

- Meeting Notice The Regular meeting of the Harmony Township Land Use Board was called to order at 6:00 p.m. by Chairwomen Carney. Mrs. Carney read the Open Public Meetings statement at this time. Mrs. Carney stated that "Adequate notice of this meeting was given in accordance with the Open Public Meetings Act by publishing a notice of the meeting in the Star Gazette and Express- Times newspapers and by posting a copy on the Township Bulletin Board and filing a copy thereof with the Township Clerk".
- Pledge of Allegiance The Pledge of Allegiance was led by Mrs. Carney.
- Roll Call Present at the meeting were Members Dave Beers, Denise Carney, Peggy Edmiston, John Fritts, Guilia Iannitelli, Dara Rossi. Also in attendance were Secretary Kelley Smith, Engineer Stanley Schrek, and Attorney Gregg Gianfacaro.
- Order of Business Public Hearing and Supplemental Testimony for the Court Ordered Star D Farm, LLC minor subdivision.
- Attorney Debra Nicholson asked that the record reflect Secretary Kelley Smith has stepped down as recording secretary at this time due to being a party to the application. Mr. John Fritts has been appointed temporary secretary at this time.
- Mr. Fritts stated that adequate notice was satisfactorily given to the adjoining property owners on October 23rd and the newspaper notice was given October 24th which is 10 days prior to the hearing. Mr. Fritts stated the record should reflect everything is in order at this time.
- Mrs. Debra Nicholson was present representing the applicants. She stated that this matter is a remand from the chancery division, Judge D'Anunzio, from a recent hearing. Mrs. Nicholson marked the judgment as A-1 with today's date for reference. Mrs. Nicholson summarized what the judge's requirement was. The court determined that the boards grant of waivers and the resolution that was enacted didn't set forth all the requirements for the entitlement of the grant of waivers that happened. This was remanded back, the applicants have filed with the board a driveway feasibility exhibit, a septic feasibility exhibit and it resulted in a review letter from Engineer Shrek dated November 3, 2014. She stated these are the issued that the board will be dealing with so that the original waivers that were granted, we are asking the board to review these and say that the waivers are no longer necessary because of the adequate proofs have been submitted by the applicant. Mrs. Nicholson stated in case additional testimony is needed she asked that Kelley and Patrick Smith, the principals of Star D Farm, LLC be sworn. Mr. Gianforcaro swore in Kelley and Patrick Smith at this time. Mrs. Nicholson expressed for the most part this is a very procedural item and the matters have been made part of the record and are part of what was noticed for. She identified item #1 as the sketch plan for the proposed minor subdivision revised October 20, 2014. It indicated it added site distance for a property driveway on Lot #1. Certified by Allen Nichols, surveyor. This demonstrates where the driveway can be located with the appropriate site distances as required. It is a county road and it was based on county standards. The soil log and test report dated October

28, 2013 was also submitted, performed by Erica Busch, P.E. which demonstrated that per tests were conducted and the soil logs were found to be satisfactory and it was attached to an exhibit which shows the location of the perc tests. These are the two items that the board had previously granted waivers on so these are the two items that are being requested that the amended application be deemed complete because these items were submitted and furtherance of that the Board's Engineer's letter of November 3, 2014 indicated "that he has reviewed the two items and since the board last took action of this minor subdivision and granted waivers to Sections 148-11A(7) driveways feasibility and Section 148-12(15) pertaining to sewerage disposal the applicant has set a field stake at the proposed driveway and has provided an engineer's certification that the property can accommodate a subsurface disposal system. The sketch plat shall be revised to now eliminate note #4, and the sketch plat shall include a certification that the stake has been prominently placed and a certification as to the feasibility of constructing a driveway meeting all requirements of the Harmony Township Driveway Ordinance. This has been addressed and unless there are questions as to the proof submitted there is nothing further to add based on the remand because it was a technical submission of data as opposed to testimony that the court requested. Mr. Gianforcaro stated for the boards information he was present with Ms. Nicholson's partner and Mr. Aaroe before the court on October 16, 2014. Mr. Gianforcaro stated this was before Judge D'Anunzio and he made the representations exactly as Ms. Nicholson has indicated. Mr. Gianforcaro asked if Mr. Aaroe was provided this information because he was the attorney on record for Harmony Sand and Gravel. Attorney Aaroe stated he had not. Mrs. Nicholson stated that Harmony Sand and Gravel was part of the noticed parties, but would be happy to share her copy now so he could review it. Mr. Schrek stated that the last paragraph of his letter stated certification has not been submitted, unless you have it now. Mrs. Nicholson stated it would be submitted with the approved date if the minor subdivision is now approved with this because it's an amended application so that will be complied with as part of any resolution requirements. Mr. Shrek indicated it would be a condition then. Mr. Gianforcaro stated that would be fine. Mrs. Nicholson stated yes that would be an appropriate condition. Mr. Gianforcaro indicated there would be a condition on the amended application, which stated that the applicant would comply with the last paragraph of the Engineer's letter. Mrs. Nicholson stated that the note on the sketch plat would say that pursuant to any approval tonight, this amendment reflects such and such, etc. Mrs. Nicholson stated she didn't want to be presumptuous that approval would be granted. Mr. Schrek indicated that the revised plan will have to be reviewed. Mrs. Nicholson stated that on the final plat his request for the certification will be put on along with anything else. Mrs. Nicholson indicated that the certification will be done. Mr. Aaroe interrupted at this time asking for verification. Mr. Aaroe continued to indicate to the board is Lyn Paul Aaroe and he is representing Harmony Sand and Gravel. Mrs. Nicholson indicated to the Board as Mr. Aaroe continued that she was finished presenting to the board and has no objection to opening to the public. Mrs. Carney at this time stopped Mr. Aaroe and asked the Board if there was questions. Mr. Fritts asked if the plat was a sealed copy dated February 18, 2013, revised October 20, 2014. He asked if the Engineer received a copy. Mr. Schrek stated he has received a copy revised October 20, 2014. Mr. Fritts asked what revisions he was looking for now. Mr. Schrek indicated that on the plan note # has to be eliminated and certification that the driveway meets all requirements of the ordinance must be put on. Mr. Fritts asked if the plan is in formal technical form. Mr. Shrek said that the certification needs to be put on and that's what he has been saying for the last 10 minutes. Mr. Fritts stated that he is sure they will hear a lot of arguments

from the opposing people on the application and he thinks they need to determine or not if that certification needs to be on before . Mrs. Nicholson stated that it would be on as a condition of this approval because the proofs have been presented, and after we submit proofs, we then will submit an amended plan pursuant to the action the board would take. Mr. Fritts asked if Warren County Planning Board has approved. Mrs. Nicholson stated yes. The County approved it without needing this addressed. Mr. Fritts asked how do we know. Mrs. Nicholson said the approvals date back to the original application. Mrs. Nicholson also stated that this driveway is not going to be constructed, it is just showing you that one can be to be deemed complete in this application. If this driveway would be constructed, a road opening permit would be required by Warren County at that time and any other issues that had to be addressed that the County had concerns would be a part of that next stage. Mr. Gianforcaro referenced the fact that Mr. Aaroe's appeal is basically set forth in 3 parts. One was that the Board did not have the right to grant the 2 waivers and there was an issue with regard to Section 185-1 with regards to well tests. The judge found that not applicable. Those were the only issues set forth at the Superior Court level, the Judge remanded it, and he felt that the Board did everything within its rights, so that issue was sort of already addressed when the original resolution was granted. Mrs. Carney clarified that the reason we don't need approval from the county is because it was previously given because they approved the subdivision with the waivers the Board Ok'd. Mrs. Nicholson said that is correct and this is just a "feasibility" presentation to meet the technical requirements of the ordinance for completion, it's not to do with it actually being constructed and that would trigger an application for the County road opening permit if this would actually be constructed. Mr. Shrek stated that is correct, however, what is missing from the plan according to his letter is 148-11(A8) all final plats of minor subdivisions and preliminary shall include certification as to the engineering feasibility for of constructing per Harmony Township Driveway Ordinance and that representation as of today is not on the plan. Mrs. Nicholson agreed and stated that is for the final approval it is not the feasibility for a waiver for completeness. Mr. Shrek indicated that would be for the Board attorney to decide but as of now that is not on the plan. Mr. Gianforcaro indicated he thought they were requiring it, before they waived it and the court said they are not permitted to waive it, Mr. Shrek said that's fine, Mr. Gianforcaro said but he thinks now that is a condition but I think Mr. Aaroe is probably going to address. Mr. Aaroe interposed at this time stating that we are here for 2 simple reasons one is to prove septic system feasibility. Mrs. Carney asked if Mr. Aaroe should be sworn in. Mr. Gianforcaro said he is not providing testimony so he did not have to be. Mr. Aaroe continued to say they are here for 2 simple reasons one is to demonstrate septic system feasibility and they have that and Mr. Aaroe stated the Engineer is from Sussex County which he is not surprised who certifies that. The second reason they are here is not to seek a condition of reapproval or amended approval as to engineering feasibility of a driveway, we are here to demonstrate feasibility of a driveway whether it's going to be constructed now or never. It is in the same category of we are subdividing a lot that we have no intentions to build upon, but we now have soils tests. He said that is fine, and certainly the driveway can be built somewhere and he is not challenging it, but that is not the ordinance scheme, that's what he raised as an issue first of all, the judge agreed, we are here an nothing has changed other than we'll get it to you. Perhaps this application was submitted abit prematurely, it was submitted before the judgment came in, a rush to notice and all that is fine. Mrs. Nicholson showed Mr. Aaroe that the driveway was on the plat. Mr. Aaroe asked where the certification was, and he knows it's a feasible location. Mr. Shrek stated that the certification is not done, the

stakes are there. Mr. Aaroe said he knows there is no certification and that's why they are here, he sees a typical driveway but he sees no feasibility certification that's why we are here. Mrs. Carney stated that the County, Mr. Arroe interrupted Mrs. Carney stated he didn't care about the County, Mrs. Carney continued to state that the road that property is on is not regarding this as a requirement. Mr. Aaroe argued no, that they can't disregard Harmony's ordinance. Mr. Shrek stated that it's a note that is required on the plan, and it's up to the Attorney whether it can be a condition. Mrs. Carney agreed that was discussed before as having it as a conditional of approval once it is approved. Mrs. Carney stated that she assumed that the Board was there to see if that is a feasible place and if it is acceptable and then the plans get amended and submitted, it will be a condition of approval. Mrs. Nicholson agreed and asked if her client could address. Mr. Aaroe said he was not done, he was interrupted by the Engineer and he certainly accepts that but he continued to state that there is a typical driveway location but they don't have feasibility. There is not certification as to site distance feasibility. That is what is needed and it has been approved. Mr. Shrek indicated the site distances have been noted on the plan. Mr. Aaroe said that is fine but the certification is not, so this is simple. Mr. Aaroe stated everybody's known for at least a year what one of his arguments were and still we don't have it so now to attempt to make it a condition of approval is not to fulfill your responsibilities that you didn't in the first place and now for a second time, or there is discussion at least, that you are not going to do it again, let them submit it as a condition of approval. Approval of what, the subdivision is approved we are here to discuss the two open issues one is satisfied and the other is not. Mr. Gianforcaro asked Mr. Aaroe if the Board were to condition the approval on the certification it would be the Engineer that would approve it correct? Mr. Aaroe stated the Engineer would not approve it unless there was a driveway permit sought to be issued and he thinks that would be the Township's Engineers function. The Engineer makes a recommendation to the board, the board determines whether feasibility has been demonstrated so there is nothing here to approve there is not engineering certification the subdivision stands approved, that wasn't set aside, so approval and condition of approval, there is no context for conditions because there is no approval we are here to address two open issues from the court one is addressed and the other is not. Mr. Gianforcaro said what he thinks what the applicants are saying is that they will comply with that request but they want it to be a condition of approval. It's not like the Board is granting a waiver of it, but making a condition. Mrs. Nicholson said if they want the driveway in a different location? Mr. Arroe said that is not their issue. Mrs. Carney stated she thinks it's the cart before the horse. Mr. Aaroe said that is what he is saying, there is nothing here to approve, they are not here to approve a septic system or feasibility they are not here to approve a driveway they are here to confirm that feasibility for each of those have been demonstrated in accordance with the ordinance and the ordinance scheme is simple they need a certification, he doesn't know if it has to be a P.E. but he said somebody needs to go on the hook to certify it. Perhaps the surveyor. Mr. Aaroe stated he will wait until Ms. Nicholson is done with the engineer so he can hear what he is saying it should be of interest. Mrs. Nicholson was reviewing Mr. Shrek's' code book at this time to make note of what is required for the plat. A gentleman who did not identify himself to the board (Mr. Wilhelm) outburst at this time from the public forum stating that the Applicant's attorney and Engineer were talking at sidebar and he wanted it on the record. Mr. Gianforcaro said that was fine and Mr. Aaroe said it is also an interruption of his time before the microphone. Mr. Gianforcaro said what he thinks Mr. Aaroe is requesting is that Ms. Nicholson speak to the Engineer on the record, verbally. Mrs. Nicholson said she was just looking at the section. She

was not having a dialog she was just asking and looking at the section because it was in the plat section and not in the driveway section. Mr. Fritts asked could an application be continued upon the Warren County planning board approval of a minor subdivision in general when it fronts their road. Mr. Arroe said sure but you can't seed your jurisdiction and your responsibility to be satisfied as to a driveway. Mr. Fritts said that wasn't his question, his question was can the board give a condition which normally they would do when a subdivision fronts a County road, that as a condition they must seek County Planning Board approval. Mr. Aaroe said absolutely you are required to do that but the County approval does not substitute for the decision making. Part of the decision making is driveway feasibility and certification and the fact that the County is or is not satisfied with the driveway because it's on a county road, you need a driveway permit from the county, does not *persa* satisfy Harmony Townships obligation in the ordinance which Doug Mace and I wrote says specifically it is the purpose of the driveway ordinance to exercise concurrent jurisdiction with the county when the driveway fronts on a County road not exclusive in favor with the County, concurrent so the County has to issue a permit and so does Harmony Township. Mrs. Carney commented given the vast site distance that has been given with today's testimony alone in addition to the testimony given at the original hearing she thinks this has been discussed at length. Mr. Aaroe said it may be intuitive there is site distance there (Mrs. Carney asked what the point is then) Mr. Aaroe continued on saying but there is no intuition exception in the ordinance it says engineering feasibility to be certified we don't have that. Mrs. Carney said to Mr. Aaroe so if it is certified, and you already said it stands approved, are the applicants allowed to do the subdivision right now without this being rectified. Mr. Aaroe stated they have the subdivision already subject to the two swords hanging over their heads and one is address and the other sword is still dangling. Mrs. Nicholson offered a proposal on how this could be handled. She proposed that the Board could direct the Board Attorney if they saw fit to prepare a resolution of approval tonight to be acted up at the next meeting provided that this map, with this driveway location have the note that's a certification attached to it and then we would not miss another month but the resolution could be enacted at the same time the condition was satisfied since it's a two month process anyway that would not delay the time but it would have us be compliant with everything Mr. Aaroe and the Board Engineer is requesting. Mrs. Carney asked Mr. Aaroe who he is representing again. Mr. Aaroe stated Harmony Sand and Gravel. He said he's not an obstructionist, we've had this many times over the years where there is something to be addressed, yet the prediction is it will be addressed satisfactorily. He is not suggesting it won't he suggesting it hasn't and that's why he is here, too early apparently, nevertheless if it saves next month for official action, then the following month for a resolution he really can't have a problem with that but it needs to be done before the board takes action. Mr. Gianforcaro said what he believes Mrs. Nicholson is saying is to have the resolution ready for signature next month. Mr. Aaroe said he is fine with that. Mrs. Nicholson can take a vote to act on it and memorialize it at the same meeting and the only action tonight would be to direct the Board Attorney to prepare a resolution of approval for potential enactment next month. Mr. Gianforcaro said he didn't have a problem with that and Mr. Aaroe said to the Chairwoman it made sense to me, and Mr. Schrek said he had no issue at all with that. Mrs. Carney asked Mr. Schrek if that solved his issue with the plat. Mr. Schrek said the plan had to be revised, and if the preparer was in attendance he could have given testimony and written right on the plan but he is not and it has to be on the plan at some point. Mrs. Nicholson said that appears to be acceptable with everyone and we will be in the exact same position time wise because the resolution is the confirming act and she

thinks that addresses all of the concerns and she respectfully asks that that be the board's action. Mrs. Carney stated given everything that is gone on, she asked if any of the Board members had any question with anyone at this time. Mrs. Nicholson asked Mr. Aaroe if he was in agreement with that protocol and he said yes. Mr. Aaroe indicated to Mr. Gianforcaro that the only action to be take is to draft a favorable resolution, have it ready and action on the application itself, the two conditions and the memorialization would be expected to occur at the December meeting. Mrs. Carney asked if there is anything further than today. Mr. Fritts commented he thinks the other item would be that the driveway needs to have a road profile that marks within the Township's jurisdiction. Mr. Fritts said that the driveway profile needs to go beyond the setback line on the property line. Mr. Shrek indicated that the certification means that the applicants engineer looked at the requirements and is certifying to the feasibility at the time they are going to construct the driveway, and that is adequate. Mr. Aaroe asked Mr. Shrek if certification is from a P.E. not a surveyor. Mr. Shrek said yes and Mrs. Nicholson she concurs. Mrs. Carney asked what will occur before being on the agenda again. Mr. Gianforcaro said an Engineers Certification of the driveway feasibility certification. Mr. Schrek said there are two sections to look at, 7 and 8. 7 has been addressed because the stakes are there and the site distances are shown and you can physically see the stake and also an engineer's statement certifying that there is driveway feasibility. Mr. Gianforcaro stated he would have a favorable resolution ready at the next month's meeting. Mr. Aaroe asked if he could get a copy of the resolution. Mrs. Carney stated NO. Mrs. Gianforcaro said he will provide it to Ms. Nicholson, the Board Engineer and Mr. Aaroe. Mr. Aaroe stepped down at this time from the public hearing forum. At this time, Kelley Smith addressed the Board and put on the record that Mr. Shrek was provided with the plan the day after it was dated, and unfortunately the preparer has gone on vacation out of town so anything in Mr. Shrek's letter of November 3rd could not of been addressed or it would have been addressed in a timely fashion. Mrs. Carney thanked Mrs. Smith for the clarification. Mr. Gianforcaro recommended the board make a motion for him to prepare a resolution by December's meeting assuming there is a positive result.

Motion by Dara Rossi that Mr. Gianforcaro prepare a resolution for the December meeting on the condition that there is a favorable result. Motion was seconded by Beers. Roll Call: Ayes: Edmiston, Fritts, Iannitelli, Rossi, Beers, Carney. Nays: None. Abstentions: None.

Minutes

Motion by Rossi, seconded by Beers to approve the minutes of July 2, 2014. Motion passed by All In Favor. Mrs. Carney abstained from voting.

Marden Subdivision Application/Escrow Fee Request

Mr. Gianforcaro said he was unable to contact Mr. Edleston regarding this matter who is representing Mr. Marden.

Mrs. Carney stated that she was under the assumption that a Township Committee representative would be present, however, there is none.

Ms. Rossi advised the board that she was in attendance at the Township Meeting last night and what was discussed is that the Committee would like to have the Board "approve" the subdivision concept before the Committee would consider to approve the deferring of the escrow and application fees for this applicant until time of closing. Mr. Phillip Marden was present and approached the board at this time. Mr. Marden

indicated he lives at 561 Harmony Brass Castle Road and he stated he owns property on Block 11 and Block 21. Mrs. Carney asked if this is an application. Mr. Marden provided the following background. New Jersey Green Acres is interested in his property. Mrs. Carney indicated at this time there is a mechanism for an informal hearing and asked if this is an informal hearing. Mr. Marden said he would explain why he is here. Mr. Fritts asked for presentation on the deferment of the application fees and escrow fees. Mr. Schrek referred to a letter from Mr. Edleston to the Township Committee which will help the Board understand what Mr. Marden is asking for. Mr. Schrek read the letter to the Board at this time. Mr. Edleston wrote that they are requesting the Township to defer payment of Mr. Marden's application fee and related escrows until Mr. Marden closes with the State of New Jersey on his property transaction. Mr. Marden will be applying for subdivision approval from the Land Use Board in order to permit him to convey approximately 14 acres of his land to the NJDEP for the purpose of Parkland Preservation. A copy of the Agreement of Sale and the subdivision map was provided. Mr. Schrek indicated it appears that their intent is to submit the application and are now looking for a waiver of fees which you can't do. Ms. Rossi indicated that Mr. Cornely at the Township Committee meeting said he was concerned that if the escrow isn't paid, or the sale doesn't go through, then the Township through the taxpayers of Harmony end up paying for the escrow. Mrs. Carney stated that if there is a denial there wouldn't be any money to pay the escrow with. Mr. Marden said that the Committee said to make the presentation to the Land Use Board because they wanted to have a sense as to what would occur would be in line with the master plan so that there would be some chance in December you might approve this. Mrs. Carney asked if there was a statement from the committee. Ms. Rossi said the committee was going to have an emergency meeting if necessary. Secretary Smith indicated that the Township Committee met and they decided in order to proceed with deferring the escrow and application fees from Mr. Marden, they were looking for the consensus of the Land Use Board that the application would be awarded to Mr. Marden as a subdivision with the variances that were requested. There were concerns that there would be outstanding funds if it was not granted at the Land Use Board level and the taxpayers would have to pay for the professional fees. The committee wanted to get a feel from the Land Use Board to see if this something they would entertain, obviously nobody has seen anything in the way of an application so perhaps Mr. Marden can give a summary of what he plans on doing. Mrs. Carney said she is not comfortable doing that because it then becomes a hearing. Mr. Fritts' opinion was he thinks you are opening up Pandora's Box by allowing the waiver of fees because it's not their job to defer the fees it's the Township's decision and if they do it they are opening up Pandora's Box. Mr. Fritts stated "it's like I want to subdivide 55 acres but I don't have any money for escrow and I'm broke and divorced." Mr. Schrek said just like what was in front of them, there is an ordinance requirement for a certification on a driveway, we all know this driveway can be built but the certification has to be there per the ordinance. Mr. Schrek said this is just an example, and fees are required per ordinance and you can't just waive that. Mr. Schrek said saying this is ok this is like pre-approval and you cannot guarantee there won't be objectors. Mr. Schrek said if they do come before the board this is a checklist item and it won't be a complete application so it wouldn't be able to be heard. Mrs. Carney said or a neighbor could come and object just like was heard earlier tonight. Mr. Marden exited the meeting at this time.

Mrs. Carney asked if there was any other business for the good of the Board. There was none heard.

Public Comment Mrs. Carney asked if there was any public comments at this time. There was none heard at this time.

Executive Session Motion by John Fritts, seconded by Dara Rossi to enter into executive session for the purpose of Professional Appointments and Land Use Board Secretary Appointment for 2015. Motion passed by all in favor.

Mrs. Carney took over the meeting at this time.

Motion by Rossi, seconded by Beers and carried by all in favor to come out of executive session.

Discussion Mrs. Carney asked how escrow accounts were taken care of by our professionals. She wanted to know if an applicant is provided with an itemized account from the professionals. Mrs. Smith stated that every applicant gets an individual escrow account. The Bank of America sends them a statement of their account. The professionals are supposed to provide copies of the bills to the Township and the Applicant. Mr. Schrek said that a copy of the invoice is supposed to go to the applicant but he honestly does not know if that happens. He provides the Township a bill with a backup of how his time is spent. He said a copy of that goes to the Applicant. Mrs. Carney does not feel this information is being provided to the Applicant. Mrs. Smith has provided copies to the applicant. Mr. Gianforcaro stated he does not provide a copy to the applicant. It was the consensus that moving forward the Secretary will provide the Applicant with the copy of the Professional bills.

Mr. Shrek recommended that there are Ordinances that need to be reviewed including the granting of waivers when things are obvious, such as the recent driveway ordinance and soil logs issue. Mr. Shrek gave examples and how this would make it easier on the applicant. Mr. Gianforcaro indicated in the recent case the Judge said such waivers can be granted if it is in accordance with an issue with the land. In this recent case the waivers were granted and he didn't think there was an issue with it but there was. Mrs. Carney stated how nobody in the public said anything. Mr. Gianforcaro stated that the waiver was granted and added a condition that said if and when a building does come up they have to come before the board and it will be addressed then and it was part of the deed. Mr. Gianforcaro said the Judge said you can't do that under these conditions because it has to be in accordance with the land and not just because there is no building being built. The Judge said it makes sense but you can't do that. Mrs. Carney asked if the ordinances can be changed. Mr. Gianforcaro said yes. He said what the Judge said did make sense because the ordinance has to be in accordance with the land, the waivers have to be in accordance with the land. Mrs. Carney said assuming a building is going to be built. Mr. Gianforcaro said he understand what Mr. Shrek is saying. Mr. Schrek said you grant waivers for environmental impact statements for major subdivisions. Mr. Gianforcaro said the reality is if Harmony Sand and Gravel had not brought this out it probably would have been fine, 99 times out of a 100 nothing like this is ever challenged. Mr. Schrek said what is the purpose of waivers if the ordinance requires it per the check list. Mr. Gianforcaro said you can grant waivers but certain waivers have to be based on certain things and this was not a certain thing to allow a waiver. Mr. Schrek said but when the feasibility is obvious, should we have been more certain we were granting the waiver because of the soil classification. Mr. Schrek said we granted waivers because there is over 500' site distance and less than 6% slopes, should he have said that. Would that work. Mr. Gianforcaro said from a legal standpoint where do you draw the line and here the Judge said no. Mr. Schrek said what he is saying based on this you can never grant any waivers. Mr. Schrek said

this is money spent that is not necessary. Mr. Gianforcaro agreed. Mr. Fritts said over his years there was one situation, it was the Steele subdivision where the lot was created specifically for a house and the other half was conditioned upon getting a driveway. At the time it was considered an agricultural lot only and he said someone could of sued over that. Mr. Fritts said at the time it should not have been allowed because you created a lot that does not have a driveway. Mr. Schrek said at that time whoever reviewed the plan would not of recommended a waiver for that situation. Mr. Schrek said he is looking at something that is obvious. Mr. Fritts said in his opinion just continue to give waivers and if they get burnt a second time they will know. Mr. Schrek indicated on the checklist it says there is a box for a waiver request. Mr. Gianforcaro said you can request the waiver but it has to be in accordance with the land for existence you want a driveway waiver because there no way to get a driveway and no way to get subdivision approval on this piece of land so do you prohibit the subdivision or do you grant a waiver because it's impossible. In that respect you can grant a waiver, but you can grant a waiver for a driveway just because there is no building. Mr. Schrek said like the site plan for the Animal Hospital Solar Project, it required a traffic study in, so how do you do that waiver. Discussion ensued on different situations and how they were handled. Mrs. Carney said this situation was an anomaly and it was the consensus that Mr. Arroe was paid to look under every rock. Discussion took place on how County approvals effect the applications.

Discussion took place on the procedural recommendation that was adopted by the Board needs to get codified by the town. The new timeline needs to get recommended to the Township Committee in order for the change to get made in the Code of The Township. It was the Boards consensus to authorize Mr. Gianforcaro to prepare a letter to the Committee for these changes to Section 110-12 from 14 days to 30 days.

Adjourn

Motion by Fritts, seconded by Rossi and carried unanimously by all in favor to adjourn the meeting at this time.

Submitted by: Kelley Smith, LUB Secretary