

**Township of Egg Harbor  
Planning Board**

**March 18, 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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| <b>1. SP 10-11 (Amended)<br/>Jersey Outdoor Media</b>  | <b>Amended Minor Site Plan<br/>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. | 114 Margate Boulevard<br>Waiver of Time – <b>Not Granted</b> |

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):**

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

Nick Talvacchia, Esq., stated he would like to cross examine Tiffany CuvIELLO, P.P. Attorney CuvIELLO stated Planner CuvIELLO raised a number of objections as to why the use is not permitted. He stated in the MC Zone Planner CuvIELLO opined that it does not permit billboards. Planner CuvIELLO stated this is correct. Attorney Talvacchia asked if the MC zone specifically prohibit certain uses. Planner CuvIELLO stated it does. Attorney Talvacchia asked if it prohibits billboards. Planner CuvIELLO stated it does not list

billboards. Attorney Talvacchia asked with the exception of the marina use are other uses permitted in the MC district and he asked, if so, could Planner Cuiello read them. Planner Cuiello stated there are other permitted uses and she read into the record the uses permitted within the MC Zone.

Attorney Talvacchia then asked Planner Cuiello to review the transcript from last month's meeting, specifically page 117 lines 5-8. He indicated that this section advises nothing else is permitted other than marinas. Planner Cuiello stated she believes with the exception of communication facilities all other uses are included within a marina use.

Attorney Talvacchia asked if new and used boat sales could be independent of a marina? Planner Cuiello stated yes. Attorney Talvacchia asked if buildings for boat storage, repair and the construction of boats are permitted independent of whether or not there is a marina. Planner Cuiello stated yes. Attorney Talvacchia asked if a marine supply shop could also be independent from a marina. Planner Cuiello stated this is correct.

Attorney Talvacchia advised he is troubled by Planner Cuiello characterizing the marine commercial zone permits marinas and that is all. He asked if she still feels this is accurate. Planner Cuiello stated the statement was based upon the purpose of the marine commercial zone and her intent that the marine commercial district and all permitted uses except for the communication towers are water related uses. Attorney Talvacchia asked if Planner Cuiello would acknowledge that a marina is one of at least five (5) principal uses within the MC zone. Planner Cuiello stated this is correct.

Attorney Talvacchia asked Planner Cuiello is she is familiar with any newer case law interpreting the Sun Oil case? Planner Cuiello stated not any published decision. Attorney Talvacchia questioned if it is Planner Cuiello's understanding of Sun Oil, that as a matter of law in New Jersey, that if a use unless an ordinance specifically allows two (2) principal uses on a lot you cannot have that? Planner Cuiello stated correct. She indicated if the ordinance does not specify two (2) principal uses and the reading of the ordinance findings does not account for more than one, then you cannot have more than one principal use.

Attorney Talvacchia stated Planner Cuiello spoke of section 225-13 of the municipal code and there being a section that prohibited two principal uses in the pinelands and in the non-pinelands two principal residential uses are not permitted. So, there is a section that deals with the issue of more than one principal use on a lot. Planner Cuiello stated in the pinelands area yes. She advised it speaks to structures and residential areas.

Attorney Talvacchia stated last month exhibit kk was presented which spoke of an application for RC Maxwell and one for All State, which the applicant's Planner, Jon Barnhart was involved with. He asked if both were in pinelands areas. Planner Cuiello stated yes. Attorney Talvacchia stated so it would have been right for the applicants to submit for a use variance to allow, not because of the Sun Oil case, but because the Township Ordinance. Planner Cuiello stated yes.

Attorney Talvacchia presented three (3) planning board resolutions, marked as Exhibit A20, dated 3/18/13 for Cellco, Exhibit A21, dated 3/18/13 for Creek Development and Exhibit A22, Weinstein supply. Attorney Talvacchia indicated the Cellco application is within the CAFRA zone and is located on site with an existing warehouse. He advised Creek Development is for a bank on the same property with a residential home and that the third is a cell tower located on the site containing Weinstein Supply.

Attorney Talvacchia advised it was Egg Harbor Township's practice requiring uses variances. Planner CuvIELLO stated when there are two (2) uses. Attorney Talvacchia stated there are three (3) examples of no uses variances being required, however, there are two (2) uses. He asked why these applications were not presented to the zoning board?

Planner CuvIELLO stated two (2) of the cases are cell towers. She indicated the cell tower ordinance section 94-57 allows for them and this is why they did not go to the Zoning Board. She stated with regard to the bank she would have to look at the file in order to determine, however, from the resolution it states the house is to be demolished, therefore, she believes this is why, but again she would have to look at the file.

Attorney Talvacchia asked Planner CuvIELLO if she is familiar with the February 24, 1997 minutes from the Zoning Board Meeting where Attorney Perskie discusses a WaWa application? Planner CuvIELLO stated she is. Attorney Talvacchia stated this application went to the zoning board for two (2) principal uses, however, he asked if there is anything specific that gives a rationale as to why this case was before the zoning board. Planner CuvIELLO stated it appears the Sun Oil case. Attorney Talvacchia asked if Planner CuvIELLO knows when the Sun Oil case came out. Planner CuvIELLO stated she believes in 1996. Attorney Talvacchia stated he would like to mark the minutes from the zoning board meeting dated February 24, 1997 as A-23.

Attorney Talvacchia then referred to the Cumberland Farm application that was submitted in 2007 and for which was the Exhibit of Attorney Hankins. He asked Planner CuvIELLO if the minutes from that application reference why Attorney Nehmad brought that application before the zoning board. Planner CuvIELLO stated it was brought before the Board because of the Sun Oil case. Attorney Talvacchia asked that the minutes from the zoning board meeting of February 5, 2007 (Cumberland Farms) be marked as Exhibit A-24.

Attorney Talvacchia stated the thousand foot separation requirements was argued that the sign includes the pole. He stated this is what Planner CuvIELLO has indicated, however, Planner Barnhart argues differently. Attorney Talvacchia then read into the record Chapter 94-3. Planner CuvIELLO stated sign area excludes out the frame work and bracketing in order to determine the square footage of a sign, however, she indicated she believes a sign, as referenced is everything and the sign area is only the face. She indicated the pole is used to support the advertisement and the electricians to make the advertisement work. Attorney Talvacchia asked if an advertisement is on the pole. Planner CuvIELLO advised there are no words on the pole, however, a 600 sq. ft. sign face is upon the pole.

Attorney Talvacchia then asked Planner CuvIELLO to read into the record the definition for Sign Area, which she did. Attorney Talvacchia asked Planner CuvIELLO after reading the definition for sign area that it is a guide on how to calculate the advertising portion. Planner CuvIELLO stated she see the sign area is the face of the sign which excludes the framework and bracketing, which is part of the whole sign.

Attorney Talvacchia then asked Planner CuvIELLO to refer to Article VIII He stated this section has directives to the ray of illuminations, and they can't directly shine, etc...he asked why this section control lighting and also section 94-23. Planner CuvIELLO stated in her opinion just because LED signs are not prohibited does not mean they are not regulated. She stated when you read the ordinances together. She indicated section 225-61 speaks of illumination devices but does not provide measurements. She indicated Chapter 94 has lighting with respect to site plan development so specific foot candles are mentioned.

Attorney Talvacchia asked if industry standards apply to the illumination of this sign or the .1 foot candles. Planner CuvIELLO stated the Board can use the industry standards as a guide, however, they have to be guided by what the ordinance requires.

Attorney Talvacchia stated last month Planner CuvIELLO referenced a case known as El Shaer and indicated the court upheld a Board's denial of a sight plan for a permitted use, no variances were requested, because of concern for public health and safety, was granted and even though the Department of Transportation issued an access permit. He asked if she could explain her opinion about this case. Planner CuvIELLO stated she referenced this because there were neighbors in surrounding communities who raised concerns about lighting, traffic safety and scenic intrusion and she wanted the Board to know that just because the Department of Transportation issued a permit the Board has a latitude to deny if the ordinance cannot be addressed.

Attorney Talvacchia advised he would like to discuss scenic resources. He asked Planner CuvIELLO if she is familiar with the existing billboards on the causeway that are below the applicants. Planner CuvIELLO stated she is. Attorney Talvacchia asked if they block the view of the wetlands more than the Jersey Outdoor sign, because it is elevated. Planner CuvIELLO stated it depends where you are viewing the wetlands from. She indicated you would be able to see under them, but if you are standing far away the lower ones have less of an impact than the ones that are higher.

Attorney Talvacchia asked Planner CuvIELLO if this is her opinion or if there are standards that she is aware of for scenic resources. Planner CuvIELLO stated scenic resources is subjective but is an important aspect of the application. Attorney Talvacchia asked if the applicant exceeds the permitted height of 60' ft. Planner CuvIELLO stated no. Attorney Talvacchia asked if they exceed the permitted sign area. Planner CuvIELLO stated no. Attorney Talvacchia asked what the permitted sign area is? Planner CuvIELLO stated 1,000 sq. ft. Attorney Talvacchia stated so the applicant is 40% smaller than what is permitted. Planner CuvIELLO stated this is correct.

Attorney Talvacchia asked so how can a permitted use violate scenic resources if it meets the sign height, setbacks and size. Planner CuvIELLO stated it is not a permitted use. She stated this is a different type of use being introduced to the area and has a different type of impact than any of the other permitted uses. So she indicated it does have impact on the scenic value that exist. Attorney Talvacchia asked if Planner CuvIELLO is aware that under the CAFRA permit review there is a scenic resource policy. Planner CuvIELLO stated yes. Attorney Talvacchia asked since a CAFRA permit was issued does this mean a positive determination was given in order to issue the permit. Planner CuvIELLO stated she would believe so.

Attorney Hankin stated he would like to pick up where Attorney Talvacchia left off concerning two (2) uses. He asked Planner CuvIELLO if she reviewed the application presented by Planner Barnhart for the billboard that was discussed previously which sought a variance. Planner CuvIELLO stated yes. Attorney Hankin asked if this was in the pinelands. Planner CuvIELLO stated yes. She indicated they required a dual use variance for the billboard, she indicated this was the All State application.

Attorney Hankin then referred to a second application at Ferguson Supply Store, located along Tilton Road. He asked if this application was a second principle use. Planner CuvIELLO stated yes. Attorney Hankin stated so regardless of whether the billboard is in the pinelands or not the applicant's own professional stated a billboard is a second principal use. Planner CuvIELLO stated yes.

Attorney Hankin marked Exhibit SS: site plan for billboard location plan from Jon Barnhart dated January 3, 2002. Attorney Hankin asked Planner CuvIELLO if she reviewed five (5) zoning board applications submitted before as Exhibit JJ. Planner CuvIELLO stated yes. Attorney Hankin asked if Planner CuvIELLO reviewed Ordinance 8-2012 which permitted gas stations and mini-marts but no other dual uses.

Township Administrator Miller stated he though the redirect was address the cross examination. He stated these issues were not addressed and it appears new information is being provided. He asked if this is allowed. Board Solicitor Bergman stated he will allow Attorney Hankin to proffer where this was covered in cross examination of Attorney Talvacchia. Attorney Hankin stated technical rules of evidence do not apply to the Planning Board. He stated the redirect is aimed at comment made last month and the Superior Court has provided me the opportunity to provide full and fair evidence.

Board Solicitor Bergman stated he would recommend the Board allow. Attorney Hankins advised he is dealing with the dual use issue and it is the same subject matter. Attorney Hankin asked the following exhibits be marked MM: March, 2012 correspondence for land use administrator to the Township Clerk advising Planning Board reason form enacting Ordinance 8-2012, Exhibit NN: planning Board minutes.

Attorney Hankin asked Planner CuvIELLO what Exhibit MM is. Planner CuvIELLO stated it is a letter from the land use administrator to the Township Clerk regarding Ordinance 8-2012, which amended Chapter 225. She stated it is dated March 28, 2012, advising gas and retail sales were never a permitted mixed use. So all applications submitted were reviewed by the zoning board. She indicated Ordinance 8-2012 now allows for gas and retail uses in every commercial zone in the Township. Attorney Hankin asked what Exhibit NN was. Planner CuvIELLO stated they were the minutes from the same meeting. She indicated she listen to the tape only on the issue of contention.

Attorney Hankin stated on our contention that billboards are not permitted even as a single use or a use at all in the MC zone, has she found any other documentation to support the issue. Planner CuvIELLO stated she reviewed the meeting minutes from the 1993 ordinance adopting the billboard. Attorney Hankin asked they be marked as Exhibit OO. Planner CuvIELLO stated it helped her understand where the billboards were intended to impact and where they intended to be permitted. She indicated she listen to the actual recording of the October 18, 1993 planning board meeting and Planner, Randall Scheule, stated that billboards would only be able to be located on the Garden State Parkway and the Atlantic City Expressway.

Planner CuvIELLO continued that a member had concern as to the 1,000 ft. being too large, however, Planner Scheule indicated that they were being pushed to the Atlantic City Expressway and Garden State Parkway and none would occur even on the Black Horse Pike because of the restrictions of the ordinance. She indicated he clearly showed where billboards were permitted.

Attorney Hankin questioned lot development. He asked if Planner CuvIELLO knows why there is a prohibition of dual uses in the pinelands area. She indicated this occurred in 1993. Attorney Hankin asked if the five (5) zoning board applications and ordinance 8-2012 come after this provision from the pinelands commission. Planner CuvIELLO stated yes, they call came after. Planner CuvIELLO stated the five applications were in non-pinelands areas and needed zoning board approval. She indicated since 1993 the Township had other applications for dual uses, but Ordinance 8-2012 was the only one to rectify the situation. She indicated if the Township wanted others than they would have changed the wording.

Attorney Hankin presented exhibit RR: aerial photographs taken from Bing Map's by Planner CuvIELLO. Attorney Hankin asked how many areas of the Township are zoned MC. Planner CuvIELLO advised there are five. She indicated there is one near Seaview Harbor Marina, Margate Causeway, Mays Landing Somers Point Road near the Elks Lodge, and there are is another on Longport Somers Pont Boulevard, and Ocean Heights Avenue by Blackman Road. She stated from the aerial's all are surrounded by water and marshlands and are surrounded by under Township Zoning the CRW zone.

Planner CuvIELLO indicated when you look at the MC zones none, which the exception of Ocean Heights Avenue are visible from the Atlantic City Expressway and the Garden State Parkway. Board Member Cook asked what is the point of this exhibit. Planner CuvIELLO stated it is to show in her opinion that billboards are not permitted in the MC zone because the ordinance only permitted them on major highways, therefore, they are not permitted in the MC District.

Township Administrator Miller asked in the first picture of RR: how many billboards are in the MC zone. Planner CuvIELLO stated in the first picture she believes this is Margate Causeway and there are seven (7). Three (3) on one side and four on the other. Township Administrator Miller asked the same question concerning picture two. Planner CuvIELLO stated she believes one (1). Township Administrator Miller asked what about photographs 3 and 4. Planner CuvIELLO stated she is not sure. She indicated she did not count billboards.

Township Administrator Miller asked if she knows how many billboards exist in marine commercial zones today. Planner CuvIELLO stated post 1993 there have been no new billboards in the MC zone. Any that exist are pre-1993. Township Administrator Miller when the ordinance was adopted in 1993 would you not take into consideration where you currently have billboards. Planner CuvIELLO stated no. She stated in some instances you may think they are non-permitted use in an effort to eliminate them because they are not favored.

Board Engineer Watkins asked if Ms. CuvIELLO took the photographs presented. Planner CuvIELLO stated yes. Attorney Talvacchia asked in the 1993 memorandum from Planner Scheule, it was a Planning Board recommendation. Planner CuvIELLO stated yes. Attorney Talvacchia asked who adopted it. Planner CuvIELLO stated Township Committee. Attorney Talvacchia asked do they have to follow Planning Board recommendation. Planner CuvIELLO stated no.

Attorney Talvacchia asked if billboards are only limited to the Expressway by the zoning based upon Planner CuvIELLO's testimony last month. Planner CuvIELLO stated no., however, a strict reading of the ordinance does restrict them to Expressway and the Parkway. Attorney Talvacchia asked Planner CuvIELLO to read section 606.1 from the 1976 Township Ordinance. Planner CuvIELLO read this section into the record. Attorney Talvacchia stated so in 19976 the governing body had a provision for dual uses. Attorney Hankin objected. He stated the section of the ordinance discusses structures not uses. Attorney Talvacchia stated the ordinance says "no lot shall have erected upon it more than one principle single family residential building". He indicated this can be interpreted any way you want.

Attorney Hankin advised he would like to cross examine Engineer Schropshire.

Attorney Hankin asked if he agreed the purpose of the LED billboard is to attract attention. Engineer Schropshire stated he does not know. Attorney Hankin asked what he thinks the purpose of an LED billboard is. Engineer Schropshire stated it is to advertise. Attorney Hankin asked if Engineer

Schropshire saw this billboard lit. Engineer Schropshire stated no. Attorney Hankin asked does an LED billboard cast more illumination than one that has spotlights. Engineer Schropshire stated he does not know.

Attorney Hankin asked if he would agree the purpose of a changing message is to draw attention. Engineer Schropshire stated yes. Attorney Hankin asked if the purpose of an LED billboard is to draw attention. Engineer Schropshire stated yes. Attorney Hankin asked if he would agree a higher billboard is to draw attention more so than a lower billboard. Engineer Schropshire stated he does not know. Attorney Hankin asked if this billboard were to be 25' ft. in height, did not have LED, and message changes it would be less noticeable to draw attention than the way it is proposed. Engineer Schropshire stated he does not know. He indicated this is an honest answer.

Attorney Hankin stated you have provided testimony before zoning board's. Engineer Schropshire stated this is correct. Attorney Hankin stated sometimes zoning boards accept your testimony and then other times they disagree and they agree with another expert. Engineer Schropshire stated this has happened. Attorney Hankin stated this happened with the Center Square Real Estate Development, the Home Depot, where a use variance was sought may four (4) years ago. Engineer Schropshire stated he is not sure where this was located.

Board Solicitor Bergman asked Attorney Hankin to proffer as to why this is being raised to this witness and where is the connection. Attorney Hankin stated he is asking based upon non legal issues are a question of opinion. Attorney Hankin advised he is not going to ask any other questions in this regard.

Attorney Hankin asked Engineer Schropshire indicated previously that there is no hard or fast rules to traffic safety. Engineer Schropshire stated yes. Attorney Hankin asked if Engineer Schropshire that he may have one opinion and someone else has another and they may be right. Engineer Schropshire stated this is fair to say.

Attorney Talvacchia stated he would like to redirect. He asked Engineer Schropshire if this application violates and known safety standards of Egg Harbor Township, the Department of Transportation, the Federal Government or Atlantic County. Engineer Schropshire stated no to all. Attorney Hankin stated he has one last questions. He asked Engineer Schropshire if there have been times when he has disagreed with the Department of Transportation. Engineer Schropshire stated yes.

Attorney Hankin stated he has one last witness. Attorney Talvacchia stated he objects. He indicated Attorney Hankin closed last month and if this was a relevant witness he had time to produce. Attorney Hankin stated this witness has been discussed and this is nothing new. He indicated he has not been available until this evening. Attorney Hankin stated the issue was raised and it will surround his testimony that the applicant could not construct the billboard in any other location than where it is at this time. He further noted that someone within twelve (12) months of this application purposely filled the area where the billboard went.

Attorney Hankin stated a report has been issued and the Board has the report and this will be five (5) minutes worth of testimony and Professor Sterile is present. Township Administrator Miller asked Attorney Hankin if he is saying the applicant filled this area in? Attorney Hankin stated either the applicant or someone on his behalf. Board Solicitor Bergman asked everyone to hold off for a moment. He advised based on the objection last month he believed the board reserved this meeting for cross-

examination of Engineer Schropshire and Planner Cuvillo. He stated he was also under the impression that both cases were completed and there were no further witnesses.

Township Administrator Miller asked what the relevancy is. Attorney Hankin advised it constitutes the applicant knows the 1,000 ft. separate requirement applies. Attorney Talvacchia stated this is correct the applicant knows it applies, otherwise why would they propose a cantilever sign. He indicated it is not relevant since a CAFRA permit for the cantilever sign has been approved. He indicated the purpose of this application is to remove the billboard from where it is located. He stated any filing of the wetlands the applicant denies, is irrelevant.

Attorney Hankin stated this applicant came before the Board and said it was not in the wetlands and the Township Attorney indicated the Board was duped. Attorney Talvacchia asked why this is relevant to this meeting tonight. Attorney Hankin stated because it is an admission. Township Administrator Miller stated that is not the application before the Board tonight.

Board Solicitor Bergman stated unless there is a greater connection to this application tonight. He stated the Board did believe you closed out your witnesses last month. Township Administrator Miller indicated the Board has no jurisdiction over if they filled this area than that will be an enforcement with the Department of Environmental Protection or any other agency needing to take action.

Attorney Hankin stated this application is to modify the previous one that was fraudulent. Board Solicitor Bergman stated and this is why the application was remanded back to the Board to hear a new application. Attorney Talvacchia stated he denies there was a fraud and they are trying to smear the applicant. He stated they deny the allegations of filling in the wetlands by anybody.

Board Solicitor Bergman stated he would recommend that the witness not be permitted to testify. He asked if the Board could take a vote. Chairman Garth asked for a vote.

**Motion Carman/Kearns that the board concur with the opinion of the Board Solicitor. Vote 7 Yes: Carman, Kearns, Cook, Eykyn, Garth, Shamsuddin, Miller.**

Chairman Garth stated the Board agrees with Solicitor Bergman. Attorney Hankin stated he would like to move his exhibits into evidence. Board Solicitor Bergman advised he would like to open the public portion before this occurs.

**Motion Carman/Eykyn to open public portion. Vote 7 Yes**

Erland Chau, 1001 Shore Road, Northfield, New Jersey, sworn in: Mr. Chau stated he would like to go on record advising he has been a resident for over 45 years and he is also an elected official and the Chairman of the Zoning Board for the City of Northfield.

Mr. Chau stated he does not have an objection to signs along the Margate Causeway as long as they meet the ordinance requirements, however, does object to this application. He stated he is concerned with the impact of a neighboring community and to the citizens whom use the causeway. He stated he has listened tonight and based on the testimony and the issues presented many are subjective. However, he indicated as having served as an official and living in this community for over 40 years. He has issues with this applications setbacks, usage, and aesthetic value

Mr. Chau stated he believes there is a similar situation in the city of Northfield concerning signs and the type of signs and the technology that is being used and the illumination process. He stated he does not want Northfield or Egg Harbor Township to come under the negative aspects of creating a sign as proposed that could create problems.

**Motion Carman/Eykyn close public portion. Vote 7 yes**

Attorney Hankin stated he would like to move all exhibits which are A-RR. He indicated Attorney Talvacchia objected to Exhibit I, which is the CAFRA denial and we have agreed it can be deleted. He stated also Exhibit X, which is a letter from Atlantic County Planning, which is relevant but it does not need to go in. He stated Exhibit S can be taken out it is the letter clearing Dr. Levitt from any wrong doing on his own property.

Attorney Hankin stated he would like to keep the editorials from the Atlantic City Press. He indicated these are important not because of the truth, but because it demonstrates the community interest on the issues involved with this matter and the seriousness of this application and the aesthetics in Margate and Northfield. He indicated these would be exhibits N and O.

Attorney Hankin also stated all formal or official documents from the neighboring communities should be considered and should be entered into evidence. Attorney Hankin stated Exhibit X is the Atlantic County objection letter that he indicates the County deems the concerns and issues as being serious. He indicated this is their position and asked the exhibits be entered into evidence.

Attorney Talvacchia stated Attorney Hankin indicated Exhibit J represents the community, however, it is from the Press of Atlantic City and not sure why or who it represented in it and he has had no opportunity to cross examine anyone, so it should not be permissible. Attorney Talvacchia indicated he objects to Exhibit X the letter is not written by the County Planning Board, but by a County Planner who was not brought here to cross examine and there are no county standards applicable to a sign.

Attorney Talvacchia stated with respect to Northfield and Margate. He stated Margate did send a representative and he did not object to his opinion and he came to tell about a resolution that was adopted, by the governing body. Attorney Talvacchia stated he did not have an opportunity to cross-examine them. He stated there were also objections from Northfield and it is there right. He again noted their governing body did not attend and he did not have an opportunity to cross examine them. He stated this is not fair.

Attorney Hankin asked if there were any other objections to his exhibits. Attorney Talvacchia stated no other objections to the rest of the exhibits being entered into the record.

Board Solicitor Bergman stated he has looked at both Attorney Talvacchia and Attorney Hankins exhibit list and there are some objections between the two. Board Solicitor Bergman asked Attorney Hankin if the ordinance that were referenced in DD through GG are they just to look at ordinance as whole or just part of. Attorney Hankin stated the Board should look as a whole and treat as such. Board Solicitor Bergman stated they are not submitted as a whole and the Board has to weight that in light of the fact that the whole ordinance is not there.

Board Solicitor Bergman advised he would have to agree with Attorney Talvacchia concerning the Atlantic City Press Editorials. He stated the purpose of a Press Editorial is to give opinions and those

opinions were not from members of the public that appeared here. He indicated if they wanted to object than they should have appeared here.

Board Solicitor Bergman stated as part of the Land Use Law the rules of evidence are relaxed somewhat for Board meetings. He stated any representation from the Press editorial should not be entered into the record as evidence. He indicated any issues with police reports or accidents on the cause way are not relevant. He stated it was not discussed in the testimony concerning the reports and the police officers who created reports were not here. So they should not be entered into evidence.

Board Solicitor Bergman stated he would also agree with Attorney Talvacchia concerning Exhibit X. He stated it is a public record generated by an official, but without cross-examining the person he would recommend it not be admitted. Also, Board Solicitor Bergman stated the Zoning Board agenda is a Board document and itself does not tell you where something occurred, however, the rest of the particular exhibits can be considered. Attorney Talvacchia stated the minutes and the resolutions have to be read on their face. He stated there is no way to cross examine, however, they are public documents and should be admitted.

Township Administrator Miller stated he has a question concerning Exhibit G: Survey prepared by Mr. Koelling. He stated Mr. Koelling did not appear to discuss this survey. He asked how it can be accepted without a proffer from the person who drew it. Board Solicitor Bergman stated he agrees, however, experts have relied upon the survey. Therefore, he would recommend the Board accept into evidence. Board Engineer Watkins asked if it has been signed and sealed. Attorney Hankin stated in Superior Court of New Jersey it was signed and sealed.

Township Administrator Miller stated Exhibit H is also of concern. He stated there was no testimony taken as to who took the photograph and when they were taken. He indicated it appears the survey signed by Mr. Ponzio is not signed and sealed and it looks like a partial page. He further noted the objectors did state it was submitted on August 12<sup>th</sup>, but the year is cut off.

Board Solicitor Berman stated it was represented that this is the survey, as received by this Board, that you granted the last application on. Attorney Talvacchia stated not the one you have before you today. This was submitted along with the current application. Attorney Hankin stated Dr. Levitt testified he took the photographs. Township Administrator Miller stated he stands correct. He did not remember.

Board Solicitor Bergman asked Attorney Hankin to close first. Attorney Hankin stated it has been four (4) evenings of back and forth, but appreciate the time the Board has given to us. He stated this is an opportunity for this Board to make a difference and this application should be taken very seriously.

Attorney Hankin stated the applicant would have the Board believe there is nothing in the ordinances which protects against illumination in homes where it is this township or others. He stated the applicant says if it is an invasive light or there is an inherent traffic danger so be it.

Attorney Hankin stated this application also takes into consideration the scenic environment, which is important to the Township. He stated this is the Township property, however, no one generally in the Township can see it. He asked the Board when was the last time they saw neighboring municipalities come out and oppose an application. He asked when was the last time they sent an attorney Scott Abbot or the Mayor of Northfield or a commissioner in Margate here with resolutions passed by both.

Attorney Hankin stated Dr. and Mrs. Levitt do not have an ax to grind. He stated the applicant is not a competitor, he is not a friend they had a fight with. They are not seeking to do this for any other reason than that it invades their home and for the reasons placed on the record.

Attorney Hankin stated for the history of this matter. He advised this application came before the board and there was no objection at the time because no one knew about it. He indicated Dr. and Mrs. Levitt did not have to be notified and they were not. He indicated the application in the newspaper stated it would be 50' ft. high, however, it was amended before the Board the evening of the public hearing to 60' ft. when no one was present and it was not clear from the article that it was going to be a message changing digital billboard. Therefore, no one came out.

Attorney Hankin stated once the Levitt's saw it erected they went to court to obtain a restraint, which they received because the Judge held that a Department of Environmental Protection permit was required. He indicated Township Solicitor, Marc Friedman advised the Court that the Township was "duped, defrauded". He indicated this Board would not have granted approvals if they knew where the billboard was being constructed.

Attorney Hankin stated he believes in his heart the Board cannot believe this is right. He stated not one person has come out in support of this application. He stated this Board has listened to neighbors and have been sensitive to the needs and wants of them whether they are in this Township or not.

Attorney Hankin stated this Board is not bound by the Department of Environmental Protection or the Department of Transportation. He stated many times the Department of Transportation has approved certain things which are hazards. He stated the Board knows it and he knows it. He indicated it is based on common sense

Attorney Hankin stated case has been costly, but what does the applicant have to gain. He stated money is what he will gain. It is his business. He asked what the Levitt's have to gain is the prevention from the invasion of light. He stated this Board has also heard from the neighbors. He stated Mr. Bopp stated this caused him to cross the yellow line, Mr. Hires stated it interferes with his sleep. Mr. Virga stated his walls change colors and he can't sleep and it affects his values. He also spoke of the sign behind the Board that shows the pilgrim and the Indian which represents community spirit.

Attorney Hankin advised the Board needs to listen to the people in this town and the surrounding municipalities that live with this every day and drive over the causeway every day. Attorney Hankin stated Ms. Jungles discussed the quality of scenic values and the danger of the sign changing.

Attorney Hankin stated Engineer Schropshire is a great guy, however, to say he does not know whether the purpose of an LED billboard is to attract more attention than not. He advised Ms. McCarthy stated the sign shines her home with contrast and wakes her out of a sound sleep. He stated Mr. Phillipy indicated the sign wakes him. Mr. Scharff the vice-president of the Planning Board for Northfield spoke of how obnoxious it is.

Attorney Hankin advised Scott Abott, Esq., the attorney for Margate was present. He advised Ms. Moyer, Mr. Robertson, an attorney and Mr. Malin, discussed the scenic resources and Mr. Bowman discussed the distraction of motorist. He advised Mr. Jazicky advised it was dangerous and Ms. Taub the Margate Commissioner, asked if it was worth the risk.

Attorney Hankin stated this sign is will attract attention. He stated the Board needs to listen to their own common sense, with all experts aside what do they believe. Is it going to be dangerous, is the use allowed and what has the Township previously done. Attorney Hankin stated there were 19 people who in opposition of the sign. He indicated Mr. Devlin, from the Elks Club came last month and dropped off a contract. The applicant is shopping to place another billboard in the MC zone, which is surrounded by the conservation district. Attorney Hankin stated the next billboard will be in Seaview Harbor if you allow this billboard in the MC zone.

Attorney Hankin stated they have put forth information that this is not permitted in the MC Zone. He indicated there has never been a billboard application since the MC Zone was created. He stated they have shown the Board that since 1982 when the Township amended the MC zone its purpose was clear it was for waterfront recreational activity, waterfront marine and related activities.

Attorney Hankin stated the Ordinance does not state the MC Zone purpose was for billboards. He indicated this does not belong in the MC Zone and he does not believe the ordinance permits it. Attorney Hankin also noted he has shown that two (2) uses are not permitted on one lot. He stated he has shown on five (5) occasions the Zoning Board voted for dual uses and the Township passed an ordinance to allow gas stations and mini-marts nothing else.

Attorney Hankin stated everyone likes Mr. Hackney, however, just because his marina is not doing well it is not a reason to allow the billboard. Attorney Hankin stated he has discussed the Board as to why this is not permitted, why it falls within the 1,000' ft. restriction and why this billboard is permitted in certain zones, but not this one, and they must be regulated and not have the ability to shine in someone's face.

Attorney Hankin stated the Board has listened to the lighting experts. He indicated it does not matter about the light meters. If there is something shining in your bedroom and it still does even when you close curtains and you lose sleep there is an issue. Attorney Hankin advised there is an ordinance in the Township that governs light. He noted it is part of the site plan ordinance and the applicant cannot cast light.

Attorney Hankin noted the Board can deny this application because they should have requested a bulk variance and they did not or you should deny because of what it does. He also stated the Board could require the applicant to turn off the billboard at 8:00 p.m. or 10:00 p.m. He stated the Board could even lower it down to 30' ft.

Attorney Hankin stated he wonders how many members have seen the billboard when it was on to understand. He indicated he would not want an accident on his conscience. He advised he does not care what Engineer Schropshire stated when driving from Northfield to the shore in the evening and it is flashing and changing it will draw attention and if you cross the solid line and someone is coming over the hill and they cannot see you there will be a problem. He stated lay people have expressed there concerns and you do not need an expert to establish.

Attorney Hankin stated Engineer Barnhart failed to tell the Board the thickness of the monopole and the cantilever. He indicated that Engineer Barnhart has advised Section 225-61 is not applicable. Attorney Hankin stated this is the section of the ordinance that prevents rays of illumination being cast into neighboring dwellings. He asked how can Engineer Barnhart say this. Attorney Hankin also noted that

Engineer Barnhart is a good Planner and in 2003 he called a billboard a second principle use and his client has shown this.

Attorney Hankin stated Engineer Zepponi took photographs at a different time than Dr. Tobias and He indicated he was surprised at the illumination of the billboard. He indicated he was surprised that the billboard is a ½ mile away and he saw shadows cast on the bedroom wall within the Levitt's home. He further noted that Engineer Zepponi indicated the pattern on the wall changed as the message lights changed.

Attorney Hankin stated Engineer Zepponi did not care what the light meter said. He indicated this was irrelevant because of the visual impact. Attorney Hankin also noted there was a difference from where Dr. Tobias was and where Engineer Zepponi was. He asked why Dr. Tobias did not ask to go to the second floor bedroom, at an angle. He stated both were in this area on different nights, at different places, different angles and different heights. He stated if the Levitt's had known Dr. Tobias was present they would have allowed him in their home.

Attorney Hankin stated a computer operates this billboard and it has been indicated by Dr. Tobias that the white light from the billboard is the most intense light. Attorney Hankin than suggested maybe not allowing white light after 8 p.m.

Attorney Hankin stated his client has clearly shown the Board the history of the ordinances concerning dual uses. He stated it is clear that two (2) uses are not allowed in the Township on a single lot unless there is exception, as there is for cell towers due to the Federal Communications Act, not because they are compatible with the MC Zoning.

Attorney Hankin stated the Board has to review the bulk variance for the 1,000' ft. separation, the lighting regulations, the fact that the light shines in neighborhood homes, the scenic resources. He advised the Board is not bound by their original decision, since the facts were presented this time. He indicated if the Board does not choose to deny this application than the conditions must be fair.

Attorney Hankin indicated the Board could perform their own testing, they suggest lowering, they can require spotlights, they could ask the applicant to switch the facing into Margate instead of Northfield. The Board can advise they shut off at 8:00 p.m. so there is no loss of sleep. He stated there can be compromises.

Attorney Hankin stated the Board should also consider in the shoes of all the people that came here and the Dr. and Mrs. Levitt who contested this matter. Attorney Hankin stated the Levitt's did not do it because they do not like the applicant or because the applicant is a competitor. He stated they did so because they believe what is right under the law and credit must be given.

Attorney Hankin also advised the Board needs to consider the domino effect. He stated if the Board is to rule billboards are allowed in the MC zone then they will pop up. There will be one near Seaveiw Harbor and he will purchase the billboards currently on the Margate Causeway and covert them. He stated he has already approached the Elks Club, who did not want to upset their neighbors.

Attorney Hankin advised he is asking the Board to abide by their Ordinances for billboards and to use their judgement with respect to everything that he has presented. He stated many people have come out because they felt so strongly. He indicated the Department of Environmental Protection does not

rule this town nor does the Department of Transportation. He indicated he has seen the Mayor of the Township say this and he had read what he has said about it.

Again, Attorney Hankin asked if the Board does not deny this application to please condition it on something that is fair and will not harm the Levitt's or the community of Northfield. Attorney Hankin thanked the Board.

Attorney Talvacchia presented his closing:

Attorney Talvacchia noted this applicant has been the subject of four (4) hearing nights and there has been a lot of time and attention given and the applicant appreciates this. Attorney Talvacchia indicated Attorney Hankin has advised the Board is bound by the Land Use Law, the Township Zoning Ordinance, and the Township Site Plan Ordinance and the Township Design Standards.

Attorney Talvacchia stated contrary to what Planner CuvIELLO has stated concerning the El Shaer case the general welfare provision is not a reason to deny. He stated the Supreme Court has denounced and made it very clear that a site plan cannot be denied unless the Board can find a violation of a standard.

Attorney Talvacchia stated the opposition has conceded that signs are permitted in the commercial zone, when at first they advised they were allowed only in the business and industrial zones. He stated if they had not conceded there would have been a lot of signs approved in the last 30 years that would not have been allowed. He further noted the prohibition that talks about business and industrial signs does not just apply to billboards it would apply to any sign.

Attorney Talvacchia stated the have conceded a commercial district is for all intents and purposes the same as the business district. He further noted that in the 1976 Township Ordinance it referenced signs were allowed in business and industrial business. However, in 1976 there were no business zones there were only commercial, industrial and residential zones. He advised business zones came later, therefore he stated this is a non-issue.

Attorney Talvacchia stated there are five permitted uses in the MC zone. He indicated a marina is only one, he stated it is hard to imagine that a zone cannot be considered a commercial zone that does not allow billboards. He indicated the MC Zone specifically talks of prohibited uses and it does not talk about billboard being a prohibited use.

Attorney Talvacchia stated Planner CuvIELLO noted that in 1993 Planning Board Planner, Randall Scheule, Stated billboards should be on the Parkway, however, the Garden State Parkway does not allow billboards along there r-o-w. He stated it does not mean they cannot be visible, but they are not allowed on the Parkway.

Attorney Talvacchia stated regardless of what the Board adopted in 1993, the governing body did not adopt what Planner Scheule proposed. He stated there are billboards beyond the expressway in the Township that are permitted and the opposition has admitted they are permitted in other commercial districts. Attorney Talvacchia stated however, they have carved out the marine commercial district saying it is not allowed. He advised he believes there argument is without merit.

Attorney Talvacchia stated the applicant also raised the issue concerning two (2) principal uses. He stated there has been much talk about the Sun Oil case from 1996. He stated he provided minutes from

1997 and 2007 from the Zoning Board where Phillip Perskie, Esq., advised WaWa, had to come to the zoning Board because of the Sun Oil case and ten (10) years later Stephen Nehmad, Esq., came before the Zoning Board with the Cumberland Farms case making the same statement.

Attorney Talvacchia stated Planner CuvIELLO came to the same conclusion that the Sun Oil case required a variance for two (2) principal uses unless the ordinance specifically allows. He stated he feels there is confusion. He advised in 2012 an ordinance concerning mix uses is introduced and adopted. However, in August, 2012, the Appellate Division, within the State of New Jersey, rejects the Sun Oil case with respect to TR Liquor and East Winsor v. the Township of Toms River.

Attorney Talvacchia stated the Appellate Division is not a public decision, however, it is the court. He stated the case concerned a restaurant and a hotel and where two (2) uses required a variance. He advised there was an objection to an approval in the case. Attorney Talvacchia then read into the record what the Appellate Division determine concerning this case.

Attorney Talvacchia advised the Court felt since a hotel and restaurant are both permissible uses in this community there was no reason to deny the application. Therefore, he stated this can explain a lot of the confusion since 1996 with respect to the Sun Oil case. He further advised the Township Ordinance does discuss two (2) principal uses within Section 225-13. He stated this section speaks of the Pinelands, however, it says nothing about outside the Pinelands. He indicated if the governing body was not prohibited from requiring in a non-pinelands area and they chose not to.

Attorney Talvacchia stated this choice is significant. He indicated the Township prohibits dual uses in the Pinelands part of town. He indicated in the Sun Oil case the City of Avalon's Ordinance was silent concerning two (2) principal uses. He stated the Township Ordinance has specific provisions and now there is an Appellate Division decision case that allows two (2) principle uses on a lot unless it is specifically prohibited.

Attorney Talvacchia stated 1,000' ft. separation is clear. He stated the Township Ordinance says a sign is an object, structure or part thereof used to advertise. He indicated if someone had a wall mounted sign, would the entire wall be the sign or just the part that advertises. He indicated the Ordinance stated it is the part that advertises. He stated the definition of sign area tells you how to calculate the sign area and tells you what to include and what not to include. He advised the pole cannot be the sign. It does not advertise

Attorney Talvacchia also noted the ordinance discusses the road. He stated it is referenced to separate the distance to the driver. He indicated this is why there is a 1,000' ft. separation on the same side of the road. He indicated the road is not private property but the actual r-o-w where you measure from and this is also from where the Department of Transportation takes their measurements. Again, he stated the Board is not bound by how the Department of Transportation measures but they measure for driver distance also.

Attorney Talvacchia advised the Township Ordinance also advises the distance from a residential zone. He indicated a billboard must be 500' ft. from residences. He advised it is not a straight 500' ft. it just 500' ft., therefore, he believes the applicant met the requirements last year with the 1,000 ft. separation and they are met with this proposal also.

Attorney Talvacchia advised Planner CuvIELLO discussed the El Shaer case. He stated it was from 1991 and it was concerning a subdivision not a site plan. He stated when the case first came out it appeared Planning Boards could deny an application because they did not like it or they thought it was bad, without referencing any standards. He indicated this is the way it was interpreted initially. He then noted that in 1993 a case called Pizzo Manto change the impression. He indicated it was during this case where they noted that in the El Shaer case there was an inadvertent omission of information concerning the bulk requirements of the zoning ordinance and that they did not conform

Attorney Talvacchia stated this is contrary to what was discussed with Planner CuvIELLO this evening. Therefore, the case established and it is very clear that there must be a standard in order to deny an application. He advised it is very clear.

Attorney Talvacchia stated he asked Engineer Horner and Mr. Alexander if the applicant failed to meet traffic standards and they stated no. He advised the Department of Transportation found that the applicant has complied with all its standards. He further noted that in case law Planning Board and Zoning Board's cannot deny a site plan for off-site traffic impact. He indicated the only thing they can do is make sure access is on and off site is safe.

Attorney Talvacchia advised the Board cannot deny this application, nor can any Planning Board, absent that the sign violates a traffic safety standard. He advised just because you do not like it does not mean but that is irrelevant.

Attorney Talvacchia advised with respect to scenic resources the use is permitted. He advised the applicant is not higher than what the ordinance requires, the sign size is 40% smaller than what is permitted. He stated and even though the Board is not bound by the Department of Environmental Protection they have a scenic resource policy and their expert agreed that it met their requirements. He stated that when someone does not meet the permitted requirements scenic resources is a point of balance. However, when the governing body determines something is appropriate in a zone, how can it be said there is an adverse scenic resource impact. He stated this is permitted and it is allowed to be there.

Attorney Talvacchia stated Engineer Zepponi agreed that the sign does not meet the definition of glare. He noted Engineer Zepponi was unable to produce a certificate that showed his meter was calibrated, however, Dr. Tobias did. Attorney Talvacchia stated Engineer Zepponi did agree with Dr. Tobias concerning the industry standards for brightness and he stated the applicant will, as a condition of approval, to meet this standard.

Attorney Talvacchia advised he asked Engineer Zepponi if the sign complied at 250' ft. distance where he measured with a .3 flashing lights would occur in the bedroom of the Levitt's. Engineer Zepponi stated if the applicant complied it would not exist. Therefore, Attorney Talvacchia stated the applicant will comply with the standard.

Attorney Talvacchia stated Attorney Hankin wants the Board to deny, however, he knows what the Pizzo Manton Case says. He indicated conditions are imposed or designed to ameliorate impacts on variances. He stated they are not proffered for permitted uses. He stated there is a lot of case law on this. However, Mr. Atkins is sensitive. He stated in addition to agreeing to meet the industry standards the will voluntarily lower the sign height to 50' ft. and at night he will eliminate the white boards because they have greater impact, even though they would meet the industry standards.

Attorney Talvacchia stated the applicant believes this sign is permitted to where it is located, that he is allowed two (2) uses on site per case law. Attorney Talvacchia thanked the Board for their time and attention and asked that they approve this application.

Township Administrator Miller stated the last meeting the Engineer Schropshire discussed Swedish Study. He asked if this will be moved into evidence. Attorney Talvacchia advised he believed this was done, however, it will be done. Board Solicitor Bergman advised they were introduced and marked. They have to be moved into evidence if there are not objections. Attorney Hankin stated he objects to the Swedish Study for the same reason Attorney Talvacchia objected because he cannot cross examine the writer.

Attorney Talvacchia stated Attorney Hankins expert mentioned the Swedish study. Township Administrator Miller stated if Mr. Alexander opined that a study prohibited electronic billboards in the Country of Sweden and when it was reviewed Engineer Schropshire testified the conclusion of the study was different than how it is not permissible to be entered and he further asked does the Board not have the right to look at a study the objectors witness identified as a relevant document.

Board Solicitor Bergman stated yes, it is admissible at this point because it was referred to within the testimony of the objectors and it was relied upon. Attorney Hankin stated it was not that study. He advised there were a number of studies and it was not identified as that one. Attorney Bergman advised it was identified as a Swedish Study, therefore, he believes it was properly identified unless there is more than one Swedish Study.

Township Administrator Miller also noted that Mr. Alexander was asked if he prepared any studies that included billboards. Mr. Alexander stated no. So he is concerned to find there was a study billboards that was not listed in his CV and it was prepared in 2007 from the State of Delaware, under his signature. He asked if the Board is to rely on the rebuttal witness without looking at the study as a exhibit. He asked Attorney Bergman how this should be handled.

Board Solicitor Bergman stated his opinion is the same as before. He advised Mr. Alexander advised that he did not complete a study, but it was shown on rebuttal that he had. Therefore, the study is admissible. He advised it will be up to the board to accept the exhibits as evidence.

**Motion Carman/Miller to concur with Board Solicitor has recommended as far as what has been submitted into evidence. Vote 7 Yes: Carman, Cook, Eykyn, Kearns, Garth, Shamsuddin, Miller.**

Board Solicitor Bergman asked the Chairman if he would like to ask the members if they want to make a statement. Township Committeeman Carman stated he would. He stated from everything he has heard the Township needs to make some changes to the Ordinance. Township Committeeman Carman advised Attorney Hankin has made some very good arguments. However, he agrees with the Board Solicitor and Professional's that this application meets the codes and ordinances.

Township Committeeman Carman stated has heard Mr. Levitt and the people who spoke loud and clear and he really does want to be a good neighbor. He asked Attorney Talvacchia that the applicant will meet the industry standards at all times based upon the illumination guidelines from the American Engineering Society. Attorney Talvacchia stated this is correct. Township Committeeman Carman

asked if the applicant agrees to lower the sign to 50' ft. and to minimize the white lighting at night. Attorney Talvacchia stated this is correct.

Township Committeeman Carman asked instead of changing every eight (8) seconds could they propose every fifteen (15) seconds. Attorney Talvacchia stated no. He indicated the applicant is eliminating the white board at night which will have a difference between being darker and lighter. He stated it will be significant. He advised the applicant will have to meet with the advertisers to make sure it is programmed properly. He stated this will cost additional monies but this is not an issue.

Township Committeeman Carman stated he would like to see the Board shut off at night. He asked if this can be done. Attorney Talvacchia advised unless there is a violation of a provision the applicant is meeting all the standards. Township Administrator Miller asked what the reluctance is to shutting it off. He asked who is looking at between midnight and 6:00 a.m.

Attorney Talvacchia stated Mr. Atkins believes going into Margate will view. Township Administrator Miller stated he would like to see the applicant volunteer to shut the board off at some point during the evening hours. Attorney Talvacchia, after a brief discussion with his client, proposed the Board that his client and advertisers believe there will be public viewing the Board in the evening. He stated his client proposes to stop the eight (8) second changes at 1:00 a.m. and to once every 45 minutes and maintain until 6:00 a.m. Board Member Eykyn stated this is still without the white background. Attorney Talvacchia stated this is correct.

Board Solicitor Bergman stated it will be a minimum of 45 minutes. Attorney Talvacchia stated it can be more than 45 minutes but will not be less than 45 minutes. Chairman Garth asked if the brightness can be turned down after a certain hour. Attorney Talvacchia stated during the day it is at 100% brightness and at night it does go down a percentage. Dr. Tobias stated the white board is going to be the difference between the darkness and the lightness, which is stated is measured at 4. Attorney Talvacchia stated this is not new testimony from Dr. Tobias. He stated this information was within his report.

Board Member Eykyn stated the Board will meet the industry standards and it will change its brightness in the darkness. Attorney Talvacchia advised at dusk the white board goes down. Board Engineer Watkins stated this will change throughout the year with the automatic sensors. Attorney Talvacchia stated yes. He further noted that Engineer Watkins can do an assessment of the Board to make sure it meets the standards.

Township Administrator Miller stated he would like to discuss some of the issues that were raised over the last four (4) nights so the record is complete and address some of the conjecture about billboards within Egg Harbor Township.

Township Administrator Miller stated before 1993 billboards were prohibited within Egg Harbor Township. He advised in Shore Signs applied to the Zoning Board and was denied a use variance. He indicated they took the Township to court and Judge Wilkenstein ruled based upon the Westfield v. Stratford Township case in 1988 that billboards are a permitted use and the Township needed to decide where there were going to be within the Township. Township Administrator Miller stated the Township had the right to limit them and had a right to say where they could go.

Township Administrator Miller advised in 1993 the Township developed the billboard standards. He indicated the Township took the standards of the Department of Transportation and modified them to what the Township wanted. He indicated that when the public hearing for these changes occurred Shore Sign was present because they raised issue with the Township requiring 1,000' ft. separation versus the separation required at that time by the Department of Transportation which was based on speed limits.

Township Administrator Miller stated the distance between billboards is based upon the impact of the motorist. He further noted how the distance is measured is along the nearest edge of pavement between points directly opposite the edge of the sign face nearest the pavement edge and shall only be between locations on the same side of the street. Township Administrator Miller stated the point of measurement for back to back signs shall be the mid-point between the nearest edge of the back to back sign face.

Township Administrator Miller stated since this sign is a double board he advised we are not measuring from the pole. He stated it is measured from the mid-point between the double faced sign. So it is measured from the face of the sign. He indicated this 1,000' ft. measurement has always been face to face for twenty (20) years in accordance with the Department of Transportation Standards, which the Township adopted in 1993.

Township Administrator Miller indicated he has been on this Board for 15 years. The Chairman has been on the Board for 19 years, Township Committeeman has been at least 17 years. There have been a lot of applicants and applications. He stated he has reviewed the Code and found that in the last ten (10) years the Township has amended Chapter 225, 48 times, Chapter 94, 19 times and Chapter 198 , 4 times. He indicated this is a total of 71 changes to the Land Use Regulations. So the Board does pay attention to the rules and they do address issues that are raised.

Township Administrator Miller stated throughout this time the Township never did anything concerning billboards because we knew what billboards were permitted, where they were permitted and the Township never raised the issues concerning two (2) principle uses because we have multiple commercial zones that have multiple principle uses already contained in them.

Township Administrator Miller explained that this Board is aware, however, the public may not be aware but between 1990 to 2010 Egg Harbor Township was the fastest growing municipality within the State of New Jersey and we had dealt with more applications in one (1) year than our neighboring communities have dealt with in ten (10) when dealing with commercial development. Therefore he indicated this Board does have expertise.

Township Administrator Miller stated when the Township placed billboards in the zoning ordinance they placed it within the sign section, which states they are permitted in business and industrial zones. He stated we define commercial in Chapter 225, which states the use involves the sale of goods and services. Therefore, he believes it is clear that Marine Commercial is a commercial zone. Think is clear marine commercial is a commercial zone.

Township Administrator Miller stated the Board was advised they could turn down an application because of the standard protecting health, safety and welfare. He indicated some of the members may recall the Cello Partnership application. He stated the case was in June, 2008. He stated this Board

denied the application which was a cell tower within the RCD Zone because it was already approved for a storage facility on the property and we did not grant "C" variance relief.

Township Administrator Miller stated he reviewed Judge Perskie determination and he advised the Planning Board action to deny was arbitrary and capricious. The Judge advised the Planning Board needed to consider the matter without regard because it was a permitted use and the Board applied an analytic model more appropriate for the review of an application for use variance. Township Administrator Miller stated he believes this is what the Board is being asked to do with this application by the objectors.

Township Administrator Miller also stated the Board has been told they should not be guided by the Department of Transportation or the Department of Environmental Protection. However we have to listen to them. The Board cannot ignore what they say.

Township Administrator Miller stated the Department of Transportation did review the reports submitted by Mr. Alexander, Engineer Horner and Engineer Schropshire and since there was no crash history patterns at this specific location they recommended approval of this application. Therefore, if our standards mirror the Department of Transportation for billboards and they are the controlling agency saying it is safe he does not have the ability to subject his judgement.

Township Administrator Miller stated he would like to evaluate the witnesses that were presented to the Board in order to determine who's credible, who's persuasive and who is not.

Township Administrator began with Mr. Alexander, Human Factors Expert, which he stated he had issues with. Township Administrator Miller stated he asked Mr. Alexander directly if he prepared any reports/studies concerning the impact of billboards on communities, traffic or agency during his career. He stated Mr. Alexander stated either not directly or no. However, on rebuttal it was found that Mr. Alexander did do a study in 2007 that he signed his name to called the critical comprehensive review and the conclusion of this study that there is no correlation between electronic billboards and increase in accidents.

Township Administrator Miller also advised that Mr. Alexander discussed a Swedish Study and it also advises the same that there is no correlation between electronic billboards and increase in accidents. Therefore, he stated he finds Mr. Alexander's testimony as an expert flawed.

Township Administrator Miller indicted he would like to discuss Engineer Zepponi. He stated he finds it hard to believe that if you are a lighting expert and you are taking light measurements you would not have a meter calibrated. Therefore, he stated a lot of information provided by Engineer Zepponi concerning his findings are from an uncalibrated light meter, therefore, he cannot place a lot of stock into it.

Township Administrator Miller stated it also bothered him that Engineer Zepponi never tested for ambient light. He indicated Mr. Zepponi performed his study in April, 2012 and did not testify until December, 2012 he indicated there was enough time where he could have went out and measured even with a bad meter.

Township Administrator Miller stated he is also concerned that Engineer Zapponi stated the lights coming from Atlantic City, which is seven (7) miles away were the same brightness as the billboard at

the Levitt's property. Township Administrator Miller stated when Township Committeeman Carman asked if this was a discernible difference Engineer Zapponi stated no.

Township Administrator Miller stated he found the testimony of Dr. Tobias to be credible and he had a calibrated meter. He also reflected industry standards has nothing to do with all the scenic resources that Attorney Hankin referred to.

Township Administrator Miller stated he found Engineer Horner to be credible. He indicated it was Engineer Horner's opinion there is a potential for things to occur, however, he stated the road meets the design standards. Township Administrator Miller stated when Engineer Horner was asked if there were any studies that showed an increase in accidents from digital billboards as opposed to no digital he answered he was not aware of any. Township Administrator Miller stated he also found Engineer Schropshire to be credible with his testimony.

Township Administrator Miller stated Planner Cuvillo was very professional in her testimony, however, he stated when she decided the Marine Commercial was not commercial it was an issue. He further stated that at the time of her testimony last month she had not looked at the 1976 Township Ordinance as to how we treated these signs or how we treated the marine commercial. So for her to conclude that boat sales, marinas, building and repairing boats "none of these are business type uses" is shocking.

Township Administrator Miller stated he observed the billboard in April, 2012. He advised he sat at the border on the Margate Causeway about 3,000' ft. from the sign. He watched it change colors and while he sat at road level no light came into his car from that distance. He stated he did notice the PAL sign because it was white and a lot brighter and you could see the intensity of the white sign. He indicated this was around 9:00/9:30 p.m. Township Administrator Miller further noted he had a difficult time reading the billboard from 3,000' ft. away. He did note the PAL sign he could read because of the white background.

Township Administrator Miller advised he was surprised how far the light was traveling with the white background. He stated when he turned around he could see the traffic light on shore road just as clear as the billboard.

Township Administrator Miller advised he also went out on Saturday, August 18, 2012 and stood on Rosedale Avenue to take a look. He also noted it was a new moon. He indicated it was around 11:00 p.m. and it was a clear night. He stated when he looked to the right he saw three (3) water towers, but could not see the billboard, and three (3) buildings that are taller than the billboard and Sea Village Marina lights. He stated to the left he saw six (6) billboards. He also saw Atlantic City, Ventnor, and he was able to read the red lights on various casino's.

Township Administrator Miller stated seven (7) billboards on the Causeway were reflected up and from Longport to Atlantic City it was lit up and glowing that night. He stated the sea buoy lights could even be seen. Therefore, he stated he does not understand with all the light there effects ones scenic view.

Township Administrator Miller stated no one has designated this area as a scenic highway. He indicated normally environmental impacts establish the effect of the birds, the tadpoles and in the Pinelands the tree frogs and snakes. He indicated the sign board is still there and the birds are still nesting so he does not see the impact on the environment. He indicated the Levitt's did not purchase their property to protect themselves from the view since there are water towers and other thins on the horizon.

Township Administrator Miller stated there has been a lot of discussion concerning the five (5) applications that were submitted for use variance for a gas station and a convenience store. He indicated in almost all the cases Attorney Nehmad's firm represented the applicant and found it in their client's best interest to submit to the zoning board based on his opinion of the Sun Oil Case.

Township Administrator Miller stated the reason why the Township changed the ordinance in 2012 was because they were approached by Mr. Nehmad because he had another WaWa application and he would like to present it before the Planning Board and did not want to go back to the Zoning Board. Township Administrator Miller stated he advised Mr. Nehmad he did not have to go to Zoning Board, however, he choose to go. He stated Mr. Nehmad suggested the Township change the ordinance to make the combination a permitted use and this is why the Township changed the ordinance to make it a permitted use.

Township Administrator Miller indicated there was also an issue concerning the definition of sign. He advised when reviewing a sentence if there are no periods or semicolons you do not stop where you want to. He indicated when you read the definition for sign there are a lot of commas it is one continuous thought. He then read the definition of sign into the record, thereafter advising he finds nothing associated with the pole which is used to advertise etc.. Therefore, he believes whether this pole is a sign is moot.

Township Administrator Miller stated the issue concerning whether the sign is a 1,000' ft. apart has been addressed.

Township Administrator Miller indicated there was discussion concerning the intent of where the Township allowed billboards i.e. Garden State Parkway/Atlantic City Expressway. He indicated Planner Scheule was a contract planner at the time. He advised this may have been his desire as a recommendation, but that is not what the Township Committee adopted. He indicated they placed them in the RCD zone, which is along the Black Horse Pike and every commercial zone we have. He stated many of these zones, including the Marine Commercial zone do not touch the Garden State Parkway or the Atlantic City Expressway.

Township Administrator Miller stated as to traffic safety issues. He indicated there is a posted 25 mile speed limit. He indicated both Engineer Horner and Engineer Schropshire testified the applicant meets the traffic design standards and no information was submitted, traffic accident data, which the Board would be concerned about in order to add another sign. He further noted the Department of Transportation reviewed the traffic information and they didn't find it to be dangerous.

Township Administrator Miller stated the Department of Environmental Protection permit was also brought up and this is why we are here. He stated the applicant did comply with a 1979 CAFRA law, but they did not comply with a 1972 fresh water. He indicated when they did show the buffers on the plan the Department of Environmental Protection issued a permit. He indicated this is a new application based upon the permit being issued and they will move the pole so it is not in the buffer.

Township Administrator Miller stated the Township does not regulate architecture, therefore, if you meet the setbacks you may design your building or sign in any creative way. Therefore, the applicant does meet the square footage on the sign face, they meet the setback requirements and they have volunteered to reduce the sign to 50' ft.

Township Administrator Miller stated there is no use variance required because the marine commercial permits multiple uses such as boat storage, boat rental, and marine stores so there is a multiple number of uses taking place.

Board Engineer Watkins stated his report is dated September 5, 2012, listing checklist completeness for the minor site plan. He advised there are seven (7) waivers requested and other than these all other items for the site plan checklist were met, therefore, the application was deemed conditionally complete.

Board Solicitor Bergman stated to summarize the applicant has indicated they have complied with site plan ordinance and that billboards are permitted use in the MC zone with no variances required. He stated the applicant has also agreed to concessions and voluntary conditions such as meeting the light standards for LED lights and signs, which is .3 at 250' ft., they will lower the sign height from 60' ft. to 50' ft., they will eliminate the white boards from dusk to dawn, they will stop the eight (8) second image at 1:00 a.m., and thereafter it will be a minimum of 45 minutes or more until 6:00 a.m.

Board Solicitor Bergman advised there have been members of the public, other municipalities appearing, and the objector's Dr. and Mrs. Levitt have been presented by Attorney Hankin who has made several objections. He advised one is the applicant requires "c" variance relief because the distance between signs is not met, which is 1,000' ft. He indicated the objectors have submitted it is not within 1,000' ft.

Board Solicitor Bergman advised the second objection is that "D" variance is required because it is there position that billboard signs are not permitted in the MC zone He advised this is based upon them advising the Township Ordinance permits signs in Business and/or Industrial zones only and not in commercial zones including the MC Zone

Board Solicitor Bergman advised they have also objected to the illumination of the sign, which includes testimony from the objector's neighbors and other members of the public. He indicated as the Board heard the applicant has agreed to meet industry standards.

Board Solicitor Bergman advised also that the objectors have also raised the question of the property having utilizing two (2) principal uses and that this would require a "D" variance.

Board Solicitor Bergan advised the Board has to determine which witnesses and evidence is persuasive and what to accept and how much weight you will give. He indicated Township Administrator Miller has summarized for himself but other Members should make their own individual determination. He indicated the Board has the ability to interpret the ordinances of the Township.

Board Solicitor Bergman advised based upon the issue with the distance between signs both himself and Engineer Watkins who provided a recommendation in his report advised the Department of Transportation standards apply and the measurement should be done by way of their standards. He indicated the sign definition has to be made by the Board to determine if the sign should only be those parts used to advertise.

Board Solicitor Bergman indicated the objector stated “D” use variance is needed because signs are not permitted in commercial districts. He stated the Board has to interpret the ordinances historically and that it has determine if it interpreted commercial as a business use in reference to sign applications.

Board Solicitor Bergman advised should the Board determine that “D” variance is not needed because they are permitted in the MC zone then the Board must reject the objector’s position. He indicated if the Board determines “D” variance is needed then the Board must make a decision as to whether it is going to deny the application based on the fact that this Board has no jurisdiction or allow the applicant to apply to the Zoning Board for an interpretation to the jurisdiction.

Board Solicitor Bergman advised the illumination of signs has been discussed and the Board must weigh the evidence submitted to the lighting standards. He further noted the objector has raised issue as to two (2) principal uses. He indicated they have cited sections of the pinelands. He indicated both himself and Board Engineer Watkins were unable to locate where there were two (2) principle uses with one being a sign with a billboard where prohibited except in certain residential zones as indicated in some of the testimony. He advised signs are not defined as principal use with the Township Ordinance.

Board Solicitor Bergman stated certain traffic safety issues were brought up and the Board must determine with the understanding that the Department of Transportation approval was obtained. By the applicant. He indicated all off site traffic problems may only be considered for the ingress and egress if it causes an unsafe condition.

Board Solicitor Bergman stated he would ask the Board to vote on the “c” variance, then move on to the “D” variances before it were to consider site plan approval or denial. Board Engineer Watkins stated he would like to piggy back on the principal use issue. He indicated nowhere in his review of the ordinance does it say a permitted principal use is a billboard.

Township Administrator Miller stated he would like to make the motion that he does not believe “c” variance relief is necessary for distance. He indicated the distance of measurement is 1,000’ ft. along the highway from the face of the sign to the next sign and we do not accept the argument the pole of the sign is part of the sign and not to be included in the calculations for distance, therefore, “c” variance is not necessary. This motion was seconded by Township Committeeman Carman.

Township Committeeman Carman advised he agrees based upon the Department of Transportation records mentioned and the sign is in compliance with what the Township uses. Board Member Eykyn stated he is relying on the Department of Transportation report, Board Member Kearns stated he also agrees based upon what was presented by Atlantic County and the Department of Transportation regulations. Chairman Garth stated he agrees for the same reasons as Township Administrator Miller.

**Motion Miller/Carman that “c” variance relief is not necessary for the 1,000’ ft. measurement of distance between signs. Vote 7 yes: Carman, Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth**

Board Solicitor Bergman advised the Board must now determine if “D” variance is necessary for the use of a billboard in the MC Distrct.

Township Administrator Miller stated he would like to make the motion he indicated the 1976 ordiance that establish zoning referenced business zones as commercial. He indicated business and commercial has been used interchangeably, but the mean the same thing. He indicated in 1993 when the Court

required Egg Harbor Township to allow billboards the Township Committee adopted an ordinance where they laced billboard in the same section as signs. He indicated from 1976 to present the MC zone has been deemed to be a commercial zone, therefore he does not believe there is a use issue with a sign being in a commercial zone. He stated he believes signs are permitted in all commercial and mairne commercial zones. Township Committeeman Carman second the motion. Chairman Garth stated he agreed also for the reasons stated.

**Motion Miller/Carman that “D” variance relief is not necessary since signs are permitted in the marine commercial zone. Vote 7 yes: Carman, Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth**

Board Solicitor Bergman stated the next motion is for “D” variance relief for two (2) principle uses.

Township Committeeman Carman stated he will make the motion. He stated he believes the Township has mixed principle uses in various parts of the Township, which is not unusual. He indicated the change made was for gas stations and convenience stores. He indicated this was done to save people from making repeated applications, when the Township did not feel they need to, but the applicant wanted to.

Township Committeeman Carman stated the Township did not feel they had to do it and the change was made for that specifically for that reason. So the Township has mix uses and always have. So the variance is not needed. Board Member Kearns stated he agrees based on the reasons stated.

Township Administrator Miller stated he believes the record is complete except for a gas station and mini-mart. He stated these are matters that have been handled by the Planning Board where there’s been multiple principal uses permitted in the zone and handled by this Board. Therefore, he will be voting yes. Chairman Garth stated yes, for all the reasons that were stated.

**Motion Carman/Garth that “D” variance relief is not necessary for two (2) principal uses. Vote 7 yes: Carman, Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth**

Board Solicitor Bergman stated the Board should take a vote next on the site plan, however, they must with the understanding that there are certain positions taken by the objectors concerning the lighting standards and complaints concerning not being able to sleep by the neighbors.

Township Committeeman Carman stated he would like to make a motion on the checklist waivers.

Township Administrator Miller stated he has a question concerning lighting. He stated the objectors referred to Chapter 94, which he stated we have only used for site lighting, for parking lots and such. He asked if this standard is used for any other type of lighting fixtures other than site plan lighting.

Board Engineer Watkins stated this is correct. He stated there is nowhere in these standards where signs are listed. He indicated he does not know if the Board can determine whether or not there is a requirement for a sign except for what is quoted in section 63.

Township Administrator Miller stated in 2007 the Township amended the sign ordinance to recognize that there were such things as digital signs and made them permissible and this is in section 225-63. He indicated these signs cannot be animated with flashing colors. He indicated there was no testimony that the sign was animated and when the change was made we did not establish a lighting standard because

there is a 500' ft. separation from residential property. He stated since there is no specific lighting standard the industry standards have established .3 foot candle at the 250' ft. point. Township Administrator Miller stated with this in mind the applicant has agreed to make that a condition of approval to meet the standard. Township Administrator Miller stated this was a second to the motion from Township Committeeman Carman.

Board Solicitor Bergman stated this should have been part of the final site plan determination.

**Motion Carman/Eykyn to grant requested checklist waivers #1, 3-8. Vote 7 yes: Carman, Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth**

Township Administrator Miller asked if the applicant would volunteer to make as a condition of approval that they will post all amber and silver alerts, and Egg Harbor Township Police Department and Atlantic County Sheriff's Department and any other law and State agencies and whether or not they will agree to post any public service announcements that these agencies may have. Attorney Talvacchi stated the applicant agrees.

Chairman Garth asked for a listing of the condition(s):

Board Solicitor Bergman stated they are as follow(s):

**Condition(s)**

Applicant will meet the light industry standards for LED Light signs which is .3 foot candle at 250' ft.

Applicant agreed sign height will be lowered to 50' ft.

Applicant will eliminate white boards from dusk to dawn

Applicant will stop eight (8) second message advertising at 1:00 a.m. and thereafter post advertisements every 45 minutes or greater than 45 minutes until 6:00 a.m.

Applicant will post amber and silver alters and public service announcements.

Township Committeeman Carman stated he would like to make a motion to see the billboard turned off from 10:00 p.m. to 6:00 a.m. Township Administrator Miller stated he also agrees he stated based upon the testimony that the board has heard and it does impact people's lives. He also noted the Board made Wal-Greens turn their sign off during the same period of time. Township Committeeman Carman stated this interferes with people's sleep and 1:00 a.m. is a little late. Board Member Eykyn second the motion

Board Solicitor Bergman stated he understands what the Board wants to do, however, there are no variances requested and there are only certain conditions that can be placed on the applicant. He indicated he has to present his legal opinion. Township Committeeman Carman stated Solicitor Bergman's advice is well taken, however, he stands by his motion. Board Member Eykyn stated he withdraws his second.

Board Solicitor Bergman asked if the Board would like to take this as separate motions voluntary and non-voluntary. Attorney Talvacchia stated the applicant has volunteered to turn-off the board from 1:00 a.m. – 6:00 a.m., he advised the applicant cannot turn off at 10:00 p.m. because eliminating the white board is a significant concession.

Board Member Eykyn advised he withdrew his motion. Township Committeeman Carman advised the motion he made is null and void.

Township Administrator Miller stated he will make motion to grant amended minor site plan approval included as conditions they will meet light industry standards for LED Light signs which is .3 foot candle at 250' ft., sign height will be lowered to 50' ft., will eliminate white boards from dusk to dawn, applicant will turn board off from 1:00 a.m. to 6:00 a.m., and they will post amber and silver alters and public service announcements.

**Motion Miller/Eykyn to grant amended conditional minor site plan approval. Vote 7 yes: Carman, Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth**

**MEMORIALIZATION OF RESOLUTION(S):**

1. **SP 20-12** **Minor Site Plan**  
**Fire's BBQ, LLC** **2015/29 &30**  
6696 & 6698 Black Horse Pike

**Motion Eykyn/Kearns to memorialize resolution granting requested checklist waiver(s), variance relief, and conditional minor site plan approval. Vote 6 Yes: Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth. 1 Abstention: Carman**

2. **SD 05-12** **Minor Subdivision**  
**Duane Hauck** **7602/43**  
50 English Lane

**Motion Eykyn/Kearns to memorialize resolution granting requested checklist waiver(s), design waiver(s), variance relief, and conditional minor subdivision approval. Vote 6 Yes: Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth. 1 Abstention: Carman**

3. **SPPF 19-12** **Preliminary/Final Major Site Plan**  
**Regent Realty Group, LLC** **404/13 & 14**  
200 West Parkway Drive

**Motion Eykyn/Kearns to memorialize resolution granting requested checklist waiver(s), design waiver(s), variance relief, and conditional preliminary and final major site plan approval. Vote 6 Yes: Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth. 1 Abstention: Carman**

4. **SP 17-12** **Minor Site Plan**  
**Capital Telecom Acquisition, LLC** **1613/90**  
3089 English Creek Avenue

**Motion Eykyn/Kearns to memorialize resolution granting requested checklist waiver(s), variance relief, and conditional minor site plan approval. Vote 6 Yes: Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth. 1 Abstention: Carman**

**SUMMARY MATTER(S):**

Discussions of matters pertaining to the Board:

**SECTION I:** a. **Egg Harbor Township Ordinance No. 16 of 2013:** an ordinance to amend Chapter 225 of Township Code entitled Zoning, "specifically" section 225-3.

Township Administrator Miller stated Ordinance 16 of 2013 is to change the building height for any structure in the flood areas only. He indicated the definition was changed as far as how height is measured in this area based on the new requirements.

**Motion Kearns/Eykyn to recommend Ordinance No. 16 of 2013 to Township Committee for review and approval finding it meets the requirements of the Master Plan. Vote 7 Yes: Carman, Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth**

**SECTION II:**

a. **General public discussion**

**Motion Eykyn/Kearns to open public portion. Vote 7 Yes.**

**May the record reflect no one came forward.**

**Motion Kearns/Cook to close public portion. Vote 7 Yes.**

**Motion Carman/Eykyn to adjourn at 10:45 P.M. Vote 7 Yes: Carman, Cook, Eykyn, Kearns, Miller, Shamsuddin, Garth**

Respectfully submitted by,

Theresa Wilbert, Secretary