

**TOWNSHIP OF EGG HARBOR
PLANNING BOARD**

February 22, 2011

Solicitor: Christopher Brown, Esq.
Engineer: James Mott, P.E. (Mott and Associates), Robert Watkins, P.E. in attendance
Planner: Vincent Polistina, P.P. (Polistina and Associates) Vincent Polistina, P.P. in attendance
Traffic: Edward Walberg, P.E., (Remington, Vernick and Walberg) Joseph Angelastro, P.E., in attendance

A regular meeting of the Planning Board of Egg Harbor Township was held on the above date, 6:30 p.m., prevailing time, Egg Harbor Township hall, Egg Harbor Township, New Jersey. The Chairperson opened the meeting by reading the statement in compliance with the Open Public Meetings Act.

Roll Call:

Manuel E. Aponte, V-Chair., present	Joseph Lisa, 2 nd V-Chair., III
Committeeman John Carman, present	Mayor James J. McCullough, Jr.,* see below
Charles Eykyn, present	Peter Miller, Township Admin., present
James Garth, Sr., Chairperson, present	Paul Rosenberg, Alt. #II, present
Frank Kearns, Alt. #I, present,	Dorothy Saslav, present
Robert Levy, present	

* **May the record reflect:** Mayor McCullough has sent Committeeman Joseph Cafero in his place this evening due to another engagement

PUBLIC HEARING(S):

- SPPF 23-10** Preliminary/Final Major Site Plan
Community Food Bank of New Jersey 2119/1-2
Zone: RCD, 1.96 acre site, sewer/water, applicant 6735 Black Horse Pike
proposes to redevelop the existing food bank site. Waiver of Time – **Not Granted**
The applicant is proposing to demolish the existing facility and construct a new 29,160 sq. ft. office and warehouse structure. The building will consist of 8,873 sq. ft. of administrative offices and the remaining 20,287 sq. ft. will be warehousing. Other improvements include 66 parking spaces, storm water management, building mounted signage and landscaping. CAFRA

Checklist Waiver(s):

- Item #3:** Area Map of 1"=300' ft.
- Item #17:** Copy of any existing or proposed protective covenants, deed restrictions
- Item #30:** Location of adjacent septic and wells
- Item #32;** Sight triangle, the radii of curb line and street sign locations

Design Waiver(s):

- §94-8.H:** Buffers
- §94-9A:** Community impact report
- §94-44E(1)(I)[1]:** Front yard basin setback distance
- §94-44E(1)(I)[1]:** Side yard basin setback distance

- 5. §94-44E(2)(k): Minimum accessway for basin
- 6. §225-50.6D: Cultural resource survey

Variance Relief:

- 1. §225-7: **Front yard building setback (*Garden State Parkway*) *Trash Enclosure*:** 5.03' ft. prop.; 80' ft. req.
- 2. §225-7: **Side yard building setback:** 8.45' ft. prop.; 20' ft. req.
- 3. §225-7: **Front yard parking setback (*Garden State Parkway*):** -0- ft. prop.; 20' ft. req.
- 4. §225-7: **Front yard parking setback (*Black Horse Pike*):** 16' ft. prop.; 20' ft. req.
- 5. §225-7: **Side yard parking setback distance:** 10' ft. prop.; 30' ft. req.
- 6. §225-55.E: **Parking buffers:** a minimum of 10' ft. of separation between a building and the parking area. There shall be a minimum of four feet for sidewalk and five feet for landscaping. The applicant is proposing a parking area located closer than 10' ft. to the building and not providing the required landscaping area between the building and the sidewalk.
- 7. §225-55.M.3.: **Parking in required buffer areas:** no off-street parking spaces shall be permitted in any required buffer areas. Applicant is proposing off-street parking spaces in the twenty foot front yard buffer as required in the RCD zoning district.
- 8. §225-55.M.7: **Parking (*Distance between building and parking*):** parking shall be located 10' ft. from the building and provide a landscaped strip between the sidewalk and the building a minimum of four feet in width. The applicant is proposing a parking area which is closer than 10' ft. from the building and has not provided a four foot wide landscaped strip between the sidewalk and the building.
- 9. §225-63.A: **Building mounted signage (*quantity*):** one (1) building mounted sign per tenant permitted. Applicant is proposing one (1) building mounted sign on the Black Horse Pike building facade. The applicant is also proposing two (2) building mounted signs on the building facade facing the Garden State Parkway.

**** May the record reflect:** Board Member, Frank Kearns reclude himself from this application. He advised he is on the Board of Directors for the Community Food Bank.

Keith Davis, Esq., introduced himself as attorney for the applicant. He indicated this application proposes the existing food bank to be demolished and replaced with a new facility. He further noted variance relief is sought based on existing conditions with respect to lot area and lot size.

Attorney Davis advised this proposed development is an improvement and the applicant will comply with the Township Ordinance requirements for parking and the applicant will construct a storm water basin.

Attorney Davis asked if the following professionals could be sworn in: Andrew Schaeffer, P.E., Schaeffer, Nassar, and Scheidegg, Cantillon Boulevard, Mays Landing, New Jersey, New Jersey Licensed Engineer, Dan Scott Mascione, 1049 New Road, Northfield, New Jersey, New Jersey Licensed Architect, Mr. Larry Martin and Ms. Kathy McCann, with the Community Food Bank.. Board Solicitor Brown swore in all individuals referenced as well as the Board Professional's.

Architect Mascione introduced himself. He indicated the proposed building will be 26,350 sq. ft., with a 2,800 sq. ft. mezzanine. He indicated it is the applicant's intension to stay within the same foot print of the existing building. Architect Mascione advised the design of the building will be a combination of decorative concrete block and metal as depicted on Exhibit A1: Architect rendering.

Architect Mascione advised the existing building is chopped up into different areas. He indicated before the food bank occupied this space the facility was originally a lumber yard. Architect Mascione referred to Exhibit A3: ariel of existing building, advising that since this ariel was taken there have been both interior renovations and a loading dock area.

Architect Mascione stated the proposed facility will be more efficient use of the land with the proposed building. He referred to Exhibit A2: Architect Rendering showing there will a designated pantry, warehouse and office area. He advised both the pantry and warehouse are will both have facade signs that are 50 sq. ft. Architect Mascione indicated these signs are for directional purposes not advertising. He further noted that the applicant is not proposing any ground mount signs. Attorney Davis indicated he believes the variance relief is necessary for the signs since they are for directional purposes.

Engineer Schaeffer introduced himself. He indicated the existing building does not function properly on the inside and the circulation for trucks is not adequate. As noted, he advised the site is about 3 acres referring to Exhibit A8: colored site plan. Engineer Schaeffer advised the site does encroach on Garden State Parkway with a host of variance(s) that currently exist, which the applicant is trying seek relief for but will not exacerbate with this proposal.

Engineer Schaeffer advised the applicant does not need variance relief for the number of parking spaces, however, relief will be needed for the location of the parking. He advised parking will be extended onto the Garden State Parkway property, but the applicant has received approval from the Turnpike Authority to do so. He referenced Exhibit A4: Letter from the Turnpike Authority. Engineer Schaeffer stated the applicant is waiting for the Turnpike Authority to send a signed agreement back to them.

Engineer Schaeffer advised there is currently a shed and a mobile home encroaching on the Food Bank property. He indicated as referenced in Exhibit A6: Letter from Harbor Crossings Mobile Home Park. The shed will be relocated to their property and once the owner of the mobile home, Ms. Verdine leaves her trailer it will be moved off the Food Bank property and onto the mobile home park property.

Engineer Schaeffer referred to Exhibit A8: site plan of food bank, advising the applicant is seeking front yard variance relief to the Garden State Parkway. He advised this is for the trash enclosure, which will be 5.03' ft. instead of the 80' ft. required. He also noted the proposed building will be 45.7' ft. from the Parkway instead of the 50' required, however, he advised the Board that the existing building, which will be removed is currently 6' ft. from the Parkway.

Engineer Schaeffer advised the truck loading dock area will be moved back which will eliminate noise and views for the residents within the adjacent mobile home park. He noted the applicant will encroach on the Parkway with the proposed parking. He indicated the applicant needs variance relief since the parking setback is suppose to be 20' ft. Again, he referred to the letter granting this encroachment previously referenced.

Engineer Schaeffer stated the applicant is also seeking variance relief along Black Horse Pike. He indicated the applicant is required to have a 20' ft. parking setback, however, the applicant is proposing 16' ft. He further noted the applicant is suppose be 30' ft. from a residential use, however, they will not be. He indicated the building is currently at 8.45' ft. from the property line with the mobile home park and it suppose to be 30' ft. He indicated the applicant is providing landscaping in this area.

Engineer Schaeffer stated the applicant is also seeking a rear yard setback. He indicated the applicant is 9.8' ft. from the rear line of property and they are suppose to be 50' ft. He also noted the applicant has a setback for the basin in the side yard and the applicant needs variance relief for the buffer of the parking area. He advised there is suppose to be a separation of 10' ft. between the building and the parking, however, the applicant is proposing 4' ft.

Engineer Schaeffer advised all variances are setbacks and they relate to the undersized nature of this site. He explained because the site is smaller the variance relief becomes larger. Engineer Schaeffer stated the improvement to the building, from this new proposal, is obvious and it will accommodate the functions of the site better.

Engineer Schaeffer advised currently the delivery trucks stop on the Black Horse Pike shoulder and back into site. He explained with the proposed it will allow for trucks to turn around on site and for the applicant to keep trailers on site for a day or two (2) for off-loading. Engineer Schaeffer advised he believes the variance relief can be granted without detriment. He also noted the applicant is seeking waiver relief. Such as the area map. He indicated the applicant has no protective covenants and the applicant will provide Department of Transportation requirements. Engineer Schaeffer also advised the applicant is seeking a waiver not to show adjacent well(s) and septic systems. He did note the applicant will comply and supply sight triangle and radii information, but asked if this could be a condition of approval.

Engineer Schaeffer advised there are a few design waivers being sought. He indicated the Community Impact Report is moot and the applicant is seeking variance relief for the basin in the front yard and side yard setbacks. He also advised the applicant is seeking relief for the minimum accessway for the basins. He indicated the basin will be privately maintained and not provided to the Township. Engineer Schaeffer advised the applicant is also seeking a waiver from providing a Cultural Resource Survey because the parcel is already developed and privately maintained.

Engineer Schaeffer explained the applicant is also seeking a waiver from providing Affordable Housing. He indicated there is an exemption within the law for community centers. He stated he further believes the Food Bank should not be applicable to this require, since the Food Bank is providing food services to the poor.

Township Administrator Miller asked what the elevation of parking is to the Parkway? Engineer Shaeffer stated the Parkway is about 8' ft. to 10' ft. higher then the parking area.

Mr. Larry Martin, Director of Special Projects, Community Food Bank of New Jersey, sworn in: Mr. Martin stated the Community Food Bank has two (2) facilities. One site is located in Hillside, New Jersey and the other site is the subject of tonight's meeting. He advised the Food Bank distributed 7 million pounds of food and in 2010 have serviced an additional 2,000 families.

He advised the site is no longer efficient the Food Bank must build a new building. Mr. Martin advised the heat does not work within the facility nor does the plumbing.

Board Member Aponte stated the applicant has mentioned the affordable housing fee. Attorney Davis advised this fee is paid at the issuance of a building permit. Attorney Davis indicated he will consult with the Solicitor to determine if they are both in agreement that the Food Bank should not pay. Attorney Davis advised he believes the food bank qualifies since this is "not for profit" company. He advised the applicant and himself will work with the Solicitor between now and the issuance of a building permit.

Motion Aponte/Eykyn to open public portion.

Steve Angelucci, sworn in: Mr. Angelucci stated that in addition to working for the Department of Labor he has worked as a free lance writer. Mr. Angelucci stated about eight (8) years ago he did a story concerning the mosaic located on the food bank facade. He advised it is a substantial work of art. Mr. Angelucci stated he feels it is morally and ethically a crime to allow for the mosaic to be ripped down.

Mr. Angelucci explained that according to the "Artist Visual Rights Act of 1990", this mosaic is granted protection. He indicated that in some instances the artist can institute a lawsuit. Mr. Angelucci provided an example. He advised there was a well known artist who did a mural of Dr. J. , which was covered over. The artist instituted a suit and was awarded 1.1 million dollars. He advised the United States Government will contribute \$250,000.00 towards this settlement.

Mr. Angelucci advised if the Planning Board moves forward and the artwork is destroyed there will be consequences. He advised this item should be tabled so the Board Solicitor can review this act.

Bobby Heisman, sworn in: She advised the artwork was created under the influence of Antonio Goudy, who is an artist in Barcelona, Spain. Ms. Heisman provided a book on Antonio Goudy marked Exhibit 01 for the Board to review. She also provided Exhibit(s): 02 and 03 pictures of existing art work.

Ms. Heisman asked if the building is constructed on the same foot print as the existing. Then she can not understand why the mosaic walls must come down? She stated she does not see why the mosaic has to be destroyed. She indicated there were many people in the community who are upset with it being destroyed. She advised the mosaic was an uplifting experience and the proposed building looks like just a regular building. She stated the artwork on the existing building can not be duplicated. Ms. Heisman stated the best thing the Board can do is to save the mosaic. .

Board Member Saslav asked if the mosaic is tile? Ms. Heisman advised the mosaic is comprised with pieces of tile, glass, and mirrors. She advised it is made out of different types of material. Board Solicitor Brown asked what Ms. Heisman's address is. Ms. Heisman advised she lives at 4 Walter Avenue in the adjacent Mobile Home Park. Township Board Solicitor Brown asked Mr. Angelucci his address. Mr. Angelucci advised his address is 322 East Cos Cob Drive, Galloway Township, New Jersey.

Township Administrator Miller asked who commissioned Ms. Heisman? Ms. Heisman stated

she volunteered her time and she began six (6) years ago. Township Administrator Miller asked if the mosaic are panels? Ms. Heisman advised they are not. Township Administrator Miller suggested maybe there is other artist who could do a similar proposal. He further noted that unless someone designates this as a historical site. The applicant has the ability take down this building. Township Administrator Miller indicated the Board always appreciates public art being considered within the approvals. However, the applicant is demolishing this building because it is falling down.

Ms. Heisman stated she believes the walls can be bolstered. Attorney Davis advised the community does not have any art standards. He indicated his client has seen the Artist Review Act. Attorney Davis indicated the artist may have cause of action to the property owner, but not this Board. He indicated this should have no bearing on this hearing.

Mr. Martin advised he has spoken with E.P. Henry representatives about the facility and the ability to preserve the mosaic. He indicated they will try to preserve in blocks if possible. Attorney Davis further noted that the property owner will donate sections of the mosaic or give them to anyone whom would like. He advised this could be made a condition of approval if the Board desires. However, he is not sure what will happen in the field, to mosaic, once constructions takes place

Chairman Garth advised that as a member of the fire company (former chief) he knows a section of roof at this facility has collapsed and the building is not in good shape. He stated it is ashamed that the building has to be replaced. He stated the block walls are deteriorating and the electrical is terrible. Chairman Garth advised you have to walk through various rooms in order to turn off breakers.

Eileen Raynes, 410 North Douglas, Margate, New Jersey, sworn in: Ms. Raynes advised she has been a life long friend of artist who created the mosaic. She also noted she watched the project happen. Ms. Raynes advised the mosaic was designed with tiny shards of glass, mirror, pottery, etc. She indicated the proposed project does serve a purpose to the community, but there is a dilemma since the mosaic is a piece of artwork.

Ms. Raynes asked if there could be a way in which the walls could be built around and become part of the interior of the building. She stated there really should be a way to keep this. She stated somehow it should be incorporated. Ms. Raynes advised this mosaic can never be duplicated and there is very little artwork in New Jersey such as this. She advised this site is a real landmark and if there is some way that part of this can be preserved it should be. She thanked the Board for their consideration.

Detelina Stoykoba, Ocean City, New Jersey, sworn in: Ms. Stoykoba advised it was disturbing to her that the applicant's professionals are showing exhibits of the building from 16 or more years ago. Ms. Stoykoba stated she helped Ms. Heisman create this mosaic. She advised many companies in the area helped provide the glass and tile for this artwork. She advised this mosaic was created with much love and enthusiasm. She advised Bessie worked on these walls through her cancer and chemotherapy treatment.

Ms. Stoykoba advised you could hire another artist to create another mosaic, but why? It already exist. She asked why the applicant can not incorporate this mosaic in the design of the new building. The whole wall is covered. She advised the women who began the mosaic are not young and they devoted so much time to work on the building. She stated you can not

destroy something and then think others will make something else.

Township Administrator Miller indicated Attorney Davis testified the applicant will make an effort to keep as much of the mosaic they can. Township Administrator Miller advised a photographic history of the building can be made and placed in the community center.

Board Member Levy asked if there is any way possible to save what can be and create a landscaping feature? Attorney Davis advised the applicant can try to fit a piece of wall into the landscaping. He further noted, he understands the concerns, as well as the applicant. Attorney Davis also reminded this proposal is for the Food Bank, who are a non-profit organization. They are focused on supplying food to families in this area that can not eat. He stated the proposed building is fugal and is bare bones. The funds given to this organization go to food for families that need it.

Attorney Davis indicated the new building is a positive for Egg Harbor Township and the applicant will keep as much of the mosaic as they can. Attorney Davis stated there are serious structural issues with the existing building and it can not be rebuilt to meet the Food Banks needs. He advised, again, if the applicant can, they will incorporate as much of the panels as they can.

Motion Carman/Aponte to close public portion. Vote 9 Yes

Board Planner Polistina asked for clarification. He asked if any of the existing walls of the food bank will be used? Architect Mascione advised no existing walls of the facility will be kept. Board Planner Polistina stated then the variance relief sought for setbacks are new not pre-existing? Attorney Davis stated yes, however, the relief sought is based on the premiss that the proposed facility will be exactly where the existing building is.

Engineer Schaeffer advised the applicant can place more landscaping along the property line of building with the mobile home park. If there is a concern. Board Planner Polistina asked what will happen to the person who is 8' ft. away from this facility? Attorney Davis advised he has explained the nature of development and have executed an agreement with her. He indicated she is aware of what will happen and will protect her. Attorney Davis indicated he has also spoken with the mobile home park owner. He advised the applicant has the legal right to eject the placement of this individuals trailer from their property, however, he advised they are working with her and the park owner.

Township Administrator Miller stated even though the building will be new. The applicant is not exacerbating the relief since it placing it where the lumber yard was for many years. He advised this is a community service and the encroachment onto the Parkway is not an issue and authorization was given by the Turnpike Authority to do so. He advised the applicant did not create the situation that exist. Township Administrator Miller stated he would urge the applicant to maintain a historical display either by leaving the mosaic where it is or placing what can be saved in the landscaping and parking area. He suggested that maybe the block could be cut. Board Member Levy advised the applicant has to try and make the best effort they can in retaining the mosaic. He advised the Board does promote public art and does not want to see the mosaic thrown away.

Architect Mascione advised the E. P. Henry materials are interlocking. This is what is proposed

for the facade of building. He stated the intent to keep the mosaics is a concern. Architect Mascione stated we are located in the North East and the thaw cycle is a tremendous issue. He stated portions of the mosaic are already falling off. He indicated he is not taking this situation lightly. He looked at trying to maintain the building but when you look at the requirements for fire, water, and electrical, added to the mold problems the existing building is at the end of its life and he is not sure what can be done. Architect Mascione stated he did look at incorporating the mosaic in the proposed building. Board Member Aponte advised the mosaic was a labor of love and should be considered.

Ms. Raynes spoke up from the audience advising there are many intelligent engineers. There has to be a sensitive way of removing the mosaic. Architect Mascione advised he will be on site, as well as, E.P. Henry representatives when the building begins demolition.

Township Administrator Miller advised he has no issue with granting front yard variance relief for the trash enclosure or for the parking. He indicated the front yard is the Parkway, which is elevated by 8' ft. - 10' ft. and they will not be seen. He also advised the side yard setback is not an issue. He indicated the impact is no greater than what currently exist. He indicated the applicant is attempting to keep as many cars on site and off the Black Horse Pike. He indicated the parking in the buffer area will be supplemental plantings, which is not an issue. Also, the building mounted signs are reasonable based on the proposal and direction to be given once on site. Again, they face the Parkway. He also noted he does not have any issue with the setbacks for parking along the Black Horse Pike.

Board Solicitor Brown stated as a condition of the approval the applicant will agree to hold harmless the Township should the mosaic either be destroyed or removed. The applicant has agreed whatever portions of the mosaic can be saved will be. The applicant has agreed to incorporate whatever has been saved into the new design features, as well as, giving portions of the mosaic to those who desire it. Board Solicitor Brown advised the applicant has agreed to provide a photographic history of the mosaic for display.

Township Administrator Miller advised the Food Bank is a great community benefit and taking everything that has been discussed into context he will be voting yes on this application.

Motion Eykyn/Aponte to grant requested checklist waiver(s) Item #1 and #3: Vote 9
Yes: Aponte, Carman, Eykyn, Garth, Levy, Cafero, Miller, Rosenberg, Saslav

Motion Aponte/Saslav to grant requested design waiver(s): Vote: 9
Yes: Aponte, Carman, Eykyn, Garth, Levy, Cafero, Miller, Rosenberg, Saslav

Motion Miller/Eykyn to grant requested variance relief: Front yard building setback (Garden State Parkway) Trash Enclosure: 5.03' ft. prop.; 80' ft. req.; Side yard building setback: 8.45' ft. prop.; 20' ft. req., Front yard parking setback (Garden State Parkway): 0-10' ft. prop.; 20' ft. req. Front yard parking setback (Black Horse Pike): 16' ft. prop.; 20' ft. req. Side yard parking setback distance: 10' ft. prop.; 30' ft. req., Parking buffers, Parking in required buffer areas, Parking (Distance between building and parking), Building mounted signage (quantity):. Vote 9
Yes: Aponte, Carman, Eykyn, Garth, Levy, Cafero, Miller, Rosenberg, Saslav

Motion Miller/Aponte to grant conditional preliminary/final major site plan approval. Vote 9

Yes: Aponte, Carman, Eykyn, Garth, Levy, Cafero, Miller, Rosenberg, Saslav

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| 2. <u>SPPF 07-09</u>
Egg Harbor Associates, LLC
as authorized agent for
Wal-Mart Real Estate Business Trust
"Oak Tree Plaza" | Preliminary/Final Major Site Plan
2118/1 & 16-21
7801 Black Horse Pike
6820 Old Egg Harbor Road, Fire Road
Waiver of Time – Not Granted |
|---|---|

Zone: RCD, 34.49 acres site, sewer and water, applicant is proposing to demolish the existing buildings and parking areas currently on site and is proposing the construction of a 244,599 sq. ft. shopping center. The applicant proposes to construct a 188,463 sq. ft. WalMart anchor store which includes a seasonal garden center and grocery store, two (2) adjacent retail stores consisting of 18,588 sq. ft. and 18,275 sq. ft., as well as, a 4,000 sq. ft. bank with three (3) drive thru lanes, a 5,895 sq. ft. dine in restaurant, a 3,400 sq. ft. restaurant with drive thru and a 4,250 sq. ft. fast food restaurant with drive thru facility. Other improvements include 1,106 paved parking spaces, freestanding and building mounted signage, landscaping and storm water management. CAFRA.

Checklist Waiver(s):

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| 1. Item #17: | Proposed protective covenants and deed restrictions |
| 2. Item #35: | Typical floor plans and building views/elevations |

Design Waiver(s):

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| 1. §94-22A: | Landscaping irrigation |
| 2. §94-44D(2)(j): | More than two feet of water for 50 year storm event |
| 3. §94-44E(1)(i)[5]: | Side slope of basins |
| 4. §94-44E(1)(j)[1][b]: | Top of basin width |
| 5. §94-46B(1): | Minimum pavement design |

Variance Relief:

- 1. §225-63A:** One (1) building mounted sign is permitted per tenant. Applicant is proposing the construction of one (1) building with three (3) tenants, WalMart and two (2) retail stores. Three (3) building mounted signs are permitted, one (1) for each tenant. The applicant is proposing four (4) building mounted signs on the proposed WalMart building.

- 2. §225-63A(1):** No building mounted sign shall exceed two (2) square feet in area for each one (1) foot width of the front building facade which is devoted to the business and to which it is attached; and shall not exceed 250 square feet on any one side. The applicant is proposing four building mounted signs for a total area of 550.64 sq. ft., whereas a maximum area of 250 sq. ft. is permitted for a building with a front facade of 500± feet.

- 3. §225-63A(3):** No building mounted sign shall have a vertical dimension in excess of five (5') feet. The applicant is proposing a building mounted sign with a vertical dimension of eight (8') feet, whereas a maximum of five (5) feet is permitted.

Stephen Nehmad, Esq., introduced himself attorney for the applicant. He indicated as the record should reflect this is the applicant's third meeting night. He advised the applicant had

presented the case in the course of the first two (2) hearing nights. He advised when the meeting concluded last month the attorney for the opposition had concluded cross examination of the applicant's engineer, traffic engineer and acoustical engineer.

Attorney Nehmad advised he informed Mr. Gasiorowski that two (2) the applicant's professionals will not be present this evening. Therefore, this application will not be finishing. He advised these professional's had other commitments. Attorney Nehmad explained that during the last hearing he rested his case. Attorney Gasiorowski advised he did not finish asking questions of the applicant's engineer, Mr. Zappala. He advised there are several questions he has and he would like to discuss them. Attorney Nehmad stated Attorney Gasiorowski was finished with Engineer Zappala. Attorney Gasiorowski advised the issue he wants to get into do with the storm water basins within the setbacks. Board Solicitor Brown advised Attorney Nehmad if Engineer Zappala is present let Attorney Gasiorowski ask his questions so that this can move forward.

Attorney Gasiorowski advised there is one (1) house keeping order. He indicated when he asked the applicant's engineer last month a question concerning the existence of a certain ordinance concerning 75' ft. buffers and presented a copy of Ordinance 46-2000 he was not aware of a subsequent ordinance, which he did not have then.

Attorney Gasiorowski stated he spoke with the Township Clerk's office concerning the buffering requirements and was presented Ordinance 46-2000, however, Attorney Nehmad actually provided a copy of Ordinance 13-2010, which vacated Ordinance 46-2000. Attorney Gasiorowski indicated that after he received this information he made an OPRA request marked as O4-11 concerning whether or not Ordinance 13-2010 was referred to the Planning Board. He stated based on Exhibit 04-11, the Planning Board Secretary presented a letter in response

Attorney Gasiorowski stated Under Municipal Land Use Law , specifically 40-55D-64, the Planning Board must review an ordinance and refer it back to Township Committee. He stated in this particular case this was never done. Therefore, based on the Municipal Land Use Law Ordinance 13-2010 is voided on its face. Thus this Board can not give consideration to the 75' buffer. It is required.

Attorney Nehmad stated Ordinance 13-2010 was adopted and is in full legal force and effect. He advised Attorney Gasiorowski may force the reasons of this ordinance at the appropriate time, however, it is not a determination this Board can make. He advised at this time Ordinance 13-2010 is in effect until the court decides. Attorney Nehmad stated for the Board to enter a legal opinion is out of order. Board Solicitor Brown advised he has reviewed the situation. One item that was left out of Attorney Gasiorowski testimony is another section of the Municipal Land Use Law, more specifically 40-55D-26, which indicates that failure of the Board to transmit a report within a 35 - day time period relieves the governing body from the requirement of recommendation.

Attorney Gasiorowski asked if this information was sent to the Board? Board Solicitor Brown stated he understands it was and for whatever reason was not discussed during a meeting. Board Secretary Wilbert advised this is correct. Attorney Gasiorowski indicated he would like to see where it was sent to the Board.

Attorney Gasiorowski asked for Engineer Zappala. Board Solicitor Brown asked if Mr. Zappala understands that he is still under oath? Engineer Zappala stated yes.

Attorney Gasiorowski referred to the February Agenda stating the application before this one sought design waivers from section 94-44E(1)(I)[1]. He asked if Mr. Zappala was familiar with this ordinance? Engineer Zappala stated he would have to review the section. Attorney Gasiorowski referred to the February Planning Board Agenda. Board Solicitor Brown marked the February Planning Board Agenda as Exhibit 05-11.

Township Administrator Miller asked if Attorney Gasiorowski should be discussing the waiver relief of an application that just heard by the Board. He indicated Engineer Zappala presented this application three (3) months ago. Is it appropriate to ask questions about another application where this engineer did not design? Attorney Gasiorowski stated he will not be asking questions about the other application. He advised he is just referring to the design waiver, which is also being sought for this one. He indicated he will be asking the engineer about this waiver because he designed this project.

Attorney Gasiorowski then read into the record section 94-44(1)(I)[1]. He then asked Mr. Zappala if he was familiar with this ordinance and if the site, as designed meets this requirement? Engineer Zappala stated yes. Attorney Gasiorowski then stated basin (III) has a depth greater the 2' ft. in a 50 year storm, therefore, it can not be located within a front or side yard setback. He then stated basins (I) and (II) are located in the front yard setback are they also an issue. Engineer Zappala explained that the section of the ordinance referenced has an exception. He indicated basins are allowed within the setback if they have a depth less then 2' ft. in a 50 year storm. So basins (I) and (II) comply.

Attorney Gasiorowski stated do the basins not have walls? Engineer Zappala stated the question concerned the depth of basin. Attorney Gasiorowski stated then it is the opinion of Mr. Zappala that these basins comply with ordinance. Engineer Zappala stated yes. Attorney Gasiorowski stated he is finished. He then asked for the fiscal expert.

Attorney Nehmad indicated Mr. Crane is present. Board Solicitor Brown asked Mr. Crane if he understands he is still under oath. Planner Crane indicated yes. Attorney Gasiorowski asked if Mr. Crane prepared the fiscal impact? Planner Crane stated yes. Attorney Gasiorowski stated he reviewed Mr. Crane's report, as well as, the transcript of the meeting were it was presented. Therefore, he asked Mr. Crane if he came up with a formula in order to determine the amount of taxes this site will create in a year. Mr. Crane advised he prepared a chart that provided taxes to Egg Harbor Township, the Egg Harbor Township School Board and the County of Atlantic.

Attorney Gasiorowski stated the purpose of a fiscal impact report is to show a gain and that taxes are secure with the proposed? Planner Crane stated yes. Attorney Gasiorowski asked when Mr. Crane prepared his report did he look at this site as a blank slate and then considered the construction of the building in order to come up with the 33 million dollar ratio, which makes the assessed value 15 million dollars? Planner Crane stated he used the equalization ratio of 48.1%, which was in effect at the time he created his report. Attorney Gasiorowski asked how much in taxes would this community collect from the proposed? Planner Crane advised the net fiscal impact would be \$66,713.00 to the Municipality. He advised the school district would receive \$409,996.00, and the County of Atlantic would be \$73,661.00. Attorney Gasiorowski asked if there is a building currently on

site? Planner Crane stated yes. Attorney Gasiorowski asked if it is not being taxed. Planner Crane indicated he assumes. He did not look at the tax records. Attorney Gasiorowski asked if Mr. Crane made any attempt to see the revenue that is collected from the existing facility on site. Planner Crane stated no, he did not believe it was germane to his report.

Attorney Gasiorowski referred to Exhibit O6-11 a three page document containing current tax information with respect to this site. Attorney Gasiorowski stated the assessment of the property currently is 13 million dollars. Thus he explained this is not a situation where your going from -0- dollars. He stated you are going from 13 million to possibly 15 million dollars. Planner Crane stated the report discusses proposed revenues. He indicated the value of the buildings could be -0- he advised they could be eliminated at anytime.

Attorney Gasiorowski indicated the fiscal report indicated the project will not increase the burden of the school system. He asked if Mr. Crane gave any indication on how many of the 450 employees, Attorney Nehmad advised would be employed here, that will be moving into the Municipality. Planner Crane stated he did review some studies. He stated that based on unemployment today, both local and regional, he the employees for this facility will not come from far away. Attorney Gasiorowski asked what studies were used? Planner Crane indicated he could not give specific names, however, he advised he did not consider that there would be a large amount of new resident's to the Township based on this application.

Attorney Gasiorowski stated he had no further questions for Mr. Crane.

Attorney Nehmad indicated he does have some questions for Planner Crane. Attorney Nehmad asked if there is a specific method that a Planner uses in order to prepare a fiscal impact report. Planner Crane stated yes. Attorney Nehmad asked if a study prepared by Burchell and Listokin, published by Rutgers, called "The New Practioners Guide to Fiscal Impact Analysis" used? Planner Crane advised it is the main study used for the preparation, however, he indicated he also uses "The Development Impact Handbook, by Burchell and "The New Fiscal Impact Handbook", which has been updated. Planner Crane advised he also reviews municipal budgets and the tax ratables for the County. Attorney Nehmad asked if this documentation accepted within Planner Crane's profession? Planner Crane stated yes. Attorney Nehmad asked if the Fiscal Impact Report prepared for this application in line with the accepted planning principals for its preparation? Planner Crane stated yes.

Attorney Nehmad asked if Planner Crane was a resident of Egg Harbor Township. Planner Crane state yes. Attorney Nehmad asked for how long? Planner Crane stated 28 years. Attorney Nehmad asked since Planner Crane has lived in Egg Harbor Township for this period of time, thus he must be familiar with the building that is currently on site, the Atlantic Electric building? Planner Crane stated yes. Attorney Nehmad asked if Planner Crane can advise how long the Atlantic Electric building has been vacant. Planner Crane indicated that it has been at least ten (10) years. Attorney Nehmad asked if the property owner wanted to do so could they demolish this building tomorrow? Planner Crane stated yes.

Attorney Nehmad stated he had nothing further.

Attorney Gasiorowski indicated he has no further questions for the witnesses present.

Attorney Gasiorowski advised he would like to call his first witness, Alexander Litwornia. Board Solicitor Brown swore in Mr. Litwornia. Attorney Gasiorowski asked whom Mr. Litwornia was employed by? Mr. Litwornia indicated he is employed by Litwornia Associates. He advised he does engineering work as a consultant. Attorney Gasiorowski asked Mr. Litwornia what were his credential's? Mr. Litwornia stated he has a degree in civil engineering from Rutgers University. He indicated he is a licensed engineer in the State of New Jersey. Attorney Gasiorowski asked how long has Mr. Litwornia has been a professional? Mr. Litwornia indicated it has been over 30 years.

Attorney Gasiorowski asked if Mr. Litwornia has prepared site plans, subdivision, etc.. and if he has had to appear before Planning Boards, Zoning Boards, and superior court for the State of New Jersey. Mr. Litwornia indicated yes, he has prepared plans and yes he has testified before various Board's and the Court. Attorney Gasiorowski stated Mr. Litwornia's expertise is in the field of traffic. He asked what dealings has Mr. Litwornia had concerning traffic? Mr. Litwornia indicated he has worked on a number of projects related to traffic and traffic engineering, for both private and municipal clients.

Attorney Gasiorowski asked if Mr. Litwornia has come before zoning and planning boards providing testimony as a traffic expert? Mr. Litwornia stated yes, including this one. Attorney Gasiorowski asked if Mr. Litwornia has had the chance to design roads while preparing a site plan or subdivision? Chairman Garth indicated he would accept Engineer Litwornia's qualifications, since he has been before this Board previously. Attorney Gasiorowski indicated he is establishing a record.

Board Solicitor Brown advised Attorney Gasiorowski has the right to ask questions from Mr. Litwornia concerning this qualifications. Chairman Garth indicated he understands. He was not sure if Attorney Gasiorowski wanted the Board to accept his qualifications. Attorney Gasiorowski stated he will take it that the Board accepts Mr. Litwornia as a licensed civil engineer and traffic expert in the State of New Jersey. Chairman Garth stated yes.

Attorney Gasiorowski asked if Mr. Litwornia visited the site in question? Mr. Litwornia stated yes. Attorney Gasiorowski also asked if Mr. Litwornia had access and if he reviewed all the plans submitted to the Planning Board for this application. Mr. Litwornia indicated yes. Attorney Gasiorowski further asked if Mr. Litwornia has reviewed the Township Master Plan and the Zoning Ordinance for Egg Harbor Township. Mr. Litwornia stated yes.

Attorney Gasiorowski further asked if Mr. Litwornia was present for the testimony of the applicant's professional's and if has read the transcripts of this hearing. Mr. Litwornia advised he was present for some testimony, however, he advised he has read the transcripts.

Attorney Gasiorowski asked if Mr. Litwornia was familiar with the documents from the Department of Transportation for the connector road? He specifically asked of the one dated August 4, 2009 in which the D.O.T., outlined a road must be constructed between the Black Horse Pike and Old Egg Harbor Road and it must be owned by the Township? Mr. Litwornia stated yes. Attorney Gasiorowski then asked if Mr. Litwornia was aware of a subsequent letter which was an interpretation to the August 4, 2009 from the D.O.T. advising what was really meant is that the connector road must be the functioning equivalent of a road? Mr. Litwornia stated yes.

Attorney Gasiorowski asked if Mr. Litwornia read or was present when Attorney Nehmad indicated it was the applicant's intention to either by an easement or a R-O-W, give the Township and the public the use of this connector road, but would be maintained by the applicant? Mr. Litwornia stated he remembers the road would be maintained by the applicant. Attorney Gasiorowski asked if it would be a private road to be used by the public. Mr. Litwornia stated yes.

Attorney Gasiorowski referred to Exhibit A2: colored site plan, asking Mr. Litwornia if the connector road is shown that was designed by the applicant? Mr. Litwornia stated yes. Attorney Gasiorowski asked if Mr. Litwornia reviewed this roadway in order to see if it meets the requirements of a public traveled road in the Township? Attorney Litwornia indicated he reviewed this road with Township Ordinance requirements. He first noted he considered this as a local road in the Township, this having a lower classification. He indicated based on the ordinance requirements, section 94-46, 100' ft. is required between curves. Also the Township also requires a center line radius of 180' ft. to 430' ft.

Mr. Litwornia stated the applicant is proposing 90' ft. between curves and a center line radius 115' ft. He advised the applicant does not meet the ordinance requirements. Mr. Litwornia further noted that because the center line radius does not meet the requirements of the ordinance it would cause encroachments and deficient speed. He indicated reviewed various documentation trying to see what the speed should be for a parking lot road. He indicated he found in one of the New Jersey Department of Transportation books ("Managing Transportation in Your Community) that internal parking lot designs the speed should be 20 miles an hour, however, roads going around the development were 30 miles an hour. Mr. Litwornia stated that if this application were considered a mall and the road may considered an arterial road, the speed limit would be maybe 35 to 40 miles an hour, but it is not, therefore, the Department of Transportation would consider the road way for 30 miles an hour.

Attorney Gasiorowski asked what the speeds have to do with the roadway? Mr. Litwornia stated the sharper the curve and radius the lower the speed should be. Since you can't go around a curve at a fast speed with a sharp radius without going across into the opposite lane of traffic.

Attorney Gasiorowski stated asked how many ingress's and egress's there are with the connector Road. Mr. Litwornia stated there are three (3) and the Township Ordinance requires there be a 150' ft. between them and the it does meet this requirement. Attorney Gasiorowski asked if this roadway will be used by people going to the shopping center, by the public going back and forth between Old Egg Harbor Road and the Black Horse Pike and for the truck traffic coming to site to make deliveries? Mr. Litwornia stated this is correct.

Attorney Gasiorowski asked if tractor trailer were to come into the site off Old Egg Harbor Road, through this connector road would there be a problem? Mr. Litwornia indicated they could come into the site, but it would encroach on the lanes of traffic coming from the other direction.

Attorney Gasiorowski referred to Exhibit 07-11: drawing of proposed road to accommodate a different speed limit, as prepared by Mr. Litwornia. Mr. Litwornia stated this plans shows the proposed connector road as it would look if it met the requirements of the Township Ordinance. He indicated it can be modified with minimal changes and the speed limit could be 25 miles and hour. Attorney Gasiorowski asked how many roadway's has Mr. Litwornia designed. Mr. Litwornia indicated many.

Attorney Gasiorowski asked if the proposed connector road, as designed, in Mr. Litwornia's opinion have a safety problem. Mr. Litwornia stated on the applicant's plan there is a problem with trucks and cars going in and with the reverse curves, if the applicant were to try to increase the speeds you would have more vehicles going into the opposite lands.

Attorney Gasiorowski if Mr. Litwornia was present when Mr. Zappala was questioned concerning basins located within the front and side yard setbacks? Mr. Litwornia stated yes. Attorney Gasiorowski what section of the ordinance is this? Mr. Litwornia stated it is 94-44E1.5.1. Attorney Gasiorowski asked why this ordinance should be utilized in the design? Mr. Litwornia indicated basins one (I) and two (II) are for the out parcels and they do hold more then two (2') ft. of water in a 50-year storm so the front yard setback has to be addressed.

Attorney Gasiorowski asked if basin (III) also of issue concerning setbacks. Mr. Litwornia stated yes, however, basin (III) also has another issue. He indicated the applicant is also seeking variance relief for the depth of the water in section 94-44D.2.J. Attorney Gasiorowski asked if the applicant is also seeking a waiver to construct a four to one (4 to 1) slope. Mr. Litwornia indicated yes. Attorney Gasiorowski asked what the difference is to have a slope or vertical wall? Mr. Litwornia indicated with a four-to-one (4 to 1) slope you can walk into the basin and you would not step off a ledge. So if a child went into the basin they would realize the water was get deeper and they could walk out. He further noted that with a slope the basin is larger and there is a larger surface area for infiltration.

Attorney Gasiorowski asked why is a larger basin bottom better then a smaller. Mr. Litwornia stated the larger the area the harder it would be to clog with things like silt or clay and things that wash in the basin from other areas. Attorney Gasiorowski asked if Mr. Litwornia visited other shopping centers who were constructed within the last ten (10) years? Mr. Litwornia advised he looked at a few. Attorney Gasiorowski indicated during previous cross-examination some Board Members raised issue with the basin located to the rear of the existing Shop-Rite in Egg Harbor Township, which uses vertical walls. Is this right? Mr. Litwornia stated he did not see vertical walls. He stated when he went to the Shop-Rite site one basin was under water so you could not see the walls and the second (2nd) was sloped. He indicated it was not dry there was some puddling in the bottom.

Attorney Gasiorowski asked if the basin design for the Shop-Rite is 15 years old? Mr. Litwornia stated yes He further noted an older design he looked at, which was holding water, was by the Hamilton Mall. Attorney Gasiorowski referred to exhibits O8-11 and O9-11, photograph's of bsin located by Hamilton Mall in Hamilton Township. Township Administrator Miller asked why is this Board discussing how basins function in Hamilton Township as compared to Egg Harbor Township. He advised we do not regulate Hamilton Township 's storm water basins. Attorney Gasiorowski stated he is showing the design and how it works with vertical walls and slopes. He indicated he is not saying Hamilton Township's designs are better.

Board Solicitor Brown asked how this is relevant to the slope and what is proposed with this application? Attorney Gasiorowski stated it is to determine how basins with vertical walls hold water. Attorney Nehmad stated he is objecting. He noted these photograph's are of a different community. He also noted this isnot the same water shed. Board Solicitor Brown advised Attorney Gasiorowski to make his point quickly.

Mr. Litwornia stated the exhibits (O8-O9) show there is standing water in an area where there is no four-to-one (4 to 1) slope. Township Administrator Miller asked where exactly this basin is

located in Hamilton Township. Mr. Litwornia advised it is in front of the mall along the Black Horse Pike by the "Red Lobster".

Planning Board Planner Polistina stated again, this basin is in another community which have different standards. What is relevant? Attorney Gasiorowski advised he is responding to a question posed by the Board. Township Administrator Miller asked then this shows a basin that does not work and does not have basin. This is the tesimony? Mr. Litwornia stated yes. Township Administrator Miller asked why it does not work. Mr. Litwornia stated he did not know why. He stated he believes it is now contaminated and it never worked.

Township Administrator Miller asked if the basin was designed to hold water. Mr. Litwornia stated no it was not designed to hold water. Township Administrator Miller asked how he knows this? Mr. Litwornia indicated from attending Board meetings. Township Administrator Miller stated, if he understands, Mr. Litwornia had nothing to do with the design of the basins in front of the Hamilton Mall. Mr. Litwornia sat at a hearing of in Hamilton Township and heard someone say they are not going to hold water.

Mr. Litwornia advised he spoke with the engineer that reviewed the basins. He indicated he had him trying to fix them so the water would stay out. Township Engineer Miller asked how did you do the review with this other engineer? Mr. Litwornia advised he did not perform a review on the basin. He was present with the discussions as a professional on the Board for Hamilton Township.

Township Administrator Miller clarified since Mr. Litwornia did not do the review of the basins. All the knowledge is hearsay. Mr. Litwornia advised not all was hearsay. He indicated it was discussed at Township Meetings with the Engineer being under oath. He stated he is currently under oath and he is advising waht was said under oath. Township Administrator Miller stated Mr. Litwornia is advising the Board what someone else said in another meeting. He believes this is hearsay.

Attorney Gasiorowski referred to Exhibit O10-11, photograph of "Lowes Shopping Center" basin. Mr. Litwornia advised this basin is at the corner of English Creek Avenue and the Drug Store located on the corner. He indicated this picture was taken Friday. Mr. Litwornia indicated it is a shallow basin, which is dry. He advised it has a four-to-one (4 to 1) slope. Attorney Gasiorowski stated this is a basin that functions which was constructed within the last ten (10) years with a four-to-one (4 to 1) slope? Mr. Litwornia stated yes.

Attorney Gasiorowski asked what the next picture on exhibit O10-11 was. Mr. Litwornia advised this is another basin at "Lowes". He indicated when this basin was first placed in it was full of water, however, q back hoe was brought in, the developer went down 12' ft. and placed sand in the bottom and it now works. Attorney Gasiorowski asked what does this prove. Chairman Garth stated it shows when the basin went in it did not work. Attorney Gasiorowski asked if it works now? Chairman Garth stated yes.

Board Solicitor Brown asked that Attorney Gasiorowski s peak. Attorney Gasiorowski stated for the record, from the start, he has been subjected to interruptions by the Board. Chairman Garth stated it is his right and all members to ask questions concerning anything that is said. Attorney Gasiorowski stated what the Chairman has done is testify and unless he wants to be a participant. Chairman Garth stated he is a participant.

Board Solicitor Brown advised this is not a contest of whom has the last word. He indicated the record will speak for itself. He further noted he disagrees with Attorney Gasiorowski. He felt the Board has been polite and they are asking questions, which they are suppose to. If Attorney Gasiorowski feels questions are an interruption that is his opinion. He asked the Board to let Attorney Gasiorowski ask his questions so this may end.

Attorney Gasiorowski referred to exhibit O11-11 noting this is another picture of the "Loves Basin". He asked Mr. Litwornia when this basin was constructed and does it have a four-to-one (4 to 1) slope? Mr. Litwornia indicated it was constructed about six (6) years ago and yes it does have the four-to-one slope.

Attorney Gasiorowski referred to Exhibit O12-11, photograph of Genuardi's basin. Mr. Litwornia advised this basin is located along the side of Genuardi's, which abuts the rear of the Gardent State Parkway. He advised it is a dry basin. Attorney Gasiorowski asked when was this site constructed. Mr. Litwornia indicated it is within the last six (6) years. Attorney Gasiorowski asked what type of basin is this. Mr. Litwornia advised it is a sloped basin with out walls and has around a four-to-one slope and its grassed.

Attorney Gasiorowski asked if there are any other photograph's of basins in Egg Harbor Township. Mr. Litwornia stated yes, but he did not want to show all basins he looked at. He advised he referenced all shopping centers and they had similar basins. Attorney Gasiorowski asked if all the shopping center's had four-to-one (4 to 1) sloped basins? Mr. Litwornia stated most had about a four-to-one (4 to 1) slope.

Attorney Gasiorowski indicated the subject application is seeking relief from this particular issue are they not? Mr. Litornia stated yes. Attorney Gasioworski asked that Exhibit O13-11 be referenced, which is a plan prepared by Mr. Litwornia showing the connector road in red and proposed basins in blue (site plan). Attorney Gasiorowski then asked if exhibit O13-11 was produced by Mr. Litwornia or at his direction. Mr. Litwornia stated yes. Attorney Gasiorowski then asked if exhibit O13-11's connector road matches the design referenced on exhibit O7-11, previously discussed. Mr. Litwornia indicated yes.

Attorney Gasiorowski asked if Mr. Litwornia would explain the basin(s) outlined on Exhibit O13-11. Mr. Litwornia explained exhibit O13-11 shows the basin(s) for the subject site. He advised if you look at basins (I) and (II) they have been designed with a four-to-one (4 to 1) slope and were maximized to no more then 2' of water in a 50 year storm. Mr. Litwornia stated these basins were enlarge slightly by this design. Attorney Gasiorowski asked if these basins are designed in accordance with the Township Ordinance. Mr. Litwornia stated yes.

Attorney Gasiorowski asked if basin(s) (I) and (II) could be located somewhere else on site? Mr. Litwornia advised basin(s) (I) and (II) could remain where they are. He advised outbuildings may have to be shifted or two (2) outbuildings could be proposed (Fire Road) instead of three (3). Attorney Gasiorowski asked from a safety standpoint if the basin were designed with vertical walls, as proposed by the applicant, versus this proposal is there any issue? Mr. Litwornia indicated this design would be safer because if anyone were to go into the basin they could get out. Also, it is better for drainage in case there is clay pockets.

Attorney Gasiorowski stated one of the main reasons a basin does not work is because it can

not permeate. Unless of course, it was designed as a wet basin. Mr. Litwornia advised this is correct. Attorney Gasiorowski asked if Mr. Litwornia could explain the other basins along the connector road.

Mr. Litwornia advised along the connector road the applicant proposed basins at a four (4') foot depth. He explained he proposed basins at a 2' ft. depth. Attorney Gasiorowski asked Mr. Litwornia to number the basins shown on exhibit O13-11. Mr. Litwornia advised he will mark his basins "A", "B", "C", and "D". He indicated instead of walling basins A, B, and C he provided a four-to-one (4 to 1) slope and he created a basin D. Mr. Litwornia advised when you change the height of the water and the depth of the water you can visually see what is being requested by the applicant for waiver relief.

Attorney Gasiorowski referred to exhibit A-2 and asked Mr. Litwornia if basins A and B are in the same location as shown on exhibit O13-11? Mr. Litwornia stated this is correct. Attorney Gasiorowski asked if by redesigning the road to meet the ordinance standards does it not intrude onto a basin. Mr. Litwornia indicated this is correct. He explained the basin referenced as (III) would be encroached upon.

Attorney Gasiorowski asked if the proposed connector road and basin(s) meet the standards. Would this mean the building coverage and the parking lot would be reduced in size? Mr. Litwornia stated yes. It would be reduced. He further noted this information would have to be checked and reviewed by everyone since this information was done without all the calculations, but was done based on the analysis given to the Board. Attorney Gasiorowski asked if Mr. Litwornia reviewed the hydraulics and the soil conditions? Mr. Litwornia stated yes. He further noted that he spoke with Mr. Higgins, who will speak later. He also indicated he used the same permeability information used by the applicant.

Mr. Litwornia explained what he is presenting is an idea. Attorney Gasiorowski asked if it is Mr. Litwornia's testimony that this site can be engineered to meet the zoning requirements of the Township without seeking relief. Mr. Litwornia stated yes. Attorney Gasiorowski asked if there was enough land for this to happen? Mr. Litwornia indicated yes. Attorney Gasiorowski asked that in order for it to the buildings would have to be made smaller? Mr. Litwornia advised graphically his exhibit shows what could be done. However, this could even be modified by adding underground storage. He indicated he presented this proposal the Board could see graphically what can be done.

Attorney Gasiorowski asked if there is any data that would say vertical walls superior to basins with a four-to one (4 to 1) slope? Mr. Litwornia indicated he does not think so. Attorney Gasiorowski then asked if the sole purpose of the basins have vertical walls is to provide more building area? Mr. Litwornia stated every application is different. He noted certain grades and conditions may require such. He did however, note that with this site he did not believe they had to be used.

Attorney Gasiorowski stated he had no further questions. He asked if the Board had any questions? Board Solicitor Brown asked if anyone had any questions. Attorney Nehmad advised Chairman Garth that he does have questions, thus he is not sure when he would like him to begin his cross-examination?

Township Administrator Miller indicated he would yield to questioning now, since some

questions may be asked by Attorney Nehmad.

Attorney Nehmad asked Mr. Litwornia how long has he been a professional engineer? Mr. Litwornia advised for over 30 years. Attorney Nehmad asked what percentage of Mr. Litwornia's work is devoted to traffic engineer versus civil engineering concerning storm water design? Mr. Litwornia indicated he does not normally do drainage work. He indicated Brian Johnson provided the drainage analysis under Mr. Litwornia's supervision and he discussed it with him.

Attorney Nehmad stated this was not his question. He asked what percentage of his work over the past ten (10) years been devoted to traffic versus civil engineering and site plan design. Mr. Litwornia stated he may work on one or two site plans a year. Attorney Nehmad again, asked what percentage of work is traffic engineering versus civil engineer and storm water design? Mr. Litwornia stated 70% is traffic. Attorney Nehmad asked if 30% is to civil engineering? Mr. Litwornia stated time is devoted to engineer, some civil, forensic engineer and other things. Attorney Nehmad asked what percentage of time is spent on site plan and storm water design? Mr. Litwornia advised a couple percent. Attorney Nehmad asked if it were 2%. Mr. Litwornia advised yes, for what he works on himself..

Attorney Nehmad asked when Mr. Litwornia was engaged in this matter? Mr. Litwornia stated he did not recall. He indicated maybe two (2) months ago. Attorney Nehmad asked who was Mr. Litwornia's client? Mr. Litwornia stated he is working with Attorney Gasiorowski. Attorney Nehmad again asked who was Mr. Litwornia's client. Mr. Litwornia advised the owner of Shop-Rite. Attorney Nehmad asked if this was Village Supermarkets, Inc. Mr. Litwornia stated yes. Attorney Nehmad asked they are compensating him for his services. Mr. Litwornia indicated yes.

Attorney Nehmad asked, as a professional engineer within the State, Mr. Litwornia knows the concept of one's right to use and enjoy property and how one is or may be effected by this use. Mr. Litwornia stated yes. Attorney Nehmad stated other then competition. Can Mr. Litwornia advise how his client's right to use and enjoy there property effected or may be effected by this approval. Attorney Gasiorowski stated he is objecting. He stated this is irrelevant. Attorney Nehmad indicated this issue goes to credibility. He advised that he has broad rights in cross-examination. Attorney Nehmad further noted this is based on a case, which Attorney Gasiorowski is aware of called "Village Supermarkets". He stated it is up to the board to decide who has mor credible experts the applicant's or the oppositions . Attorney Nehmad also explained that by being employed by a competitor can used to impeach their experts.

Attorney Gasiorowski stated Mr. Litwornia advised he was employed by Village Supermarkets. He answered the question. Board Solicitor Brown indicated there may not be relevance, however, Attorney Nehmad may ask how this effects your client. Should Mr. Litwornia not have any knowledge he can answer as such and move on.

Attorney Nehmad rephrased his question. He asked from a civil engineer or traffic engineering perspective if this application is approved, however, it will effect your client's use of their property? Attorney Gasiorowski again, objected. Board Solicitor Brown advised it is noted. Mr. Litwornia stated he does not know. Attorney Nehmad asked Mr. Litwornia if he would agree that his client's property located miles from this site? Mr. Litwornia stated yes.

Attorney Nehmad asked if Mr. Litwornia acknowledges his client is a competitor of the applicant. Mr. Litwornia stated yes. Attorney Nehmad asked when Mr. Litwornia accept this matter it was being funded by a competitor of the applicant? Mr. Litwornia stated yes. Attorney Nehmad asked what was the last site plan Mr. Litwornia designed in Egg Harbor Township. Mr. Litwornia advised he had never designed a site plan in Egg Harbor Township.

Attorney Nehmad asked when the last site plan Mr. Litwornia review for a client in the Township from either a civil engineer or traffic engineering aspect? Mr. Litwornia stated the last one reviewed is the subject of this hearing. Attorney Nehmad asked so this application is the only one you reviewed from a civil engineering standpoint? Mr. Litwornia indicated he may have reviewed others in the past. Attorney Nehmad asked for whom. Mr. Litwornia indicated he believes he did review civil engineering on applications for other client's. He indicated he went over them with the client and it was not something a report was issued on.

Attorney Nehmad asked when was the last site plan reviewed by Mr. Litwornia? Mr. Litwornia indicated it was around seven (7) years ago, but he does not remember who it was. Attorney Nehmad asked Mr. Litwornia if he can not remember what the site plan was. Then how does he know he reviewed one? Mr. Litwornia advised he remember's meeting the client in Toms River. Attorney Nehmad asked if Mr. Litwornia remembers the clients name or the site plan? Mr. Litwornia advised he remembers the application was approved in this building because it was either 90 or 100 degrees in this room and it was approved because everyone left the room. It was a strange situation.

Attorney Nehmad asked if Mr. Litwornia is currently employed by Attorney Gasiorowski or Village Supermarkets to oppose any other Walmart applications? Mr. Litwornia stated he does not know. He stated there was one application he thought Village Supermarkets was hiring him for, but he is not sure if they have done so. He stated he believes this is the only one he is working on. He further noted there might be another one coming up, but not sure it is in effect yet.

Attorney Nehmad asked Mr. Litwornia that is appears he is currently working on this application, and there are two (2) others that a possible. So there are a total of three (3) applications you would be working on in opposition to the Walmart? Mr. Litwornia stated yes. Attorney Nehmad asked if Mr. Litwornia has been hired by Attorney Gasiorowski in the past to oppose Walmart? Mr. Litwornia stated he had been hired by someone else to object to a Walmart in Toms River. Attorney Nehmad asked who compensated him? Mr. Litwornia stated he could not recall the individuals name.

Attorney Nehmad asked Mr. Litwornia if there are any other Walmart applications either past or present where he has been hired as a traffic engineer or civil engineer to opposed a Walmart? Mr. Litwornia stated yes, in Lumberton Township. Attorney Nehmad asked if that project has been ongoing for a number of years. Mr. Litwornia stated yes. Attorney Nehmad asked if he is the objector's traffic engineer in the Lumberton matter and if he is retained by the Shop-Rite owner in that area? Mr. Litwornia stated he believes so. Attorney Nehmad asked when was the last time Mr. Litwornia testified in the Lumberton case. Mr. Litwornia advised it was about six (6) months ago and he spoke about the lighting problem. Attorney Nehmad asked if Mr. Litwornia knows who his client is in the Lumberton matter? Mr. Litwornia stated he has hundreds of clients. He stated he does not recall. He stated his secretary goes through clients to make sure there is no conflict of interest. Mr. Litwornia stated it could be a competitor or the union.

Attorney Nehmad asked that each one of the cases where Mr. Litwornia reviewed a Walmart application for an objector there was something wrong from either a civil or traffic engineering standpoint? Mr. Litwornia stated he has found things wrong. Attorney Nehmad asked if he has testified to these items being wrong. Mr. Litwornia indicated if they were valid concerns. He indicated that sometimes he testifies for Walmart. Attorney Nehmad asked if Mr. Litwornia ever found any thing acceptable on the Walmart applications that were reviewed on behalf of a competitors. Mr. Litwornia stated he found problems with the Walmart applications reviewed for competitors.

Attorney Nehmad stated this is not the first time where Mr. Litwornia has testified as a professional on behalf of a business competitor who wanted to enter a market of his client. Mr. Litwornia stated no. Attorney Nehmad advised that a number of years ago Mr. Litwornia testified in opposition to WaWa when they went into the fuel business. Mr. Litwornia stated yes.

Attorney Nehmad asked if Mr. Litwornia testified against WaWa through New Jersey and Pennsylvania? Mr. Litwornia stated this is true.

Attorney Nehmad asked if Mr. Litwornia took the photographs marked exhibits O10, O11, and O12-11. Mr. Litwornia stated yes. Attorney Nehmad confirmed that exhibit O12 is the Genuardi's Shopping Center, O11 and O12 are the Lowes Shopping Center. Mr. Litwornia stated yes. Attorney Nehmad asked if there were any other basins reviewed? Mr. Litwornia stated he looked at some others. Attorney Nehmad asked Mr. Litwornia if the purpose of basins is to handle the storm water runoff from impervious surface? Mr. Litwornia stated this is correct. Attorney Nehmad stated so there is no difference between a shopping center, office building or retail store. He indicated it is all run off. Mr. Litwornia stated this is correct.

Attorney Nehmad asked if Mr. Litwornia looked at the basin for the Jersey Shore Pharmacy on Ocean Heights Avenue, within the Township. Mr. Litwornia stated no. Attorney Nehmad asked if he looked at the True Value Hardware basin on Ocean Heights Avenue or the Wendy's on the black Horse Pike or his client's facility? Mr. Litwornia stated no. Attorney Nehmad asked if Mr. Litwornia had the change to review the basin at the Residence Inn by Marriot which is across the street from the applicant's property on Old Egg Harbor Road. Mr. Litwornia stated yes. Attorney Nehmad asked if it is true that the Residence Inn has walled basins and they are infiltrating? Mr. Litwornia advised they do have walled basins and the basin was dry when he was present.

Attorney Nehmad asked how many times was Mr. Litwornia was at the Residence Inn? Mr. Litwornia stated he was only there once. Attorney Nehmad asked why a picture of this basin not presented when it is in the same water shed? Mr. Litwornia advised he only provided photograph's of shopping centers. He further noted the Residence Inn was the only walled basin he found. He indicated he did review the basins at the Clarion and the Comfort Inn, which are on the other side of this applicant's property.

Attorney Nehmad stated the Clarion and Comfort Inn are older site plans. Mr. Litwornia stated they are older and dry. He advised they were four-to-one (4 to 1) slopes and they were dry. Attorney Nehmad asked if Mr. Litwornia measured the slopes? Mr. Litwornia stated no. He indicated he looked at them and they looked liked four-to-one (4 to 1) slopes. Attorney Nehmad asked if the basins were eyeballed? Mr. Litwornia stated no. He indicated they were approximations. He did not measure any slopes but he did walk around them.

Attorney Nehmad asked if Mr. Litwornia looked Auto Lenders located on the Black Horse Pike, or Matt Blatt, as located there? Mr. Litwornia stated no. Attorney Nehmad asked if the applicant looked at the Chick-fil-A on the Black horse Pike or the Joe Canals next to the Chick-fil-A or Risley Square also on the Black Horse Pike. Mr. Litwornia stated no. Attorney Nehmad asked if it would surprise Mr. Litwornia to know that all these applications have walled basins that were approved by this Board? Mr. Litwornia stated he is surprised if they were all approved by this Board.

Attorney Nehmad stated the Board has the discretion in granting waiver relief? Mr. Litwornia stated this is correct. Attorney Nehmad asked Mr. Litwornia if the Board agrees with walled basins and find them to infiltrate and no create a hazard they could grant waiver relief. Mr. Litwornia if it is a waiver requested it could be considered.

Attorney Nehmad asked Mr. Litwornia if he is the Traffic Engineer in Hamilton Township, a contiguous community, with Egg Harbor Township? Mr. Litwornia stated yes. Attorney Nehmad stated Hamilton Township also has experience with walled basin? Mr. Litwornia stated he does not work on the walled basins for Hamilton Township. Attorney Nehmad indicated that Mr. Litwornia provided testimony and pictures for the Hamilton Mall. Mr. Litwornia stated this is correct. Attorney Nehmad stated the Hamilton Mall was constructed in 1986 so this would be an old site plan. Mr. Litwornia stated yes.

Attorney Nehmad asked if Mr. Litwornia, as the traffic engineer, reviewed a development by Benderson Development Company for a project known as Hamilton Commons. Mr. Litwornia stated yes. Attorney Nehmad asked if this site has walled basins. Mr. Litwornia indicated yes. Attorney Nehmad asked if there is any reason why Mr. Litwornia did not take a picture of Hamilton Commons site when you are the traffic engineer in the town it is in. Mr. Litwornia stated yes.

Attorney Nehmad asked Mr. Litwornia if Chapter 94 is the design standards for the Township and if Chapter 225 is the Zoning Ordinance for the Township? Mr. Litwornia indicated yes. Attorney Nehmad stated in Chapter 94 it deals with the standards for storm water for every type of development such as residential , recreational, commercial. Therefore he asked Mr. Litwornia if the Board can determine whether or not a different type of storm water basin is appropriate for different types of developments. Mr. Litwornia indicated this is correct.

Attorney Nehmad stated in Chapter 94 there is a requirement that basins must have a 15' ft. access way. He then asked Mr. Litwornia if he has ever seen had a commercial development with a 15' ft. access way? Attorney Gasiorowski objected. He stated this was not in the scope of what was discussed. Board Solicitor Brown advised Attorney Nehmad could continue. Mr. Litwornia stated he has not seen a complete 15' ft. access. Attorney Nehmad then asked if the waiver sought for the 15' access way is appropriate for this development. He asked if the basins can be maintained without them. Mr. Litwornia indicated for sections there should be so you can access. He further noted that no issues were raised concerning the 15' ft. access waiver.

Attorney Nehmad stated another issue with Chapter 94 concerns the four-to-one (4 to 1) slope. He asked Mr. Litwornia if this Board has approved ten (10) to twelve (12) site plans with walled basins does it not indicate that the Board has made a distinction between commercial and residential development? Mr. Litwornia he advised he would conclude the board has determined a difference between commercial and residential, but also the Board if they have

consistently granted waivers they should seek an amendment to the ordinance. Attorney Nehmad asked if Mr. Litwornia knows how long the ordinance has been in place. Mr. Litwornia stated no.

Attorney Nehmad asked Mr. Litwornia what the zoning was of the subject parcel. Mr. Litwornia indicated he believes it Regional Shopping Center. Attorney Nehmad stated the parcel is zoned RCD (Regional Commercial Development). He then asked Mr. Litwornia if the RCD zone is the most intense zoning within the Township's commercial districts. Mr. Litwornia stated yes. Attorney Nehmad then asked if a commercial site plan is measured by lot coverage? Mr. Litwornia stated when he worked on multi-use's you can get a more intense development with parking garages, residential and multi-use without coverage. Attorney Nehmad indicated this is not a residential development. He asked Mr. Litwornia if residential is allowed in the RCD zone? Mr. Litwornia stated no.

Attorney Nehmad asked Mr. Litwornia if in these economic times would it not be fair to say this Board has the interest of the Township to see a site development to its potential. Mr. Litwornia stated yes. Attorney Nehmad further asked if in this RCD zone there is a 70% coverage. Mr. Litwornia stated yes.

Attorney Nehmad asked if this site is located within the coast zone under the Department of Environmental Protection CAFRA regulations. Mr. Litwornia stated yes. Attorney Nehmad further asked that under their regulations, for a metropolitan planning area, the coverage allowed is 80% Mr. Litwornia stated yes.

Attorney Nehmad asked Mr. Litwornia if he agreed that CAFRA is the most stringent agency in the state concerning environmental issues? Mr. Litwornia stated yes. Attorney Nehmad asked if Mr. Litwornia knows this site has a CAFRA permit from the Department of Environmental Protection and a modification. Mr. Litwornia advised he was not aware a modification was approved.

Attorney Nehmad asked if Mr. Litwornia would agree that this application has been through a rigorous review with the Department of Environmental Protection? Mr. Litwornia stated he is not sure. He advised sometimes when an application is in a commercialized zone or a redevelopment area it is not reviewed stringently. Attorney Nehmad asked if Mr. Litwornia is saying CAFRA did not review this application? Mr. Litwornia stated no. He advised the air quality review did not match the air quality requirements for CAFRA. Attorney Nehmad asked if Mr. Litwornia reviewed the modification permit. Mr. Litwornia stated no. He advised he reviewed the records in the Township and he saw nothing.

Attorney Nehmad asked if Mr. Litwornia reviewed the Department of Environmental Protection records? Mr. Litwornia indicated no since the Township should have matching records with them. Attorney Nehmad thus stated then that Mr. Litwornia does not know where the applicant stands with the Department of Environmental Protection.

Attorney Nehmad advised there has been discussion concerning Chapter 94. He asked Mr. Litwornia if he would agree the Board has the ability to grant waivers if they do not cause an issue with the intent of the ordinance? Attorney Gasiorowski objected. He indicated this is a question for a Planner.

Attorney Nehmad advised exhibit O13-11 has been discussed. He asked who prepared it? Mr. Litwornia advised it was Brian Johnson. Attorney Nehmad asked whom he was? Mr. Litwornia advised he is a professional engineer working within his office. Attorney Nehmad asked how it was prepared. Mr. Litwornia indicated it was prepared by the documents that were provided for this application with respect to the storm water, the basin design, permeability, the basin size, the slopes and other things.

Attorney Nehmad asked what other basins that Mr. Litwornia looked at in this water shed area that have compaction issues? Mr. Litwornia stated the only basins he looked at that held water were the one's behind the Shop-Rite. Attorney Nehmad indicated those basins are not within the water shed. He asked how far the Shop-Rite is from this facility? Mr. Litwornia indicated it was about four (4) miles. Attorney Nehmad asked if Mr. Litwornia looked at the Genuardi's basin which is much closer, about a one (1) mile away from the subject site. Mr. Litwornia stated he did and it was dry.

Attorney Nehmad asked if Mr. Litwornia looked at any other basins and which ones. Mr. Litwornia stated he looked at the Marriott in, which was infiltrating. He stated it was a grassed basin with sloped sides. He indicated he looked at the Residence Inn which has walled sides. He advised he looked at the basin on the corner of Fire and Tilton Road's (Jiffy Lube), which is long and not walled. Mr. Litwornia stated this also appears to infiltrate well.

Attorney Nehmad asked if Mr. Litwornia looked at the basin in front of Pep Boys on Tilton Road? He indicated this site is also within the watershed of the subject project. Mr. Litwornia stated no. Attorney Nehmad thus asked if every basin looked at within a mile of the subject site is infiltrating? Mr. Litwornia stated yes.

Attorney Nehmad asked if Mr. Litwornia reviewed the geo-technical report prepared by Mr. Zappala. Mr. Litwornia stated yes. Attorney Nehmad further asked Mr. Litwornia reviewed the report done by CMX dated March 5, 2010? Mr. Litwornia stated yes. Attorney Nehmad indicated the CMX report referenced good infiltration rates? Mr. Litwornia advised the CMX report was done by test pits where in another study before theirs did borings. He stated the borings which were performed in a sealed tube sample show there was clay throughout the site, but with the test pit, which is an open pit where you can take samples from wherever. Attorney Nehmad asked if the samples were witnessed. Mr. Litwornia stated he does not recall.

Attorney Nehmad stated there were two (2) excavations for basin (I) and their permeability rate was 1.44 to 81.59 inches per hours. He asked Mr. Litwornia if this is a good rate. Mr. Litwornia advised he had no issues with permeability outlined in the CMX reports. Attorney Nehmad indicated there were three (3) excavations for basin (II), is this correct. Mr. Litwornia advised rates in the CMX report were excellent and they did not have any clay samples found. Attorney Nehmad advised there were ten (10) excavations in basin (III) is this correct Mr. Litwornia. Mr. Litwornia stated yes.

Township Administrator Miller asked if he could interrupt. Township Administrator Miller asked whom the gentleman was in the camel jacket. He indicated this gentlemen seems to be sending Mr. Litwornia signals and nodding in agreement. Michael Higgins introduced himself advising he is the owner of Soil Tech Environmental Consultants and he has been retained by Mr. Summas. He stated he was agreeing with what was being said.

Township Administrator Miller asked that Mr. Higgins refrain from sending signals or coaching him and nodding in the affirmative. He stated Mr. Litwornia has been looking at Mr. Higgins for direction before he answers a question. Township Administrator Miller stated he has been watching this during most of Mr. Litwornia's testimony and he is finding it offensive that Mr. Higgins is coaching Mr. Litwornia.

Attorney Gasiorowski stated he is objecting. He stated if this Mr. Higgins is coaching and it has been since the beginning why was it not raised from the start? Attorney Nehmad stated he would like the record to reflect that Attorney Gasiorowski and himself have been facing the dais and the Board is facing Mr. Higgins who is of issue.

Chairman Garth stated he could not see it, but Township Administrator is at a different angle. Attorney Gasiorowski asked how could Chairman Garth not see. Chairman Garth advised he is sitting in the center, however the Board Secretary is between him and this person.

Board Solicitor Brown advised it is 10:00 p.m. Attorney Nehmad stated he does have more questions for Mr. Litwornia. Chairman Garth indicated he will have to be brought back.

Township Administrator Miller stated he has two (2) questions to ask before he forgets. Township Administrator Miller stated that Mr. Litwornia advised he either heard all the testimony or he read the transcript. He asked if what was the testimony for truck deliveries to this site? Mr. Litwornia stated he recalls deliveries would be from Old Egg Harbor Road, they would then go to the back of the Walmart and the going out the same way. Township Administrator Miller stated this is from memory? Mr. Litwornia stated he also looked at the truck turning template on the plan.

Township Administrator Miller asked if Mr. Litwornia would disagree that direct testimony from the applicant's witnesses indicated all truck traffic would be limited to the Black Horse Pike? Mr. Litwornia stated no. He advised this is the only site plan that he has worked on that is upside down. He indicated the questions concerning direction have been confusing based on this.

Township Administrator Miller asked if all truck traffic is coming from the Black Horse Pike does the entrance now work for the Pike versus Old Egg Harbor Road, which you stated does not? Could the trucks make turns based on the geometry of the entrance? He asked Mr. Litwornia to refer to exhibit A2. Mr. Litwornia advised trucks could make the turn but they would encroach on the opposing lanes. It would not be that major of a difference between the them.

Township Administrator Miller indicated that part of Mr. Litwornia's testimony provided that inside a shopping center the speed limit is 20 miles an hour? He asked if this is correct? Mr. Litwornia advised that within the New Jersey Department of Transportation book they recommend inside the aisles of a shopping center you have 20 miles an hour. He stated roads going around the shopping center are recommend at 30 miles and hour or even a higher speed.

Township Administrator Miller asked if people are going 20 miles an hour down the aisles? Mr. Litwornia stated no. He advised the Department of Transportation requires 20 miles an hour for sight distance, however, he indicated people are normally going 10 to 15 miles an hour when in operation. Township Administrator Miller asked what happens at Christmas time? Would the cars not go slower? Mr. Litwornia indicated maybe 5 miles an hour. Township Administrator

Miller asked why design for a 20 mile an hour limit if everyone is going 15 miles an hour? Mr. Litwornia stated the design is based on Department of Transportation standards.

Township Administrator Miller stated if then by the Department of Transportation standards the connector road is 30 miles an hour it has been designed for less. He indicated is this not good planning. He stated it slows people down. Mr. Litwornia advised he designed the connector road as 25 miles an hour and in some areas of the road, as designed by the applicant, the limit would be five (5) to seven (7) miles an hour based on the reverse curves. He indicated reverse curbs is not a function for slowing people down. He stated to slow someone down you want them to go a consistent good speed which is 20 miles an hour or 25.

Township Administrator Miller asked if there were not reverse curves and you designed the connector road to come straight through you would have a straight shot and people could be going 45 miles an hour when others are trying to turn into the center. Mr. Litwornia stated the Department of Transportation is not looking at this road for a private users. They are looking at it for public to also use. So the limit will be different.

Township Administrator Miller asked how long Mr. Litwornia has been the Traffic Engineer with Hamilton Township? Mr. Litwornia stated he is not sure, but about 20 years. Township Administrator Miller stated so he was the traffic engineer for the Walmart, Toys-R-Us, McDonalds, and Acme application when they are built. Mr. Litwornia stated yes and there is parallel access road. Township Administrator Miller indicated he has never been able to go more then 20 miles an hour on this parallel road. He asked what speed should people be going? Mr. Litwornia stated 20 to 25 miles and hour. He stated at Christmas time it would be less.

Attorney Nehmad asked Mr. Litwornia the name of the Department of Transportation manual that was referenced within his responses to Township Administrator Miller's questions? Mr. Litwornia stated it is Managing Transportation in your Community and it is by the New Jersey Department of Transportation. Attorney Nehmad asked what the date is. Mr. Litwornia stated it is dated 1992.

Attorney Nehmad asked Mr. Litwornia that when giving testimony based on Attorney Gasiorowski's questions was all his objections to this site plan referenced? Attorney Gasiorowski objected. He advised he is providing testimony as traffic engineer and an engineer not as a planner. Chairman Garth advised Mr. Litwornia is being asked a question and he would like to hear the answer. Mr. Litwornia advised he had other objections, but he was not going to discuss.

Attorney Nehmad asked Mr. Litwornia that he is not going to mention other issues he has with site? Mr. Litwornia indicated no. He stated they were not major questions or problems. He indicated the only issues he spoke of were the basin locations and the road way connection. Attorney Nehmad asked Mr. Litwornia if these are ht only objections given that were worthy of comment as a professional. Mr. Litwornia indicated yes.

Attorney Nehmad asked if Mr. Litwornia reviewed the storm water system. Mr. Litwornia indicated not in detail. He indicated he reviewed the basins. He indicated he worked on this with Brian Johnson in his office. Attorney Nehmad stated Mr. Litwornia has testified concerning about the issues he has with the design waivers. He stated in order to have this opinion did he

review the storm water system? Mr. Litwornia advised he looked at the storm water system. He indicated he had someone also review it and went over the review with this person. Attorney Nehmad asked Mr. Litwornia other than the design waivers requested is he of the opinion that the storm water management system will function as designed?

Mr. Litwornia stated he will yield to Mr. Higgin's with respect to this question. Attorney Nehmad asked if Mr. Higgins is a civil engineer? Mr. Litwornia stated no. Attorney Nehmad stated based upon Mr. Litwornia being a civil engineer is it his opinion the basins will function as designed? Mr. Litwornia advised he has a problem answering yes. He advised if the information CMX provided is correct then the basins will work. However, he stated his concern since there was no clay layers shown in their information.

Attorney Nehmad asked if Mr. Litwornia did any borings on the subject site? Mr. Litwornia stated no. He advised he is concerned since one consulting group had clay layer information and CMX did not. Mr. Litwornia stated the results were inconsistent. Attorney Nehmad asked other than Mr. Litwornia's expressed concern does he dispute Mr. Zappala's opinion that the basins will work? Mr. Litwornia stated no.

Attorney Nehmad stated he is ending for tonight, however, he still has questioned for Mr. Litwornia. Chairman Garth advised this application will be carried to the Monday, March 21, 2011 agenda, the meeting will begin at 6:30 p.m. Attorney Nehmad asked not to re-notice. Chairman Garth stated this is correct.

Motion Miller/Eykyn to continue this application to Monday, March 21, 2011, 6:30 p.m., prevailing time. Vote 9 Yes: Aponte, Carman, Eykyn, Garth, Kearns, Levy, Cafero, Miller, Saslav

MEMORIALIZATION OF RESOLUTION:

1. **SP 20-10**
Open Range Communications

Minor Site Plan
915/1
9 Atlantic Avenue

Motion Eykyn /Levy to memorialize resolution granting requested checklist waiver(s), variance relief: §94-57(c)3: Minimum PWTF Yard Setback: 80' ft. required; 65' ft. proposed, and conditional minor site plan approval. Vote 8 Yes: Aponte, Carman, Eykyn, Garth, Kearns, Levy, Cafero, Miller

SUMMARY MATTER(S):

1. Discussion of matters pertaining to the Board: Preliminary Discussion: Automobile service stations (HB zoning district): changes to visibility of overhead garage doors along the Black Horse Pike.

Board Planner Polistina advised he would like to clarify that automobile stations are permitted within the HB (Highway Business) district. However, He would like to see an amendment to the ordinance which would not allow service bay garage doors to be visible to the highway. He indicated this would be exclusive to the HB (Highway Business) District.

Township Administrator Miller advised he is concerned with someone coming in with a facility along the Black Horse Pike. He advised this is based upon the "Pep Boy's" facility located along Tilton Road, whose doors face the roadway.

Motion Aponte/Kearns **to recommend that Township Committee review the visibility of overhead doors (along the Black Horse Pike) within the HB (Highway Business) district.**

Vote 9 Yes: Aponte, Carman, Eykyn, Garth, Kearns, Levy, Cafero, Miller, Saslav

Motion Carman/Aponte **to adjourn at 10:45 p.m. P.M. Vote 9 Yes:** Aponte, Carman, Eykyn, Garth, Kearns, Levy, Cafero, Miller, Saslav

Respectfully submitted by,

Theresa Wilbert, Secretary