.

So counsel, please provide a summation.

ADV: Like most applications that I'm currently handling, none of them are ever easy, and this one is no exception. The property has challenges, the neighborhood has challenges, we are in a challenging time on a number of fronts. But I think at the end of the day we have come to a project that meets those challenges and satisfied probably not everybody's concerns but most everybody's concerns about how the property should or could be developed. It provides a reasonable density on the property. It moves the detention basin in a place that provides the least amount of likely impact to adjacent residents but also provides an enhanced buffer between the buildings that will eventually be constructed and those neighbors, increasing the line of sight, and even the rotation of the longest building on the property – that location, as you heard, also helps the development of the property because it swings the majority of the building further from the common property line, again further enhancing the buffer on the side. We've made what we believe to be the necessary changes to address those concerns. We've entered into a settlement agreement with the respective Boards on what that should look like, and I believe this evening we have provided sufficient testimony and evidence through our witnesses, Mr. Gimigliano and Mr. Bruno, to support that the changes to the plan can be accommodated without any negative impacts and, therefore, we would ask for the Boards' favorable vote on the application this evening. Thank you.

TM: So I think that at this point perhaps somebody could make a joint motion to approve the application that you heard tonight [inaudible] to put the Hardyston and Hamburg tracts – it would be a joint motion to grant preliminary and final site plan approval, variance relief pursuant to Section 70C and 70D of the Land Use Law and any and all related site plan design waivers exception relief. Certain conditions of approval would attach. Specifically, we talked tonight about Erika's comments and things that she has asked for – a [inaudible] engineer; Michael's



comments about what he has asked for as far as being Hardyston's engineer; and then standard conditions of approval which is payment of all taxes, fees and escrows, the applicant's duty and obligation to obtain any and all other required governmental approvals, the applicant entering into a developers agreement with Hamburg and/or Hardyston, and things of that nature. So that's what I contemplate happening if there's a Board member that so agrees, then we can hear such a motion.

TM: It should also include that there will be a sewer agreement. I suspect it may be more on the Hamburg side, but that will depend upon what comes out of this. But I think they're probably getting the sewer EDU's from Hamburg. So that kind of answers the question that somebody on the Hardyston side asked earlier. There will be other conditions in the resolution, but I think that was probably the main one that I saw. We can certainly – professionally we all know each other, we see each other probably more than we think we're going to see each other over a monthly basis. So the professionals can work all of this out. I think Tom's got a good idea to do a joint resolution, but it's gotta be two separate votes. So we can make the joint motion with a second and then we would take Hamburg's roll and then Hardyston's roll.

Sally Goodson. I'll make the joint resolution to approve the agreement between Hardyston and Hamburg for site plan approval.

Thank you Sally.

You think we need two here and two there?

Yeah, we can do that.

Valerie Cicarel: I'll second Hardyston.

So we have a Hardyston motion and a second by Val Cicarel.

We have a Hamburg –

I'll make a motion.

And I'll second it.

Just state your names.

Sam Villa Gomez

[inaudible]

Hamburg's Roll Call

Hardyston's Roll Call

Motion carries.

Congratulations applicant, and Board members thank you very much. That was a very efficient and well done proceeding. Doesn't happen often, and you've all handled it [inaudible]. I would like to thank [inaudible].

ADV: Thank you. Good evening and we do appreciate the joint Board meetings. It is appreciated by the applicant as well.

Procedurally, when is the next Hardyston meeting?

I think we're at May 12.

And Wendy when's our next?

May 12.

Really? So there. So hopefully we'll have resolutions and they can both be adopted.

Is that a joint or is that separate?

It's gonna be one form of resolution.

I think you guys can have your own meeting.

We don't need to have another joint meeting.

We love coming here, but ----- there's no place like home.

We have regular meeting agendas I think, but the Hardyston agenda most of what you see on there did not happen tonight, so we really will only have minutes and the old and new business and then an adjournment. Does Hamburg want to take care of what I see on their agenda?

Our intention, Mr. Mollica. They want to conclude Hardyston's meeting.

We don't have any resolutions. I feel [inaudible] is a pending case. That's continuing in May. A completeness review is moot because the application was withdrawn on Friday. Do we have minutes from March 10?

Yes, we do.

All right, so do we have a motion to approve the minutes?

Jim Homa: I'll make a motion.

Tony Alfano: I'll second it.

Is there any discussion? There being none, roll call (etc.).

I think what we should just do is note on the record that there was a joint meeting and we did flag salute, statement of certification, we had old business which was the SMS Hamburg case. I think we're up to #6 on your agenda, Mr. \_\_\_\_\_.

[inaudible]

Motion of approval of closing documents with the exception of #326715 and that was for Weiner Law Group?

Motion to approve.

All in favor: Yes.

[The rest of the tape does not pertain to us.]