

**TOWNSHIP OF WALL
ZONING BOARD OF ADJUSTMENT
MINUTES OF THE REGULAR MEETING
HELD IN THE MUNICIPAL MEETING ROOM
AUGUST 17, 2004**

The Regular Meeting of the Wall Township Board of Adjustment was called to order by Chairman Clayton at 7:15 P.M. Members present were Chairman Michael Clayton, Vice Chairperson Mary DeSarno, Dominick Cinelli, Anthony Rembiszewski, Jim Gray, Wayne Palmer, first alternate Bob Kerr, second alternate Ray Slocum, Attorney Hirsch, Planning Coordinator Roberta Lang, Engineer Dan Swayze, Planner Art Bernard and court reporter Deborah Arnone.

SALUTE TO THE FLAG

Attorney Hirsch announced that all requirements under the Open Public Meetings Act had been complied with for this meeting and read the purposes of the Board of Adjustment.

CARRIED APPLICATION

CASE #BA38-2003 – Date application complete: December 22, 2003. Carried from February 18, 2004, March 9, 2004, March 17, 2004, March 30, 2004, April 7, 2004, May 4, 2004, May 18, 2004, June 22, 2004, June 29, 2004 and July 26, 2004.

APPLICANT: SUNNYSIDE MANOR

PROPERTY: Ramshorn Drive & Lakewood Road, Block 876, Lots 16 and 44.01, R-30 zone

RELIEF REQUESTED: Use with variances

Chairman Clayton said we are now at cross-examination.

Attorney Gasiorowski introduced himself. He said at the last hearing he presented his witness, Mr. Gemma, who was a planning expert. He was like his next witness Mr. Brody, an appraisal expert, out of order. He was on vacation and came back for this hearing.

Attorney Hirsch asked Attorney Landis if he had any objections. Attorney Landis said no.

Attorney Hirsch said you are finished with Mr. Gemma. Attorney Gasiorowski said he is finished with Mr. Gemma. Attorney Hirsch said he can be cross-examined by Attorney Landis. You are asking that the Board hold cross-examination of Mr. Gemma until you are done with Mr. Brody. Attorney Gasiorowski said yes.

Sworn by Reporter Arnone:

Jon P. Brody

Mr. Brody said he is associated Appraisal Consultants, 293 Eisenhower Parkway, Livingston. He said he is president of the company. He said he is a member of the Appraisal Institute. He said he is a licensed real estate broker and a real estate salesperson in the State of New Jersey.

Attorney Hirsch asked if Attorney Gasiorowski was proffering the witness as an expert. Attorney Gasiorowski said yes.

Mr. Gray asked how long he has been a real estate appraiser. Mr. Brody said 40 years. He gave his credentials which were accepted by the Board.

Mr. Brody explained that appraising is a profession that basically based on analyzing the market and to a degree valuing real estate. He said he personally does not value a lot of single family homes. He values homes on a revaluation basis. In addition to valuing single family homes an appraiser will value industrial commercial properties for mortgage purposes, bankruptcy purposes, tax appeals and any type valuation question.

Attorney Gasiorowski said you have been retained by me to give testimony with regard to an objection being made by surrounding property owners with regard to this application. Mr. Brody said yes. Mr. Brody said he has testified 300 – 400 times relative to this particular item.

Attorney Gasiorowski asked if Mr. Brody has visited the site. Mr. Brody said yes. He visited the site four or five months ago with Attorney Gasiorowski. He said he has been back again. He said he is familiar with Wall Township.

Attorney Gasiorowski asked if Mr. Brody has listened to the testimony of Mr. Keane. Mr. Brody said yes. Attorney Gasiorowski asked if he has listened to the testimony of Mr. Gemma. Mr. Brody said yes. Attorney Gasiorowski asked if he reviewed the transcripts. Mr. Brody said yes. Attorney Gasiorowski asked if he was aware that there are several projected nursing homes which have been approved but not built. Mr. Brody said yes.

Mr. Brody said the subject property is located in a 100% residential area. He said he did some research relative to the value of the homes in the area. Some of the older homes have a range in sale prices between \$350,000 to \$550,000. Some of the homes located to the rear of the existing facility have ranges from \$750,000 to One and a half million dollars. He said he also researched the sales. We've researched the assessment on these homes. We did an analysis. The planned new larger facility would be a pre-existing non-conforming use would be an inconsistent use. It is a use that is inharmonious with the surrounding uses. It is my opinion that this would have a detrimental impact on the surrounding properties. These are multi family dwellings that are specifically built and addressed for senior citizens. When you take this type of use and you put it into a very lovely residential area it has an impact on what buyers and sellers will do. When choices are made as to where to buy there will be a greater resistance to buying a home that is within close proximity to a site such as this.

Mr. Brody said he finds that in a purely economic market value environment such as this the proximity of the homes to this proposed facility will have a detrimental impact on the value of these homes. Those homes will be come less valuable.

Mr. Brody said the Master Plan does not have any proposals for this type of use in this R-30 zone. The Master Plan provides for nursing type facilities outside of this neighborhood.

Attorney Gasiorowski said given the approvals of the Boards of the Township they have followed the direction of the Master Plan as well as the zoning ordinance in locating those facilities in what you have described in transition area between commercial and multi family

housing. Mr. Brody said that is true. Approvals have been granted for those particular facilities on a major or secondary highway. These types of facilities create a higher volume of traffic. There is truck traffic. The employees, the emergency medical equipment and emergency vehicles that will visit the facility you don't find in a typical residential neighborhood.

Attorney Gasiorowski asked Mr. Brody if he was aware of the fact that the original structure served as a rest home for employees of a North Jersey industrial. Mr. Brody said yes. He said he saw the existing building.

Attorney Gasiorowski said one would assume all the residential homes now there were not in existence at the turn of the century when this was created. Mr. Brody said that is correct. Attorney Gasiorowski said the Township consistently zoned this property residential. Mr. Brody said that is true. The subject site and everything around it is in the R-30 zone.

Attorney Gasiorowski asked if Mr. Brody formed an opinion as to whether or not, if the Board of Adjustment granted this, would have a deleterious effect on both the quality of life and the value of those surrounding residential uses. Attorney Hirsch said leave out the quality of life. Property values. Mr. Brody said in his opinion the surrounding area will be negatively impacted.

Attorney Gasiorowski said the residential homes surrounding the property were built subsequent to the original placement of this small nursing home. Mr. Brody said that is a fact. Attorney Gasiorowski said so this is not a question of property owners wanting to exclude either disabled people or seniors from residing within the existing nursing home. Mr. Brody said no. Attorney Gasiorowski said they are voicing their objection to saying this new facility which is many times larger than the existing facility. Attorney Landis objected. Attorney Gasiorowski finished saying it will adversely affect the property values. Attorney Hirsch told Attorney Gasiorowski he was testifying. You are not questioning your appraiser. You are saying what the people are objecting to.

Mr. Brody said he thinks the objections are common sense objections. He said he has testified on many different items. To the property owners their home is probably the largest asset they have. The new building will have an extensive amount of windows. The homes will be sold at a lesser price in my opinion than that which existed before that particular building is built. The studies I have done indicate that where there are several choices someone will make this the last choice because of the inconsistent use within the neighborhood. People are very prone to want to live in areas that are consistently residential.

Mr. Cinelli asked how much work has your company done in Southern Monmouth County in the last year. Mr. Brody said he has worked in every municipality in Monmouth County. He said he is doing 15 appraisals in Long Branch. He is doing work in Tinton Falls, Freehold and Upper Freehold.

Mr. Cinelli asked if he has reviewed any of the sales within the last six or seven months, since this application has been pending. Mr. Brody said there haven't been any recent sales with the last three to five months.

Mr. Cinelli said prior to this application have any of the sales in that neighborhood been affected by the preexisting use that's there right now. Mr. Brody said he thinks they have. He said his analysis showed that houses further away from the existing property were selling for a bigger

gap between the assessment and what they sold for. The bigger gap is a higher number. They are selling for 15% - 20% above the assessment. He said it was difficult because there weren't a lot of sales in this particular neighborhood.

Mr. Cinelli asked if supply and demand is a factor. Mr. Brody said Wall Township is a very desirable community. It has a good school system. It has a good competitive tax rate. Supply and demand is a factor.

Mr. Cinelli asked if Mr. Brody reviewed the landscaping plan submitted by the applicant. Mr. Brody said yes. He said he was present during that testimony. He said there will probably be more trees planted than what is recommended. He said it is not just trees. You can't put up 40' - 60' trees. It is just not economically feasible. You have to put up small arborvitae and hope that creates a 12 month a year buffer. He said he doesn't think the landscaping plan is going to change the impact of what buyers and sellers are going to do in this market.

Mr. Cinelli asked if this were approved how would it negatively impact the neighborhood as far as sale prices – 10% - 20%. Mr. Brody said it is difficult to come up with a percentage. It depends where the house is located, what the view is and where the driveways are located. He said somewhere between 15% - 25% detriment in value.

Mrs. DeSarno asked if the existing facility has a negative impact. And the new one, what kind of percentage would you say that's going to have. Mr. Brody said it is hard to say. The houses on Autumn Drive are a million to a million four hundred thousand. Some of the houses on Lakewood Road have sold for \$350,000 - \$450,000. He said he thinks Lakewood Road homes would be more impacted. He said it was hard to say how it is going to impact every home. He believes the homes on Lakewood Road and Autumn would be more impacted. He said he thinks that some of the homes on Lakewood Road have been impacted by the existing nursing home.

Mr. Rembiszewski asked if since this application has started have there been a lot of homes put up for sale. Mr. Brody said not to my knowledge.

Mr. Gray asked how far away this affect would be felt. Mr. Brody said it would probably stop within a block, maybe two. Mr. Gray said the largest impact would be on Ramshorn, Lakewood and Autumn Drives. Mr. Brody said yes. Mr. Gray said further down Ramshorn about a quarter of a mile. Mr. Brody said he doesn't think if you get a half a mile away there would be any impact. He said there could be an impact within a quarter of a mile. There is going to be emergency vehicles. There is going to be medium size trucks serving the facility. There is going to be a kitchen there. There is going to be a noise impact, etc.

Mr. Gray said you talked about inconsistent use and how that negatively affects the value but the inconsistent use preexisted before anybody in the neighborhood bought their homes. Mr. Brody said it is not the existing. The new facility would have the impact.

Mr. Palmer asked if Mr. Brody has ever seen a nursing home similar to this anywhere in Monmouth County in a residential zone. Mr. Brody said he has not. He has not seen a new nursing home in this type of a location. He said he has not testified to any new facility that's located in this kind of a 100% residential location. They have all been in mixed use areas.

Mr. Palmer asked if he has seen anything in any other county that is similar to this. Mr. Brody said no. He said this is unique because it is a pre-existing use and it is an expansion. He said he deals with all new assisted living facilities.

Mr. Cinelli said if your firm has not done this in other areas how are you basing your calculations of something not done in other areas. Should there be other types of formulas that you would present to us to show us what to expect. Mr. Brody said there aren't many other types of formulas. There is still a detriment to the value surrounding the properties.

Mr. Cinelli asked when you undertook this did you have the ability to speak to any of the real estate companies within Wall to get a flavor of the market conditions within the town. Mr. Brody said no. He said he looks at what's called ratio studies. They basically tell me the rate of inflation that's happening and the type of volume of sales that are taking place in Wall. He said he is doing work in Long Branch. He is up on multiple listing data. He said he has been reviewing Monmouth County Multiple listing data. Wall is certainly similar if not more progressive and more aggressive from an appreciation standpoint in comparison to some of the other communities that he has reviewed. Mr. Cinelli said you bring up Long Branch. That is a major redevelopment project. Mr. Brody said he has also worked in Freehold Township, Howell, and Millstone.

Mr. Cinelli asked if there was a scientific method to come up with your analysis. Mr. Brody said appraising is an opinion of value. Appraising is not a science. Appraising is an art.

Mr. Kerr asked if you can put a percentage on any type of negative impact of the existing facility currently have on those same adjoining properties. Mr. Brody said he doesn't think so. Unfortunately the market bought knowing it was there. If it were not for the existing facility they would have paid more.

Mr. Kerr asked what is your opinion of the main detrimental aspect of the new facility. Mr. Brody said volume. The new building is going to be enormous in comparison to the existing. There is going to be either larger trucks or more trucks regarding deliveries. There is going to be more ambulances. There is going to be more sirens. There is going to be huge air conditioners. It just comes down to volume.

Chairman Clayton asked if he could produce any of the studies for this site or for comparable sites that would reflect these figures. Mr. Brody said no he does not have empirical numbers that he uses for this particular analysis. Chairman Clayton said you stated there would be a 30% impact on real estate values in this area. Mr. Brody said that was a range. Chairman Clayton said that range would be driven by the square footage or height or volume of the structure. It would be greater for a larger building or less. Mr. Brody said the bigger the nonconforming use the bigger the inharmonious use. The bigger the inconsistent use the greater the impact on those parties living in the area.

Mr. Bernard said you have not done a specific study with regards to a nursing home or assisted living facility. Mr. Brody said we've done nursing homes and we have done assisted living. He said they haven't done too many assisted living because they're new and most of them aren't in these types of neighborhoods. Mr. Bernard said you have studied assisted livings in terms of their relationship – their impact on single family homes. Mr. Brody said yes. Mr. Bernard said I thought you said in your testimony you were not aware of any facilities that were next to single

family homes. Mr. Brody said he said recent facility. Mr. Bernard said you do have some study of nursing home and assisted living facilities and their impacts on single family homes. Mr. Brody said we have done them. He said he has done a couple in Essex County. He said the studies are his notes. He has many spread sheets and grids showing the concentric circles. Mr. Bernard asked if it was based on those studies that you opined that the negative impact would raise from 10% - 30%. Mr. Brody said yes. Mr. Bernard said you said there are various uses that are not harmonious with single family homes. You said it was similar to a supermarket or a funeral home. Mr. Brody said yes. It is something that doesn't fit into the zone and what the Master Plan had anticipated.

Mr. Bernard said you said that you looked at a house that was close to the site and you found that it was worth less than a home that was removed a bit more from the site. Mr. Brody said that is correct. Mr. Bernard asked if the house was worth less before the proposed use was there. Mr. Brody said every one of the studies we made the nursing home was in existence. As the neighborhood grew the choice between buying next to or not next to a nursing home were made by the buyers and sellers. The buyer that bought next to it could negotiate a little bit better.

Mr. Bernard asked if those cases involved the expansion of a use. Mr. Brody said no. Mr. Bernard asked if there was a long-term relationship between the location and the value of the property. Mr. Brody said practice says that there would be. There are three levels of depreciation.

Mr. Bernard said you opined that the values on Autumn Drive might be increased by 10% and those on Lakewood by 30%. What about Ramshorn? Mr. Brody said it is so hard because every house on Ramshorn is so different. You have giant homes, little homes.

Mr. Bernard said you talked about negative traffic impact, the noise impacts and fumes from the kitchen. Do your studies show that this use is going to generate a lot of traffic, that people are going to be able to smell the fumes and that they are going to hear the air conditioners? Mr. Brody said the general engineering said these things have to happen.

Mr. Bernard asked if Mr. Brody heard the testimony from the architect stating they will not hear them. Mr. Brody said he does not remember if he heard them address that criterion. He said when you have twice as many people it is not the same as if there are single family homes. Mr. Bernard asked if there was a basis for you're saying that there is going to be a diminution of value because you think it deals with all the truck traffic, the fumes, the air conditioners, etc. Mr. Brody said everyone here representing the developer may say that the noise isn't going to be there. But everyone has an air conditioner that is somewhere outside of their bedroom and it creates sound. When you put a 90,000 s.f. building next to single family homes you've got air conditioning that is a little different from single family homes. The applicant may be correct saying it is going to be sheltered and it's not going to be terribly noisy. There is no way the decibel level is going to be in comparison to what the zoning permits.

Attorney Gasiorowski said he is objecting to Mr. Bernard's comment because the applicant did not call or produce a noise expert to give expert testimony as to the decibel levels.

Mr. Slocum asked if the term grandfather comes into play with this application. Mr. Brody said not at all. The existing use may be a grandfathered use. That does not make it a right use.

Louis Grella, 2512 Ramshorn Drive, asked do you think it matters whether the noise is real or perceived. It could be that there is no noise increase, there is no smell increase but the perception of a buyer doesn't know that. Mr. Brody said yes.

Richard Drewes, 2505 Ramshorn Drive, asked are you aware that the project as proposed includes a land swap. Mr. Brody said yes. Mr. Drewes asked if he was aware that a piece of property that abuts the site is owned by the Township. Mr. Brody said yes.

Mr. Drewes asked is it more of an impact to those residents that bought lots knowing that the adjoining lot was a residential lot rather than a lot that would be used for a commercial expansion of a nursing home. Mr. Brody said the measure of the detriment is distance. Those properties closer to the new facility will be more negatively impacted than the properties further away.

Mr. Drewes said the other part of the land swap proposes a larger parcel adjoining other residential lots located on Autumn and part of Lakewood would be less impacted by the demolition of the building and moving it further down the street. There would be less of an impact because now you've got a large residential lot rather than a nursing home. Mr. Brody said you are talking about the area that is going to be dedicated to the town as open space. Mr. Drewes said there has never been any testimony regarding whether that land would be dedicated as open space. Mr. Brody said it depends on how the new facility is buffered from the balance of the land area. Mr. Drewes said you indicated that more buffering would be better and provide less of an impact. Mr. Brody said it can have some impact. Mr. Drewes said more positive than negative. Mr. Brody said yes.

Debi Gallo, 1530 Lakewood Road, asked in your experience have you run into situations where towns swap land. Mr. Brody said yes. Ms. Gallo asked how frequently that occurs. Mr. Brody said it is not an uncommon practice. Ms. Gallo asked for what purpose have you seen this done. Mr. Brody said firehouses, parks, etc. Mostly for municipal related uses. Ms. Gallo asked if he has ever seen it done in a residential neighborhood to foster commercial use. Mr. Brody said no. Ms. Gallo said so this would be unusual. Mr. Brody said it doesn't fit the norm.

Attorney Hirsch said though the swap is where the municipality would get open space; open space would be a municipal purpose. Mr. Brody agreed.

Attorney Gasiorowski said we don't know that. The Township is not before this Board. The Township has not spoken as to what it intends to do with the property.

Joe Lamendella, 1535 Deer Run Drive, asked Mr. Brody to explain the negative impact as a homeowner. He asked the long he owned the property the greater the negative impact on value. Mr. Brody said on a very hypothetical basis it could. He said he can't say yea or nay.

Mr. Lamendella said if he tried to sell his property within the first year and lost 15%, living within a half mile or he held on to his property for five years, would it be fair to say that I would be losing an additional percentage each of those years versus if I were living a half a mile away. Mr. Brody said you could. He said he can't say yes or no. Mr. Lamendella said his property would appreciate at a lower percentage. Mr. Brody said sure. Mr. Lamendella said what about if I live further away. Mr. Brody said not only would your property appreciate at a lower rate but

the assessment would have taken into consideration the fact that you're across the street from this property.

Ed Cook, 2528, Ramshorn Drive, asked if he had data regarding the increase in the number of visitors per additional resident. Attorney Hirsch said this witness does not have the expertise.

The Board recessed.

The meeting resumed.

Attorney Landis said to Mr. Brody the first thing you said is that you are testifying in support of some non-conforming use application and the opposition to some. The key is site specific. Mr. Brody said correct. Attorney Landis said there is no rule stating that this type use is appropriate or inappropriate for the neighborhood. Mr. Brody said very rarely is it in a 100% residential neighborhood. Attorney Landis said one of the things you said is there is a greater, in your opinion, resistance to buying property when you are looking at this type of facility. Mr. Brody said yes.

Attorney Landis asked if Mr. Brody was here when Mr. Keane testified. Mr. Brody said yes.

Attorney Landis said Mr. Keane said that the existing facility was converted to a nursing home in 1957. Mr. Brody said he thinks he recalls that. Attorney Landis said the existing facility predates many of the residential single family homes, correct? Mr. Brody said yes. Attorney Landis said a large majority of the property around the existing facility was vacant and undeveloped. Mr. Brody agreed.

Attorney Landis asked when were the homes on Autumn Drive constructed. Mr. Brody said he did not know.

Attorney Landis asked what the original selling prices of those homes were. Mr. Brody said he did not know. Attorney Landis asked if he did a study of the resale of those properties. Mr. Brody said yes. Attorney Landis asked when. Mr. Brody said the last two or three years. Attorney Landis asked how many homes have sold in that period. Mr. Brody said one, lot 40. Attorney Landis asked when did that sell. Mr. Brody said 2002. Attorney Landis asked for the sales price. Mr. Brody said \$1,325,000. Attorney Landis asked when prior to that the property was previously sold to the owner who sold it in 2002. Mr. Brody said he did not know. Attorney Landis said you don't have any information on the increase. Mr. Brody said no.

Attorney Landis asked how many homes currently are impacted by the existing facility.

Attorney Gasiorowski objected as to the relevancy of what impact the existing facility has on the homes. This is a new application. Attorney Hirsch said he thinks the question is relevant.

Mr. Brody answered probably the houses located on the northerly side of Lakewood Road. Attorney Landis asked how far down Ramshorn do you think the impact would be. Mr. Brody said probably the first six houses.

Attorney Landis said what do you mean by impacted. Mr. Brody said when you look out the window you see the facility.

Attorney Landis said how many homes are impacted in the sense right now that the facility is within easy sight of. Mr. Brody said it depends on what time of year it is. Attorney Landis said in your opinion how many homes on Cedar Street are impacted by the existing facility. Mr. Brody said calling the word impacted strictly view, probably just the first house on Cedar. All of the homes on Autumn have a limited view. Attorney Landis said 13 homes will be impacted from a view standpoint. Mr. Brody said yes. Attorney Landis asked if seeing the facility out your window a factor which might impact the market value. Mr. Brody said that would be an impact.

Attorney Landis said if the new facility is constructed how many homes would be impacted by it from a visual perspective. Mr. Brody said it is hard to say. He said there are no elevations relative to the height of the building and the height of the trees.

Attorney Landis said the height of the building is actually going to be lower than the existing facility. Would that knowledge change your opinion? Mr. Brody said no. It is still a big building.

Attorney Landis asked what homes on Lakewood Road would be impacted. Mr. Brody said every house.

Attorney Landis asked what homes on Autumn Drive would be impacted. Mr. Brody said probably the two at the cul-de-sac. Attorney Landis said the five which you previously said would be impacted will not be. Mr. Brody said everyone in the neighborhood is going to be impacted.

Attorney Landis said is it fair to say that the removal of the existing facility and replacing it with a facility further down the hill would lessen the impact on the homes on Autumn Drive. Mr. Brody said as long as you are talking about visual impact.

Attorney Landis said Mr. Brody testified stating the higher value of properties are on Autumn Drive. Mr. Brody said yes. Attorney Landis said Lakewood Road is a little lower. Mr. Brody said in comparison to Autumn yes.

Attorney Landis asked what is the zoning on Lakewood Road. Mr. Brody said R-30.

Attorney Landis said you did some sort of study with Lakewood approaching Cedar Street as to the sales prices of some of the homes on Lakewood as compared to sales a little further down. Mr. Brody said that is correct. Attorney Landis said when did you do that and why. Mr. Brody said he did them over the last three months. The reason was to try to see if there was some impact. Attorney Landis said there was only one sale over the last three years on Autumn Drive. Mr. Brody said that is correct. Attorney Landis asked if he researched Lakewood Road as to sales. Mr. Brody said yes. There was the sale of lot 19 which is on the corner of Riverside. There was also one on the corner of Cedar and Lakewood being lot 32. Attorney Landis asked when lot 32 sold. Mr. Brody said 1997. Attorney Landis asked what did that sell for. Mr. Brody said \$190,000. He said lot 33 sold in 199 for \$167,500. Lot 35 sold in July of 1999. It sold for \$273,500.

Attorney Landis said the house you used for comparison was west of Cedar Street. Mr. Brody said yes. Attorney Landis said you indicated that you researched the sales prices of some homes on Lakewood Road. Mr. Brody said correct. Attorney Landis said you attempted to research sale prices of comparable homes which were a little further away from the facility. You indicated one of the non-Lakewood Road lots west of Cedar Street was used as your comparison. Mr. Brody said they were all north of Cedar Street. They were all behind Lakewood Road. The house is the second lot in on Cedar. Attorney Landis said they were single lots. Mr. Brody said yes. Attorney Landis asked how the lots dimensions compare to the three lots on Lakewood Road do. Mr. Brody said they were similar. Every one of the lots on Lakewood Road is 100' frontage. The depths range between 184' and 182'.

Attorney Landis asked what the house north of Cedar sold for. Mr. Brody said \$305,000 in 2003.

Attorney Landis asked do you think if the existing facility is demolished and the proposed facility constructed would that increase, decrease or have no impact on the market value of the homes on Autumn Drive. Mr. Brody said every house on Autumn Drive and every house within a reasonable proximity of the facility is going to be impacted by its existence and its presence.

Attorney Landis said do you think that would have any positive, negative or no impact on the market values of those homes. Mr. Brody said he thinks the market values would be impacted. They would go down.

Attorney Gasiorowski objected to the form of the question. Attorney Hirsch said he is just asking him whether those homes will be increased or decreased in value.

Mr. Brody said with the demolition of the old nursing home the houses on Autumn would be positively impacted. That is offset by the construction of a large nursing home facility. It would be impacted negatively. There are no positives that come out of this.

Attorney Landis asked if there has been any testimony on smell which you are relying on. Mr. Brody said he has appraised nursing homes many times. He said he knows what it is like.

Gordon Gemma remains under oath.

Louis Grella, 2512 Ramshorn Drive, said you have been involved in developing other assisted living and nursing facilities. Mr. Gemma said that is correct.

Mr. Grella asked what would be the benefit of placing this facility within a residential area. What would be the positive effect on the residents being located within a residential area versus where it is normally located? Mr. Gemma said there are broad public policy benefits but individual benefits no.

Mr. Grella said he is talking about people living within the facility. He said the whole premise here is that placing this facility within our neighborhood would be beneficial to the seniors. Mr. Gemma said right. Mr. Grella asked how would a senior living within Mr. Keane's facility benefit versus a senior living in a facility in a different area. Mr. Gemma said the point the applicant was trying to make is it is appropriate to put this in a neighborhood. This is not just a nursing home. It is also an assisted living and that means they have some ability to interact a

little more because of the nature of their needs. Mr. Grella said there would be no benefit from the residents' perspective there. They would be isolated. They would be within the building. Mr. Gemma said they're quality isolated as if they were put someplace else that had no facility nearby them. There is the benefit of being around a single family residential neighborhood.

Joe Lamendella asked to have inherent beneficial use explained. He said to have an inherent beneficial use there has to be an assumption of need. Mr. Gemma said an inherent beneficial use is a determination of law. Courts decide what is inherent use based upon broad public policies. Hospitals have been found by the courts to be an inherently beneficial use. Nursing homes have been found to be inherently beneficial use. There also has to be how compelling is the need. That is a determination of what have you looked at to say this is needed and not only is it need but it is needed here. Mr. Lamendella said inherently beneficial use is definitely need based. Mr. Gemma said it is need based and also defined by the courts.

Mr. Lamendella said being there is no court here what is going to determine for this Board whether or not this meets inherent beneficial use. This is the addition of an assisted living facility so to me it has to be inherent beneficial use of assisted living. Mr. Gemma said there are other things the applicant has to do besides inherent beneficial use. There is actually a four prong test. Inherently beneficial use is simply a term of art defined by the courts to create a standard.

Mr. Lamendella asked if inherent beneficial use or Master Plan take preference. Mr. Gemma said the Municipal Land Use Law gives a power to zone to the town. It is inappropriate to zone by variance. The Board of Adjustment has the authority to give variance based upon meeting the criteria. In this instance you have a power of the town saying this is not the appropriate placed based upon the Master Plan, based upon the ordinance as to where its use is. If it were appropriate in the conditional uses and the conditional criteria that's one side. You have the zoning board using its authority to balance the public policy of inherently beneficial against all these other things. The Board should not seek to rezone. It is not appropriate for this Board. It is appropriate for this Board to look at what the Master Plan says and look at what the ordinance says and look at what the criteria for the use as set forth in the ordinance in determining whether or not to give the use or not.

Janet Hentschel, 1922 Troy Drive, asked how you come to the conclusion that the residents at Sunnyside do not benefit from being in a residential area. Mr. Gemma said that was not the question that was asked. The question asked was do they benefit by being within this residential area. In this area I don't see either vehicular or pedestrian access to facilities that someone who was in an assisted living facility may walk to. I don't see easy access to a store. I don't see easy access to a recreation area.

Ms. Hentschel said this is not only assisted living it is also a nursing home. These residents lived in residential areas. They get to enjoy the grounds. They get to go out to the garden and patio. Mr. Gemma said residential areas can be ten acre lots or multi family townhouses. The question is if they're living there and they want the ability to walk to a store. Ms. Hentschel said Foodtown is not far away. There are usually facilities adjacent to supermarkets. Mr. Gemma said he hasn't measured the distance between the nearest facility of any type and the proposed residents. There is nothing within sight distance.

Ms. Hentschel asked if this would be any different from Tower Lodge which is on Gully Road which is in a residential area with nothing around. Mr. Gemma said he is not familiar with it.

Ms. Hentschel asked if there was any kind of personal level involved here because we are talking about human beings where we're not talking about throwing a loved one in a bed. We are talking about care and quality of care. I had to place someone in a nursing home. There was no room at Sunnyside. I had to go out of Wall Township. It was not right for my father. He is now at Sunnyside. The care is unsurpassed. It is phenomenal. Is there any personal factor involved here other than sheer amount of numbers? Mr. Gemma said certainly quality of care means a lot. But as a planner when I do an analysis of quality of care when I represent my clients who are assisted living facility operators and developers we think we provide one of the highest quality of care available. Ms. Hentschel said the personal aspect isn't there. Mr. Gemma said first of all I counted the number of beds. Secondly I would say I am not qualified at this aspect to determine quality of care.

Attorney Landis asked Mr. Gemma is it your opinion that a nursing home and/or assisted living facility should never be permitted in a residential zone. Mr. Gemma said no.

Attorney Landis asked when it would be appropriate in a residential zone. Mr. Gemma said you would have to look at a number of factors not only need but accessibility to items that would be appropriate for the residents of the facility. How accessible is it to a store, recreation areas.

Attorney Landis said getting to the Master Plan, Wall Township's Master Plan does not make any specific reference to this type of facility. Mr. Gemma said that is correct.

Attorney Landis asked whether this type of use would ever be appropriate in a residential zone. Mr. Gemma said there are different levels of care that are provided for different facilities. When one is licensed in nursing home care facility you are licensed to provide everything including the provision of meds. These are patients that are less ambulatory. In assisted living facility those are patients that are more ambulatory. They get around more. They have communal types of eating. They occasionally venture out. They occasionally use the outdoor facilities. If they are close to a store they may walk to that store. Depending on the type of residents that you're building the facility for you have to look at what other amenities are nearby that would be appropriate for them to utilize.

Attorney Landis said an assisted living does accommodate ambulatory residents. Mr. Gemma said yes. Attorney Landis said wouldn't the ambulatory nature of those residents be a factor that you would consider as to whether or not the residential setting is appropriate for this facility. Mr. Gemma said they would certainly be a factor in determining what type of residential setting is appropriate.

Attorney Landis said Mr. Gemma said this particular facility in this setting would be inappropriate. Mr. Gemma said that is correct. He said he did see a lot of amenities if there were an ambulatory resident that would utilize them. I did not see a convenience store. I did not see a food store. I did not see a park they could utilize.

Attorney Landis said the facility is at the intersection of Ramshorn Drive and Lakewood Road. If you go up Lakewood Road there is a commercial shopping center with several different types of commercial establishments. Mr. Gemma said what would be appropriate would be that the

applicant would have to show that these facilities are available to the residents. That they could utilize them. That they are in walking distance. That it is safe walking. This is a facility in the middle of a bunch of single family homes.

Attorney Landis said you did take that commercial facility into account. Mr. Gemma said he did not measure how far away it is.

Attorney Landis asked how many assisted living facilities are in Wall Township right now and that are operating and how many beds do they have. Mr. Gemma said 294 beds. He said he doesn't have the actual breakdown of assisted living and nursing. He said he will provide that.

Attorney Landis asked how many other facilities in Wall Township provide for both nursing home and assisted living. Mr. Gemma said he did not know.

Attorney Landis said this application has both nursing and assisted living beds as opposed to only one or the other. That distinguishes it from the other senior healthcare facilities in Wall Township. Mr. Gemma said he does not know. Attorney Landis said there was some testimony that the concept of this facility is what they call aging in place. Mr. Gemma said there is a lot of aging in place facilities.

Attorney Landis said you are familiar with special reasons. Mr. Gemma said correct. Attorney Landis asked do you consider as a special reason the existing facility and its use predates the majority of the surrounding residents – single family homes. Mr. Gemma said no.

Attorney Landis said another consideration is that we're replacing the older facility with a new facility which better conforms to the site guidelines and criteria relative to the maintenance of the residence. Attorney Gasiorowski objected. There has been no argument that you are going to replace the existing facility which they extol the virtue of for the better facility. Attorney Hirsch said there was testimony about the new facility being able to better serve the clientele. Attorney Gasiorowski said it will have more beds. It will be bigger. Attorney Hirsch said we went beyond that.

Attorney Gasiorowski asked what is the old facility as far as the level of care given there has to do with this application. Mr. Gemma said he does not know.

Attorney Landis asked you have done work for Sunrise. Mr. Gemma said yes. Attorney Landis asked what zone that is in. Mr. Gemma said HB or OB zone. Attorney Landis said is that in the R-60 zone. Mr. Gemma said he thought it was in one of the permitted zones.

Attorney Landis asked what you do for Sunrise. Mr. Gemma said he assists them in receipt of the governmental entitlements as a planner. I help provide and make applications to the Department of Health for Certificates of Need.

Attorney Landis said Sunrise is a competitor of Sunnyside. Mr. Gemma said he has not worked for Sunrise for about a year and he has no idea whether they consider Sunnyside a competitor.

Attorney Landis said you are familiar with Hovson versus Township of Brick. Mr. Gemma said yes. Attorney Landis said did the court not determine in that case that under certain

circumstances boards would have to make exceptions to zoning ordinances to people who have disabilities. Mr. Gemma said reasonable accommodations. It was the Fair Housing Act case.

Attorney Landis said what you consider reasonable accommodations. Mr. Gemma said what the court did was provide the community the ability for these types of facilities someplace within the community. There was language used by the court that you cannot simply put one of these facilities in any residential neighborhood. There is a difference between trying to put a home for the developmentally disabled in a residential area that fits with the residential area versus putting a large facility in a residential zone was different.

Attorney Landis said didn't the court indicate that not only did the Township have to make reasonable accommodation within the town but also in the residential zone. Mr. Gemma said it did not say it had to make accommodations in every zone.

Attorney Landis asked if he referred to this facility as an institutional use. Mr. Gemma said it is institutional residential use. You can have both. It is an institutional residential use.

Attorney Landis said did not the court in the Hovson case specifically stat this type of use was not an institutionalized use. Mr. Gemma said he thinks they were looking at it institutionalized use in terms of a commercial use like a hospital. It would be equally inappropriate to say this is a residential single family house. You have to design what type of residential use it is. This is more akin to residential multi family house.

Attorney Landis asked would you conceive a residential use. Mr. Gemma said residence can be a lot of things.

Attorney Landis asked if he has read the transcripts of all the meeting he has not attended. Mr. Gemma said no. Attorney Landis asked if he has read any of the transcripts of the meeting she has not attended. Mr. Gemma said the transcript he read was of the testimony of Mr. Higgins.

Attorney Landis asked him to identify the negative criteria for this application. Mr. Gemma said the first prong is the impact upon the ordinance and the Master Plan. It is not permitted within the zone. Where it is permitted there are conditions of how it is permitted. This violates the goals and objectives of the Master Plan in terms of increasing density, residential density and residential areas. In terms of substantial detriment to the public use you have to use the four prong test of Sica. The first part is proving the compelling need. There are different versions of compelling need. The second part of the Sica test is the detrimental impacts. There seems to be negative impacts. There is a negative impact by virtue of the size, character, scope of the facility upon the surrounding neighbors. It is simply larger. It will be seen in sight distance. There are issues regarding traffic.

Attorney Landis asked about the traffic issues. Mr. Gemma said he listened to some of the testimony and even though it was not going to be a higher level of traffic it did indicate that there was some traffic going to and from the facility. He said he was not here for the traffic engineers that testified. He said he did hear Mr. Keane testify that there would be certain uses and trucks supplying the place. Hearing Mr. Keane testify the impact of traffic will be more than from a single family house.

Attorney Landis asked if there was anything else. Mr. Gemma said drainage and the impact of the lights. There will be a lot of windows and a lot of lights. Those are detriments.

Attorney Landis asked does not a certain test require the detriments to be substantial detriments. Mr. Gemma said when the court used the term substantial on the Sica test that four part analysis went to the heart of what it meant to be substantial. You have got to look at that four part analysis on the Sica case. You have to say how compelling is the need. What are the detriments, Can I ameliorate the detriments?

Attorney Landis said he has two rebuttal witnesses. He said he brought Mr. Higgins and Mr. Gagliano back. Attorney Hirsch said ok. He said we will go through the public comment and then your rebuttal could be at the end of the public comments.

Chairman Clayton said this will be carried to September 30th. That will be a special meeting.

Attorney Landis said he will waive the time limits.

There being no further business to come before the Board, a motion was made, seconded and unanimously approved to adjourn the meeting at 10:15 P.M.

Respectfully submitted,

Betty Schinestuhl
Recording Secretary