

**TOWNSHIP OF EGG HARBOR
PLANNING BOARD**

March 21, 2011

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

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

Roll Call:

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

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

PUBLIC HEARING(S):

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| 1. SPPF 32-02 (Amended) Shore Mall Associates Zone: RCD, 73.31 acres, sewer/water, applicant amended preliminary and final major site plan in order to keep the existing freestanding sign in its current location. The applicant is not proposing to relocate the freestanding sign in accordance with the original approval. Signage area and sign copy will be changed in accordance with the last amended site plan approval, Decision and Resolution #SPPF 32-02 (Amended) adopted on May 19, 2008. Pinelands. | Amend. Prelim/Final Major Site Plan 2302/10 & 20 Black Horse Pike and Tilton Road Waiver of Time – Not Granted |
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Checklist Waiver(s):

1. **Item #10:** Existing and proposed elevations extending 100 feet from property lines.
2. **Item #15:** Site Characteristics Map
3. **Item #18(i):** NJDEP Low impact development checklist
4. **Item #20:** Traffic report
5. **Item #23(b):** Letters of availability from utility companies
6. **Item #26:** Truck turning movements
7. **Item #31:** Natural Resource Survey

Variance Relief:

1. **§225-63B(1):** Freestanding signage height: 28' ft. permitted; 45'.92" ft

existing/proposed

2. §225-63B(2): Freestanding signage area: 250 sq. ft. permitted; 522 sq. ft. existing/proposed

Stephen Nehmad, Esq., introduced himself as attorney for the applicant. He stated that while the applicant's representative is in attendance, Christopher Fencel, the applicant's engineer is not.

May the record reflect: Board Member Aponte advised he will be abstaining from this application. He advised an organization he is involved with may or may not be dealing with the applicant in September, 2011, he indicated discussion are occurring currently.

Attorney Nehmad advised the application is being submitted as a revision to a prior application and approval. Attorney Nehmad explained the existing free standing sign at the Shore Mall was to be moved 35' ft. off the Black Horse Pike R-O-W. This was done in conjunction with the "Golden Corral" application. He advised it was actually believed the sign would be in the way of the "Golden Corral" operation.

Attorney Nehmad stated the applicant is seeking a number of checklist waivers for two (2) reasons. The first being this application is for an existing free standing sign and secondly, this information was provided when the "Golden Corral" was originally approved.

Attorney Nehmad advised if the Board has any questions the applicant would be happen to answer. Board Solicitor Brown swore in, Christopher Fencel, Direction of Project Development with Cedar Shopping Center, owner(s) of the Shore Mall.

Mr. Fencel advised the Mall had obtained a grant for improvements and he hopes that it will attract new tenants to the Mall.

Board Planner Polistina explained the applicant is keeping the sign at its current location, the height of the free standing sign will remain the same and the area will remain the same, however, there will be changes to the facade of the sign. Attorney Nehmad indicated eventually a new sign will be proposed for the Mall. However, that will not occur until new tenants are in place.

Board Member Levy asked if the applicant was moving along with placement of a Parkway Exist Ramp into the Mall? Mr. Fencel indicated his company has worked with the Department of Transportation. They have also worked with the Turnpike Authority, whom has control over the Garden State Parkway and a traffic study was prepared. He advised this was submitted but he has no information for the Turnpike Authority has been provided in order to supply the Department of Transportation with their required information. Mr. Fencel indicated he is waiting to hear feed back from the Authority.

Motion Kearns/Carman to open public portion. Vote 9 Yes.

May the record reflect no one came forward.

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

Township Committeeman Carman stated he has no problem granting relief requested. He advised the sign is staying in the exact location that it has always. He indicated this is a pre-existing; non-conforming structure.

Motion Carman/Cafero to grant requested checklist waiver(s): Vote 9 Yes: Carman, Eykyn, Garth, Kearns, Levy, Lisa, Cafero, Miller, Saslav

Motion Cafero/Kearns to grant requested variance relief: §225-63B(1): Freestanding signage height: 28' ft. permitted; 45'.92" ft existing/proposed and §225-63B(2): Freestanding signage area:250 sq. ft. permitted; 522 sq. ft. existing/proposed : Vote 9 Yes: Carman, Eykyn, Garth, Kearns, Levy, Lisa, Cafero, Miller, Saslav

Motion Eykyn/Saslav to grant amended conditional preliminary/final major site plan approval. Vote 9 Yes: Carman, Eykyn, Garth, Kearns, Levy, Lisa, Cafero, Miller, Saslav

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| <p>2. <u>SPPF 07-09</u> Egg Harbor Associates, LLC as authorized agent for Wal-Mart Real Estate Business Trust “Oak Tree Plaza” Zone: RCD, 34.49 acres site,</p> | <p>Preliminary/Final Major Site Plan 2118/1 & 16-21 7801 Black Horse Pike 6820 Old Egg Harbor Road Fire Road Waiver of Time – Not Granted</p> |
| <p>sewer and water, applicant is proposing to demolish the existing buildings and parking areas currently on site and is proposing the construction of a 244,599 sq. ft. shopping center. The applicant proposes to construct a 188,463 sq. ft. WalMart anchor store which includes a seasonal garden center and grocery store, two (2) adjacent retail stores consisting of 18,588 sq. ft. and 18,275 sq. ft., as well as, a 4,000 sq. ft. bank with three (3) drive thru lanes, a 5,895 sq. ft. dine in restaurant, a 3,400 sq. ft. restaurant with drive thru and a 4,250 sq. ft. fast food restaurant with drive thru facility. Other improvements include 1,106 paved parking spaces, freestanding and building mounted signage, landscaping and storm water management. CAFRA.</p> | |

Checklist Waiver(s):

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

Design Waiver(s):

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

Variance Relief:

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

2. **§225-63A(1):** No building mounted sign shall exceed two (2) square feet in area for each one (1) foot width of the front building facade which is devoted to the business and to which it is attached; and shall not exceed 250 square feet on any one side. The applicant is proposing four building mounted signs for a total area of 550.64 sq. ft., whereas a maximum area of 250 sq. ft. is permitted for a building with a front facade of 500± feet.
3. **§225-63A(3):** No building mounted sign shall have a vertical dimension in excess of five (5') feet. The applicant is proposing a building mounted sign with a vertical dimension of eight (8') feet, whereas a maximum of five (5) feet is permitted.

Attorney Nehmad introduced himself as attorney for the applicant. He noted this is the fourth meeting night for this application. Attorney Nehmad indicated at the end of the last hearing he was in the middle of cross-examination with Mr. Litwornia. However, he noted he does not see Mr. Litwornia nor Attorney Gasiorowski.

Chairman Garth advised that while waiting for Mr. Gasiorowski he would open the public portion to any member of the public in attendance with respect to comments concerning this application.

Motion Aponte/Kearns to open public portion. Vote 9 Yes.

Raymond Phillips, 2 Gem Avenue, Egg Harbor Township, sworn in: Mr. Phillips advised he is the business agent representing Iron Workers Local 350 in Atlantic City. Stated he wanted to come out and show their support for the developer whom is developing this project.

Chairman Garth asked if there was any other member of the public whom wanted to come forward to discuss this application?

Motion Carman/Rosenberg to close public portion with the understanding it will be reopened after all testimony has been provided for this application, should there be more public whom want to be heard. Vote 9 Yes.

Attorney Nehmad, again advised for the record, he is appearing on behalf of the Applicant. He advised his notes reflect this is the four (4th) meeting night and after the last meeting he was in the midst of cross-examining Mr. Litwornia, whom is an expert in traffic and civil engineering.

Board Solicitor Brown reminded Mr. Litwornia that he is still under oath. Mr. Alexander Litwornia advised he is aware.

Attorney Nehmad asked if Mr. Litwornia reviewed the testimony and cross-examination of the last meeting. Mr. Litwornia stated no. Attorney Nehmad indicated that during the last meeting he asked if the design of the basins would function as designed. He indicated Mr. Litwornia advised during that hearing that there was one (1) boring that indicated clay so because of this the basin may not work. Mr. Litwornia indicated this is correct.

Attorney Nehmad asked Mr. Litwornia if he has reviewed a significant amount of the

information provided by the applicant. Mr. Litwornia stated he has had others review and report back to him. Attorney Nehmad asked if this is the basis for Mr. Litwornia's opinion. Mr. Litwornia stated yes.

Attorney Nehmad indicated there were two (2) sets of soil logs. He indicated one was done in 2004 prepared by Whitestone and another was done in 2010 by CMX. He asked if Mr. Litwornia has reviewed these reports? Mr. Litwornia stated no, he had individuals on his staff review them. Attorney Nehmad asked then if Mr. Litwornia can give an opinion? Mr. Litwornia stated yes.

Attorney Nehmad asked if Mr. Litwornia would agree the results from the soil reports match closely? Mr. Litwornia stated they match pretty closely but there were some differences. Attorney Nehmad asked Mr. Litwornia that each report did not indicate there was any limiting soils? Mr. Litwornia advised he could not recall. Attorney Nehmad asked if the both reports indicated that the soils on this site were mostly sandy and gravelly with clay being sporadic? Mr. Litwornia indicated yes.

Attorney Nehmad asked if Mr. Litwornia knows what a soil log is. That it is a report of the soils that are pulled up and analyzed? Mr. Litwornia indicated a log is when you go down into the pit and do an analysis of different soils and a soil analysis is when you do a boring. Attorney Nehmad asked if both were done with this application? Mr. Litwornia stated yes both were done. Attorney Gasiorowski objected. He indicated there were two (2) logs that were done, which one is Attorney Nehmad referencing? Board Solicitor Brown advised attorney Nehmad has referenced he is speaking of both not one.

Attorney Nehmad indicated neither set of soil logs referenced any large amount of clay being found on site? Mr. Litwornia the test pits showed little clay. Attorney Nehmad asked if Mr. Litwornia is aware that in Egg Harbor Township when borings and test pits are done they must be done in the proposed basin area and they must be witnessed by a representative of the Township. Mr. Litwornia stated yes. Attorney Nehmad asked if all the logs of the applicant witnessed. Mr. Litwornia stated he does not recall. However, they are suppose to be.

Attorney Nehmad asked Mr. Litwornia if the soils are restrictive do they not have to be replaced, as required, by Egg Harbor Township. Mr. Litwornia stated they are suppose to be. Attorney Nehmad asked if this is not a condition of the Board for any site plan approval that the soils have to be replaced? Mr. Litwornia stated yes. Attorney Nehmad asked if Mr. Litwornia is aware that the Township Engineer's Office will be inspecting these basins. Mr. Litwornia stated it would be a condition.

Attorney Nehmad asked if Mr. Litwornia asked if he was aware Whitestone investigated ten (10) locations on site? Mr. Litwornia stated he did not recall how many locations. Attorney Nehmad asked if Mr. Litwornia was aware that Whitestone also performed 82 borings? Mr. Litwornia advised he did not recall how many. Attorney Nehmad asked if Mr. Litwornia is aware that out of the 82 borings taken one (1) found a clay lense and it was not in the basin? Mr. Litwornia stated he went over this information with a member of his staff and an environmentalist. He stated he did not go into great detail, as what is being ask.

Attorney Nehmad asked if Mr. Litwornia went over this information enough in order to have an expert opinion? Mr. Litwornia stated yes. Attorney Nehmad stated Mr. Litwornia has rendered

an opinion in the hope the Board can make an informed decision on your testimony. Mr. Litwornia stated not completely. He advised he wanted to address questions and problems so that additional testimony can be provided by the professional's whom reviewed it. Attorney Nehmad asked Mr. Litwornia that he has provided a partial opinion in this matter? Mr. Litwornia indicated he summarized some of the expert opinion that will be elaborated by the objector's testimony.

Attorney Nehmad asked if Mr. Litwornia ever advised the Board that he would be giving a limited opinion? Mr. Litwornia stated no. Attorney Nehmad stated during the last meeting Mr. Litwornia indicated the waiver relief sought for the construction of the basins were not warranted from an engineering perspective. Mr. Litwornia advised he believes the basins can be developed in agreement with the Township standards.

Attorney Nehmad indicated in a 50 year storm the Township Ordinance requires a basin hold 2' or less of water. He asked if this was for all developments in Egg Harbor Township? Mr. Litwornia stated yes. Attorney Nehmad asked if Mr. Litwornia knows what the rationale was for the Township to pass an ordinance requiring 2' ft. or less of water in a 50 year storm? Mr. Litwornia advised he is not sure why. Attorney Nehmad stated during Mr. Litwornia's previous testimony he had indicated the reasoning for this was due to safety. Should a child fall into a shallow basin they can get out. He asked if this is correct? Mr. Litwornia stated yes.

Attorney Nehmad indicated Mr. Litwornia referred to a grouping of photograph's that were presented at the last meeting. He explained these photograph's were of basins that Mr. Litwornia had believed were designed well. He asked if Mr. Litwornia remembered? Mr. Litwornia stated yes. Attorney Nehmad asked where these photograph's were. Attorney Gasiorowski advised Mr. Litwornia has the exhibits. Also he indicated the photograph's were not referred to as well designed basins. They were demonstrating a four-to-one slope.

Attorney Nehmad referred to Exhibit 08-11: Hamilton Mall Basin, Hamilton Township. He asked Mr. Litwornia if he is the Traffic Engineer for Hamilton Township and for how long? Mr. Litwornia indicated advised he is the Traffic Engineer for Hamilton Township and has been for 20 years.

Attorney Nehmad asked Mr. Litwornia if the basins located in front of the Hamilton Mall between the Black Horse Pike and the parking field for the Mall more than ten (10') feet deep and not fenced? Mr. Litwornia stated the one's by the Red Lobster are deep and not fenced, however, there are others that do have fences.. Attorney Nehmad indicated are the basins at the Mall not deeper than the basins proposed for this project. Mr. Litwornia advised this is correct.

Attorney Nehmad then asked Mr. Litwornia if the applicant's proposed basin (III), which is located in the rear of the subject site and will be at least six (6) feet in depth proposed to have a six (6) foot fence around it. Mr. Litwornia stated yes. Attorney Nehmad asked if during the time Mr. Litwornia has been the Traffic Engineer for Hamilton Township have the basins in front of the Hamilton Mall had any safety issues? Mr. Litwornia stated can not recall. Attorney Nehmad further asked if anyone has been trapped in the basins and not get out? Mr. Litwornia stated he was not aware.

Attorney Nehmad asked if Mr. Litwornia reviewed his client's basin's? Mr. Litwornia indicated yes. Attorney Nehmad asked Mr. Litwornia if not his client's basin over ten (10) feet deep, not

fenced, and is a walled basins that is 25' ft. from multi-family dwellings? Mr. Litwornia advised he is not sure of the exact depth of the basin. He noted there was no fence and he did not see walls since the basin was full. He further stated he is not sure what the exact distance is from the residential units.

Attorney Nehmad asked if there has been any problems with respect to safety with his client's basins. Mr. Litwornia indicated he is not aware of any. Attorney Nehmad asked Mr. Litwornia again, that the rear basin on the subject property will be fenced, however, the basins in the front of the parcel (I and II) will not be fenced. Mr. Litwornia advised this is correct.

Attorney Nehmad asked if the subject parcels basins (I and II) compared to the Hamilton Commons Shopping Center in Hamilton Township, similar. Mr. Litwornia stated yes. Attorney Nehmad asked if Mr. Litwornia is aware of any safety issues with the Hamilton Commons basin since they are walled basins and near a major roadway. Mr. Litwornia indicated no.

Attorney Nehmad asked Mr. Litwornia if when providing an opinion concerning the traffic aspect of this application did he believe he would be followed-up by another individual's testimony. Mr. Litwornia stated no. Attorney Nehmad asked Mr. Litwornia if when providing an opinion concerning the civil engineer aspect of this application did he believe he would be followed-up by another individual's testimony. Mr. Litwornia advised he believes so.

Attorney Nehmad stated there was much discussion with respect to the connector roadway. He asked if Mr. Litwornia remembers the information provided for Exhibit A2? Mr. Litwornia indicated yes. Attorney Nehmad advised that Mr. Litwornia brought up an issue concerning a waiver for the centerline radius. Attorney Gasiorowski objected, he stated he is not aware of any waiver being requested for the design of the road. Attorney Nehmad indicated he stood correct.

Attorney Nehmad asked Mr. Litwornia when he was questioned by Attorney Gasiorowski did he compare this connector roadway to a public roadway. Mr. Litwornia stated he compared it to a public roadway, as a requirement of the Township. Attorney Nehmad asked if Mr. Litwornia looked at the definition of street in the Township Ordinance. Mr. Litwornia indicated yes. Attorney Nehmad stated if Mr. Litwornia looked at the definition of public street, the connector roadway does meet the definition. He then asked Mr. Litwornia if he agrees. Mr. Litwornia indicated he believes the connector road should meet the requirements of a public street based upon what the Department of Transportation wanted within their concept letter.

Attorney Nehmad stated Mr. Litwornia did not answer his question. He then referred to section 94-3 of the Egg Harbor Township Code, asking that Mr. Litwornia review it. Attorney Gasiorowski stated he would also like to review. Board Member Aponte asked if this information could be read into the record for the Board. * May the record reflect that Attorney Nehmad read into the record Chapter 94-3 (definition of street).

Attorney Nehmad asked Mr. Litwornia based on the definition just read does the connector roadway meet the definition of Streets within the Ordinance of Egg Harbor Township. Mr. Litwornia indicated technical it does. He advised it will be placed on a plan that will be approved by this Board and then filed. Attorney Nehmad advised this plan will not be filed. He indicated subdivision(s) are filed not site plans.

Mr. Litwornia indicated site plans are filed in order to enforce State Codes. Attorney Nehmad advised in order for the State Codes to be enforced for Motor Vehicle the applicant will have to go to Governing Body and seek the granting of a Title 39. He stated if this occurs then the plan would be filed with the Department of Transportation not the County.

Attorney Nehmad asked Mr. Litwornia if he believes the Township street design standards should apply though this connector roadway does not meet the definition of a public street? Mr. Litwornia advised it may not meet the requirements of a public street under Egg Harbor Township it will under the MUTCD.

Attorney Nehmad asked Mr. Litwornia to advise what MUTCD means. Mr. Litwornia stated it is the Manual and Uniform Traffic Control Devices. Attorney Nehmad asked if this is the manual that Mr. Litwornia used and if this manual is part of the Township Ordinance. Mr. Litwornia advised it is not in the Township Ordinance, but it is within the State standards and both should apply to the connector roadway.

Attorney Nehmad stated Mr. Litwornia has indicated the applicant does not meet the center line radius for the connector road way. He asked, however, if the applicant super elevated the road they would meet the requirements. Mr. Litwornia advised if the road is super elevated it may, however, it is not referenced on the applicant's plans.

Attorney Nehmad stated super elevation means instead of a road being crowned it would actually be banked. Attorney Nehmad asked Mr. Litwornia if the roadway could not be readily achieved as a condition of approval for a super elevation. Mr. Litwornia stated he does not believe it should be a recommendation of the road because there are drainage problems with super elevation and there is another road going into the middle of the connector road. Attorney Nehmad asked if Mr. Litwornia has looked into drainage problems with super elevation? Mr. Litwornia indicated no, but there is usually a drainage problem with super elevation.

Attorney Nehmad asked if Mr. Litwornia looked at the effect a super elevation of the roadway would do drainage on the subject parcel. Mr. Litwornia stated no, since there was no reference to a super elevation on the plan.

Attorney Nehmad asked Mr. Litwornia if a super elevation could be easily done. Attorney Gasiorowski objected, advising Attorney Nehmad is speculating, however, Mr. Litwornia stated the roadway could be redesigned. Board Solicitor Brown advised Attorney Gasiorowski that Mr. Litwornia answered the question.

Mr. Litwornia then stated he would like to further discuss the super elevation. Attorney Nehmad asked if Mr. Litwornia wants to continue. Attorney Gasiorowski stated let him answer. Mr. Litwornia advised the super elevation would cause a problem because of the steep slopes in some areas where driveways would be. He stated it would cause a problem with trucks and people coming into the site. Mr. Litwornia indicated, however, it would not be difficult to redesign the road to meet the standards.

Attorney Nehmad advised the Township Ordinance requires a 100' ft. tangent between curves. He asked Mr. Litwornia what he believes the applicant's plans reference. Mr. Litwornia advised 90' ft. Attorney Nehmad advised an engineer associated with this application has determined the measurement is 100' ft. . Attorney Nehmad asked if Mr. Litwornia reviewed this

measurement based on a computer program? Mr. Litwornia advised he based his measurement by scaling off the design which did not show the curves.

Attorney Nehmad indicated he had one question for Board Engineer Watkins. He asked Board Engineer Watkins if he can recall that last month he asked Mr. Litwornia about a number of site plan applications that either were either totally walled or partially walled basins. Board Engineer Watkins stated he does remember. Attorney Nehmad asked Board Engineer Watkins if he was correct in advising they were walled basins. Board Engineer Watkins stated yes.

Attorney Nehmad indicated that last month Mr. Litwornia discussed speed limits on the proposed connector roadway. He stated Mr. Litwornia indicated he found a manual called Managing Transportation in Your Community and it was dated 1992, however, Attorney Nehmad advised it appears this manual is dated January, 1989. Mr. Litwornia indicated there was a reprint of this document. He advised it had a different cover.

Attorney Nehmad presented Exhibit A19-11. Attorney Gasiorowski stated he is objecting. He advised if Mr. Litwornia used a document dated 1992, but what is being presented is dated 1989. Township Administrator Miller asked if Mr. Litwornia has his copy? Mr. Litwornia stated he does not believe he has the document with him. He indicated he could look at what Attorney Nehmad has and he can advise if this is what he used

Attorney Nehmad indicated Exhibit A19-II is a document that was prepared by a firm known as Carter Van Dyke Associates. It's title page and first page states "Managing Transportation in your Community," a Municipal Handbook published by the new Jersey Department of Transportation, dated 1989.

Mr. Litwornia indicated the document Attorney Nehmad is referring to is slightly different. Attorney Nehmad asked if Mr. Litwornia, again, if he has his copy with him. Mr. Litwornia indicated he does not see that he has it.

Attorney Gasiorowski stated he is objecting. He indicated if there is a document dated 1992 it was what Mr. Litwornia used, not what Attorney Nehmad is presenting which is dated 1989. Township Administrator Miller asked Mr. Litwornia if he absolutely does not have the documents he reviewed? Mr. Litwornia advised he does not see that he has this information.

Attorney Nehmad stated, as he understands, Mr. Litwornia used this handbook in search of a source concerning speed limit recommendation. Mr. Litwornia stated yes. Attorney Nehmad asked Mr. Litwornia if it is true that this handbook was not intended as a regulation or a specification? Mr. Litwornia stated this is correct. He advised the handbook is a planning guide for board's and town's to have something to use when designing roads.

Attorney Nehmad asked Mr. Litwornia if since 1992 there have been changes to the handbook? Mr. Litwornia asked in what way. Attorney Nehmad stated this handbook references the Highway Capacity Manual of 1985, which was updated in 1994. He asked Mr. Litwornia if this is true. Mr. Litwornia advised it is Highway Manual is updated almost annually. Attorney Nehmad asked if it is true that since 1992 the Highway Manual has been updated at least four (4) times, with another update for 2010 to be done this month? Mr. Litwornia indicated this is correct.

Attorney Nehmad advised he would like to discuss trip generation. Attorney Gasiorowski

objected. He advised there was no testimony provided by Mr. Litwornia concerning trip generation. Attorney Nehmad stated the design of the roadway and the speed limit on a road way has much to do with the trip generation of a particular site.

Board Solicitor Brown advised under 401 the question is relative and under 403 there is no prejudice so Attorney Nehmad may go on. Attorney Nehmad asked Mr. Litwornia if the Institute of Traffic Engineer's Trip Generation Manual has been updated four (4) times since 1992, which includes traffic calming measures? Mr. Litwornia stated yes, in order to reduce speeds.

Attorney Nehmad also asked if there have been articles put out by the Urban Land Institute concerning traffic calming since 1992? Mr. Litwornia stated yes. Attorney Nehmad Asked if the American Association of State Highway Transportation Officials also have had articles about the calming of traffic since 1991. Mr. Litwornia stated yes, but these changes dealt with vehicle and pedestrian traffic at intersections.

Attorney Nehmad asked if it is desirable to imply traffic calming measures on bypass roads or connector roads? Mr. Litwornia stated the purpose of a connector roadway. Attorney Nehmad asked Mr. Litwornia to answer the question asked. Attorney Gasiorowski objected, he asked Attorney Nehmad to let Mr. Litwornia answer the question. Attorney Nehmad and Attorney Gasiorowski went back and forth concerning this question. Thus Attorney Nehmad rephrased his question.

Attorney Nehmad asked Mr. Litwornia based on traffic engineering, since 1992 there has been information published providing calming measures to slow down traffic for the applicant(s) proposed roadway? Mr. Litwornia stated he does not believe he would recommend reverse curbs to calm traffic. He further noted that he does not believe the proposed roadway would be geared toward traffic calming measures.

Attorney Nehmad asked if the Township Committee passed a speed limit requirement to govern would Mr. Litwornia feel the same. Mr. Litwornia stated yes. Attorney Nehmad asked if the Township were to pass a speed limit requirement on roads that traverse shopping centers would this not show the towns desire that they want to see speed limits on these roadways? Attorney Gasiorowski objected. He stated this is not a roadway traversing a shopping center. He stated this is road way was designated by the Department of Transportation as a connector road.

Board Solicitor Brown advised Mr. Nehmad to proceed. Attorney Nehmad again asked if the Governing Body were to adopt a speed limit for roadways that traverse shopping centers is it not an indication the Governing Body as to what it would want to see as a speed limit on the proposed road? Mr. Litwornin stated this road way is not a road way for the shopping center it is a connector road with roads coming off of it for the shopping center.

Attorney Nehmad asked if Mr. Litwornia spoke with anyone at the Department of Transportation concerning a speed limit recommended this type of road. Mr. Litwornia stated he is no sure if the Department of Transportation has a speed limit for this road way because he did not discuss this application with anyone from there. He indicated he relied on the correspondence and letters from them previously discussed.

Attorney Nehmad asked Mr. Litwornia if other then a document from 1992 had he search to see if the Department of Transportation had any recommendations for speed limits through shopping

centers? Mr. Litwornia advised they recommend speed based on radius curvature on streets. Attorney Nehmad asked if Mr. Litwornia searched the Township Ordinance(s) for this type of speed limit. Mr. Litwornia stated no.

Attorney Nehmad presented Exhibit A-20-11: Township of Egg Harbor, (code section) Chapter 213, entitled Vehicles and Traffic. He asked Mr. Litwornia if he has looked at section "B" of this ordinance? Mr. Litwornia advised he had not. Attorney Nehmad read into the record section "B". He further advised this ordinance discusses the speed limits at such locations as the Shore Mall, which has the public right-of-way of West Jersey Avenue going through it. Attorney Nehmad asked what the speed limit is for this. Mr. Litwornia indicated 15 miles per hour.

Attorney Nehmad asked what about the Cardiff Mall, which is located at 6718 Black Horse Pike. Mr. Litwornia stated 15 miles per hour. Attorney Nehmad asked what is the speed limit for the Cardiff Fashion Plaza and the Tilton Times Plaza. Mr. Litwornia again advised it is 15 miles per hour. Attorney Nehmad stated the last facility mentioned is the Expressway Corporate Center which is an office park. He asked what this speed limit is? Mr. Litwornia indicated it also is 15 miles per hour.

Attorney Nehmad asked Mr. Litwornia if this changes his mind about what the Township requires for speed limits for connector road's? Mr. Litwornia stated it appears they are leaning towards 15 miles per hour, but with reverse curbs being proposed for this applicant's road way a slower speed should be proposed. He indicated it should be 10 miles per hour. He further advised that in order to establish this speed test must be performed once constructed to see what is an acceptable speed, however, again, he stated a slower speed limit of 10 miles per hour should be proposed.

Attorney Nehmad asked if Mr. Litwornia has done speed limit studies for the proposed roadway? Mr. Litwornia stated no, again, the road has not been developed, there is no super elevation proposed so the speed limit should be 10 miles per hour. He did indicate should the applicant propose a super elevation and when the center is constructed the speed limit may end up being 15 miles per hour. Attorney Nehmad indicated the Town has done studies on the other centers and they find 15 miles an hour acceptable. Mr. Litwornia indicated he is not sure if the Town has done studies or if a number was just picked. Attorney Nehmad asked if ordinances are not based on a rationalization? Mr. Litwornia stated yes, however, he indicated he hoped the Township has done studies.

Attorney Nehmad indicated he has no further questions of this witness and he asked all exhibits presented be marked as evidence. Township Committeeman Carman advised Attorney Gasiorowski's redirect my answer some of the questions he has. Board Solicitor Brown asked Mr. Gasiorowski to proceed.

Attorney Gasiorowski asked if the traffic ordinance that was presented marked? Board Secretary Wilbert indicated it was Exhibit A20-11. Attorney Gasiorowski asked Mr. Litwornia to review Exhibit A2 previously discussed. He asked if this exhibit shows the connector road way having ingress and egress from Old Egg Harbor Road traversing through the applicants property on the easterly side, and have ingress and egress on the Black Horse Pike. Mr. Litwornia stated yes, it does show this.

Attorney Gasiorowski asked if there was any portion of this connector road way that goes through the shopping center or the parking fields? Mr. Litwornia indicated no. Attorney Gasiorowski then referred Mr. Litwornia to Exhibit O2-11, Letter from the Department of Transportation dated December 30, 2010. He asked him to read to the Board the intention of the Department of Transportation is concerning this road way. Mr. Litwornia read into the read the Department of Transportation letter dated December 30, 2010.

Attorney Gasiorowski stated by looking at this letter, specifically section "B" and reviewing Exhibit A20-11, would the testimony provided by the applicant be contrary to what the Department of Transportation originally required. Since the applicant wants to remain in ownership of this road way. Mr. Litwornia advised this is correct.

Attorney Gasiorowski asked that their will either be an easement or right-of-way given for the general public to traverse the road whether they go into the shopping center or not. Mr. Litwornia indicated this is correct. Attorney Gasiorowski asked if Mr. Litwornia knows when this connector road was proposed. Mr. Litwornia advised it was sometime in 2006 when the Department of Transportation denied the applicant for a traffic signal at the intersection of the Black Horse Pike and the site drive. He indicated the Department of Transportation did say they would approve the applicant if they proposed a connector roadway between Old Egg Harbor Road and the Black Horse Pike. This would allow for a bypass to Hingston Avenue, which continues across Tilton Road and eventually leads to Fire Road. He indicated the Department of Transportation indicated this would help with traffic at the intersection of Fire Road and the Black Horse Pike.

Attorney Gasiorowski asked if there was a connector road granted in the original approval? Mr. Litwornia advised yes a connector road was shown, but the Department of Transportation did not like it, since it worked a driveway for the shopping center and was of no benefit other then for the shopping center.

Attorney Gasiorowski then referred to Exhibit O14-11, letter dated July 25, 2006, from the Department of Transportation, signed by Kenneth Spiegel to Kenneth O'Brien with McMahon Associates. Attorney Nehmad objected. He indicated this is not rebuttal, but new evidence. He indicated Attorney Gasiorowski had a chance to submit this information previously.. Attorney Gasiorowski stated Attorney Nehmad asked questions about the road way and submitted a regulation concerning utilizing private property. Board Solicitor Brown advised the letter has been marked and to proceed.

Attorney Gasiorowski asked Mr. Litwornia to read the second paragraph of the letter dated July 25, 2006. Mr. Litwornia read into the record what was asked. Attorney Gasiorowski asked based upon this letter what was the reason for the road in respect to Old Egg Harbor Road and Fire Road. Mr. Litwornia indicated it was to create a bypass so people could avoid going through the intersection of Fire Road and the Black Horse Pike. He indicated the Department of Transportation wanted to make a better road way connector.

Attorney Gasiorowski stated the Department of Transportation was not this road way designed to accommodate the shopping center patron, but the general public. Attorney Nehmad objected, he advised Attorney Gasiorowski can not speak for the Department of Transportation. Attorney Gasiorowski advised this is what the letter says. Board Solicitor Brown advised the letter was already read and it speaks for itself.

Attorney Gasiorowski asked if the proposed connector road way also provide ingress and egress into the shopping center? Mr. Litwornia indicated the Township Ordinance requires three (3) connections to the proposed road way. Attorney Gasiorowski asked if the roadway, as designed, proposes a separate lane of traffic for users going to the first entrance way to the center? Attorney Litwornia indicated this is correct.

Attorney Gasiorowski referred to a letter dated February 19, 2008, from Aurora and Associates to Mr. Jack Scire, who is within the office of major access permits. He asked that it be marked Exhibit O15-11. He asked Mr. Litwornia if this letter is sent by a representative of the developer? Mr. Litwornia state no. He indicated the letter was a review of the traffic analysis of the application to the Department of Environmental Protection with their comments.

Attorney Gasiorowski asked Mr. Litwornia to read paragraph three (3) of this letter. Mr. Litwornia read into the record the third paragraph of the letter dated February 19, 2008. Mr. Gasiorowski then referred to a letter dated April 29, 2009, which is marked Exhibit O16-11: which is correspondence sent by McManhon Associates to Mr. Kenneth Spiegel, whom is with the major access permits, of the New Jersey Department of Transportation Attorney Gasiorowski asked Mr. Litwornia if the author of the letter refers to whom they are representing. Mr. Litwornia stated it is Wolfson and Verrechia Group. Attorney Gasiorowski asked what is the purpose of the letter. Attorney Nehmad objected. He indicated Mr. Litwornia is not qualified to discuss the purpose of the letter. Attorney Gasiorowski stated if the letter refers to the purpose he can refer to it.

Board Solicitor Brown asked Attorney Gasiorowski what his legal point is? He asked if at the end of the day when Mr. Litwornia is done reading these letters, what is the legal point they will be making? Attorney Gasiorowski stated that throughout the history of this application, going even back to the original application that was made. The Department of Transportation wanted this connector road to be a public roadway to be owned by the Township and as time went on the Department of Transportation stated it had to be a functional equivalent of a public roadway. Attorney Gasiorowski indicated that Attorney Nehmad is trying to represent this roadway is a private one with calming features.

Attorney Gasiorowski asked Mr. Litwornia to read comment #3 of Exhibit O16-11. Attorney Litwornia read into the record comment #3 of the April 29, 2009 letter to Kenneth Spiegle from McManhon.

**** May the record reflect:** due to the back and forth question and objections between the Board Solicitor, the applicant's attorney and the objector's attorney. The letter from McManhon dated April 29, 2009, was marked as Exhibit O16-11, however, it was referenced again as Exhibit O17-11.

Attorney Nehmad stated to the Chairman that Attorney Gasiorowski is not presenting a rebuttal but is providing new evidence. Board Solicitor Brown indicated the applicant will own the land. Attorney Gasiorowski stated he no one knows this. Board Solicitor Brown stated the applicant has to receive approval from the Department of Transportation. He indicated Attorney Gasirowoski has made a good point concerning what the Department of Transportation has requested, however, it seems what is being presented is redundant and the Board should be

moving forward.

Attorney Gasiorowski stated he understands the interest of time and he will have the additional letters marked and entered relating to this issue. He indicated the Department of Transportation has the power to deny this road as proposed. Board Solicitor Brown advised the argument Attorney Gasiorowski is making is really for the Department of Transportation not the Planning Board.

Attorney Gasiorowski indicated he understands what Board Solicitor Brown has stated. He also indicated that he has written letters to the Planning Board Engineer and the Township Engineer seeking a review of the proposed roadway to see if it complies with the existing ordinance. Attorney Gasiorowski stated the Board Engineer advised he would do it, but nothing has been received stating it has been.

Planning Board Engineering Representative, Robert Watkins stated his firm is also the Township Engineer. He indicated his firm did look at the road, however, since the Township is not going to own the road there was no need to review as a Township Road.

Attorney Gasiorowski asked if this is the Engineer's position fine. Planning Board Engineering Representative Watkins stated it was. He indicated if this plan receives approval from the Board and is then provided to the Department of Transportation and they do not grant the road way because it is not a public road. Then the Township must come back to the Township and the road way will be reviewed to see if it meets the standards of a public road.

Attorney Gasiorowski asked that the following exhibits be placed on the record. Exhibit 017-11: dated June 22, 2009 sent to McMahon Associates, Exhibits 018-11: appeal meeting sheet dated November 21, 2006 memorialized on January 30, 2007, a letter from the New Jersey Department of Transportation to Steven Wolfson, Exhibit 019-11: letter dated June 22nd, 2009 from the Department of Transportation to Dean Carr of McMahon Associates, and Exhibit 020-11: Letter dated August 4, 2009 from the Department of Transportation (Attorney Gasiorowski advised this Exhibit may already be in evidence).

Attorney Gasiorowski asked Mr. Litwornia, based as an expert in the field of traffic, his testimony has indicated the intended function of the connector road way is a bypass between Old Egg Harbor Road and Black Horse Pike. Mr. Litwornia indicated yes. He advised it is a connector road in order to help the traffic in this area. Attorney Gasiorowski asked Mr. Litwornia if this connector road has a secondary purpose which would provide ingress and egress into the shopping center.

Attorney Nehmad objected. He stated this is not redirect testimony. Attorney Gasiorowski indicated Attorney Nehmad went through the detail use of this road during his cross. Attorney Nehmad stated Attorney Gasiorowski is getting new opinions. Board Solicitor Brown stated Attorney Gasiorowski has another expert, who will not be able to testify to what Mr. Litwornia testifies to. Board Solicitor Brown told Attorney Gasiorowski to move forward.

Attorney Gasiorowski again asked Mr. Litwornia if this proposed roadway is secondary or ancillary in providing ingress and egress into the shopping center. Mr. Litwornia indicated yes. He further noted the road way proposed is in excess of what the Department of Transportation required for width. Mr. Litwornia advised the road way will have three (3) driveways coming off of it for the shopping center and they do meet the Township ordinance requirements.

Attorney Gasiorowski stated Attorney Nehmad referenced various basins in the Township, as well as, Hamilton Township. Attorney Gasiorowski asked if there is a specific ordinance within the Township for the construction of basins? Mr. Litwornia stated yes. Attorney Gasiorowski asked if there is any mention in these ordinance(s) concerning vertical walls? Mr. Litwornia stated no. Attorney Gasiorowski asked how are basins constructed in the Township? Mr. Litwornia indicated with slopes.

Attorney Gasiorowski asked if the applicant could construct the basin with meeting the four-to-one (4 to 1) slope? Attorney Nehmad objected advising Mr. Gasiorowski was being redundant.

Mr. Litwornia stated yes, he indicated it was referenced on Exhibit 013-11.

Attorney Gasiorowski advised he is finished with Mr. Litwornia. Attorney Nehmad indicated he had nothing further of Mr. Litwornia.

Township Administrator Miller indicated that Mr. Litwornia's testified he has 30 plus years experience as a traffic engineer within the State. Mr. Litwornia stated yes. Township Administrator Miller asked if Mr. Litwornia has done both private sector and municipal work. Mr. Litwornia indicated he has designed shopping centers and he has reviewed them for towns also. Township Administrator Miller asked how many has he reviewed during his career? Mr. Litwornia stated at least three (3) to four (4) a year. Township Administrator Miller stated then in the past 30 years there have been over 100 reviewed? Mr. Litwornia stated yes.

Township Administrator Miller asked how many shopping centers has he designed during his career. Mr. Litwornia indicated he has designed a half dozen. Township Administrator Miller asked how many of these shopping centers have you had to deal with the Department of Transportation concerning signalization? Mr. Litwornia indicated about a half dozen..

Township Administrator Miller asked if when submitting to the Department of Transportation did they ever approve an application from the beginning? Mr. Litwornia stated no. He indicated there is a give and take but they normally do not give in with signal controls and public access. Township Administrator Miller asked that the number of letters that have went back and forth between the applicant and the Department of Transportation, for this application unusual? Mr. Litwornia stated for a large shopping center it is not he did advise it could take two (2) to four (4) years.

Township Administrator Miller asked would Mr. Litwornia not agree the last letter received by the Department of Transportation is what is relied upon. Mr. Litwornia advised there was a series of conceptual approvals and denials from the Department of Transportation for this application. Township Administrator Miller asked if Mr. Litwornia knows if this proposal was approved? Mr. Litwornia indicated no, since the road way was not to be a driveway into the shopping center and the road way was to connect to Hingston Avenue. Township Administrator Miller stated the applicant has done so. Mr. Litwornia stated the applicant did not.

Township Administrator Miller asked if Mr. Litwornia looked at the original approval granted to this applicant? Mr. Litwornia stated no. Township Administrator Miller asked if Mr. Litwornia was aware the square footage of this project was reduced. Mr. Litwornia indicated yes.

Township Administrator Miller asked if Mr. Litwornia was familiar with NJSA 40:48-2.46, which

allows for a municipality to set speed limits and movement of traffic on private property. Mr. Litwornia stated yes. Township Administrator Miller so under this requirement the Township can set a speed limit on the proposed road regardless if it services the public, the shopping center or if it is a dedicated right-of-way. Mr. Litwornia indicated the public authority has a right to establish the limit.

Mr. Litwornia stated the proposed road is a bypass road and if the road becomes a problem then the Department of Transportation would be concerned that it is not taking traffic off the adjacent intersection as intended. Township Administrator Miller stated earlier Mr. Litwornia advised he was familiar with the Shore Mall. He asked Mr. Litwornia if the Shore Mall's bypass road similar in design to the proposed bypass road.

Mr. Litwornia indicated it was not, because the proposed will be a dedicated roadway and the Shore Mall has wide open areas. Township Administrator Miller indicated he is not speaking of the parking lot for the Shore Mall. He stated there is road from West Jersey Avenue that connects into the Black Horse Pike. Township Administrator Miller further noted the road does not go through the mall but it is around the Shore Mall and people can access the Mall from it. Therefore, he asked what is the difference?

Mr. Litwornia indicated it is similar. Township Administrator Miller advised it is identical. Mr. Litwornia stated many parts of the Shore Mall are not dedicated or clearly delimited. Township Administrator Miller advised the Shore Mall was designed over 40 years. He indicated in the last 40 years standards have evolved and control points have been established. Mr. Litwornia stated the proposed road is a roadway. He indicated at the Shore Mall the public goes off the road in different locations. He stated West Jersey Avenue is more like a parking lot than a road. He did advise the applicant's proposed road is a better design.

Township Administrator Miller indicated that based on what Mr. Litwornia has testified less public are going to the shopping center then those using connector road as a cut through? Mr. Litwornia stated no, he did not state this. He indicated he advised the road is well designed for the turn off's to go into the center and also as a connector roadway.

Township Administrator Miller asked what percentage of motorist will be using the proposed road way to go into the shopping center. Mr. Litwornia stated based on the traffic study of the applicant there will be 80 to 100 vehicles during peak hours using as through traffic. Township Administrator Miller advised he is asking for an opinion. He asked why would the applicant construct a road if the shopping center was not going to be the primary beneficiary? Mr. Litwornia indicated the applicant is building the road as a public benefit. He indicated without the Department of Transportation would not approve the shopping center.

Township Administrator Miller stated the purpose of the road is to service the shopping center and the secondary benefit is for the public to cut through to avoid the Fire Road intersection? Mr. Litwornia stated yes, he indicated there will be more traffic going to the shopping center the going through the bypass. Township Administrator Miller thanked Mr. Litwornia.

Attorney Nehmad advised the traffic impact for this site advises that during peak hours 80 to 85 percent of the traffic will be private and 10 to 15 percent will be public. Township Administrator Miller thanked Attorney Nehmad, however, he stated he was asking Mr. Litwornia the information as an expert.

Attorney Nehmad advised there are two (2) witnesses present that were not available during the last meeting for Attorney Gasiorowski to cross examine. He advised they are Perry Petrillo the applicant's architect and Sherry Thomas of the Walmart Stores.

Attorney Gasiorowski indicated he would like to move forward with his other witnesses. Board Solicitor Brown asked if Attorney Nehmad will be bringing these individuals back again. Attorney Nehmad stated no. Board Solicitor Brown advised Attorney Gasiorowski to take this opportunity to cross examine the witnesses. Attorney Gasiorowski stated he would, however, he would like to bring another witness forward first since he is not feeling well.

Attorney Gasiorowski asked Michael Angelastro, the Egg Harbor Township, Traffic Engineer to come forward. He indicated he would stipulate to his qualifications. Attorney Gasiorowski referred to Exhibit O21-11: Section 94-46 of the Township Code, street design and performance standards. He asked Traffic Engineer Angelastro if he is professional engineer in the State of New Jersey and he serves this community as the traffic engineer. Traffic Engineer Angelastro stated this is correct.

Attorney Gasiorowski asked Traffic Engineer Angelastro is he is familiar with Exhibit O21-11. He also asked what this section of the ordinance does? Traffic Engineer Angelastro indicated yes, he is familiar and it is the street design and standards. Attorney Gasiorowski asked if Traffic Engineer Angelastro reviewed the connector road with the section of the Ordinance outline in Exhibit O21-11? Traffic Engineer Angelastro advised his review as limited to the traffic study submitted by the applicant. Attorney Gasiorowski stated he had no further questions for Traffic Engineer Angelastro.

Attorney Gasiorowski asked for Sherry Thomas. Board Solicitor Brown asked Ms. Thomas if she understands she is still under oath. Ms. Thomas stated yes. Attorney Gasiorowski asked what position Ms. Thomas holds with Walmart. Ms. Thomas stated she is a market manager, which is a district manager. She advised she manages eight (8) stores.

Attorney Gasiorowski asked where the stores are that she manages? Ms. Thomas advised they are Rio Grande, Mays Landing, Turnersville, Vineland, Millville, and Bridgeton. Attorney Gasiorowski asked if Ms. Thomas has ever served as a manager in a Walmart. Ms. Thomas stated no.

Attorney Gasiorowski asked what does Ms. Thomas do within the structure of Walmart? Ms. Thomas stated she has eight stores and the managers report directly to her as well as district managers, human resource, asset protection, health and wellness managers. Attorney Gasiorowski asked Ms. Thomas to look at Exhibit A2-11 and advise how the tractor trailers will be coming in and out for the Walmart stores? Ms. Thomas stated whichever way the Board wants. Attorney Gasiorowski asked if Ms. Thomas knows what businesses are proposed to occupy Retail Store A and Retail Store B? He asked will they be part of Walmart or will they be independent? Ms. Thomas stated the retail A and B will be independent. They will not be part of Walmart. Attorney Gasiorowski advised he has no further questions for Ms. Thomas.

Attorney Gasiorowski advised he will accept Mr. Petrillo's qualifications. Board Solicitor Brown asked if Mr. Petrillo still understands he is under oath? Mr. Petrillo stated yes.

Attorney Gasiorowski asked if Mr. Petrillo is the architect who designed this proposed Walmart and has he designed others? Mr. Petrillo stated yes he designed the proposed and he has designed others. Attorney Gasiorowski asked what the size is of the proposed Walmart? Mr. Petrillo stated it will be 188,463 sq. ft. Attorney Gasiorowski asked if the proposed will be a Walmart super center? Mr. Petrillo advised he does not call it a super center it is considered a full service Walmart.

Attorney Gasiorowski stated in addition to Walmart there will be other independent stores such as a bank and a food store within the footprint. Mr. Petrillo stated there could be. Attorney Gasiorowski asked how many others will be included and how much square footage is proposed to be used. Mr. Petrillo advised it could be one (1) to four (4) others and he is not sure what the square footage will be. He indicated it could be a couple hundred feet for each.

Attorney Gasiorowski asked if this facility will have a full service supermarket use within the Walmart? Mr. Petrillo stated yes. Attorney Gasiorowski asked what was the square footage dedicated for the supermarket. Mr. Petrillo stated he does not have the specific number at this time. Attorney Gasiorowski asked if it is not important to have how much spaces is dedicated to the supermarket, to the retail and to the independent users in order to provide a traffic analysis for the number of parking spaces? Mr. Petrillo indicated this is a traffic question.

Attorney Gasiorowski asked if Mr. Petrillo was involved with the design of retail space A and B or any of the pad sites? Mr. Petrillo stated no. Attorney Gasiorowski stated Mr. Petrillo's only involvement was for the Walmart? Mr. Petrillo stated yes. Attorney Gasiorowski advised he has no further questions for Mr. Petrillo

Board Solicitor Brown asked if Attorney Gasiorowski has anyone else he would like to present? Attorney Gasiorowski stated yes, he called Mr. Michael Higgins.

Board Solicitor Brown swore in Michael Higgins, owner of Soil Tech Environmental Consultants. Mr. Higgins stated he has lived in New Jersey almost his whole life. He advised he has a degree in Environmental Science from Stockton State College. Mr Higgins presented Exhibit O22-11: his curriculum vitae. Mr. Higgins indicated he established Soil Tech Environmental Consultants in 1980 as a consulting company for the investigation and analysis of natural resources.

Attorney Gasiorowski asked if Mr. Higgins is an expert in the field of soils investigation? Mr. Higgins stated with his degree in environmental science he has taken courses at Stockton. He has worked in the Academy of Natural Science in Philadelphia, he has worked in Delaware Valley Regional Planning Commission and has been a member of the New Jersey Professional Soil Scientist Association. Mr. Higgins also advised he co-authored the Egg Harbor Township's Natural Resource Inventory in 1979 when he worked for Adams, Rehmann, and Heggan whom were the Township's consulting engineers.

Attorney Gasiorowski asked Mr. Higgins, with respect to this application, if he was retained by him to provide testimony before the Board and if he is being compensated? Mr. Higgins stated yes. Attorney Gasiorowski asked if Mr. Higgins has been present during the previous hearings? Mr. Higgins stated he was present during the January and February hearings. Attorney Gasiorowski asked if Mr. Higgins listened to the testimony presented by Attorney

Nehmad, but also listened to the cross examination of Mr. Litwornia by Attorney Nehmad? Mr. Higgins stated yes.

Attorney Gasiorowski stated there was much discussion concerning retention and detention he asked Mr. Higgins if there is a difference between the two (2). Attorney Nehmad objected. He indicated Mr. Higgins is not a civil engineer and is not qualified to speak as to the difference between the two (2). Attorney Gasiorowski advised he was just asking if on the proposed site if there is a difference between retention and detention. Board Solicitor Brown asked what this has to do with soils. Attorney Gasiorowski indicated it does have to do with soils. He indicated if it is a retention basin it is important to now the permeability of the soils.

Attorney Nehmad again, objected. Board Solicitor Brown indicated Attorney Gasiorowski is just asking whether the basins are retention or detention.. Mr. Higgins advised he can answer Attorney Gasiorowski's question as a non-professional engineer. He explained that the site has an infiltration basin design for a detention system.

Attorney Gasiorowski asked Mr. Higgins, if he had prepared an exhibit based on his request, of the basin locations referenced by Attorney Nehmad during his cross of Mr. Litwornia. Mr. Higgins stated yes. Attorney Gasiorowski referred to Exhibit O23-11, which is a Google Earth Aerial Photograph of site, without date.

Township Administrator Miller asked what this exhibit is representing without a date. Mr. Higgins stated he is representing the property in question and the area surrounding the proposed development. Attorney Gasiorowski asked Mr. Higgins to explain where the site is located. Mr. Higgins advised the site is located between the Black Horse Pike, Fire Road, and Old Egg Harbor Road and there is existing structures on site that are depicted.

Attorney Gasiorowski asked Mr. Higgins to show on Exhibit O23-11 where the proposed main structure of the proposed shopping center will be? Mr. Higgins advised the structure is where the yellow and black area's are depicted on Exhibit O23-11. Attorney Gasiorowski asked Mr. Higgins to show where the connector road will be? Mr. Higgins referred to Exhibit O23-11 showing the line of where the connector road would be. Attorney Gasiorowski asked Mr. Higgins where basin (III) would be located? Mr. Higgins referred again visually to Exhibit O23-11 advising it would be located in the back corner of the site on either side of the connector road.

Attorney Gasiorowski advised there has been testimony concerning the soils taken by two (2) companies, one (1) known as Whitestone and the other none as CMX. He asked if Mr. Higgins reviewed each of these companies soil reports? Mr. Higgins stated yes. Attorney Gasiorowski asked if there was a difference in how each of the companies took the soil samples?

Attorney Gasiorowski asked how many soil samples were referenced in the Whitestone Report? Mr. Higgins indicated he would estimate it to be around 50 or more. Attorney Gasiorowski asked how many were taken in the area of where basin (III) is? Mr. Higgins stated in order to investigate the soils a drilling rig digs a hole about four (4) to six (6) inches round and then a pipe is banged into the ground using a split spoon to get samples. Mr. Higgins further noted that this method gives a small area but a specific depth of the horizons.

Attorney Gasiorowski asked what a horizon is? Mr. Higgins stated a horizon is the condition of the soil, its characteristics. Attorney Gasiorowski asked if samples were taken in the area of proposed basin (III). Mr. Higgins stated there were three (3) vertically drilled borings #38, #39 and #40, done by the first company. Attorney Gasiorowski asked how many borings were taken. Mr. Higgins referred to the Geotechnical Report of CMX, which has Whitestones soil logs included. He stated what he is referring to is the CMX report dated March 5, 2010.

Attorney Gasiorowski asked what this information disclosed? Mr. Higgins advised he referring to B-38 of the Whitestone Associates. Mr. Higgins advised this boring was taken at a 10' feet, at an elevation of 40.1 and the drilling method for the boring is HSA which means it was done with a hand split auger. He indicated this result was located where basin (III) is located. Mr. Higgins then read into the record the results of the boring

Board Solicitor Brown stated to Attorney Gasiorowski that the information Mr. Higgins is discussing is already in evidence. He asked if Attorney Gasiorowski had questions concerning Mr. Higgins opinion versus having Mr. Higgins go over items already addressed? Attorney Gasiorowski stated he is not sure if the Board read in detail the soil records.

Attorney Gasiorowski asked Mr. Higgins what his opinion is of the three (3) borings taken by Whitestone in the location of basin (III). Mr. Higgins stated from the review of the information there is sandy clay and from reviewing the soil logs there is silty clay. He stated with this type of material it would be difficult for percolation. Attorney Gasiorowski asked if other borings were taken in this area. Mr. Higgins noted in B-29 of the Whitestone report again, there was material not unlike the previous horizon which had clay at a depth of 4' ft. to 6' ft.

Township Administrator Miller asked what the bottom of the basin (III) elevation will be? He indicated if what Mr. Higgins is saying is correct then when the basin is constructed the mater would be excavated out.

Mr. Higgins stated the plans indicated the head wall will be at 41.0' ft. at the bottom of the basin. Township Administrator Miller stated then the bottom of the basin will be below the clay pockets? Mr. Higgins stated no, he then read into the record the description of B-38 and B-39 into the record, thereafter advising that at various levels there is sand, clay and silt.

Township Committeeman Cafero stated he would like to ask a question. He asked if you take a soil sample and you hit a pocket of clay could it not be a ribbon, which is a few feet in width versus depth? Mr. Higgins indicated this is what is called a wavy boundary. He stated with these the clay layer may thin out or it may become thicker.

Mr. Higgins advised if there were a test pit dug versus a boring to a depth of 10' you could find sand on one (1) all and clay on another. Township Committeeman Cafero stated yes, this could be but below this it could be sand all the way down.

Board Member Rosenberg asked why Mr. Higgins believes there is clay in the lower levels. He stated from what Mr. Higgins read it does not say this. Mr. Higgins stated it does state this and he is interpreting the findings. He indicated that with B-38 and B39 it does give a description of being dense at an 8' ft. to 10' ft. depth. He indicated based on he being a site investigator he is concerned with finding dense soil with sandy clay and the permeability.

Mr. Higgins advised the third (3rd) boring in basin (III) is outlined in the CMX report. He advised

the location is B-41 and the elevation is 46.3' ft. Mr. Higgins then read the soil log results of this boring into the record. He indicated they did not find any dense soils, however, he indicated he has been careful because the soils that were found might not percolate quickly either. Mr. Higgins stated you must look at the consistency overall, which he indicated is his interpretation.

Township Committeeman Cafero asked if the looser the quicker percolation rate. Mr. Higgins stated yes, if you measure the water going into the soil. Township Committeeman Cafero asked if the soil is tighter then does the percolation rate still meet the a 72 hour, 48 hour, or 96 hour standard?

Mr. Higgins stated you would have to look at the natural resources. He indicated this could be done by performing another type of test then what was performed. Mr. Higgins indicated you need to take many samples from different horizons in order to understand the soil saturations for an extended period of time.

Township Committeeman Cafero asked that even if it tight or loose it can still percolate, but not within certain time frames? Mr. Higgins stated it depends upon the minerals and the soil structure. Attorney Gasiorowski asked for conformation that the Whitestone test were done in 2000 and there were three (3) borings done. Mr. Higgins indicated this is correct for basin (III). He did advise other borings were done. Attorney Gasiorowski asked what the size of the basin will be. Mr. Higgins indicated when he spoke with Brian Johnson, of Mr. Litwornia's office, the bottom area of the basin is 48,217 sq. ft.

Attorney Gasiorowski asked what acreage will physically drain into the basin. Attorney Nehmad Objected. He indicated Mr. Higgins is not an engineer. He advised Attorney Gasiorowski should be asked his engineer this question. He indicated he should not discuss flow. Attorney Gasiorowski indicated he asked the surface area not the flow.

Attorney Gasiorowski asked what is the purpose of the basin? Mr. Higgins stated it is to store storm water run off and infiltrate it into ground or take it off site. Attorney Gasiorowski asked what areas on site will be draining into basin (III). Mr. Higgins stated he can not answer the question.

Attorney Gasiorowski are there two (2) other basins on site? Mr. Higgins stated yes. Attorney Gasiorowski asked Mr. Higgins knows their size? Mr. Higgins stated no. He advised they are shown on the plans and they are smaller then proposed basin (III). Attorney Gasiorowski indicated at a point in time CMX prepared a report. He asked what the date was. Mr. Higgins indicated CMX did prepare a report and it was dated March 19, 2010.

Attorney Gasiorowski asked what method was used by CMX to take samples? Mr. Higgins advised they the report indicates they used an excavating machine to create a test pit. Attorney Gasiorowski asked how many test pits were done. Mr. Higgins advised there were 15 done for all three (3) basins. Attorney Gasiorowski asked if they did test pits in other areas? Mr. Higgins stated yes, however, he really did not review that information.

Attorney Gasiorowski asked Mr. Higgins if the Whitestone report showed if they took borings in the other basins (I and II)? Mr. Higgins stated yes, he also advised it was the same type of soils found in basin (III). Attorney Gasiorowski stated the bottom of basin (III) is over an acre. He indicated that he would think the three (3) borings were taken at different locations within the one

acre basin. He asked Mr. Higgins if there is a distance between each and is three (3) borings typical for a bottom basin that is 48,000 sq. ft.? Mr. Higgins advised the location of the borings are shown on the plan, but there is no distances. They could be scaled. He indicated he would have taken between 10 and 15. Mr. Higgins further noted that these numbers would depend on the sample results. He indicated other testing may have to be done or another type of testing.

Attorney Gasiorowski asked if by using the auger/boring method would it not be better to do more borings throughout the one acre area to better know the soils? Mr. Higgins indicated yes.

Attorney Gasiorowski asked Mr. Higgins if it was common to take a sample and it is silty clay conditions, would it be the only result of this type within an acre area? Mr. Higgins stated no. He advised because of the coastal plane deposits and there are so many different horizons you would have to do more site investigation of the soils.

Attorney Gasiorowski asked what coastal plane means? Mr. Higgins indicated it is the geologic area we live in. It is made up of unconsolidated sands, silts, and clays. Attorney Gasiorowski asked what morphology means? Mr. Higgins stated it is the examination of the constituents of the medium that is being investigated.

Attorney Gasiorowski asked what test and how many were done by CMX in proposed basin (III)? Mr. Higgins indicated this information is found on a plan prepared by Bohler Engineer dated September, 14th, 2010, sheet 20A of 31. He indicated the sheet name is post construction storm water management basin cross sections. Mr. Higgins advised there are test pits numbered two, three, five, six, seven, eight, nine and then. Attorney Gasiorowski indicated there were between eight to ten test pits? Mr. Higgins advised there is also a B-1 and a B-4.

Attorney Gasiorowski asked what type of method was used to obtain these samples. Mr. Higgins indicated test pits and borings were done. Attorney Gasiorowski asked what was found? Mr. Higgins advised it is the same soil as previously described in his testimony. Attorney Nehmad advised he would like the record to reflect there is protracted periods of silence between the question and answers.

Mr. Higgins advised B-2 sample was conducted on December 17, 2009 with a stem auger, and a quinnlan well drill truck, which is mounted with a drill rig. Board Member Levy stated Mr. Higgins stated B-1 and B-4 not B-2. Mr. Higgins advised he would stay with B-2 and began to read into the record the soil characteristics found. Township Administrator Miller asked where B-2 was taken from? He stated it was not one of the borings referenced as being taken in the basin (III).

Mr. Higgins advised he thought it was on the plan as being in the basin.

Township Committeeman Carman indicated the reports Mr. Higgins is reading from are already part of the record. He asked if Mr. Higgins is going to read the results of all 40 borings? Mr. Higgins indicated B-4 results have been located and the boring was taken in the basin. Mr. Higgins then read into the record the results of B-4 soil samples. Attorney Gasiorowski asked if the borings taken by CMX dissimilar from the borings referenced in Whitestones report? Mr. Higgins stated they appear to be similar.

Chairman Garth advised he will ending discussions at this point. Attorney Nehmad asked the Board if they would consider a special meeting. He advised the third (3rd) Monday of next month (April) is a religious holiday for himself and his client, Mr. Wolfson.

May the record reflect: Board Solicitor Brown asked Attorney Nehmad and Attorney Gasiorowski how many more witnesses each had in order to determine how much longer this application would take. There was also discussion as the availability of witnesses, members and professional's, however, in the end the Board decided on a special meeting for Wednesday, April 20, 2011, 5:30 p.m., prevailing time.

Board Solicitor Brown made the announcement to the public advising the continued hearing date for this application will be held on Wednesday, April 20, 2011, 5:30 p.m., prevailing time

Motion Miller/Rosenberg to continue public hearing on Wednesday, April 20, 2011, 5:30 p.m., prevailing time. Vote 9 Yes: Aponte, Carman, Eykyn, Garth, Levy, Lisa, Cafero, Miller, Saslav.

MEMORIALIZATION OF RESOLUTION:

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| 1. <u>SPPF 23-10</u> Community Food Bank of New Jersey | Preliminary/Final Major Site Plan 2119/1-2 6735 Black Horse Pike |
|---|---|

Motion Carman/Saslav to memorialize resolution granting checklist waiver(s): #1 & 3, design waiver(s), variance relief: Front yard building setback (Garden State Parkway) Trash Enclosure: 5.03' ft. prop.; 80' ft. req.: Side yard building setback: 8.45' ft. prop.; 20' ft. req., Front yard parking setback (Garden State Parkway): -0- ft. prop.; 20' ft. req. Front yard parking setback (Black Horse Pike): 16' ft. prop.; 20' ft. req. Side yard parking setback distance: 10' ft. prop.; 30' ft. req., Parking buffers, Parking in required buffer areas, Parking (Distance between building and parking), Building mounted signage (quantity) and conditional preliminary/final major site plan approval. Vote 9 Yes : Aponte, Carman, Eykyn, Garth, Levy, Cafero, Miller, Rosenberg, Saslav .

***May the record reflect:** Board Member Lisa advised he was not present for the Community Food Bank of New Jersey Application, therefore, he abstained from memorialization and Board Member Kearns, also noted for the record he did not preside over the Community Food Bank of New Jersey hearing, he had excused himself from the proceeding.

SUMMARY MATTER(S):

1. Discussion of matters pertaining to the Board:
 - a. *Egg Harbor Township ordinance No. 15 of 2011 an Ordinance to rescind Ordinance 46 of 2000. Ordinance 46 of 2000 entitled "An Ordinance to Amend the Code of the Township of Egg Harbor, Chapter 94 thereof entitled Design and Performance Standards by adding a new subsection "L" to section 94-8, Buffers*

Township Administrator Miller advised the Board received information from the County concerning a Comprehensive Farmland Plan, however, the Township has nothing to do with this. We did receive the correspondence but the Township has nothing that would qualify.

Township Administrator Miller indicated The Township Committee introduced Ordinance 15-2011. He indicated that back in 2000 the Township adopted a buffer standard to indirectly reduce density in the Pinelands Jurisdiction. He advised the Pinelands Commission never certified the ordinance, it was never enforced, and design waivers were granted to everyone within the

non-Pinelands jurisdiction. Township Administrator Miller further noted the Township does have correspondence from the Pinelands advising they were not certifying the ordinance.

Township Administrator Miller indicated in 2010 the Township Committee adopted an ordinance rescinding the buffer requirement. He advised this was sent to the Planning Board and the Planning Board took no action on the ordinance since it was a couple days after the Township Committee public hearing for it and the Planning Board knew why it was being rescinded because it was never certified and it was not being enforced.

Township Administrator Miller advised last month an issue was raised by the Objector's Attorney for the Oak Tree Plaza application. This attorney indicated the Township may not have adopted the ordinance properly since the Planning Board did not place anything in writing.

Township Administrator Miller stated Marc Friedman, Esq. (Township Solicitor) used a legal term "Du Nova", which means do it again new. So Township Administrator Miller indicated the Township Committee reintroduced an ordinance and it is being referred again to the Planning Board.

Township Administrator Miller indicated the Board needs to make a decision this evening whether rescinding this ordinance has any impact on the Master Plan or not, so that the determination can be forwarded back to the Governing Body before their April 13, 2011, hearing.

Chairman Garth advised everyone heard what has been discussed. He indicated he will entertain a motion. Board Solicitor Brown advised the Board could make a motion recommending the adoption of the ordinance. Board Planner Polistina advised it should include that it is consistent with the Master Plan and then recommend it back.

Board Member Levy stated since it has not been enforced he would like to make a motion, Board Member Aponte second the motion.

Township Administrator Miller stated the Board may want to place on the record the reason why it is being rescinded is in part because the Pinelands Commission refused to certify the ordinance and the Township has buffer standards that apply in other parts of the township and it is inconsistent that Pinelands and Non-Pinelands standards and for those reasons we are rescinding the ordinance for consistency with the Master Plan.

Board Member Aponte indicated he agrees.

Motion Levy/Aponte to recommend Ordinance No. 15 of 2011, to Township Committee for review and approval, finding it meets the requirements of the Master Plan. Vote 9 Yes:
Aponte, Carman, Eykyn, Garth, Levy, Lisa, Cafero, Miller, Saslav.

Township Administrator Miller stated he would like to ask a general question of the Board Engineer while the Board is still in public section. Township Administrator Miller stated his questions concerns stormwater basins. He asked doesn't the Township Ordinance standars say that during construction if we find unsuitable material you can direct them to over excavate and replace with suitable material?

Board Engineer Watkins stated absolutely? Board Chairman Garth stated he thought he

remembered this. Board Planner Polistina stated so the two (2) hours where this was discussed just went away.

Township Administrator Miller indicated that's why he didn't understand why we where having this question of what's there because they have to take it out and replace it at the direction of the Township Engineer.

Board Engineer Watkins indicated whether he advised him or not he still would have discussed. He would still have deliberately been doing that so it doesn't matter. Township Committeeman Cafero indicated it should be placed on the record. Board Engineer Watkins stated there is note indicating this issue on the plan. Township Administrator Miller suggested that he believes either someone else should ask this question or he will. Board Engineer Watkins stated this is fine. He indicated his office requires this all the time and it is noted on the plan.

Board Solicitor Brown suggested the Board allow the professional's to speak and let them finish, don't involve them and when the Board goes into gives opinion. Township Administrator Miller stated he will make it part of his deliberation.

Motion Carman/Miller to adjourn at 10:15 P.M. Vote 9 Yes: Aponte, Carman, Eykyn, Garth, Levy, Lisa, Cafero, Miller, Saslav.

Respectfully submitted by,

Theresa Wilbert, Secretary