

**Township of Egg Harbor  
Planning Board  
Special Meeting**

**February 25, 2013**

**Solicitor:** Christopher Brown, Esq., (Stan Bergman, Esq., in attendance)

**Engineer:** James A. Mott, P.E., of Mott Associates (Robert Watkins, P.E., in attendance)

**Planner:** Vincent Polistina, P.P., of Polistina and Associates, present

A regular meeting of the Planning Board of Egg Harbor Township was held on the above date, 5:30 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 Taken as Follow(s):**

Manuel E. Aponte, Vice-Chairperson, another engage.	Robert Levy, another engage.
Committeeman John Carman, present	Mayor James J. McCullough, Jr., another engage
Milas Cook, Alt. #I, present	Peter Miller, Township Administrator, present
Charles Eykyn, present	Paul Rosenberg, another engage.
James Garth, Sr., Chairperson, present	MD Shamsuddin, Alt. #II, present
Frank Kearns, present	

**PUBLIC HEARING(S):**

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| 1. <b><u>SP 10-11 (Amended)</u></b>  | <b>Amended Minor Site Plan</b>                               |
| <b><u>Jersey Outdoor Media</u></b>   | <b>9801/13</b>   |
| Zone: MC, 5.85 acres, applicant received minor site plan approval in September, 2011 to construct a double sided billboard to be setback at a distance of 25' ft. from the R-O-W of Margate Boulevard. The existing billboard is 60' ft. in height and has one (1) 20' X 30' digital sign facing west and two (2) 10' X 30' non-digital signs facing east. | <b>114 Margate Boulevard</b><br>Waiver of Time – Not Granted |

Applicant is now seeking to amend the minor site plan approval in order to relocate the billboard to an area outside of the wetlands. The billboard will be mounted on a single pipe column and will be cantilevered over the wetlands area. No other improvements are proposed on site. CAFRA

**Checklist Waiver(s):**

1. Item #12: Vehicular access
2. Item #15: Location of all wetlands area, transition area, or buffers
3. Item #18: Stormwater Management Plan
4. Item #19: Water and sewer connection
5. Item #20: Method of solid waste
6. Item #21: Location of existing wells and septic systems
7. Item #23: Landscaping plan
8. Item #24: Lighting and signage plan

Attorney Hankin advised there two (2) experts have not arrived yet. He advised the Planner, Tiffany Cuvillo explained she had a meeting and would be ten (10) to fifteen (15) minutes late and Traffic Engineer, David Horner, is en route. He indicated there are members of the public and if the Board would like to take them first, until the experts arrive.

Attorney Talvacchia stated for the record he would like to know how many voting members are present. Chairman Garth stated everyone is present and Board Member Shamsuddin did listen to the January 22, 2013, meeting tape.

Board Solicitor Bergman advised as a matter of record last month the Board had asked for certification concerning the light meters. Attorney Hankins advised Engineer Zepponi does not have a certificate and he indicated Engineer Zepponi advised this previously.

Attorney Talvacchia stated Dr. Tobias does not have a certification. He advised the Company that Dr. Tobias purchased his meter from certifies it is calibrated for one (1) year after purchase. He advised Dr. Tobias purchased the meter on June 14, 2011 and he performed the test in April, 2012, therefore, it was still within the one-year period. Attorney Talvacchia produced the receipt of the purchase of this meter with the dollar amounts blanked out. Board Solicitor Bergman marked as Applicant(s) Exhibit dated February 25, 2013.

Attorney Hankin advised Attorney Hankin did not have any issue with opening the hearing to the public, Township Administrator Miller advised that last month Attorney Hankin indicated Dr. and Mrs. Levitt would also be speaking. He stated rather than opening to the public at this point he would like to hear from them first.

Attorney Hankin advised he would rather place them on at the end, however, if the Board would like to have them testify he will present them. Chairman Garth asked Attorney Hankin to present the Levitt's.

Richard Levitt, 224 Bay Drive, Northfield, New Jersey, duly sworn: Attorney Hankin stated there has been exhibits that were introduced with various photographs that were enlarged. Attorney Hankin stated he would like to begin with Exhibit H (seven (7) photographs). He asked Dr. Levitt if he knows who took them.

Dr. Levitt indicated the first is a conceptual drawing photograph of that the applicant provided to the Planning Board. Attorney Hankin asked if this was for the first application that Dr. Levitt did not appear. Dr. Levitt stated yes. Attorney Hankin asked where the photograph came from. Dr. Levitt stated it was provided by the Board office as part of documents submitted by the applicant during the application process. He advised it was a conceptual picture of what the billboard was to look like.

Attorney Hankin asked what about the other photographs. Dr. Levitt advised he took the pictures on his camera. May the record reflect: Dr. Levitt showed the Board his camera and indicated it is a "Little Cannon Sure Shot".

Attorney Hankin asked Dr. Levitt to when they were taken and under what circumstances. Dr. Levitt advised the first photograph was taken on August 22, 2012, at 5:45. He stated indicated the one photograph showing the sign in the water is after the Army Corp of Engineers made them take fill out and this was on December 15, 2012 at 12:31 p.m., he advised the next is where they are digging out the illegal fill that was placed there and it was taken on May 18, 2012, at 3:41 p.m. Dr. Levitt stated the next shows the dirt that was filled in at the base of the sign and it was taken on April 12, 2012, 7:30 a.m. He advised the next is another picture after the Corp of Engineers had them remove fill and it was taken on May 19, 2012 at 8:17 p.m., He indicated the next picture is during the removing of fill and it was taken on May 18, 2012 at 3:41 p.m.

Attorney Hankin then referred Dr. Levitt to previously marked Exhibit T, which is eight (8) photographs. He asked if Dr. Levitt can advise the date and time when these were taken. Dr. Levitt the first one was taken on April 27, 2012 at 6:00 p.m. and he is standing across the road from Hackney's Marina.

Dr. Levitt stated the next photograph was taken on August 22, 2012 at 5:47 p.m. and he was on the shoulder of the Margate Boulevard over the small bridge. Dr. Levitt advised the next is at the entrance of the houseboat community along Margate Boulevard showing the billboard. He indicated this picture was taken when the traffic people were with him. He stated it was also taken on August 22, 2012 at 5:45 p.m.

Hankin: Exhibit T, Levitt: has 8 photographs took on 4/27/12, 8/22 at 5:47 p.m., was standing on the shoulder over the small bridge. Actually in entrance of house boat committee looking down road. Dr. Levitt stated the remaining pictures show the curve of the road and were taken on August 24, 2012, except for the last one which is a picture looking up at the billboard and it was taken on December 9, 2012.

Attorney Hankin stated Engineer Zepponi was questioned with reference to the pictures outline within his report, which is Exhibit X. Dr. Levitt advised he took the photographs within the report. Dr. Levitt stated he took the first one from the balcony of his home right outside his bedroom windows. He indicated it was taken before the Court shut down the billboard. Attorney Hankin asked when was the picture taken. Dr. Levitt advised it was April 11, 2012, at 8:18 p.m. Attorney Hankin asked if all the pictures taken with the same camera. Dr. Levitt stated yes. Dr. Levitt stated the next two (2) pictures were taken inside his bedroom through his window on May 18, 2012.

Attorney Hankin asked Dr. Levitt to advise the Board why they object to this application. Dr. Levitt indicated he and his wife purchased their home in 1977, which was a small cape cod. He stated it did not meet their needs, however, it was a beautiful location and it had a natural setting on protected wetlands. He indicated that even back then they knew the environmental and zoning laws would protect the beauty of the area and their investment.

He indicated over the years as they made improvements to the home his taxes were going up proportionately more than others in Northfield for the same size house. He indicated they were told it was because of the value of the view as to why the value went up. He indicated now it is not just the view but also feel the property value has been degraded. He asked who would what to purchase a home with lights that flash and shine in your bedroom.

Dr. Levitt stated he and his wife are not 66 years of age and they are thinking about a peaceful existence and retirement in a pleasant setting. However, it is shattered by a billboard that was illegally constructed. Dr. Levitt stated all his neighbor's on Bay Drive have all signed a petition condemning the billboard. He stated the Board has heard from his neighbors over the last two (2) hearings. He stated they cannot sleep at night until the Judge made the applicant shut it down.

Dr. Levitt stated his neighbors and himself are subject to different messages on what looks like a giant movie screen. He indicated unless you saw the billboard operational it is hard to appreciate what it looked like. He stated retirement may have to be postponed by the expense of protecting his rights.

Attorney Hankin asked Dr. Levitt what has been the effect of this billboard on him. Dr. Levitt stated it has been devastating financially and emotionally. Attorney Hankin asked what impact did the billboard have on his bedroom when it in operation. Dr. Levitt stated the even worse than losing the view is the invasion of the light in his bedroom. He stated he has a problem sleeping because of the constant moving of lights.

Dr. Levitt stated he cannot open the window or the shades to let fresh air in because of the lights flashing. He advised they never closed the shades in the back of the home because it faces an open meadow and it is private, but that has changed. Dr. Levitt explained they enjoyed the stars and the soft lights of the skyline but not anymore. He stated it has been a cave-like existence due to the flashing of different colors every eight (8) seconds. He stated the shades have to be closed at night.

Dr. Levitt stated everyone can argue over the light meters. He stated Dr. Tobias did not ask to come into the house to see from our bedroom window. However, Dr. Levitt indicated everyone says they can't sleep at night either. This billboard is disturbing to them also.

Dr. Levitt stated the first time he saw the billboard board he know its construction was in violation of CAFRA, wetlands and zoning. Attorney Hankin asked what Dr. Levitt did as a result of this information. Dr. Levitt stated he contacted the Township and the Department of Environmental Protection. He also noted the Army Corp of Engineers came to site, however, he did not contact them. He stated he then hired Paul Koelling, who is a surveyor to determine if the 1,000' ft. separation was correct and then he hired Dr. Phil Sterile, who is a professor from Stockton. He indicated Dr. Sterile analyzed the fill and found it was very recent.

Dr. Levitt advised the Township did issue a cease and desist order, however, the applicant's electricians still worked on the Board, with no CAFRA Permit and a desist order. He stated at this point he had to take the case to court and the Township's Solicitor, Marc Friedman told the Judge the Township had been hoodwinked. He stated if the plan submitted had shown the wetlands in the correct area the Board would never had approved. He indicated Judge Todd agreed and he required the applicant to shut down the billboard.

Dr. Levitt explained that he has been on Northfield's Planning Board for 34 years (1979), most of which he stated he has been the chairman. He stated he knows the members of this board care about the community and how it develops. He asked them to place themselves in his shoes. Dr. Levitt stated he has dedicated himself for years to the fair application of zoning laws and now he and his wife are made to suffer in their most private place by an applicant who mislead the board and ignored the laws.

Dr. Levitt stated Mr. Atkins has threaten him by saying he filled his property. He advised the Department of Environmental Protection and the Corp of engineers came out digging holes and surveying his property to see if he had any violations. Dr. Levitt indicated this was just a form of intimidation and the Department of Environmental Protection advised he has done nothing wrong.

Dr. Levitt stated this is very stressful for his wife and himself. He indicated this is the worst thing we have been through in their lives. He indicated now the Department of Environment Protection is making the applicant move the sign out of the illegally filled-in wetlands and he is coming back with a plan to move 25' ft. over and cantilevering.

Dr. Levitt stated after years on a board he knows it is difficult to balance the desire of a developer with the people that are affected by the proposal. He indicated what people have told him this billboard belongs on the Atlantic City Expressway or the Black Horse Pike not on a narrow, two (2) lane causeway where everything is low and there are views of the meadows. Dr. Levitt stated he had to sacrifice his resources because he believes in the law and when someone disregards then everything he has believed in worked so hard for is meaningless.

Dr. Levitt stated upholding the law does not mean the most liberal interpretation. He indicated over the years he has learned if it is not permitted, its prohibited. He stated he understands not everyone is offended by the billboard. He stated he knows many members cannot understand the fuss. However, people have come before you and advised there is something special about looking across the meadows and the scenic causeway. Dr. Levitt they can look at the bird live and enjoy the natural vistas and the billboard has changed the whole atmosphere.

Dr. Levitt stated this is the reason why the resolutions from Margate and Northfield because people complained to their Governing Bodies that this has affected the quality of life in this area. He stated this is a special place and one it is lost it will be lost forever. He stated he hopes the greed of one man is not permitted to ruin it for so many other people.

Dr. Levitt stated he knows his has been a laborious situation and he thanks everyone for their attention and the work they do for Egg Harbor Township. He urged the Board to please reject this application.

Attorney Talvacchia asked if the photographs taken from Dr. Levitt's bedroom were taken with a telephoto or was it an automatic setting. Dr. Levitt stated they were taken with the camera he has presented and it is automatic. Attorney Talvacchia asked if any special adjustments were made? Dr. Levitt indicated he does not recall.

Township Administrator Miller asked if Dr. Levitt is related to Mr. Alexander whom was present last month? Dr. Levitt stated no. He indicated he had never met him before, however, he found him through an organization called Scenic America, which the president of is present.

Board Member Shamsuddin asked when the Margate Causeway was constructed. Dr. Levitt stated the 1920's or 1930's. Board Member Shamsuddin stated when it was constructed people were affected. Dr. Levitt stated he could not testify to this because it was 80 years ago. Board Member Shamsuddin stated when the airport was constructed a lot of people affected including his home. He asked if people were to get a benefit from this billboard what is the matter exactly. Dr. Levitt stated people are not getting a benefit by this billboard just the applicant.

Dr. Levitt stated when he purchased his home he knew what was there at the time. He indicated there were a few low billboards at the time that were no more than 25' ft. and the light shined on them not on him. He indicated these billboards were grandfathered and he understood this. He indicated they never bothered him. He indicated this billboard is the only thing built in all the years that they have been there that impacted them.

Board Member Shamsuddin asked how financially this has affected the Levitt's. Dr. Levitt stated this lawsuit has cost hundreds of thousands of dollars that he has had to borrow from his retirement account. Board Member Shamsuddin stated a lot of people may benefit from this billboard. Dr. Levitt stated to have a business you must be in conformance with the laws he stated in this case it was not

constructed in conformance with the laws. He indicated his attorney will prove tonight that this billboard is not done in compliance with the Township laws.

Board Member Cook asked at what point did Dr. Levitt decide to take this to court. Dr. Levitt advised when they turned the billboard on and when they illegally filled the wetlands. He indicated he believes it was in April, 2012. Board Member Cook asked at what point did you decide to go further? Dr. Levitt stated he never thought it would be this complex and go on as long, however, issues needed to be addressed on many levels such as local issues, County, Department of Environmental Protection and the Department of Transportation. He indicated it was not something that some said to him it was the fact this was in his face on a daily basis and he cannot live with it.

Board Member Cook asked if it began with the cantilever of the sign. Dr. Levitt stated no. It started it was much earlier in the process. He indicated the cantilever is a proposal after the Department of Environmental Protection told them to remove the pole from the wetlands.

Attorney Hankin asked Dr. Levitt if he received notice of this application. Dr. Levitt stated no. Attorney Hankin asked when he first saw the sign. Dr. Levitt indicated at the end of March, 2012. Attorney Hankin asked if he took immediate action after seeking it. He advised he came into the Board office and reviewed the application. He advised he knew there was something wrong since there was no wetlands on the application. Dr. Levitt advised he then called his attorney (Attorney Hankin) to obtain an injunction to see what was legally done. Attorney Hankin asked if the injunction is still in place today. Dr. Levitt stated yes. He advised the Judge had found irregularities. He indicated the applicant is now asking to change the application to move the pole and cantilever.

Mrs. Deborah Levitt, duly sworn in, Mrs. Levitt individually thanked the Planning Board Members present for listening to the testimony about the illegally built 60' ft. billboard placed in the wetlands and which is visually polluting the skyline. Mr. Levitt stated there has been compelling testimony from neighbor's whom have also spoken that this also directly impacted. She stated neighbor after neighbor has spoken to you about the lights being cast and not being able to sleep because of the changing colors on the wall.

Mrs. Levitt stated she is sorry Dr. Tobias is not because she would like to comment that he never asked to come into her hours or anyone else who is affected. She indicated he cannot really speak of what happens at night when this is on. Mrs. Levitt advised she finds it comforting at to look out the bedroom windows to look at the moon and stars that don't change colors every eight (8) seconds.

Mrs. Levitt stated the quality of their life is being destroyed. She indicated after work she enjoyed sitting outside looking at the marsh and bird life, however, this billboard it has changed everything. She indicated when they purchased their home in 1977 the other billboards were there. She indicated they were 25' ft. tall and their lights shone on themselves not on neighbors.

Mrs. Levitt asked if anyone remembers the outdoor movie theater next to the Shore Mall. She asked how someone would like a giant movie screen like that shining into their bedroom. Mrs. Levitt advised others have spoken about the unique environment seen from this road and how this billboard board ruins that setting. She indicated this billboard belongs a major highway. She asked if this billboard is allowed what will happen with the other causeways.

Mrs. Levitt advised many people sent letters to the Department of Environmental protection asking the CAFRA permit be denied. She stated this was not just the neighbors but Governing Bodies from other towns. She stated no one has come forward yet to say they want this billboard. Mrs. Levitt stated both her son's grew up with the scenery and wildlife. She indicated now they live in New York City and they have a better appreciation. Mrs. Levitt stated she wants her Grandchildren to feel the same.

Mrs. Levitt advised she has been on the Northfield Board of Education for 22 years. She knows what controversy is. She indicated it is the Board's job to maintain the quality of life by regulating development. Mrs. Levitt stated on behalf of herself and her husband and neighbors and anyone else who values the unique area filled with wildlife in the marsh she asked they deny this application.

Attorney Hankin advised there will two (2) exhibits discussed. He referred to Exhibit BB, which is within the booklets previously provided. He indicated this describes Mr. David Horner's background and the second is Exhibit CC: Traffic Report dated September 7, 2012, prepared by David Horner. Attorney Hankin passed out Exhibit CC and asked the Board to place within Volume II (Booklet).

David Horner, P.E., New Jersey Licensed Engineer, 105 Zion Road, Medford, New Jersey, Certified Professional Traffic Operations Engineer, principal with Horner and Canter Associates, licensed since 1992. Engineer Horner stated he is also licensed in Pennsylvania and Florida.

Township Administrator Miller asked to be recognized as a traffic engineer expert is there classes or course that must be taken to have this designation. Engineer Horner stated yes. He advised when he became licensed in 1992 there was nothing, however, the Institute of Transportation Engineer Society created a certification. He advised he is required to test and receiving continuing education credits to be maintain the certification. He advised he received this certification in 2007. Township Administrator Miller stated he has no problem with him as a traffic expert.

Attorney Hankin asked Engineer Horner when he was hired for this case. Engineer Horner stated he believed he was hired in August, 2012. Advised he was hired to look at the roadway and subject site to see if he had any safety or traffic engineering issues related billboard. He indicated he accept this request with the knowledge what he finds is what he finds.

Attorney Hankin asked what did he do after being retained. Engineer Horner stated went to the site. He did add the billboard was not on at this point. He advised he then took some measurements and met Dr. Levitt. He indicated he drove the road a few times to get a feel for the existing road configuration and alignment. Attorney Hankin referred to Exhibit T: a series of eight (8) photographs asking if they represent the conditions of the road and billboard. Engineer Horner advised yes.

Engineer Horner stated he also researched the safety characteristics of the roadway, especially the horizontal curvature. Engineer Horner went over several of the pictures reflected in Exhibit T advising the locations and what is depicted. Attorney Hankin asked what is the speed limit along the Margate Boulevard. Engineer Horner stated it is 45 mph and it has three (3') foot shoulders. Attorney Hankin asked if the shoulder is enough for a vehicle to park. Engineer Horner stated no, however, just past the billboard in front of the marinas it widens out for a shoulder/deceleration right turn lane. He indicated there is driveways off the Margate road going into each marina.

Attorney Hankin asked what is the difference between a horizontal curve and a vertical curve. Engineer Horner stated a horizontal curve is when the road bents to the left or the right and a vertical curve would be a hill. Attorney Hankin asked if Engineer Horner is familiar with the traffic along this road way.

Engineer Horner stated he is familiar with it by observation. He indicated he did not perform any traffic counts for this application. Attorney Hankin asked how wide is each lane? Engineer Horner stated each is twelve (12') feet wide. Attorney Hankin asked based on the information presented and observations of the roadway. He asked if Engineer Horner came up with any conclusion on the safety of the roadway in this area where the billboard sits. Engineer Horner stated he did.

Engineer Horner stated when you have a horizontal curvature in a road, regardless if it meets standards, which this one does, research has shown the accident potential horizontal curve is three times what a straightaway would be. Engineer Horner stated in this situation you have a horizontal curve and then a vertical curve immediately beyond it and he stated in his opinion you have more of a potential for an accident.

Attorney Hankin asked if the roadway is now unsafe. Engineer Horner stated he would not define as unsafe, since it meets the standards. However, he stated he was looking it from the point of introducing something else. Attorney Hankin asked Engineer Horner to look at Exhibit T (lower left picture) and explain to the board a potentially unsafe condition with going over bridge. Engineer Horner stated it is the combination of curves that create the potential. If a driver heading west from Northfield over the crest and there is a period of time where they have their vision impaired and they cannot see oncoming traffic, regardless of the expectation that traffic stays in its own lane, is when there is a distraction.

Attorney Hankin asked if Engineer Horner had the chance to look at the billboard. Engineer Horner stated yes. Attorney Hankin stated even though it is not operational is he aware it is a digitally lighted billboard. Engineer Horner stated yes, but he did not have chance to observe it when it was in operation. Attorney Hankin asked if Engineer Horner is aware the billboard proposes white background and colors that change every eight (8) seconds. Engineer Horner stated it is his understanding.

Attorney Hankin asked Engineer Horner if there is a conclusion that has been reached regarding the impact of the billboard when it is operational with the white background and colors changing every eight (8) seconds on traffic safety.

Engineer Horner stated a digital billboard that is lit up and changes every eight (8) seconds grabs the attention of a driver. He indicated in his opinion to place an attention-grabbing at this location where the roadway has a combination of horizontal and vertical roadways lends itself to distraction leading to accidents. He stated it is a safety hazard, which is his opinion. Engineer Horner stated if this billboard were on a straight section of road, it would still grab attention of a driver, but would be less of a chance of a negative impact, because if someone crosses the center line due to distraction, it would not be as much impact because drivers oncoming can see them.

Attorney Hankin asked what impact in Engineer Horner's opinion that this is a 60' ft. billboard versus a 25' ft. Engineer Horner stated the further away from the billboard you take your eyes off the road. He indicated if it were in the position with a typical road sign which are designed so you do not you're your eyes off of road, but this would cause you to turn your head away from the road for a period of time. He stated this is due to the fact that it changes every eight (8) seconds.

Attorney Hankin asked what would fog and the light of that event have on traffic or driver safety. Engineer Horner stated he cannot speak to the impact. He indicated he knows if you have high beams through fog the light will create difficulty in vision. He stated he cannot testify as how this light would react in the driver's viewpoint.

Attorney Hankin asked if Engineer Horner has an opinion regarding motorist safety and what impact will it have when sign is operational. Engineer Horner stated with the billboard changing messages he believes it will have a negative impact on the safety situation and he believes it should not happen. He stated he cannot put a number on how many accident's it will cause, but he believes it is a dangerous combination.

Attorney Hankin asked Engineer Horner if he has met Mr. Schropshire. Engineer Horner stated yes. Attorney Hankin stated Engineer Schropshire's report is different from Engineer Horner's. Engineer Horner stated yes and he disagrees with it. He indicated that within his report of September 27, 2012, he notes Engineer Schropshire's report of September 20, 2012, where it discusses a cone of vision.

Engineer Horner explained he has a problem with certain statements in Engineer Schropshire's report concerning cone of vision. He stated Engineer Schropshire stated the billboard is not intended to be viewable by eastbound motorist since it is outside the cone of vision. He indicated he does not agree with this statement. Engineer Horner stated he believes this statement means it is supposed to be viewed further back, however, because it changes every eight (8) seconds it grabs the driver's attention and there is a temptation to look.

Attorney Hankin asked if it could change several times before someone passes it. Engineer Horner stated yes, depending upon the initial point where you see it. Attorney Hankin asked if the Margate side of the billboard digitally lit. Engineer Horner stated it is not. Engineer Horner stated another point in Engineer Schropshire's report that he disagrees with concerns the vertical curve and the bridge. He indicated Engineer Schropshire does not believe this is factor, however, Engineer Horner stated he believes it is a critical factor. He stated if someone is distracted because of the billboard or for other reasons and they cannot negotiate the curve it increases the possibility of causing problems. He stated he disagrees with Engineer Schropshire that it has no relevance.

Attorney Talvacchia stated he has a few questions. He asked Engineer Horner if he is aware of any studies showing an increase in accidents from digital billboards versus non-digital? Engineer Horner stated he is not. Attorney Talvacchia stated he believes they agree curves are more dangerous than a straightaway. Engineer Horner stated okay. Attorney Talvacchia asked if roadways are more dangerous when it rains. Engineer Horner stated in general yes.

Attorney Talvacchia asked if the introduction of this billboard creates an increased risk of accident based on the roads being vertical and horizontal curves. Engineer Horner stated in general terms. He indicated he thinks by adding the digital billboard is a distraction that pulls attention from the driver.

Attorney Talvacchia but not aware of any studies that show this. Engineer Horner stated not aware of any studies that say "X" amount of accidents or accident percentage is increased with a digital billboard. He further noted this does not mean there are not any. He just has not read any. Attorney Talvacchia stated what Engineer Horner has testified to is just opinion. No data to support.

Attorney Hankin raised objection. He stated his observation is data. Attorney Talvacchia asked if there is any accident data where there was no billboard and then you add a digital billboard and now there is an increase in accidents. Engineer Horner stated he does not have this information that says digital billboards increase accident rates by a certain amount.

Attorney Talvacchia stated, he is quoting from Engineer Horner's report "No outdoor advertising signs shall be of such type, size, or character or placed at a location that will endanger or injure the public safety or health or pose a physical treat to property in the vicinity thereof". Engineer Horner stated this is correct it is within his report. Attorney Talvacchia stated within Engineer Horner's report he does not believe this billboard meets that standard. Engineer Horner stated he does not believe it does. Attorney Talvacchia stated the Department of Transportation does because it issued a permit. Engineer Horner stated he is aware that since he issued his report the Department of Transportation has issued a permit.

Attorney Talvacchia asked if it was not because of Engineer Horner's report and Dr. Alexander's report that the Department of Transportation held their permit for 30-days to allow the County to comment, which they did not, and then the Department of Transportation issued a letter to Joseph Maher, on November 29, 2012, who is the Director of Planning for Atlantic County, which he then asked Engineer Horner if he was familiar with. Engineer Horner stated he is familiar.

Attorney Talvacchia asked Engineer Horner what the Department of Transportation conclusion was when it made the decision to issue the permit. Engineer Horner read into the record the Department of Transportation conclusion for the issuance of their permit.

Board Member Eykyn stated he has heard testimony that billboard does not belong here, but it belongs along the Black Horse Pike or Atlantic City Expressway. He asked what makes this road more dangerous than say West Atlantic City. Engineer Horner stated yes, it is. He indicated it is because of the two (2) curve combination. Board Member Eykyn stated asked if Engineer Horner has been in West Atlantic City because it is also dangerous. Engineer Horner stated it is the hierarchy of the road. He stated a straight section of road would be the best location, he stated if you had one horizontal curve or vertical curve would be a lesser location but when you have a combination like this one it is not desirable.

Engineer Horner stated the Department of Transportation cited a lack of crash history, however, does not involve a digital billboard. Again, he stated in the hierarch of where a billboard goes this would be lowest.

Township Administrator Miller stated you did not collect accident or traffic volume data. Engineer Horner stated he did not collect any traffic volume. He stated he did not based on the question on hand. He indicated whether you have ten (10) cars a day or 10,000 it does not change the geometry and the location of billboard. Township Administrator Miller stated you are familiar with the road. He asked if Engineer Horner has drove this road to the beach in the summertime. He asked what is his knowledge of road. Engineer Horner stated he has driven the road several times. Township Administrator Miller asked if he has driven the road routinely. Engineer Horner stated he does not drive it on a regular basis.

Township Administrator Miller stated there are people whom drive this road routinely where are they going. Engineer Horner stated they are either going into Margate or into Northfield. Township Administrator Miller asked if you have people using this road and are familiar does that provide a safety factor. Engineer Horner stated there will always be a percentage that are familiar with the road.

However, this road is not a commuter road. Township Administrator Miller asked if someone is traveling from Philadelphia, Camden or Burlington County and going into Atlantic City, Ventnor Brigantine, or West Atlantic City I would not use this road. Engineer Horner stated you would probably not use road, but being familiar with a road can make a driver attentive, however, sometimes familiarity breeds complacency, so when you are not familiar you may pay more attention. He indicated the billboard is still a distraction of anyone whether or not they are familiar with the road.

Township Administrator Miller stated Mr. Alexander indicated that after a period of time you are no longer distracted by things and they become part of your field of vision because you are familiar. So if you are traveling that road it is not as much of a distraction and it was initially. Engineer Horner stated he does not recall Mr. Alexander saying this. He would agree to a point if this was a fixed billboard, however, this is a changeable message every eight (8) seconds, therefore, he does not believe this is the case.

Township Administrator Miller indicated the curve is either equal to the billboard or just pass. He asked if this is correct. Engineer Horner stated it starts about 100' ft. before the billboard as you are going east.

Township Administrator Miller asked if the two (2) pictures on the bottom of Exhibit T seem to show the Gifford Marine building being taller than the billboard. He asked if it actually is. Engineer Horner stated he does not agree that the pictures show Gifford taller. He stated if you compare the two (2) pictures on top of Exhibit T with the lower tow it would be difficult to judge. These are the perspective of where they were taken.

Attorney Hankin stated the record reflects the billboard is 20' ft. higher than the Gifford Marine building, based on Engineer Barnhart. Attorney Talvacchia stated he is not sure if the Billboard is 20' ft. higher. Township Administrator Miller stated when you pass the billboard and going into the curvature and before the vertical riser there are two (2) marina entrances and houseboat community. Engineer Horner stated yes.

Township Administrator Miller asked if flags or spinning displays be a distraction to a driver going into a vertical and horizontal curves. Engineer Horner stated it would be a distraction. It is not a changeable message. Township Administrator Miller asked if you go 45 mph in eight (8) seconds how far would you travel. Board Engineer Watkins stated it is 3,000 ft.

Township Administrator Miller asked the distance from the Egg Harbor Township corporate line to this billboard. Engineer Horner stated he does not know the distance. Township Administrator Miller indicated if it is 3,300' ft. to the Levitt's house from the billboard. Then with the border of Northfield with Egg Harbor Township, if he goes by what the professional has indicated then he will be pass the sign before it changes a second time. He asked if this is the distraction.

Engineer Horner stated he does not believe the calculation is correct. Engineer Horner stated 45 mph is 66' ft. per second so in eight (8) seconds you will travel 528' ft. Township Administrator Miller stated than the billboard can change three (3) to four (4) times. Engineer Horner stated if the border is 3,000' ft. then it would change five (5) to six (6) times.

Attorney Hankin introduced Tiffany Cuiello, Planner, Planner Cuiello advised she is licensed planner in the state of New Jersey and she is a member of the American Institute of Certified Planners and a member of American Planning Association and New Jersey Planning Officials.

Attorney Hankin asked how many years has she been a member of the American Planning Association. Planner Cuiello advised since 1995 and she has been a licensed professional planner in New Jersey since 2001.

Attorney Hankin asked experience she has as a Planner for any other Township. Planner Cuiello stated she is part time with Galloway Township as their Planner and she has her own consulting business and she has worked for different municipalities in Southern New Jersey as well as applicants and developers in Southern New Jersey.

Attorney Hankin asked if her responsibilities as a municipal planner the same as Mr. Wakins? Planner Cuiello stated he prepares master plans, subdivision ordinances. She indicated she reviews subdivisions and site plans, prepares fiscal analysis and economic development analysis. She also noted she previously worked for Remington and Vernick Engineer's and JCA Associates.

Attorney Hankin asked how many boards has she testified before in the last 13 years. Planner Cuiello stated many. She also advised she received her Master's in City Planning from the University of Pennsylvania in 2000 and she also has a bachelor of science in environmental and business economics from Rutgers University, Cook College. Attorney Hankin also asked if Planner Cuiello has an environmental planning certificate. Planner Cuiello stated yes, from Rutgers's University, Cook College.

Attorney Hankin advised he would like to present Planner Cuiello as an expert witness in Land Use Planning. Chairman Garth stated this is fine.

Planner Cuiello stated her take was to determine if the billboard was a permitted use and if there were issues within the land use ordinance that would impact this application. She advised he did have an opportunity to review the marine commercial zone, the local ordinances, master plan documents past minutes and agendas of Planning and Zoning Board and Council meetings. Attorney Hankin asked if she reached a conclusion. Planner Cuiello stated she had.

Planner Cuiello states she looked in the ordinance to see where billboards are a permitted use. She advised under section 225-63 it speaks that billboards are permitted in business and industrial zones. She advised she then looked for the business and industrial zones by referring to Section IV in the Township Code. She advised this section references several zoning districts. Planner Cuiello stated she then looked at the MC zone and it is classified as a commercial zone so she stated she went back to Section 225-63 says signs permitted in business and industrial districts.

Planner Cuiello stated a strict reading of the ordinance signs are not a permitted use in the marine commercial zone, however, she stated it is not that simple because that would mean signs are not permitted in any commercial zone. She indicated when you have a strict reading it clearly indicates they are not permitted in the Marine Commercial, however, there are several other commercial zones classified such as NB, CB, HB, which are classified as commercial but speak of both business and commercial she indicated they are interchangeable and there are different types of business uses there are permitted.

Planner CuvIELlo stated when you also read further there is a specific intent and purposes given for the Marine Commercial District, which is referenced in 225-39 of the ordinance. Planner CuvIELlo than read into the record the intent of purpose referenced in 229-39. Attorney Hankin asked what does it tell you when an intent and purpose is referenced in the Marine Commercial Zone. Planner CuvIELlo stated it tells her there was a clear purpose created for this zone and that it is related to waterfront areas and facilities. She indicated it was not intended to a typical commercial zone. She indicated it is for waterfront facilities and recreational purposes.

Attorney Hankin stated marinas are defined in this ordinance. Planner CuvIELlo stated yes, she further noted when you look at the permitted uses in the marine commercial zone they relate to boat sales marinas, buildings for storage, repair, construction of boats, marine supply shops. She indicated when you read this combination with the fact you have other commercial community business that permit various types of uses and do not have a an intent and purpose in the ordinance She stated she finds the marine commercial district, as defined, it is not a business district, it is a waterfront district.

Planner CuvIELlo stated she then thought maybe there was a past practice in the Township. She indicated she thought maybe in 1993 when the ordinance was adopted to permit billboards they had permitted them in the marine commercial zone. Attorney Hankin asked when the marine commercial zone was created. Planner CuvIELlo stated in 1982 and the billboard ordinance was enacted in 1993.

Attorney Hankin asked if Planner CuvIELlo could read the definition of marina from the Township zoning code. Planner CuvIELlo then read from section 225-3 the definition of marina. Attorney Hankin asked what does the limitation of marina's mean as referenced. Planner CuvIELlo stated it is restrictive to the type of uses that would be permitted in the marine commercial zone and it is very specific as to what is meant by a marina. She indicated it was very elaborate.

Planner CuvIELlo also noted that the Marine Commercial Zone is specific to prohibited uses for dance halls, bars, inns and taverns. She indicated they went further into the intent of the zone. Attorney Hankin stated they also don't want homes in the marine commercial district. Planner CuvIELlo stated this is correct.

Attorney Hankin asked if the Township has ever allowed a billboard in the marine commercial zone since its creation. Planner CuvIELlo stated she has a letter dated October 9, 2012 from Terry Wilbert, Land Use Administrator, who was asked through an OPRA request whether or not there was a billboard ever approved in the MC since 1993. Planner CuvIELlo stated this letter indicates upon reviewing the available references within Planning and Development, Division of Planning and Zoning Board there were no other site plan application or approvals for any other billboard in the MC other than Jersey Outdoor Media, LLC. Attorney Hankin advised this is Exhibit L. Planner CuvIELlo stated any other billboards within the MC zone, pre-date available reference logs.

Attorney Hankin asked if a billboard is a sign. Planner CuvIELlo stated it is a type of sign, but it advertises a use that is not on that property, which is different than a regular sign. A business identification sign identifies a business specifically on that property. She stated a billboard is a second use that is used to advertise products that are not related to the property.

Attorney Hankin asked how many MC zones are in the Township. Planner CuvIELlo stated there five (5) zones which are abutted by conservation districts at least three times and in some there are residential

next to it. Attorney Hankin so they are in noncommercial type areas. Planner CuvIELLO stated this is correct.

Planner CuvIELLO also stated when you have a strict reading of the ordinance and you combine with the purpose of the zone it becomes demonstrative that billboards were not intended for the MC zone. She indicated to verify her opinion was valid she had to see where they have been approved since 1993. She indicated there has been a total of five (5) approved by the Township and all are located with access or frontage visible to the Atlantic City Expressway. She stated they are in the M1, HB ad GC zones. She indicated there is a clear pattern of where billboards are permitted in town and how they have been addressed. Planner CuvIELLO stated none were approved or constructed in the MC zone.

Planner CuvIELLO stated she also referred to her William Cox book and there are two (2) cases concerning the literal reading of an ordinance where there courts found that where a literal reading of the ordinance will lead to a result no in accord with the purposes or the design of the act, the spirit of the act will control the letter. She indicated in this specific instance it does not mean that billboard signs are not permitted in the marine commercial zone nor any commercial district. She stated this does not seem to be true. She stated in instance there is a difference between the commercial zones. She indicated in the Marine Commercial it permits waterfront marinas and small uses associated with the marina and nothing else.

Planner CuvIELLO stated the spirit of the act shows there is a clear intent and purpose of what should happen in the marine commercial zone and billboards do not fit into it. She stated they don't fit into the definition of marinas and not in the uses described as permitted.

Planner CuvIELLO stated indicated she believes in the literal reading of the marine commercial zone that says no signs are permitted is not in accord with the design of the act, but in the spirit of the act marinas and waterfront development facilities are, not billboards and the actions over the last 20 years with five (5) billboards fronting the Expressway and nowhere else in the Township is the reason for her opinion that this billboard is not a permitted principal use in the marine commercial zone and a use variance is required.

Attorney Hankin stated this is not something the Planning Board can grant. Planner CuvIELLO stated this is correct. She stated the Zoning Board of Adjustment is. Attorney Hankin asked any other reason why a use variance would be required. Planner CuvIELLO stated a billboard is a principal use because it advertises something that is not on the property. She stated it is not a sign for the marina to say get your marina supplies. She stated this is not just her opinion but the opinion of the courts and the Township.

Planner CuvIELLO stated when she reviewed the billboard applications for the Township that were on properties with other uses they required a variance from the Zoning Board for two (2) principal uses. She stated there is also a practice in the Township to not permit two (2) principal uses on a property. Attorney Hankin asked if there is a functioning marina on the property with the billboard. Planner CuvIELLO stated there is, so the billboard is a second principal use on property.

Planner CuvIELLO stated there are also five (5) other applications from 1997 to 2011 where the zoning board granted two principal uses. She advised at least one (1) application references Sun Oil versus Avalon, which is a case that dealt with the fact that if a use is not expressly provided for then it is prohibited. She stated unless two (2) principal uses are expressly permitted they are prohibited and this

is what was found in that case. Attorney Hankin marked Exhibit JJ which is the five applications resolutions previously referenced for the Zoning Board.

Planner CuvIELLO advise shortly after a use variance was granted for Garden State Fuels (one of five), which dealt with a use variance to allow a convenience store at a gas station the Township amended their Ordinance. She stated ordinance 8-2012 that specifically dealt with mix uses for retail sales and gas stations. She indicated this is important because it is the only issue the Township dealt with concerning two (2) principal uses. She indicated it was specific to retail sales especially considering there were billboard applications that were approved that were two (2) permitted uses.

Planner CuvIELLO stated when she reaches an opinion she wants to support herself and make sure she is not reaching so she goes to the Cox book, the New Jersey Zoning and Land Use Administration book and read section 5-2.3, a portion thereof. Planner CuvIELLO stated she finds it important from this section that the Township since 1997 there are has been a master plan, two (2) re-examinations another master plan and it was not until 2012 that Ordinance 8-2012 dealt with addressing gas and convenience stores in specific areas and it shows two (2) principal uses are permitted with the exception of gas and convenience stores.

Attorney Hankin asked in any of the research did she find that a Planner filed an application and advised that a billboard was a principal use. Planner CuvIELLO stated in 2003 Allstate, who was represented by Jon Barnhart.

Attorney Hankin asked if there is an ordinance that would require a bulk variance for this application. Planner CuvIELLO stated under section 225-63c deals with billboards and off-premise signs. Attorney Hankin referred the Board to Exhibit E within the booklets. Planner CuvIELLO stated item 4 says billboards or off-premise signs shall not be located in subsection A within a 1,000' ft. of any other sign on the same side of the highway.

Planner CuvIELLO stated she believes the pole is in violation of the ordinance. She indicated the applicant believes it is the sign face that is calculated for the 1,000' ft. separation. Attorney Hankin referenced Exhibit H: photograph of sign. Planner CuvIELLO indicated that via Exhibit H the pole contains the electrical equipment that operates the digital portion of the sign and the lighting. She stated this monopole is about a 54" diameter at base and is about 40' ft. high, without the sign itself. Planner CuvIELLO went back to the ordinance and read into the record the section concerning 1,000' ft. separation for signs. She indicated the sign display area cannot exist without the base and we know it is not within 1000' ft. of others. She advised if they met sign face the ordinance would have indicated this.

Planner CuvIELLO stated you cannot have the sign face without the pole. She stated she understands the applicant's argument, however, it is more of an appropriate argument to grant the variance then to say this is what the ordinance says. Attorney Hankin asked if the pole could be within the 25' ft. front yard setback. Planner CuvIELLO stated no, because the ordinance says no sign can be located closer than 25' ft. to a property line. Planner CuvIELLO stated she believes the sign needs a variance for the setback between the signs.

Planner CuvIELLO states she also looked at other aspects of the Township Ordinance to see if any other relief was needed as related to LED signs. She indicated she reviewed the lighting requirements and found there is not enough information to determine of the lighting impact. She stated there has been enough testimony provided there is an impact of lighting from the sign. Planner CuvIELLO stated the

Levitt's lighting expert indicated the billboard exceeds the industry standards and the lighting standards for the Township are exceeded at the property line. Planner CuvIELLO referred to Article VIII of the Township Ordinance stating it deals with signs and there are two (2) subsections that deals with illumination of signs. She further noted that section 225-59 also speaks of certain features being prohibited and she then read this section into record. Planner CuvIELLO stated this section does not say digital signs are prohibited it does not mean it is not regulated.

Planner CuvIELLO then referred to section 225-61 (a) illumination lighting and then read this section into the ordinance advising this is a clear indication that you cannot have a sign that causes a public nuisance. Planner CuvIELLO stated this section also speaks of a ray of illumination and you have to look at that standard. She indicated she has reviewed Chapter 94 of the Township Code, which deals with lighting for subdivision and site plan, which is the only standard in the Township Ordinance. She then read into the record 94-23H advising based upon the Levitt's lighting expert there was a violation of this provision of the ordinance. She stated this section would not create a variance, however, since it is a design standard the applicant would have to seek a waiver.

Attorney Hankin asked if there are any other traffic or light ordinance or site plan requirements that would apply to this application and he asked because this question was previously brought up does 94-23 only apply to subdivisions. Planner CuvIELLO stated Chapter 94-23 applies to both site plans and subdivisions. She indicated this Board granted a design waiver in 2010 for lighting. Attorney Hankin presented Exhibit LL. Planner CuvIELLO advised these are the minutes from the July 19, 2010 Planning Board Meeting for Thomas Family Enterprises, site plan 04-10, and they requested a design waiver for lighting.

Planner CuvIELLO stated under Chapter 94-23 A-K some items apply to subdivision some to site plans, however, this is the only area where lighting is addressed and in her opinion and the Board since a waiver was granted in 2010 applies. Planner CuvIELLO then referred to Chapter 94-23 item K and read into the record advising when you have a site plan application you are required to have lighting information.

Planner CuvIELLO stated based on the ordinance there are regulations that must be considered and evaluated by the Planning Board, however, she stated with this application she is not sure it was addressed since the billboard can be seen from far away and creates a disturbance. Attorney Hankin asked if a lighting plan was submitted with this application. Planner CuvIELLO stated she is not aware. Attorney Hankin asked if a waiver was requested. Planner CuvIELLO advised she believes he is right.

Attorney Hankin referred to Exhibit KK, which is evidence of the Township's treatment of a billboard as a second use. Planner CuvIELLO advised the applicant asked for a waiver of landscaping, lighting and signage plan when they made their application. She indicated when you review different ordinance that all deal with the same subject matter, which she indicated with this one also requires a submission of an Environmental Impact Statement under Chapter 94-14.

Attorney Hankin asked if this Board can deny this application if there is traffic danger. Planner CuvIELLO stated if the Board finds the information provided by the traffic engineers is such that there is a traffic safety issue substantial enough, even though, the Department of Transportation granted an approval the Board can deny this application. Planner CuvIELLO stated this is based upon fact. She indicated in 1991 there was a case called El Shaer v. Planning Board and the court upheld the decision of the Board's

denial of a site plan, without variances because of concerns for public health and safety even though the Department of Transportation granted an approval for access.

Attorney Hankin asked if Planner CuvIELLO has reviewed the scenic resources concerning this application. Planner CuvIELLO stated she has. Attorney Hankin asked if the Board finds the billboard out of character they can either deny it, lower, or modify the application, which would include a shut off of lights at 8:00 p.m. Planner CuvIELLO stated yes. She indicated under the requirements of the Environmental Impact, which was submitted with this application, critical impact areas must be reviewed. She stated if you refer to page 4 of their statement, section 1.4, the last paragraph states: With regards to the impact of the sign on scenic views, it is very important to note the existing residential development is located over half a mile from the billboard and the views from these dwellings across the marshes are currently affected by the large marina building to the immediate east of the subject billboard.

Planner CuvIELLO indicated this is all it says. She stated it does not discuss the LED Board being lit 24 hours and it changes every eight (8) seconds. She indicated it is compared to the marina as being compatible and within this report it states the Gifford building as being 40' ft. high so the sign is 20' ft. higher than it, as well as, the telephone poles in this area. She indicated there is an impact of this billboard on the scenic views and values.

Planner CuvIELLO also referred to page 7 of the applicant's Environmental Impact Statement, more specifically under section 2.4. She indicated both sides of the Margate Boulevard are developed with externally light billboards with surrounding wetlands, which is show in Figure 6. She then referred to photograph 5 in Appendix A which is provided to show the existing view of the billboard and the marina building from the subject residential neighbors. She sated there is a massing and bulk from the marina building that does affect the existing view, however, she stated she takes exception that this statement says the billboard is compatible with the existing ones. She stated this is a 60' ft. billboard and the others are only 25' ft., which are externally illuminated and cast light on themselves not shining into residential bedrooms in a residential community over a half mile away.

Planner CuvIELLO than referred to section 3.3 in the Environmental Impact Statement, specifically page 11 which she indicates discusses no development alternatives. She stated if this billboard was eliminated there is no means of supporting the travel and tourism industry, recreational activities, seasonal demands of travel and tourism in Egg Harbor Township and the surrounding communities. Attorney Hankin asked how does a beer commercial interface with this comment.

Planner CuvIELLO stated it is a matter of opinion, however, there are three (3) other billboards existing that contribute to tourism and does so in a way that is compatible to the surrounding area. Planner CuvIELLO also stated that based upon the Traffic Engineer, David Horner and the information he provided. She stated the sign comes into view between Oxford and Bay Drive in Northfield, which is 3,600 ft. away. She stated if you travel 45 mph, traveling 66' ft. per seconds then you will see 6.8 different messages before you pass it.

Planner CuvIELLO stated this is what occurs as a driver not as a resident sitting on their back deck enjoying a glass of wine. She stated there is a clear impact on the scenic views. She indicated there is two (2) component to her argument. She stated the fact this is not a permitted use and the fact it need a variance for setback distance.

Attorney Hankin stated he is finished with Planner Cuvillo. Attorney Talvacchi stated there is a lot of new material submitted and he would like to research, therefore, he would like to reserve his right to examine today and possibly bring back to the next meeting.

Attorney Talvacchia advised he listened to arguments that this is not a permitted use. He asked if Planner Cuvillo is aware the current zoning ordinance was adopted in 1976. Planner Cuvillo stated yes. Attorney Talvacchia stated in 1976 section 401 listed the variance zones, residential, commercial and industrial. He then showed this to Planner Cuvillo.

Attorney Talvacchia asked there is no business zones listed. Planner Cuvillo stated this is correct. Attorney Talvacchia then referred to the sign section, which was earlier noted billboards were not permitted in 1976. Billboards became permitted in 1993. Planner Cuvillo stated correct. Attorney Talvacchia stated however signs in business and industrial zones under section 1007 is noted. Planner Cuvillo stated this is correct.

Attorney Talvacchia asked if this is the way it is referenced today. Planner Cuvillo stated yes. Attorney Talvacchia asked if it mentions commercial zones. Planner Cuvillo stated not in title, however, she has not reviewed the 1976 ordinance. Attorney Talvacchia asked Planner Cuvillo to review so she may answer. Planner Cuvillo stated in 1976 it does not mention commercial zones.

Attorney Talvacchia asked that in 1976 the ordinance has sign provision for business and industrial zones, but there are commercial zones. He asked if signs were permitted in those zones in 1976. Planner Cuvillo stated yes and she indicated this is what she had previously advised. She stated it would be unfair to say that no signs were permitted in the commercial zone. She stated that was not the intent. Planner Cuvillo advised it is how she related it to billboards.

Attorney Hankin asked if specific zoning districts allow signs. Planner Cuvillo stated she does not believe they are listed under zoning. Attorney Talvacchia stated under Article VIII in the current zoning this is the only section dealing with signs in terms of where they are allowable and they are regulated. Therefore, in 1976 signs would have been permitted in commercial districts. Planner Cuvillo stated she thinks the premise remains the same in 1976 or today. She stated the argument is that when billboards were added it was not the intent to add them to the marine commercial zone. Again, she noted a strict reading of the ordinance indicates signs are not permitted in the commercial zones, however, it is not the spirit.

Attorney Talvacchia stated so under section 225-63 of the code it says signs in business and industrial districts and your opinion is that under certain circumstances you can have signs in commercial districts. Planner Cuvillo stated based on past practice of the town and how they interpret this provision of the ordinance, she stated yes. Attorney Talvacchia asked if this is since 1976. Planner Cuvillo stated yes.

Attorney Talvacchia stated in 1993, as the result of a lawsuit, the municipality now allows billboards and added this to section 225-63 c. Planner Cuvillo stated yes. Attorney Talvacchia asked if there is a distinction between a business sign or a billboard in the business or industrial zone. Planner Cuvillo stated no.

Attorney Talvacchia asked if it was possible when billboards were added and the language was left in section 63 the intent was to allow billboards in commercial districts. Planner Cuvillo stated yes. Attorney Talvacchia stated, however, she is looking at the MC zone differently. Planner Cuvillo stated

though the MC zone is classified as commercial zone it has a different purpose and different types of uses are permitted within it.

Attorney Talvacchia stated the one thing not read that is permitted with the MC zone is that personal wireless telecommunication facilities not to exceed 120' ft are a permitted use. Planner CuvIELLO stated yes it is.

Attorney Talvacchia stated the intent and purposes is to encourage waterfront facilities for recreation purpose and provide access in the MC zone, however, you also have new and used boat sales. He stated boat sales could be anywhere it does not have to be purchased on the waterfront to promote it. Planner CuvIELLO stated this is correct. Attorney Talvacchia stated you can also repair and construct boats and you have marine supply shops, as well as, telecommunication towers. He asked how does this provide access to the waterfront. Planner CuvIELLO stated it does not.

Attorney Talvacchia stated a 120' ft. cell tower is permitted without variance relief. Planner CuvIELLO stated yes. Attorney Talvacchia stated it is not a use variance. Planner CuvIELLO stated this is correct.

Attorney Talvacchia stated he would like to address the two (2) use issue. He indicated he has not had a chance to review the information presented tonight, but he is familiar with the Sun Oil Case. Attorney Talvacchia asked Planner CuvIELLO to look at section 225-13 of the Township Ordinance, specifically A. Planner CuvIELLO reviewed and read into the record this section. Attorney Talvacchia stated this section discusses two (2) principal uses are prohibited in the Pinelands. Planner CuvIELLO advised it does say this.

Attorney Talvacchia asked if it said non-pinelands. Planner CuvIELLO stated no. Attorney Talvacchia asked of the cases cited how many were in the pinelands. Planner CuvIELLO stated none. Planner CuvIELLO advised also that this section goes back to 1976 and it relates to buildings not uses in her opinion.

Attorney Talvacchia asked if Planner CuvIELLO read the Sun Oil Case. Planner CuvIELLO stated she did. Attorney Talvacchia asked if the court said the municipal land use law requires a use variance for two (2) principal uses on a lot. Planner CuvIELLO stated under the way of the Avalon ordinance is written that two (2) principal uses are required. Attorney Talvacchia then read into the record Case 286 New Jersey Super, Appellate Division, 1996, page 443, what the court said. Planner CuvIELLO stated the court discussed two (2) principal uses.

Attorney Talvacchia asked if Planner CuvIELLO was familiar with a case known as TR Liquor, LLC and East Windsor Group versus Township of Toms River Planning Board". Planner CuvIELLO stated no. Township Administrator Miller stated Attorney Talvacchia cannot ask Planner CuvIELLO what the case means if she doesn't know it. Attorney Talvacchia stated this is correct and he will leave this out for now.

Attorney Talvacchia advised he is finished for now, but has to review information presented by Attorney Hankin would like to make sure Planner CuvIELLO will be brought back to recall. Chairman Garth stated this is fine.

Attorney Talvacchia asked if Attorney Hankin is done because he would like to bring up Engineer Schropshire. Attorney Hankin asked he is not complete yet. He stated he would like to introduce his exhibits into evidence and make statement about the editorials. Attorney Talvacchia stated he will object to a lot of what Attorney Hankin has proposed to submit.

Township Administrator Miller stated he would like to ask the witness some questions. Attorney Hankin advised there are members of the public present this evening that would like to speak. Chairman Garth advised he will let Township Administrator Miller ask his questions and then he will open to the public.

Township Administrator Miller stated Planner Cuiello advised she did not review the first ordinance of the Township creating zoning (1976). He asked why not. Planner Cuiello stated she went back to the 1993 ordinance when billboards were introduced and she reviewed the 1982 ordinance that addressed the marine commercial zoning. She indicated she did not feel it was necessary based upon billboards being added.

Township Administrator Miller stated if she had went to the 1976 ordinance would have discovered marine commercial was permitted from day one with similar uses. Planner Cuiello stated she is aware of this when they saw the list presented by Attorney Talvacchia this evening. Township Administrator Miller stated then saying marine commercial was not created until 1982 is incorrect. Planner Cuiello stated she had an ordinance creating the marine commercial in 1982, she stated if there is another ordinance prior she did not review.

Township Administrator Miller stated 7-13.1 marine commercial list the permitted uses and accessory uses and many are similar to today, so marine commercial zone has been in since 1976. He further noted that in Planner Cuiello's opening she indicated she writes ordinance for Galloway Land Use regulations, zoning amendments. He asked if this is correct. Planner Cuiello stated Galloway and others. Township Administrator Miller stated in 1993 the Township placed billboard sin section 225-63 for signs would you conclude the writer and the intention was to put them together so they were permitted in business and industrial zones this is why they selected the section to put it in.

Planner Cuiello stated when you go that far to say, why would they put it here and not exclude it. She stated this is why she went as far as she did to look at Marie purposes to make a finding for the Board to evaluate. Township Administrator Miller stated Planner Cuiello stated marine commercial uses are not business uses. Planner Cuiello stated yes.

Township Administrator Miller stated if he goes to Gifford Marina he can purchase fishing gear or a gas tank, so they are selling like any other retail store. If he rents a boat to somebody and they go out I am paying them money. He stated it may be recreational but still engaging in a business activity. Planner Cuiello stated yes, they are businesses.

Township Administrator Miller stated Planner Cuiello spoke of a pattern of where billboards when. However, he stated she has been there long enough to know the pattern is created by landowners/developers who come and submit an application in a hot area. He asked if people go in areas that the do not believe are successful. Planner Cuiello stated hopefully not.

Township Administrator Miller stated so the pattern is where they can make the money and be successful not because they could not have go somewhere else. Planner Cuiello stated this is correct.

Township Administrator Miller asked when she reviewed the applications how many site plan and subdivision approvals were granted since 1993. Planner Cuiello stated she is not sure, however, she imagines it is a lot. Township Administrator Miller stated so there are five (5) applications that you found, however, there are dozens that didn't require a variance. Planner Cuiello stated the request as

for any application with two (2) uses so not sure if others were treated differently. She stated there were five (5) applications in the CAFRA that were treated this way and the governing body only addressed the retail uses and gasoline stations. She stated nothing else was modified.

Attorney Hankin stated he would represent that a request was made through an OPRA request and this is what was produced and I doubt they would have been missed. Township Administrator Miller asked if any billboards were denied by Egg Harbor Township. Planner CuvIELLO stated no.

Township Administrator Miller stated Planner CuvIELLO is not the Land Use Administrator in Galloway but she does see applications come in and deals with land use attorneys. He asked if some attorney's decide they want to submit an application which may be contrary to the Planner or Land Use Administrator for whatever the reason. Planner CuvIELLO stated she is not sure how other areas do it, but if an application does not meet the ordinance then it is addressed before the board.

Township Administrator Miller stated what if an attorney wanted a use variance because they thought it was required, however, you did not. Planner CuvIELLO stated she has never had this occur in the years she has been practicing, however, she does not have the right to deny them from making the application. Township Administrator Miller stated Exhibit KK is a letter from land use attorney John Daniel dated July 18, 2002, saying his client is submitted an application for principal use in the CB Zone, however, this document does not say he was told and there does not seem to be a zoning interpretation was that found. Attorney Hankin stated no, however, Egg Harbor Township's Planner concurred in all five (5) situations. Planner CuvIELLO stated she does not recall anything from town that a use variance was required.

Township Administrator Miller stated Planner CuvIELLO believes the post is part of sign. Planner CuvIELLO stated yes. Township Administrator Miller asked if the post is part of the sign when measuring the square footage of the sign. Planner CuvIELLO stated no because the ordinance defines sign area separately from the sign.

Township Administrator Miller stated with the environmental impact Planner CuvIELLO did not conclude one way or another if environmental things were disturbed such as the osprey nesting, eagle nesting and the shore birds by the placement of the sign. Planner CuvIELLO stated she focused on the scenic aspects. Township Administrator Miller asked what is the horizon for determining the scenic vista from whatever you are measuring from.

Planner CuvIELLO stated it depends on where you are looking at from. She stated it does affect the scenic views. Township Administrator Miller asked if this were not an LED sign would it have same impact. Planner CuvIELLO stated the LED portion of the sign contributes to the impairment of the scenic view and vista. She stated the height also is a factor.

Township Administrator Miller asked if he were standing in Dr. and Mrs. Levitt's backyard looking toward Atlantic City can you read the Harrah's sign does this not impact the scenic vistas. Planner CuvIELLO stated she did not look to see if you can read the signs on the casinos in the city, however, the city skyline is part of the scenic view and vista that people value. So not sure if the billboard compares to the view of the skyline in Atlantic City. She stated they are different.

David Schropshire, sworn in: Engineer Schropshire stated he is a principal of Schropshire Associates, traffic engineering consultant, professional engineer and planner in the State of New Jersey. Attorney Hankin stated he will stipulate to the qualifications of this professional. Attorney Talvacchia stated he would like to stipulate his qualifications regardless. Engineer Schropshire stated he received his license in 1989 and has been a practicing traffic engineering consultant since 1980. He stated he has had his own firm for thirteen years and before this he was a principal with Horner and Canter Associates. He stated he has qualified as an expert by about 175 boards include this one.

Attorney Talvacchia stated when the Department of Transportation was reviewing this application a report was submitted to them dated September 7, 2012, from Horner and Canter and one from Gerson Alexander dated August 25, 2012, so a result the Department of Transportation gave Jersey Outdoor the chance to submit is own report. Attorney Schropshire stated this is correct and he prepared this report which is dated September 20, 2012. Attorney Talvacchia handed out this report to the members. He also asked Engineer Schropshire if any other reports were done by him other than this. Engineer Schropshire stated this is correct.

Board Attorney Bergman marked Engineer Schropshire's report dated September 20, 2012, as applicant's Exhibit dated February 25, 2013. Attorney Talvacchia asked if Engineer Schropshire would please summarize his report to the Board.

Engineer Schropshire stated Planner CuvIELLO stated the Board could deny this application based on traffic safety issues or a dangerous condition. He stated based on his analysis and the testimony presented during the hearings he stated he does not believe there is any traffic engineering evidence that there is a traffic safety issue nor a dangerous condition for which the board to deny this application. He stated this is actually his conclusion.

Engineer Schropshire stated the issue is what is safe and what is unsafe, which is difficult to nail down as a traffic engineer. He stated there is criteria to look at but there is no hard and fast definition. Engineer Schropshire stated he believes that Engineer Horner defined "less safe and Mr. Alexander stated "more hazardous. He indicated he is not focusing in on safe or hazardous but on less and more.

Engineer Schropshire stated Engineer Horner advised the road way is safe and this is correct. He stated Mr. Alexander did not reach this conclusion and actually found that there were dangerous curves and hazardous curves. He stated Mr. Alexander made a leap from more hazardous to hazard and you cannot. Engineer Schropshire stated the reason you cannot is because this road way meets all or exceeds all the accept traffic engineering standards. He stated in his experience Atlantic County does not build itself unsafe roadways. He stated the follow the rules and exceed them so they are safe.

Engineer Schropshire stated he also reviewed the accident reports, which can give an indication of whether or not there is a safety condition. He indicated that based upon this information there is no safety condition out here based upon the accident reviews.

Engineer Schropshire stated the other compelling thing is that the New Jersey Department of Transportation, as part of the purposes for evaluating billboards is to consider public safety and convenience. He stated when they approved the billboard they concluded public safety wise that is was approvable.

Engineer Schropshire stated there is no question in his mind the roadway is safe and the location is safe and that it meets all Department of Transportation criteria for billboards. He indicated this is why the applicant received a permit. He further noted there is no question concerning this since it was confirmed in Engineer Horner's testimony that the roadway is safe.

Engineer Schropshire stated the departure comes with Engineer Horner having the opinion that this billboard could lead to accidents. Engineer Schropshire stated that in his opinion the billboard could be an unsafe structure based on the billboard being introduced to this roadway. So he indicated you have a safe roadway and a possible unsafe element being added.

Engineer Schropshire stated he has reviewed all relevant literature associated with billboards and there is not one report that concludes definitively that there is a correlation between the introduction of a billboard and the introduction of any increased accident. Engineer Schropshire stated there is at least ten (10) documents out there for review dating back to 1980 and none of them have concluded there is a correlation between digital billboards and an increase in accident experience.

Engineer Schropshire stated he also believes the New Jersey Department of Transportation disagrees also that this billboard will lead to accidents because of their letter to Atlantic County was very specific that they could find no accident experience. He stated they could find no issue that would deem this location unsafe for a digital billboard.

Engineer Schropshire stated Engineer Horner had two (2) issues. He stated one was with his report more specifically page 3 where he indicated "the billboard is not intended to be viewable by passing eastbound motorist since it is outside of a driver's cone of vision", however, he stated there was a preposition in front of this. He then read the entire sentence: "At the beginning of the horizontal curve, at the beginning of the horizontal curve, the billboard is not intended to be viewable by the passing eastbound motorist since it is outside the driver's cone of vision".

Engineer Schropshire then referred to Exhibit I to demonstrate what he meant. He also stated the photographs taken were from someone outside of their vehicle standing in the middle of the road way between 5' to 6' ft. tall. So if you move a driver over four or five more feet into the drivers lane and then take him down to 3' or 4' feet and push him up 100' ft. and place a car around him you are not going to see the billboard. It is outside the cone of vision.

Engineer Schropshire stated the other issue Engineer Horner stated was relevance to the vertical curve. Engineer Schropshire stated the digital billboard faces to the west, so the eastbound traffic is where it is being viewed. He stated the vertical curve is about 700' ft. beyond the billboard location and that is heading in the eastbound direction. So you have a distance of about 800' ft. by the time the horizontal curve begins until you reach the vertical curve. He stated in his opinion there is no relevance.

Engineer Schropshire stated based on this he indicated this would mean some would see the billboard go into the opposing lane travel 800' ft. to get to the vertical curve and be in danger of hitting someone on the other side of traffic. He indicated this person should not have a driver's license if this occurs.

Engineer Schropshire stated when you review the facts you go back to the conclusion that there is no safety issues from a traffic engineering perspective that could lead to a denial of this application. He indicated this is a summary of his report.

Attorney Talvacchia stated Mr. Alexander mentioned a Swedish study that recently came out. He did not read it did he? Engineer Schropshire stated this is true. Attorney Talvacchia asked Engineer Schropshire if he had. Engineer Schropshire stated he did. Engineer Talvacchia asked if reached a conclusion about billboards and safety.

Engineer Schropshire stated the study is dated July, 2012 and the results or conclusions are found on page 2, which he read to the Board. He then stated there is no correlation between an increase in the accidents even in this Swedish study and the presence of a digital billboard.

Attorney Talvacchia asked if Engineer Schropshire looked at a Maryland study. Engineer Schropshire stated he had. Attorney Talvacchia asked that it be identified. Engineer Schropshire stated it is entitled "A critical comprehensive review of two studies" recently released by the outdoor advertising association of america prepared for the Maryland State Highway Administration, and it has one of the signers, Gerson J. Alexander, President.

Attorney Talvacchia asked if there was a conclusion reached. Engineer Schropshire yes and it was a final report. He referred to Page 12 and read into the record. He stated again, there is no correlation between electronic billboards and an increase in accidents. Attorney Talvacchia asked that Mr. Alexander who was here last month signed off on this study. Engineer Schropshire stated his name is on the title.

Township Administrator Miller asked if the Swedish study and the Maryland study could be marked for the Board's consideration. Board Solicitor Berman Marked the Swedish Study applicant Exhibit 2/25/13 and the Maryland Study as applicant Exhibit 2/25/13.

Board Engineer Watkins asked Engineer Schropshire what are the New Jersey Department of Transportation requirements for the allowable time changes for electronic billboards. Engineer Schropshire stated ever eight (8) seconds. He stated this is based on the two (2) second issue. He indicated when a driver is distracted more than two (2) seconds it is more than likely to be an issue therefore, he believes they increased the timing. Board Engineer Watkins stated it takes someone two (2) seconds to see it and then turn their head back.

Engineer Schropshire stated it is less that. He stated once you get to two (2) seconds it becomes a distraction, therefore, the reason why it does not change every second. Board Engineer Watkins asked how far do you think you can read this sign and be driving on the Margate Boulevard towards it. Engineer Schropshire stated he is not sure he did not analyze this.

Township Administrator Miller asked if the eight seconds change based on your speed limit. Engineer Schropshire stated it if you are on the Expressway going 70 mph it still is going to be eight (8) seconds. Chairman Garth asked if it could be ten (10) seconds or does the Department of Transportation require the eight (8) seconds. Engineer Schropshire stated they give a minimum.

#### **Motion Carman/Eykyn to open public portion.**

Brenda Taube, sworn in, Ms. Taube advised she is a Margate resident and a Margate Commissioner. Ms. Taube stated she travels this causeway at least once a day maybe up to three (3) times a day. She indicated she travels the causeway twice or three times a day. Ms. Taube noted her concerns are safety

and aesthetics. Ms. Taube advised all the other billboards on the causeway are within peripheral vision, however, with this one you have to look up taking your eyes off the road.

Ms. Taube stated this billboard stands out. She indicated it would fit nicely within Time Square, Vegas or Atlantic City. She indicated others have even suggested the Expressway or Black Horse Pike. She advised in its current location with the height and brightness it does not fit.

Ms. Taube stated she does not believe the residents of Egg Harbor Township are affected or nearly affected as those who reside in the down beach community, whom travel this causeway. However, she stated she is concerned with everyone's safety. She thanked the Board for their consideration.

Mary Tracy, 14 North 30<sup>th</sup> street, Longport, New Jersey, sworn in: Ms. Tracy advised she admires how the Board has carefully listened to testimony. Ms. Tracy indicated she is president of Scenic America. She advised Scenic America is a national organization for scenic conservation, preservation of community character and prevention of visual blight.

Ms. Tracy advised Scenic America would consider this project a negative impact on the scenic character of the causeway. She advised Aesthetics has been a primary concern of Scenic America and they have been interested in digital signs. She indicated across the country Boards and citizens are dealing with digital technology. She indicated this application is now an intrusion of digital signs flashing in homes, which is a tremendous negative impact on quality of life.

Ms. Tracy indicated on this causeway is a treasured scenic vista and she would be grateful to the Board if they would save this vista for future generations. She stated once this project is allowed there will be no stopping others.

Ms. Tracy stated there has been many conversations about safety tonight. She indicated she knows a bit about this because of her being president of Scenic America and a member of transportation research boards of digital sign committee. She stated in January she attended an annual meeting in Washington, D.C., where the Swedish Study was presented.

Ms. Tracy stated one of the key subjects in this study concerned glances were longer and more frequent with a digital sign versus a regular one. She indicated everyone has talked about two (2) seconds. She noted there is a study called The 100 Car Naturalistic Study whose fact sheets says if you take your eyes off the road more than two (2) seconds it will increase risk of a crash or near crash.

Ms. Tracy stated this study also found that 23% of crashes that occur in metropolitan areas are because eyes are being taken off the road for two seconds. She indicated 80% were due to distractions that made the driver look away. She indicated there are many good drivers and they may not look at these signs.

Attorney Talvacchia objected. He asked if Ms. Tracy was an engineer. Ms. Tracy stated no and she has advised who she is. Attorney Talvacchia indicated Ms. Tracy can give her opinion, however, there is no verification for this study. Board Solicitor Bergman advised Ms. Tracy is a member of the public and the Board can weigh what she is testifying to.

Ms. Tracy stated what was found in the Swedish study is that electronic billboards have an impact on the gaze. She stated even if you do not want to look you are going to end up looking, especially when the road is dark.

Ms. Tracy advised the Board needs to look if this location is appropriate, the intrusion of to the quality of life for many residents, the safety impact and the precedent that it will have. She indicated a digital billboard has no public benefit. Ms. Tracy stated it enriches the owner of the billboard and allows private advertisers to use public space for the pushing of their goods.

Ms. Tracy thanked the Board for their time. She stated she would also like to share one other study that was done in Philadelphia. She stated it is called Beyond Aesthetics. She stated the study found that properties located within 500' ft., she indicated a regular billboard, are worth \$31,000.00 less. She indicated this is sound statistics and in this study it is showing properties will decrease in value.

Ms. Tracy stated she would strongly urge the Board not to allow the sign and to use their power for the public good.

Township Administrator Miller asked Ms. Tracy if Scenic America opposed philosophically to electronic billboards. Ms. Tracy questioned philosophically? Township Administrator Miller stated yes, do you support them? Ms. Tracy stated yes, Township Administrator Miller asked if they outright oppose them? Ms. Tracy stated she thinks Scenic America sees them as not being something scenic. Township Administrator Miller stated so Scenic America does not support electronic billboards. Ms. Tracy stated they do not. She indicated there are some places such as Times Square that they are appropriate because they fit into the character, however, this is not a place where they would be appropriate.

Township Administrator Miller stated Ms. Tracy stated there was no public benefit he asked if they post Amber Alerts or Silver Alerts would it meet a public purpose? Ms. Tracy stated no it does not. She stated this will be flashing commercial advertisements all the time. She stated if someone is kidnapped once every ten (10) months and there is a 30 second flash of this. She stated it just not having the kind of benefit that is worth all the cost and cause of accidents. She advised there are many other ways to have these alerts come across.

Steve Devlin, 218 Locust Avenue, Egg Harbor Township, sworn in: Mr. Devlin advised he is representing the Elks Lodge on Mays Landing Somers Point Road. He stated he actually came here tonight to see Mr. Atkins and he did not have a chance before the meeting. He indicated he is not sure if he is even here.

Mr. Devlin stated the Elks are in possession of a contract from Mr. Atkins' company to put up a sign like this right by the bridge on Mays Landing Somers Point Road. He indicated the Elks had a meeting the other day to consider. He advised they considered the light pollution going into Somers Point. He stated they did not want to make the neighbors mad. Therefore, Mr. Devlin advised officially the Elks will not be signing a contract. He stated he did not mean to do it this way, but he thought he should let Mr. Atkins' know.

**Motion Cook/Kearns to Close public portion.**

**Motion Kearns/Eykyn to continue application to Monday, March 18, 2013, 5:30 p.m. Vote 7 Yes:**  
Carman, Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth

SUMMARY MATTER(S):

Discussions of matters pertaining to the Board:

*SECTION I:*

*SECTION II:*

- a. General public discussion

**Motion Cook/Eykyn to open. Vote 7 Yes**

May the record reflect no one has come forward.

**Motion Eykyn/Kearns to close. Vote 7 Yes**

Motion Carman/Kearns to adjourn at 9:45 P.M. Vote 7 Yes: Carman, Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth

Respectfully submitted by,

Theresa Wilbert, Secretary