

**TOWNSHIP OF EGG HARBOR  
PLANNING BOARD**

**September 16, 2013**

**Solicitor:** Christopher Brown, Esq., present

**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, present  
Committeeman John Carman, present  
Milas Cook, Alt. #I, present  
Charles Eykyn, present  
James Garth, Sr., Chairperson, present  
Frank Kearns, present

Robert Levy, present  
Mayor James J. McCullough, Jr., \* **See Below**  
Peter Miller, Township Administrator, present  
Paul Rosenberg, present  
MD Shamsuddin, Alt. #II, present

- **May the record reflect:** Mayor McCullough was in in attendance due to another engagement, however, he has sent Township Committeeman Joseph Cafero in his place Township Committeeman Cafero left at 6:30 p.m.

**OTHER MATTER(S):**

**1. SP 13-13  
South Jersey Transportation Authority**

**Atlantic City Expressway R-O-W  
1,350' ft. West of Fire Road Overpass  
1016/3**

Discussion/Presentation: Pursuant to N.J.S.A. 40:55D-31 the South Jersey Transportation Authority is presenting discussion to the Planning Board of Egg Harbor Township as a courtesy for their review and recommendation to establish and maintain a 50' ft. high pole-mounted static billboard on a State controlled right-of-way located on the Atlantic City Expressway 1,350' ft. west of the Fire Road overpass, eastbound. The applicant is also seeking the ability to convert, at a later date, the static billboard into a digital billboard sign. The proposed sign will be a back-to-back sign with 960 sq. ft. of signage on each side.

Emanuel Levin, Esq., introduced himself, he advised he is present on behalf of South Jersey Transportation Authority to present an application for review of a billboard to be located on the Atlantic City Expressway R-O-W.

John Barnhart, P.E., New Jersey Licensed Engineer, Ponzio Associates, duly sworn, he advised this area was originally GC, however, it was changed to M1. Township Administrator Miller asked Board Solicitor Brown if the Planning Board can hear this application based on the recent decision of Judge Mendez. Board Solicitor Brown advised the proposed is located within the M1 zone and it is permitted. He stated the Authority does not have to go to the Zoning Board.

Engineer Barnhart introduced himself. Board Solicitor Brown stated the applicant must prove this application is within the industrial zone. Attorney Levin asked Engineer Barnhart if the zone was recently changed does it go up to R-O-W. Engineer Barnhart stated he believes so. Board Solicitor Brown stated if for some reason it does not the applicant will have to come back. He stated if the Board were to make recommendation it should be made subject to this condition.

Engineer Barnhart stated the applicant is proposing a static billboard for both sides, however, they are also proposing in the future for a digital sign on both sides of the structure. He indicated the proposed sign is 50' ft. above grade for height.

Attorney Levin stated when the applicant makes an application to the Department of Environmental Protection it can be as high as you would like to go. He stated you do not have to go that high. He advised you cannot say to the Department of Transportation you want something smaller and then make application for something larger. Attorney Levin stated the applicant wants to conform to the ordinance requirements.

Board Engineer Watkins stated the Department of Transportation Permit says you applied for 70' ft. Attorney Levin stated this is correct, however, the Department of Transportation permit has no bearing on the height. He stated the only qualification is that the applicant will not go higher than the 70' ft., however they can go lower. Board Engineer Watkins stated based on Township Ordinance requirements the applicant cannot go higher than 50' ft. Attorney Levin stated he is sure the Board will provide a letter to the State concerning the height. He stated the applicant has agreed to the height of 50' ft. and it will become part of this record.

Board Engineer Watkins stated he is also confused as to whom applied for the permit to the Department of Transportation. Attorney Levin stated we will build the sign on South Jersey Transportation Authority property and they are the applicant, however, Garden Outdoor owns the permit. He indicated South Jersey Transportation Authority has signed an agreement with Garden Outdoor for 25 years. Township Committeeman Carman stated this is no uncommon for the Expressway. He further noted there is an agreement with the New Jersey Department of Transportation that at the end of the agreement the sign is Garden Outdoor.

Attorney Levin stated there is an agreement with an adjacent land owner, Leo Schoffer and the sign could be moved to his property, however, this sign is proposed within the R-O-W and all that must be given is a recommendation. He stated if he would to come in with a private property than would have to receive approval.

Township Administrator Miller asked what is the distance between the next closet sign? Engineer Barnhart stated it is 1,183' ft. Township Administrator Miller asked what about from the nearest point to nearest point based upon Judge Mendez ruling. Board Solicitor Brown stated it has to be greater than 1,000 ft. and if not has to go to Zoning Board. Engineer Barnhart stated it is greater than 1,000' ft. He indicated it will be about 1,133' ft. based upon the distance of each.

Board Member Levy asked who will man the billboard. Attorney Levin stated the billboard will be controlled through their offices located at 1616 Pacific Avenue, Atlantic City, New Jersey. He stated Garden Outdoor will control the billboard.

Engineer Barnhart stated there is 1,250 ft. between signs on the opposite side of the Expressway. He indicated taking into account the same theory as referenced in the Judge's decision the actual distance is 1,200'ft. from point to point.

Board Planner Polistina stated the applicant is closer to the RG-4 zone than the 500' ft. required. Township Administrator Miller stated the applicant has to be in compliance with the Township Standards. Board Planner Polistina asked if the applicant has to go to the other Board for this relief or can it be approved by this one. Attorney Levin stated he is not before the Board for approval. He stated even if the Board voted nothing all he has to do is go through the State. He advised this is a State sign on a State property. He advised South Jersey Transportation does not need approval. He stated if the Board feels they cannot approve then it does not have too.

Engineer Barnhart advised the State requirements do not dimension the distance from residential. Township Administrator Miller asked if Attorney Levin is representing South Jersey Transportation Authority or Garden Outdoor. Attorney Levin stated as per agreement with South Jersey Transportation Authority Garden Outdoor must have attorney to handle project, therefore, he is present. Attorney Levin stated he is a partner in Garden Outdoor. He advised with all the Boards where Garden Outdoor placed a billboard there was never a South Jersey Transportation Authority lawyer that represented them. He advised they had hired attorneys to do so.

Township Administrator Miller stated he does not believe the applicant exempt from Township standards but he does believe they are exempt from the application process. Board Solicitor Brown stated under the section of the Township Ordinance this application would have to go before the Zoning Board.

Attorney Levin stated all he needs is a letter. He advised the Board can say whatever they want. He advised he just needs a letter showing he was present. Board Solicitor Brown stated the Board can write a letter and advise you are not meeting the standards of the Township Ordinance. Attorney Levin stated he believes everyone is familiar with billboard at end of Expressway. The indicated Atlantic City voted no and it is still there. Attorney Levin stated the only requirement he has is to show up and discuss the billboard. He stated all he wants is a letter.

Chairman Garth stated it appears the billboard will be static at first and then go to digital. Attorney Levin stated it may or may not be digital. He stated there is limit locations for digitals to work. He stated there has to be a long viewing time. He stated if installed it may be within the next five (5) to ten (10) years. Township Administrator Miller stated all South Jersey Transportation Authority representatives have represented they may convert to digital. He indicated this Board has recommended they return before going digital. Attorney Levin stated he will come back to this Board and advise if they go digital. .

Chairman Garth stated if the applicant is within 500' ft. of the residential zone you are at the wrong Board. Board Solicitor Brown stated Attorney Levin is not asking you do to anything other than write a letter, even though he is within 500' ft. of a residential zone.

Attorney Levin stated billboards are subject to Department of Transportation sign approvals. He indicated many years ago a decision was made concerning the R-O-W of the Expressway. He stated this was because it was difficult to get approvals under normal circumstances on private property. He stated the Legislation did an exemption concerning State owned parcels. Board Planner Polistina stated the Municipal Land Use Law requires the Board to review and make recommendation. Attorney Levin stated property notice was sent to everyone within 200' ft.

**Motion Carman/Eykyn to open public portion. Vote 9 Yes**

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

**Close Carman/Kearns to close. Vote 9 Yes**

Township Administrator Miller stated he would like to make a motion to deny the presentation because application does not meet Township standards the Township needs to verification that proposed sign is within the M1 zone. Township Committeeman Carman stated rather than make a motion to deny he would rather send a letter to the State.

Township Administrator Miller stated he will amend his motion for the Board to send a letter to the State advising the applicant does not meet the requirements of the Township seconded by Aponte.

**Motion Miller/Aponte to send letter to State advising proposed does not comply with Township Ordinance standards. Vote 9 Yes:** Aponte, Carman, Eykyn, Kearns, Levy, Cafero, Miller, Rosenberg, Garth

**PUBLIC HEARING(S):**

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|-----------|--|----------------------------------|
| <b>1.</b> | <b>SD 04-13</b>  | <b>Minor Subdivision</b>         |
|           | <b>Harem, LLC</b>  | <b>6601/6</b>                    |
|           | Zone: R-1, 7.71 acre site, septic/well,  | <b>3067 Ocean Heights Avenue</b> |
|           | Applicant proposes a two (2) lot subdivision.  | Waiver of Time – Not Granted     |
|           | one (1) lot (proposed lot 6) will consist of 6.71 acres and will contain the existing construction business office(s), industrial yard, and mobile storage trailers. The other lot (proposed lot 6.01) will consist of |                                  |

43,671 sq. ft. and will contain the existing 180' ft. high lattice tower, which services four (4) wireless communication antennas and equipment structures. CAFRA

**Checklist Waiver(s):**

1. **Item 1c: Digital CD**
2. **Item #15: Wetlands location letter**
3. **Item #17: Soil borings**
4. **Item #18: Septic system locations**
5. **Item #25: Compliance with standards**

**Variance Relief:**

1. **225-7: Lot Area (proposed lot 6.01): 1 acre proposed; 2 acres required**

Stephen Nehmad, Esq., introduced himself as attorney for the applicant Harem LLC, which is owned by Ralph and Meredith Henry and various members of the Henry family. He indicated this application does not create development. He advised the property is 7.71 acre site and there currently a construction yard and cell tower, which has been there for over 20 years. Attorney Nehmad stated in 2007 the applicant did secured a CAFRA permit to place flex space on site, however, it was not submitted to the Township. He indicated his client's believe when the economy turns around they will begin pursuing this approval.

Attorney Nehmad stated the Township can subdivide property and it will still allow for the flex space to be independently assessed and financed. He advised with this subdivision the applicant is seeking a variance for lot area. Attorney Nehmad stated the cell tower lot should be two (2) acres, however, the applicant is seeking approval for one (1) acre. He advised the applicant will meet all standards. He indicated if the applicant were to comply with the lot area they would be taking away very valuable property.

Paul Koelling, 2161 Shore Road, Linwood, New Jersey, New Jersey Licensed Surveyor and Planner, sworn in: Mr. Koelling advised the property in question is block 6601 lot 6 and is located on Ocean Heights Avenue next to the "Sea Jam" property. He stated it is 7.71 acres. He indicated the applicant is proposing to subdivide off cell tower from the remainder portion of the property. He indicated the applicant has a lease with the cell company and that leased area is .26 acres. He advised the applicant is trying to conform to the zoning plan of the Township. He advised the applicant has moved the rear property line back in order to meet the bulk the bulk standards. He advised any other setbacks are based on existing conditions and cannot be met since the cell tower is over 20 years.

Mr. Koelling advised the applicant is letting the cell tower stay by itself, which is the extent of the subdivision application. He advised the applicant is proposing no development changes. Attorney Nehmad asked Mr. Koelling at the time when economy is better the construction yard will be used for flex spaces. Mr. Koelling stated yes. He then referred to Exhibit A1: subdivision plan and A3: CAFRA plan for flexible use space. Mr. Koelling stated after the applicant received the CAFRA permit for flex space the economy tanked and the family did not come in for site plan approval.

Township Administrator Miller stated the rear yard meets the requirements, as well as the front yard, however, the side yard does not. Mr. Koelling stated the existing property line is 88.9 ft. to the compound. He indicated on the other side the applicant is proposing 78' ft. by the existing driveway. He indicated the applicant actually needs 90' ft. Township Administrator Miller stated he has a problem when someone is creating own relief. Mr. Koelling stated the side yard by the driveway is a waiver not variance relief. Township Committeeman Carman asked if the variance relief is just for lot area. Board Planner Polistina stated there are existing conditions on proposed lot 6 where they will not meet setbacks.

Attorney Nehmad asked the Board to review the CAFRA permit plan. He advised originally the applicant proposed a smaller lot size for the cell tower parcel. Township Administrator Miller stated the Board is not bounded by the CAFRA permit he stated the applicant is creating variance relief.

Attorney Nehmad stated the applicant does not have to subdivide off cell tower. He indicated the applicant can come in with multiple uses. Township Committeeman Carman stated he disagrees with Township Administrator Miller he stated only a small area is used for the functioning of the cell tower. He stated he does see benefit in the future. Township Committeeman Cafero asked how much of a hardship is it to make it conforming. Attorney Nehmad stated the applicant is guarding their CAFRA permit. He advised much of Ocean Heights Avenue is the key to economic development in the area. He advised there is some blight and the applicant wants this to be redeveloped when the economy turns around.

Board Member Aponte stated the CAFRA permit shows a smaller lot. He asked what the difference would be if the applicant were to make it larger. Attorney Nehmad stated the applicant has one (1) driveway for the triangular shaped site and this is the problem. Township Administrator Miller asked if the applicant cannot meet the mandatory 90' ft. what is the closest they can. Attorney Nehmad stated to take two (2) acres and devote to a cell tower and then address an existing condition would be a problem. He stated the applicant should not be urged to expand the area for the cell tower lot. He indicated the applicant should be allowed to develop the larger development on adjacent parcel.

Township Administrator Miller stated there are four (4) users on cell tower and the applicant could have another one (1) to two (2) more users and they will need utility boxes on ground and have to make sure there is enough room to accommodate. Board Member Eykyn stated if the applicant receives relief if someone wants to co-locate on the tower they must work within the area approved and not come in and seek variance relief. Attorney Nehmad stated there is plenty of land area. Attorney Nehmad stated he is confident there is enough room for additional cabinets to be placed if a new users were added to tower.

**Motion Rosenberg/Eykyn to open public portion. Vote 9 Yes**

Stanley Sharkin, 216 Castle Pine Drive, Egg Harbor Township, sworn in: Mr. Sharkin asked where the retention basin will be. Mr. Koelling stated there is no basin proposed within this subdivision. He stated with the CAFRA permit there is a basin proposed toward the front. Mr. Sharkin asked if site plan is necessary. Attorney Nehmad stated there is no site plan required. He stated the applicant will have to come back to this Board with a proposal based upon the CAFRA permit that has been shown.

**Motion Rosenberg/Kearns to close public portion. Vote 9 Yes**

Board Planner stated there is a 90' ft. requirement for setback around the entire tower. He indicated the applicant has proposed 77.5' ft. to the tower on the east side (setback). Township Administrator Miller stated he believes the applicant can meet setback requirements. He stated this is self-created. Township Committeeman Carman: advised he sees no detriment to our zoning plan and what is proposed opens more area for development in the future.

**Motion Carman/Rosenberg to grant requested checklist waiver(s). Vote 9 Yes:** Aponte, Carman, Eykyn, Kearns, Levy, Cafero, Miller, Rosenberg, Garth

**Motion Carman/Kearns to grant design waiver: 90' ft. setback for in lieu of 77.5 proposed. Vote 8 Yes:** Aponte, Carman, Eykyn, Kearns, Levy, Cafero, Rosenberg, Garth. **1 No:** Miller

**Motion Carman/Rosenberg to grant requested variance relief: proposed lot 6.01 lot area of 1 acre proposed in lieu of 2 acres required. Vote 8 Yes:** Aponte, Carman, Eykyn, Kearns, Levy, Cafero, Rosenberg, Garth. **1 No:** Miller

**Motion Cafero/Rosenberg to grant conditional minor subdivision approval. Vote 8 Yes:** Aponte, Carman, Eykyn, Kearns, Levy, Cafero, Rosenberg, Garth. **1 No:** Miller

**May the record reflect:** Township Committeeman Cafero left for the evening at 6:30 p.m. and Board Member Rosenberg is removing himself from this hearing, however, he will be staying.

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| <p>2. <b><u>SPPF 09-13</u></b><br/> <b>Hope &amp; Comfort a NJ Nonprofit Corporation</b><br/>         Zone: CRW, 22.42 Acres, septic/well, applicant<br/>         Proposes to construct a 9,331 sq. ft. building to be utilized as a 15 bed hospice facility with 18 off-street parking spaces. Other improvements include a storm water management facility, landscaping and a free standing sign. CAFRA</p> | <p><b>Preliminary/Final Major Site Plan</b><br/> <b>8701/5.04</b><br/> <b>170 Wharf Road</b><br/>         Waiver of Time – Not Granted</p> |
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Charles Gemmel, Esq., introduced himself as attorney for the applicant Hope and Comfort. Stated the applicant was before the Board in August, 2013, at which time the Board ran out of time. He indicated at the time the application was within the public comment portion. He stated the applicant does have information concerning the noise level of the equipment (utilities) proposed for the facility.

**Checklist Waiver(s):**

1. **Item #17:** Copy of any existing and/or proposed protective covenants/deed restrictions
2. **Item #37:** Purpose of any proposed easement of land reserved or dedicated to public or common use shall be designated, and the proposed use of sites other than for residential uses shall be noted.

**Motion Aponte/Carman to re-open public portion. Vote 8 Yes**

Board Solicitor Brown advised the public if anyone present spoke last month please let others who have not go before you.

Attorney Talvacchia stated the applicant has added a generator to the plans and the applicant was going to advise if there was any noise.

Board Solicitor Brown advised the professional(s) they were duly sworn last month and they are still under oath.

Attorney Gemmel asked Engineer Bruce (Robert Bruce, P.E.) if the utilities for the site are now shown. Engineer Bruce stated yes, he referred to Exhibit A6A: page 2 of site plan dated September 6, 2013. He indicated the difference between exhibit A6 and A6A is the location of the utilities. He indicated there will be air handlers, a 6,000 gallon tank for fire, oxygen, and bulk storage. He indicated everything is located toward the rear of the facility.

Township Administrator Miller asked which is closer to the property line the air handler or the oxygen. Engineer Bruce stated the air handler which is 250' ft. back. Township Administrator Miller asked if he has the volumes or noise level for the generator unit.

Board Member Kearns stated he is aware the proposed is on Wharf Road, however, he asked how far off Somers Point Mays Landing Road to the site. Engineer Bruce stated this site is more than a mile away.

Steven Sgro, Architect stated he looked at noise generation. Attorney Gemmel asked if the applicant can meet the noise requirements for this zone. Architect Sgro stated he is not an acoustic engineer, however, the calculations that were provided indicated to the front property line the unit will be 47 decibels. Township Committeeman Carman stated Architect Sgro has no expertise and just using formula's that he found. Architect Sgro stated they are formulas for sound decay over time. He stated there are environmental and character things that can cause them to change.

Township Administrator Miller asked what the numbers are from the source. Architect Sgro stated they are measured 30' ft. from the source not directly at it. He stated it was 63 decibels. Attorney Gemmel asked what the numbers have to be. Architect Sgro stated between 50 and 55 decibels at the property line.

Architect Sgro stated there is a fire water pump, but it will be enclosed. He stated the applicant has not specifically chose what it will be but will be within a walled area. Architect Sgro stated the generator will have a stock enclosure and it will be 11' ft. x 21' ft. long. He stated it will be galvanized steel and it will be below the 50 decibels at property line. Township Administrator Miller asked if it meets the accessory structure setback for that zone. Engineer Bruce stated he believes it will meet the setback

Board Engineer Watkins asked if there is a sound from bulk oxygen. Architect Sgro stated the oxygen does not have a sound source, however, it is pressurized when they are filled. Board Engineer Watkins asked how many times a week will the oxygen be charged. Attorney Gemmel stated it will be once a month. Board Engineer Watkins asked many times a month is generator tested. Architect Sgro stated it will be tested once a month for 30 minutes. He advised the generator is diesel operated.

Board Member Eykyn asked since this is a permitted use in residential and was not going to be used any more than the applicant could not move anyone else in other than for a hospice or a single-family home. Board Planner Polistina stated there are other uses that could go in under the same requirements for a hospice. He indicated they are referenced within the Municipal Land Use Law.

Attorney Talvacchia asked if the generator can be placed on the opposite side of the facility away from the neighbor. Township Administrator asked if the generator can be flip-flopped with the fire tank. Engineer Bruce stated the applicant has indicated she does not have problem. Attorney Talvacchia stated his client would like to see the generator behind the building. Architect Sgro stated they will make sure where the generator is placed there is enough room and can be maintained. Attorney Talvacchia stated his client would like to see the generator moved to opposite side so it will be a benefit to them if it is approved.

Township Committeeman Carman stated the Board has to consider that Architect Sgro is not an expert in the field of noise generation.

Tony Formica, Egg Harbor Township, sworn in: Board Solicitor Brown stated, since Ms. Formica spoke last month should discuss only the new information. Ms. Formica states she lives in an area that is so quiet. She stated this is her residence and the proposed is so out of place. Ms. Formica advised there is so many other areas where this can be placed. She stated there will be trucks and other things that the residents have never had in this area before. Ms. Formica stated the proposed will create havoc.

Sam Gioconda, 16<sup>th</sup> Avenue, Weymouth Township, sworn in: Mr. Gioconda stated he grew up on Wharf Road and there are a few safety points he would like to raise. He indicated there is a flooding problem at least four (4) times a year with at least 6" of water. He advised in the winter Wharf Road is one of the last streets in Egg Harbor Township to be plowed. He also advised that when the new bridge opens there will be more accidents.

Suzanne Gibson, 135 Wharf Road, Egg Harbor Township, sworn in: Ms. Gibson stated she thinks the reason she is standing here as I am a registered nurse and applaud the pursuit of what is being proposed but at the same time she is a resident of Wharf Road and she is the director of a nursing for a medical facility.

Ms. Gibson stated she wants to make sure they have a mandatory evacuation policy that has been prepared within the last two (2) years. She further noted they must tell patients this is end of life facility, however, patients can still contemplate end of life. She indicated sometimes this will take days, weeks and years for a final decision to be made, however, if it is 2:30 a.m. and a patient wants to go to the hospital and they make that decision then you have to mobilize the patient.

Ms. Gibson stated she is concerned with staff, meals and oxygen. States she is surprised oxygen will only be once a month. She advised she is concerned with space. She asked what the patient to staff ratio is and if you have someone passing they will be surrounded by family and can be ten (10) members or more that will be present. She stated the Board has to look at patient care and needs and she is concerned about the flooding and mobilization of patients if necessary.

David Francis, 134 Wharf Road, sworn in: Mr. Francis stated he has concern with tides. He stated he knows there was 5' ft. of water from "Sandy". He asked where the sewer is going from the site. Also, he indicated Wharf Road is impassable in the winter between the flooding and the snow. He stated the road is not wide enough. He indicated the whole thing does not make sense. Mr. Francis also advised there is a lot of wild life in this area.

Michael Fitzsimmons, 135 Wharf Road, sworn in: stated he chose this location knowing it is hot, it smells and it is buggy. However, he loves it. He indicated he has seen eagles and herons. He stated this is hospice and Wharf Road is a lonely road and there will be controlled substances. He stated he is concerned with criminal activity. He also asked if they will pay taxes.

Margret Gioconda, Wharf Road, Egg Harbor Township, sworn in: Ms. Gioconda stated she just wondered how many of the members have taken the time to see the property being discussed. She stated there have been accidents at the intersection of Wharf Road and Wharf Road is one of the more neglected roads in the Township. She stated she feels sorry for the people coming to this home.

Attorney Talvacchia introduced David Martin, Environmental Scientist with Marathon Engineer for 17 years and was with Pennoni 13 years. Attorney Talvacchia stated Mr. Martin was present last month when discussions occurred concerning the restriction placed upon the applicant within the first approval of this parcel.

Attorney Talvacchia stated though the tape of the 2005 meeting is no longer available the minutes were reviewed, as well as, the reports from the application. Attorney Talvacchia stated Trident Engineering was a sub-consultant, who prepared information for Parsons Brinkerhoff the Boards consultants at the time. He stated this information concerned threatened and endangered species and habitat for a barred owl.

Attorney Talvacchia asked Mr. Martin from review the minutes from 2005 and the other information what is his opinion concerning the restriction. Mr. Martin stated from the information he has reviewed. Trident performed a site inspection and based on the site inspection there was no barred owls found, however, from the Natural Heritage information provided there were other species found which included the bald eagle and the black crown heron. He stated Mr. Newman of Trident felt these species could forage on site. He indicated because of this Mr. Newman was concerned regardless if there was a wetlands buffer already existing so he was concerned some other areas should be deed restricted. He indicated within the minutes and the resolution of the subdivision it was discussed that proposed lot 5.04 should be further restricted. Attorney Talvacchia stated based upon the information we believe the area beyond the 240' ft. line is the protected/restricted area based upon the minutes of the meeting. Mr. Martin stated he believes the testimony he has provided is a valid reason for the restriction.

Mr. Martin stated he has looked at the property in question and aerials and it appears there has been no change to the site (lot 5.04) as far as access, logging, etc...since the 2005 hearing. Mr. Martin stated the barred owl if present would use the trees on sites. He also noted a tree survey was done in 2005 and the 240' ft. restriction would also allow for certain trees to be removed. He indicated there were five (5) oak trees and four (4) pitch pines that were to be removed that had a 22 dbh.

Attorney Talvacchia stated with this application there was no environmental impact study submitted by the applicant, however, the Board can request one be submitted. He asked Mr. Martin if any other agency will review this application. Mr. Martin stated the proposed is permitted under the flood hazard act. He stated this facility is considered a public building and stated the applicant is saying it is a single-family home under the Municipal Land Use Law. Stated he sees no controls for it being just a single-family home and it would be controlled under other State Regulations. He stated one thing would be the parking and driveways which are above the 100 year storm. He stated this also includes the ingress and egress above the 100 year flood plain.

Mr. Martin stated he doubts Wharf Road can be elevate, however, the applicant has to demonstrate as to why it does not have to be elevated. He indicated also access to this site is important because of the food and linen supplies being delivered daily and he is not sure what type of emergency plan is in place if Wharf Road closes.



Mr. Martin further noted he is not sure how many gallons will be going into septic system daily. He advised if using Chapter 9A the facility will have 22,005 gallons a day which will require the septic system may require a Department of Environmental Protection permit.

Attorney Gemmel asked Mr. Martin if he was present last month and heard the testimony of the professionals. He asked if the property in question was 22.4 acres. Mr. Martin stated he did not double check. Attorney Gemmel stated if the 240' ft. line were moved to 350' ft. would it equal 38,000 to 42,000 sq. ft. of lot disturbance, which is actually one (1) acre of property for a property owner who has 22 acres. Mr. Martin stated this would be correct.

Attorney Gemmel asked Mr. Martin if he looked at the minutes, plans, letters and Trident's Report and if the 240' ft. requirement was referenced within the minutes. Mr. Martin stated the 240' ft. restriction was referenced within the resolution but not the minutes. Attorney Gemmel asked if he reviewed the engineer or planner reports. Mr. Martin stated he did not review any reports. Attorney Gemmel advised that in 2004 Mr. Martin's firm prepared an environmental impact statement for a six (6) lot subdivision, which was withdrawn, and was replaced with the result of the four (4) lot subdivision in which the lot in question was proposed. He asked Mr. Martin if he has reviewed the impact statement noted. Mr. Martin stated he could not find the report in his file and Attorney Talvacchia did not provide for him to review.

Attorney Gemmel referred to Page 7 of the 2004 E.I.S. (Environmental Impact Statement) he advised the report stated the average building footprint would be 150 X 150. He asked what determined this. Mr. Martin stated this would have been determined by looking at a grading plan and discussing with their engineer. Mr. Martin advised the six (6) lot subdivision was withdrawn by the applicant. Attorney Gemmel asked if 150 X 150 is the average footprint he asked what is the square footage of this. Mr. Martin stated it is about 110,000 sq. ft. Attorney Gemmel stated under these requirements there would be no impact from the development to the restricted area. Mr. Martin stated under the six (6) lot subdivision they restricted areas toward the north. Mr. Martin stated he glanced at the six (6) lot subdivision map and found there was no change to lot 5.04 under the four (4) lot subdivision.

Attorney Gemmel asked Mr. Martin if he would agree the six (6) lots could be developed without any impact. Township Administrator Miller stated the questions make no sense because the six (6) lot subdivision did not happen. Township Committeeman Carman stated Attorney Gemmel is trying to say that from the six (6) lot subdivision to the four (4) lot subdivision the area did not change, however, the applicant's own expert had concerns with respect to lot 5.04. He indicated it is rare an applicant's expert would express concerns.

Attorney Gemmel asked Mr. Martin if in the last eight (8) years he has not been on property. Mr. Martin stated this is correct. Board Member Kearns stated eight (8) years ago you represented this property and now someone else is. Attorney Talvacchia stated the applicant has a different environmental consultant today. Board Member Kearns asked if Mr. Martin is in conflict. Attorney Talvacchia stated there is a different owner of the property. He further noted that Mr. Bonner, the applicant/developer of the subdivision knows Mr. Martin is present. Township Administrator Miller asked Mr. Martin why his firm did not do a study. Mr. Martin stated he was brought in for the review of certain bird species.

Attorney Talvacchia stated looking at the parking proposed there is no standard and the Board does have some discretion. He stated testimony has been provided that there will be a certain number of employees. He indicated the original decision and resolution that created this lot required a turn around. He asked what happens if a turn round for emergency vehicles, trash trucks, etc... is not provided. Township Committeeman Carman stated the original decision and resolution required it to be dedicated to the Township and it will continue to be so.

**Close Aponte/Kearns to close public portion. Vote 8 Yes.**

Junetta Dix, Environmental Scientist, stated she has been to the property in question to review the vegetation, soils, or endangered species. She indicated that for clarity Trident was hired by the developer of the original

subdivision because there was a concern with barred owls, which were not found on the property and were not using the property.

Environmental Consultant Dix indicated there was a bald eagle nest within a ¼ mile, of the property at the time, and their closest foraging area was three (3) miles away. She indicated Trident, Marathon and the Department of Environmental Protection did not find anything using the property. She stated at the time there were two (2) separate consultants who stated there were no threaten and endangered species on site. She indicated based upon their information she does believe them. Environmental Consultant Dix stated it should be noted that there were aquatic birds. She stated the lot in question does provide a buffer averaging and it is the maximum the Department of Environmental Protection uses for these species. She advised in 2007 the bald eagle was deregulated, however, within the State of New Jersey it still is. She indicated since the time period of the subdivision application changes have occurred for buffer averaging. Environmental Consultant Dix indicated she can find no scientific reason or calculation to justify a 240' ft., 250' ft. or a 300' ft. additional restriction for the subject lot.

Township Committeeman Carman asked if it does not concern Environmental Consultant Dix that Allen Newman (Marathon) was concerned with some areas beyond where the Department of Environmental Protection deed restricted. Environmental Consultant Dix indicated her assumption was that Mr. Bonner was proposing residential lots and it would be great for him to buffer into a buffer. She indicated when a developer starts to haggle over development they give up small things in order to receive an approval. She stated she believes this is what happen. Environmental Consultant Dix stated the 240' ft. restriction does not have any scientific practice. She stated in order to determine this you must use existing State and Federal Regulations. She indicated she would be the first person to tell you that there is a 240' ft. buffer and it is what it is, however, in this case she cannot give any scientific reason as to why it exist.

Engineer Bruce stated he spoke with the County Health Department he indicated there is no specific criteria in terms of a 9A septic design for a hospice. He indicated we have developed per day/per gallon calculation for both employees and patients and come up with 1,700 gallons per day. He indicated if the applicant were to be over 2,000 gallons per day a new gypsy permit would be required. Engineer Bruce stated with respect to the lot when meeting with the Technical Review Committee it was determined there would be setback for the "K" turn or the "turn around". He advised the applicant will have a 30' ft. wide driveway and emergency vehicles, trash trucks can make the turn. He further noted the Technical Review Committee and themselves decided the parking ratio. He indicated they did research concerning the patients and the staff and it was determined that 18 parking spaces was the number that could accommodate this facility. He indicated ten (10) family members may come to the facility, however, they would not come in ten (10) different cars. He advised the parking area was taken into great consideration.

Engineer Bruce indicated the difference between the 240' ft. and 350' ft. line is the most significant issue. Board Engineer Watkins asked if the applicant can fit everything proposed outside of the 240' ft. buffer. He suggested maybe proposing building more to the south side of property. Engineer Bruce stated he tried but could not fit everything. He indicated he can place all the improvements outside of the 240' ft. restricted area, but the septic system he cannot. Attorney Gemmel stated the applicant did propose a scenario as reference by the Board Engineer. He indicated there were a few suggestions and changes but the septic system cannot fit.

Engineer Bruce referred to Exhibit A8: plan showing different design layouts with 240' ft. restriction. He advised they had proposed moving the building forward along with parking spaces and this would keep all the utility equipment outside of the 240' ft. line, whoever the septic system needs to occupy an area of 40' ft. X 50' ft. Township Administrator Miller asked if the line has to be moved to 350' ft. He indicated based on this alternative layout it may only have to be moved from 240' ft. to between 290' ft. or 300' ft. Engineer Bruce stated Township Administrator Miller is correct.

Township Committeeman Carman asked how fill is needed. Engineer Bruce stated the area needs to be raised between 5' to 6' ft. in order to comply with requirements. He stated the finished floor as proposed is 13' ft.

however, based on the changes with the flood mapping they may be able to go down to 10' ft. Township Committeeman Carman asked how much fill is being brought in. Engineer Bruce stated he is not sure. Township Committeeman Carman asked what type of off-site contribution will be made. Attorney Gemmel stated the statute says the proposed is a permitted use in zone and is allowed in every residential zone of the municipality and it cannot be anymore than a single-family home. He stated this request would fall into this condition. Township Administrator Miller stated if the applicant's trucks destroy the Township Road in order to construct this site the applicant will pave. He indicated the Township has made single-family homeowners do this. He advised the applicant could have 100's of trucks coming in and the road is going to take a beating. He advised this information should be considered and it will be something the applicant will have to deal with. Attorney Gemmel stated client understands if damage is done the Township would have to look at the applicant and not at the tax payers of the community.

Board Member Kearns stated the oxygen truck used will be heavy and so will the trash trucks coming to site. Sated he has concern with the width of Wharf Road. Attorney Gemmel stated the applicant will have to deal with this to the extent that if they damage Township infrastructure it must repaired.

Board Member Aponte asked how many employees will there be at facility. Engineer Bruce stated in the course of a 24 hour day there will be various shifts. He indicated the maximum staff would be 13 to 14 individuals and this is during the peak shift time which is during the day, but again they will be coming and going. Board Member Aponte stated then there will be 13 to 14 cars. Engineer Bruce stated no, it may be nine (9) again, they will be shifts. Township Administrator Miller stated he believed Ms. Triboletti indicated they would be ten (10) cars during the day shift and overnight it would be seven (7).

Ms. Triboletti stated the most cars for employees would be during the day shift and it would ten (10). She indicated the facility is open 24 hours a day and the patients loved ones would be welcome to stay there if necessary. Attorney Gemmel stated the closest parking requirement the Township would have to consider is that of a nursing home. He indicated if this were to be applied the application would only need seven (7) parking spaces. He referred to section 225-56 of the Township Zoning Code. Board Planner Polistina stated he agrees with Attorney Gemmel as far as the reading of the parking section of the code.

Board Member Aponte asked what procedure(s) are in place to alleviate security concerns as raised by a neighbor. Ms. Triboletti stated medication is under lock and key and there is a security system. She advised after 10:00 p.m., no one may enter facility without having to be buzzed in.

Board Engineer Watkins asked how many nurses per bed. Ms. Triboletti stated there is one (1) nurse per every eight (8) patients. Board Engineer Watkins asked if there will be flooding on road way? Engineer Bruce stated because of the new elevation there will be substantial grading of the site. He also noted there will be a series of underground piping for run off. He indicated the site does come forward, however, there are trench drains that catches the run off from the paving and discharges into the wetlands. He indicated the drainage from the back of the site goes to underground chambers and discharges from behind.

Board Member Cook stated it has been mentioned if the road gets torn up the Township can go after the applicant to replace. Attorney Gemmel advised this would occur after the project is completed. Board Member Cook asked how long it will take to construct facility. Architect Sgro advised it will take between eight (8) to nine (9) months for construction. Board Member Cook stated this is a long time for the road to be torn up. He indicated this will tear up the trucks and cars of the residents. Attorney Gemmel stated he has a different opinion. Engineer Bruce stated the applicant will not wait until the end to repair road. Board Member Cook asked if it would be fixed ongoing. Engineer Bruce stated yes. Board Engineer Watkins stated this could be added as a condition to the approval. He advised bonding of the roadway would be requested for improvements to the road. Attorney Gemmel stated he expect some type of surety bond for the improvements would be requested. He advised if for some reason the applicant did not do the work to the roadway than the bonding company would come after the applicant.

Chairman Garth stated in 2005 he does not remember the subdivision application, however, he would still like to hold this applicant to the 240' ft. restriction. He stated there were nine (9) people who sat here at the time and there was a purpose even if it were through discussions with the environmental firms. Board Member Levy stated he remembers the residents on Wharf Road were not happy about the subdivision. He indicated he does remember the Board wanted the applicant to keep development small. Attorney Gemmel stated the only lot effected by this restriction is lot 5.04 no other lots were considered. Board Member Levy stated this is a great facility and there is a need, however, he stated he does not feel he could vote in the positive because the Board at the time found a reason for the 240' ft. line. He stated that is just his opinion. Township Administrator Miller stated with his recollection the line was established because of environmental issues and it was a negotiated number and it was placed in the decision and resolution. He stated the Board makes decisions and the conditions serve a purpose. He stated he has nothing against the hospice, however, everything should fit within the non-restricted area.

Board Solicitor Brown stated when voicing rational for keeping the 240' ft. restricted area in the Board must make clear it make sense. He stated the Board has to remember they have standards and they cannot be arbitrary and capricious. Board Planner Polistina stated the hospice is limited to 15 beds and is a permitted use. Board Solicitor Brown stated if Board Members are incline not approve, again, they cannot be arbitrary and capricious.

Attorney Gemmel stated he would like the Board to vote on the 240' ft. line and then vote on site plan. Township Administrator Miller stated when the subdivision was originally submitted and approved the Board had environmental consultants who raised concerns and the Board felt those conditions should be imposed, however, if things have changed it should be reviewed again. He suggested before the Board sustains a 240' ft. line the Board should have their own environmental consultant to review. Board Solicitor Brown stated the Board can do so if the Board felt bringing in an environmental expert would allow them to vote in an educated manner. He advised he does not believe Attorney Gemmel would have an issue. Board Member Aponte stated he would be incline to this suggestion in order to make a better decision.

Attorney Gemmel stated Board Planner Polistina would be most effective. Township Administrator Miller stated he would like to go back to the firm who represented the Board in 2005, Parsons Brinkerhoff and see if those individuals are still on staff and if they may review. Township Committeeman Carman stated he agrees. Board Planner Polistina stated Parsons Brinkerhoff should really look at this, not his firm. Board Solicitor Brown stated when this subdivision was approved people did not foresee a hospice being constructed on site. Board Planner Polistina stated there other uses under the Municipal Land Use Law that can be constructed there also.

**Motion Miller/Carman** in light of testimony and at the request for the Board to reconsider the restriction for developmental purposes of the 240' ft. buffer (restricted area) and with consent of applicant the Board will retain Parsons Brinkerhoff to prepare an environmental report for next month (October, 2013). **Vote 8 Yes:** Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Garth.

**Motion Aponte/Kearns to continue application until October 21, 2013, at 5:30 p.m. Vote 8 Yes:** Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Garth.

**MEMORIALIZATION OF RESOLUTION(S):**

- |                                  |                                   |
|----------------------------------|-----------------------------------|
| 1. SPPF 18-07 – (Amended)        | Preliminary/Final Major Site Plan |
| MTW Realty, LLC – “Auto Lenders” | 1703/28, 39, 41 & 42              |
|                                  | 6201 Black Horse Pike             |

**Motion Kearns/Eykyn to memorialize resolution granting requested checklist waiver(s) conditional amended preliminary/final major site plan approval. Vote 8 Yes:** Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Garth

**SUMMARY MATTER(S):**

1. Discussions of matters pertaining to the Board: *SECTION I* : a. General public discussion

Board Planner Polistina stated the Board has received a copy of a letter from Attorney, Carol Goloff. He indicated her client, a Township resident, was scammed by an attorney and the client has no money. He indicated Attorney Goloff would be representing this resident during a subdivision application. Attorney Goloff has asked the Board professional's if they would be willing to waive their review fees and she has asked for the recreation fee to be deferred until time of building permit. Board Solicitor Brown stated he advised Attorney Goloff he would charge only \$100.00 to cover cost. Board Planner Polistina stated he would defer any waiving of fees until he finds out who the engineer will be for the applicant. He indicated if someone does this subdivision plan for a low amount it will be the Board Professional's that will end up design.

Township Administrator Miller stated the Board has deferred recreation fee at time of building permit, but this was a problem year ago from a collection standpoint. He advised he would rather see the recreation fee paid at the time of closing.

Township Administrator Miller stated he would like to discuss the Billboard Application, Jersey Outdoor Media. He indicated the Township Committee discussed and they will not be appealing the case. He stated the Planning Board has to make a decision also. He stated the Board needs to discuss the merits and followed the lead of the Township Committee or not. Township Committeeman Carman stated the Committee does not believe this is our fight and will not appeal it. He advised the Township will change the ordinance(s). Board Member Rosenberg stated he can understand.

Board Solicitor Brown stated he wants it placed on the record and it be made clear, so that someone does not raise an issue, he is conflicted from this discussion and he is voluntarily recusing himself from this discussion. He stated he wants to make this a non-issue. He stated he is still holding himself as being in conflict.

Township Administrator Miller stated the recommendation of Stan Bergman, Esq., and Marc Friedman, Esq., is not to spend any more money on appeal and to handle the decision of the Judge through ordinance recommendations.

**Motion Kearns/Eykyn that the Board will not appeal Judge Mendez decision concerning Jersey Outdoor Media.**

**Vote 9 Yes:** Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Rosenberg, Garth.

Board Member Aponte stated he read the decision and there were five (5) things that the Judge found that were inappropriate. Township Administrator Miller advised the first was that in 1976 our zoning permitted signs in business districts but not in commercial, another was principal uses and how we look at them. He stated another is multiple uses and how it is worded within non-pinelands jurisdiction, he advised this can be corrected by adding a sentence in section 225-13. Township Administrator Miller stated the Judge had determined that the Township never intended billboards for the MC zone and that it is a highly sensitive area due to the accompanying CRW zone, despite the fact that there are numerous billboards on the Margate Boulevard.

Township Administrator Miller stated the Judge also took into consideration cases that were provided by Attorney Hankin, but were within the Pinelands Jurisdiction and were granted use variances by the Zoning Board. He indicated the Township attorneys argued these issues and advised the Judge we had determined where billboards are allowed.

Township Administrator Miller stated there will be changes to the zoning. He advised current language allows for signs/billboards in all business and industrial zones, such as HB, CB, and NB, however, based upon the decision of the Judge the Township needs to look at placement of billboards in different areas. He suggested the GC, RCD M1 and the MC zone, which is four (4) zoning districts. He further noted that electronic billboard were an issue. He stated if Jersey Outdoor had placed a non-digital billboard it would not have been an issue. He advised the Board may want to consider allowing electronic billboards in areas referenced since most of the zoning fronts along

Expressway and Parkway. He indicated the MC zone is being suggested since there are 15 billboards on the Margate Boulevard and there are three (3) other MC zones.

Township Administrator Miller stated the height of billboards should still be permitted at 60' ft. Board Engineer Watkins stated they could be lower height requirements based upon the zone. Township Committeeman Carman stated he does not want billboards within the MC zone at all. Township Administrator Miller stated whatever ordinance gets introduced by Township Committee will have to be reviewed by the Planning Board. He stated we have to look at the issues coming out of this application and propose ordinances accordingly. He stated it is similar to what was done with the Wal-Mart application. He stated the Governing Body will have to wrestle where electronic billboards will be and in what zones.

Board Member Kearns stated the PAL was looking for placement of a billboard. He asked what zone they are in. Township Administrator Miller stated the GC zone. Township Administrator Miller stated also coming from this litigation was how we measure a billboard. He advised the Township looked at the States higher standards and established a distance of 1,000' ft. Board Engineer Watkins advised the Judge has determined the pole is part of the sign. Township Administrator Miller advised the Township measured from board to board.

Township Administrator Miller asked who does not want to see billboards on Margate Boulevard. He indicated by show of hands most want in MC Zone. Township Administrator Miller asked who would like to keep 60' ft. height on Margate Boulevard. Township Administrator Miller indicated by a show of hands most members want to keep billboards in MC zone at a height of 25' ft. Township Administrator Miller asked the Board Members what about LED signs within the MC Zone. Township Administrator Miller indicated by a show of hands no LED signs permitted in the MC zone.

Township Administrator Miller asked the Board Members by a show of hands if they had a problem with the RCD, GC and M1 zone permitting LED signs at a maximum height of 60' ft. Township Committeeman Miller stated he had no problem. Township Administrator Miller stated by a show of hands Board Members had no issue with proposal. Board Member Aponte stated the Board has to set standards. Township Administrator Miller stated one standards will be the sign cannot change more than one (1) time every ten (10) seconds. He also advised the LED signs should be promulgated to the standards of the industry regulators. The indicated the white lights were the biggest concern. Board Member Rosenberg stated the Township can place a restriction of the lumens. Township Administrator Miller stated this is correct. Board Member Rosenberg suggested maybe if the MC zone had LED signs they could be turned off between 12:00 a.m. and 6:00 a.m., if the billboard was 25' ft. Township Administrator stated he believes there would still be the same problem.

Township Administrator Miller stated he will advise Township Committee of the Planning Board input and they will decide what ordinances they will introduce.

**Motion Rosenberg/Carman to adjourn to executive session. Vote 9 Yes:** Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Rosenberg, Garth.

**Motion Carman/Aponte to reconvene to open session. Vote 9 Yes:** Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Rosenberg, Garth.

Board Solicitor Brown advised the Board went into executive session to discuss potential litigation concerning Hope and Comfort.

**Motion Aponte/Kearns to adjourn at 9:36 P.M. Vote 9 Yes:** Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Rosenberg, Garth.

Respectfully submitted by,

Theresa Wilbert, Secretary

