

**TOWNSHIP OF EGG HARBOR
PLANNING BOARD
SPECIAL MEETING**

April 20, 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 was taken as follows:

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

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

* **May the record reflect:** Chairman James Garth was unable to attend meeting due to another engagement. Vice-Chairman Aponte presided over the application.

PUBLIC HEARING(S):

- SPPF 07-09**
Egg Harbor Associates, LLC
as authorized agent for
Wal-Mart Real Estate Business Trust
“Oak Tree Plaza”
Zone: RCD, 34.49 acres site,
sewer and water, applicant is proposing to demolish the existing buildings and parking areas currently on site and is proposing the construction of a 244,599 sq. ft. shopping center. The applicant proposes to construct a 188,463 sq. ft. WalMart anchor store which includes a seasonal garden center and grocery store, two (2) adjacent retail stores consisting of 18,588 sq. ft. and 18,275 sq. ft., as well as, a 4,000 sq. ft. bank with three (3) drive thru lanes, a 5,895 sq. ft. dine in restaurant, a 3,400 sq. ft. restaurant with drive thru and a 4,250 sq. ft. fast food restaurant with drive thru facility. Other improvements include 1,106 paved parking spaces, freestanding and building mounted signage, landscaping and storm water management. CAFRA.
- | |
|--|
| 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 |

Checklist Waiver(s):

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

Design Waiver(s):

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

Variance Relief:

1. **§225-63A:** One (1) building mounted sign is permitted per tenant. Applicant is proposing the construction of one (1) building with three (3) tenants, WalMart and two (2) retail stores. Three (3) building mounted signs are permitted, one (1) for each tenant. The applicant is proposing four (4) building mounted signs on the proposed WalMart building.
2. **§225-63A(1):** No building mounted sign shall exceed two (2) square feet in area for each one (1) foot width of the front building facade which is devoted to the business and to which it is attached; and shall not exceed 250 square feet on any one side. The applicant is proposing four building mounted signs for a total area of 550.64 sq. ft., whereas a maximum area of 250 sq. ft. is permitted for a building with a front facade of 500± feet.
3. **§225-63A(3):** No building mounted sign shall have a vertical dimension in excess of five (5') feet. The applicant is proposing a building mounted sign with a vertical dimension of eight (8') feet, whereas a maximum of five (5) feet is permitted.

Vice-Chairman Aponte advised Attorney Gasiorowski has indicated that Mr. Higgins is not present, however, a Brian Johnson, whom is an engineer is present and Attorney Gasiorowski would like to take him first.

Attorney Gasiorowski indicated Mr. Higgins is on his way

Stephen Nehmad, Esq., introduced himself to the Board advising he is appearing on behalf of applicant. Attorney Nehmad has indicated that Attorney Gasiorowski would like to call Brian Johnson who is a civil engineer. However, he stated to his recollection Attorney Gasiorowski has already called Mr. Litwornia whom is both a civil engineer, as well as, a traffic. Attorney Nehmad stated to call another engineer is repetitive testimony.

Attorney Nehmad stated Attorney Gasiorowski has had his opportunity with Mr. Lithwornia.and he objects to this. Board Solicitor Brown asked Attorney Gasiorowski what is different about the testimony of this engineer? Attorney Gasiorowski explained that during Mr. Litwornia's testimony certain questions came up concerning whom prepared the plans, exhibits and calculations. Mr. Litwornia advised Mr. Johnson had and he is with his firm. Attorney Gasiorowski stated Mr. Johnson will advise what he used in order to create the plans. He advised it will not be long. Attorney Gasiorowski did note, however, he was not aware of anything outlined in the Municipal Land Use Law that prohibited how many witnesses he can call.

Board Solicitor Brown advised the Municipal Land Use Law does not allow for repetitiveness. Vice-Chairman Aponte announced no new testimony will be taken after 10:00 p.m.

* **May the record reflect:** the Planning Board Professional's and Mr. Brian Johnson were sworn in: Mr. Johnson advised he obtained a Bachelor of Science in civil engineering from Rutgers in 1980 and he has been a licensed professional since 1986. He advised he is a certified municipal engineer within New Jersey and with the Society of Municipal Engineers.

Attorney Gasiorowski asked if during Mr. Johnson's career has he testified before Planning and Zoning Boards? Mr. Johnson stated yes, as well as, representing many Board's. Mr. Gasiorowski

asked with whom Mr. Johnson works for? Mr. Johnson advised he works for Litwornia Associates in Medford Lakes, New Jersey doing land development and municipal engineer.

Attorney Gasiorowski asked if Mr. Johnson had read the testimony given by Mr. Litwornia. Mr. Johnston stated yes. Attorney Gasiorowski asked if Mr. Johnson has had work sessions with Mr. Higgins the soils consultant? Mr. Johnson indicated yes. Attorney Gasiorowski asked if Mr. Johnson was present during the last meeting where Mr. Higgins presented testimony? Mr. Johnson advised he was. Attorney Gasiorowski also asked if Mr. Johnson new he was being called out of turn tonight. Mr. Johnson indicated yes.

Attorney Gasiorowski asked Mr. Johnson if he relied upon any information provided by Mr. Higgins in order to create exhibits. Mr. Johnson stated yes. He indicated he had discussed with Mr. Higgins at length the soil infiltration of the three (3) basins. Mr. Johnson stated he has created Exhibit O24-11 (exhibit prepared by Mr. Johnson showing what basin would look like if they complied with Township Ordinance requirements). Attorney Gasiorowski asked Mr. Johnson if he reviewed the applicant's engineers testimony concerning the size of the basin? Mr. Johnson stated yes. He indicated the important criteria is the depth of the water not to exceed 2' during a 50 year storm. Mr. Johnson advised the applicant's engineer advised the two (2) smaller basins meet the criteria, however, the larger third basins does not.

Attorney Nehmad stated his objection. He indicated Mr. Litwornia has discussed this. He indicated this is redundant testimony. He stated new exhibits are being presented and on behalf of his client he does not want this to become a filibuster. Attorney Gasiorowski stated it is not a filibuster. He indicated Mr. Johnson will incorporate the soil borings and conditions relative to soils in order to know what the basin size should be. Board Solicitor Brown indicated Attorney Gasiorowski should ask questions concerning the soils.

Attorney Gasiorowski asked if Mr. Johnson prepared an exhibit taking into consideration the soils not only in the basin but though out the site in order to determine the size of the basin if the standards of the ordinance were met. Attorney Gasiorowski asked if the applicant's engineer prepared an exhibit that shows what the basin will look like if it meet the standards? Mr. Johnson indicated he does not know.

Mr. Johnson stated if the proposed basin (III) were designed to meet the standards of the Township Ordinance it would be 3.6 times larger then what was designed by the applicant's engineer. Mr. Johnson indicated on Exhibit O24-11 he has depicted in dark blue the additional basin bottom based Attorney Gasiorowski asked if the dark blue area on Exhibit O24-11 is what is required based on Township Ordinance. Mr. Johnson stated yes, and he also noted he used the same computer program as the applicant's professional's in order to meet the two (2') foot

and keep the same outflow. Attorney Gasiorowski asked Mr. Johnson to confirm that Exhibit O24-11 is specifically for the size of the basin. It does not include any buffer requirements or such? Mr. Johnson advised this is correct it is just to show the size.

Attorney Gasiorowski asked if the smaller basins had any changes if it met the Ordinance requirements? Mr. Johnson advised the smaller basins were nominal. He indicated the smaller basins almost meet the Township Ordinance requirements. Mr. Johnson stated if they were developed to meet the Township Ordinance requirements the basins would be expanded and would encroach within the parking area of two (2) pad sites.

Attorney Gasiorowski asked if a basin were designed to not have a four (4) to one (1) slope and it were to have retaining walls would that proposed basin be smaller? Mr. Johnson indicated it would not be the size, but the real issue is the depth of the water. He indicated the basin would be eight (8') feet on all sides. Attorney Gasiorowski indicated then what is driving the size of proposed basin (III) is the depth of the water. Mr. Johnson stated this is correct.

Attorney Gasiorowski advised he has no further questions of Mr. Johnson.

Attorney Nehmad advised he does have questions for Mr. Johnson. He asked Mr. Johnson how long he has been employed with Mr. Litwornia? Mr. Johnson indicated he has been on and off working for Mr. Litwornia for ten (10) years. Attorney Nehmad asked if Mr. Johnson is full or part-time. Mr. Johnson indicated he is part-time. Attorney Nehmad asked as a part-time employee how long has been employed? Mr. Johnson stated a year and a half (1 ½).

Attorney Nehmad asked Mr. Johnson how many site plans has he reviewed in Egg Harbor Township during his career. Mr. Johnson stated just one (1). This one (1). Attorney Nehmad asked if Mr. Johnson has ever designed a site plan for Egg Harbor Township? Mr. Johnson stated zero. He had not designed any. Attorney Nehmad then asked if this review has been the first time Mr. Johnson has dealt with the Egg Harbor Township design standards? Mr. Johnson indicated yes.

Attorney Nehmad asked that in Mr. Johnson's professional opinion the most important waiver being requested is the two (2') foot depth, the seasonal high and the 50 year storm? Mr. Johnson indicated for the basin yes. Attorney Gasiorowski stated he objects. He indicated Mr. Johnson was just asked questions concerning the basin. He was not asked any questions concerning any other waivers or variances. Board Solicitor Brown indicated the rules are relaxed and Attorney Nehmad asked a specific question based on specific information given by Mr. Johnson.

Attorney Nehmad asked Mr. Johnson if he reviewed the Ordinance that seeks the two (2') foot requirement? Mr. Johnson stated yes. Attorney Nehmad stated this Ordinance applies to all development in Egg Harbor Township regardless if it is commercial, recreational, residential or industrial? Mr. Johnson stated he agrees it does. Attorney Nehmad asked Mr. Johnson if he knew why Township Committee based an Ordinance to require two (2') foot? Mr. Johnson stated he could not put himself into their heads. Attorney Nehmad asked Mr. Johnson if the two (2') foot design event is unusual? Mr. Johnson advised he was not sure how to answer this question.

Attorney Nehmad asked Mr. Johnson if during his career is the Egg Harbor Township

Ordinance requiring a basin depth during a 50 year storm of two (2') feet the first. Mr. Johnson indicated this would be a fair statement. Attorney Nehmad asked if Mr. Johnson if he knows of the extraordinary issues as to why the Township Committee passed this ordinance? Mr. Johnson stated no. Attorney Nehmad asked Mr. Johnson if he thought it would be relevant to see why? Mr. Johnson stated he can not answer this question.

Attorney Nehmad asked Mr. Johnson, based on his experience, what a design waiver is? Mr. Johnson stated yes. Attorney Nehmad asked if Mr. Johnson would agree if the Planning Board can grant a design waiver, as being requested by the applicant? Mr. Johnson stated yes.

Attorney Nehmad asked Mr. Johnson if he believes that a shallow basin is more important in a residential zone then a commercial zone? Mr. Johnston stated he would not agree. Attorney Nehmad asked if Mr. Johnson has looked at basin depths of any other projects in Egg Harbor Township within commercial zones? Mr. Johnson stated yes. He advised he looked at London Court II. Mr. Nehmad advised this is a residential development. Mr. Johnston stated yes. He further noted that he looked at the Sam's Club and the Marriot. Attorney Nehmad asked if Mr. Johnson knew when the Sam's Club was constructed. Mr. Johnson stated the 1980's. Mr. Nehmad advised it was constructed in 1993 and their basins are deeper then the applicants. Mr. Johnson stated they were deeper.

Attorney Nehmad asked Mr. Johnson if he looked at the Marriot basin which is across the street from this development and it is walled basin. Mr. Johnson stated he was not sure it was walled. Attorney Nehmad told Mr. Johnson that the Marriot basin is a partially walled basin. Mr. Johnson stated this is different then a 100% walled basin. Attorney Nehmad asked Mr. Johnson when he looked at the Marriot basin? Mr. Johnson stated he looked at the basin once in the filed and he reviewed the plans and drainage calculations for the Marriot.

Attorney Nehmad asked Mr. Johnson if is true that the Marriot basin is infiltrating as designed, from his view. Mr. Johnston stated this would depend upon when you physically look at the basin. He indicated when he went to site the basin was dry. Mr. Nehmad asked if there were any other basins in the area that did not seem to be working as designed? Mr. Johnson indicated the London Court II basin is wet. Attorney Nehmad asked if Mr. Johnson knew when that basin was constructed. Mr. Johnson stated it was recently approved and built. Mr. Johnson also wanted to clarify for the record that the basin located at the Marriot is a detention basin and it is not to hold water.

Attorney Nehmad asked if Mr. Johnson would agree the Board can grant the waiver requested by the applicant. Mr. Johnson stated yes. Attorney Nehmad asked Mr. Johnson if he believes the request being sought by the applicant unreasonable. Mr. Johnson stated he has not formed an opinion.

Attorney Nehmad asked again, if Mr. Johnson felt whether or not the request being sought by the applicant is or is not reasonable from a civil engineering perspective? Mr. Johnson stated it is up to the Board, he does not know. Attorney Nehmad stated to Mr. Johnson that he has no opinion if it reasonable or not. Mr. Johnson stated yes, this is correct.

Attorney Nehmad advised he had no further questions.

Attorney Gasiorowski advised he had a few questions of Mr. Johnson. He asked Mr. Johnson if

he has worked on site plans for shopping center in towns other than Egg Harbor Township and reviewed them? Mr. Johnson stated yes. Attorney Gasiorowski asked how many? Mr. Johnson stated he has designed and reviewed 50 or 75 and it has been over 30 years.

Attorney Gasiorowski asked if there is anything unique about Egg Harbor Township in comparison to Hamilton Township, Little Egg Harbor Township, or any other from an engineering standpoint? Mr. Johnson stated no. He further noted he was involved in a very large PUD located in Ocean County called the Heritage. He stated it was a 4,000 acre development with a proposal for 3,000 units and a shopping center. He indicated it had similar soils and it was both within CAFRA and the Pinelands. So Mr. Johnson indicated even though he is not an Egg Harbor Township expert he can not think of anything special about the Township.

Attorney Gasiorowski asked Mr. Johnson though not an Egg Harbor Township expert he is still an engineer and has experience. Mr. Johnson stated yes. Attorney Gasiorowski asked Mr. Johnson if the basin at the Marriot site a detention? Mr. Johnson indicated yes. Attorney Gasiorowski asked if there are different types of basin and what are they? Attorney Nehmad objected indicating this is not direct. Attorney Gasiorowski indicated it is cross examination.

Board Solicitor Brown advised Attorney Gasiorowski's question is not relevant. He stated there is two (2) basins being discussed. He advised to stick with those. Attorney Gasiorowski asked what type of basin is proposed for the WalMart site? Mr. Johnson stated they infiltrate some water and release most. He indicated all three (3) are designed about the same. Attorney Gasiorowski asked if the basin at the Marriot infiltrates water or does it capture it and then release? Mr. Johnson stated it is capture and release.

Attorney Gasiorowski so the basin at the Marriot is irrelevant because it captures and releases water. It is not like the proposed. Mr. Johnson advised they are not apples and apples. Attorney Gasiorowski asked how far is the London Court basins from the property in question? Attorney Nehmad objected. Board Solicitor Brown stated Attorney Nehmad did not speak of the London Court basin because it is a residential basin and the applicant's application is commercial.

Attorney Gasiorowski asked Mr. Johnson if London Court's basin was on a commercial property like the applicants would the existing basin at London Court be similar to the basin proposed by the applicant. Board Solicitor Brown stated Attorney Gasiorowski is asking Mr. Johnson a hypothetical question and for him to give an opinion, even though it is not true he still wants an answer? Attorney Gasiorowski stated the everyone is aware the London court property is a residential site. Attorney Gasiorowski asked if Mr. Johnson looked at the plans for London Court? Mr. Johnson stated yes.

Attorney Gasiorowski asked what type of basin is the one located on the London Court parcel? Mr. Johnson stated it is a recharge or retention basin, which means the water is held and then infiltrate into the ground. Attorney Gasiorowski asked Mr. Johnson if the Board has the jurisdiction to grant a waiver if they choose. Mr. Johnson stated yes.

Attorney Gasiorowski asked if there was enough space on the subject parcel to construct the basin required by Township Ordinance and still keep the design as presented. Mr. Johnson stated no. He indicated the applicant would have to redesign the whole site. Attorney Gasiorowski asked Mr. Johnson if looking at the applicant's parcel as a blank space is there

enough land on the property to design the basin as he has done? Mr. Johnson stated yes.

Attorney Gasiorowski stated he had no more questions.

Attorney Nehmad stated Mr. Litwornia had indicated he has represented other people who have opposed WalMart. He asked if he was aware and did he assist Mr. Johnson? Mr. Johnson stated yes he is aware and he assisted on one (1). Attorney Nehmad asked which one (1). Mr. Johnson stated it was awhile ago and he could not tell him. Attorney Nehmad asked if Mr. Litwornia has discussed with Mr. Johnson about the other ones he has opposed. Mr. Johnson stated yes. Attorney Nehmad stated so Mr. Johnson is aware that a major client of your office, whom is a competitor of the WalMart, practices opposing WalMart's that go before Planning and Zoning Boards. Mr. Johnson stated he is not aware if the client is a major or minor. Attorney Nehmad asked that Mr. Johnson is aware it is Shop-Rite that is opposing the WalMart. Mr. Johnson stated he has only done it on this project for the Shop-rite.

Attorney Nehmad stated Mr. Johnson indicated soil conditions are important. He asked if Mr. Johnson is familiar with construction requirements post approval in the Township. Mr. Johnson stated no. Attorney Nehmad asked if it is not unusual for the Township Engineer to inspect all construction on site? Mr. Johnson stated no. He indicated 98% of the Town's within New Jersey do so.

Attorney Nehmad asked if Mr. Johnson new in this community during construction of the basin the Township Engineer is present inspecting the basin and if unsuitable soils are found they are replaced with suitable, which is in conjunction with the Township Ordinance. Mr. Johnson stated this if fair, but the devil is in the details. Attorney Nehmad stated so it has to be done correctly. So if there is unsuitable soil it must be removed and replaced at the direction of the Township Engineer? Mr. Johnson stated if they look for it. Attorney Nehmad asked if Mr. Johnson is implying the Township Engineer would be derelict in their duties and not look for it? Mr. Johnson stated no and not to place words in his mouth. He indicated he meant the contractor/developer.

Attorney Nehmad 100 test pits and borings done at this site and he asked if Mr. Johnson looked at them. Mr. Johnson stated yes. Attorney Nehmad stated this information is provided to the Township Engineer. Mr. Johnson stated the issue is the borings only went so deep. He indicated they did not go completely from the bottom of the basin all the way down to the ware table. He indicated there may be other horizons that create restrictions to the basins.

Attorney Nehmad asked if Mr. Johnson was aware the borings were witnessed by the Township Engineer's office? Mr. Johnson stated this is reasonable. Attorney Nehmad stated his client was never told the borings did not go deep enough. He asked Mr. Johnson if he reviewed the Township Ordinance in order to determine how deep the borings go. Mr. Johnson stated no. Attorney Nehmad stated then your opinion that they did not go deep enough. Mr. Johnson stated absolutely.

Attorney Nehmad stated the depth of the borings and pits is listed in the Ordinance. Mr. Johnson stated he can not recall, however, he did state that at times an applicant has to go beyond ordinance requirements to do good practice. Attorney Nehmad stated the ordinance defines good practice. Mr. Johnson stated he does not agree. He indicated the ordinance only provides minimum standards.

Attorney Nehmad asked if the Department of Environmental Protection define good practice. Mr. Johnson stated minimum standards characterize this agency. Attorney Nehmad stated these are not minimum standards. They are the requirements in order for an application to be deemed complete and proceed for review. Mr. Johnson stated they are minimum requirements in order to meet to meet a hurdle and receive approval.

Mr. Johnson stated he has reviewed the ordinance but he can not say off the top of his head what the depth is. Attorney Nehmad asked Mr. Johnson if he did not think it important to review this section of the ordinance before coming to the Board and create an illusion that his client's site plan is not designed appropriately. Mr. Johnson stated he objected to Mr. Nehmad's question and he will not answer. Attorney Nehmad asked the record to reflect that Mr. Johnson refused to answer his question.

Attorney Nehmad asked if Mr. Johnson reviewed London Court II, which was designed in the 1980's. Mr. Johnson stated yes. Attorney Nehmad asked Mr. Johnson if he would not say that since this time period there have been changes in the standards for storm water. Mr. Johnson indicated yes they have.

Attorney Nehmad asked Mr. Johnson if it is true the applicant will have to post a performance guarantee and have a maintenance guarantee? Mr. Johnston indicated the applicant will have to post a performance guarantee it is required in the Municipal Land Use Law and a maintenance guarantee for two (2) years.

Attorney Nehmad continued to asked Mr. Johnson if it is not true that the guarantee runs to benefit the Governing Body if there are any problems. He also asked if Mr. Johnson would agree the Governing Body receives a report from the Township Engineer advising the storm water basin is working as design. Mr. Johnson indicated he has seen basins fail even with performance or maintenance guarantees and the best effort of the Municipal Engineers.

Attorney Nehmad indicated it appears Mr. Johnson does not have any reason or has not advised of any reason through the information he collected as to why the basin would not function. Mr. Johnson stated he does agree. Attorney Nehmad asked if Mr. Johnson has collected any empirical data? Mr. Johnson indicated he reviewed information from the soils with Mr. Higgins.

Attorney Nehmad indicated he had nothing further.

Vice-Chairman Aponte asked if the basins fails would the applicant not have to fix it? Mr. Johnson stated it depends on the status of the performance and maintenance guarantees? Vice-Chairman Aponte asked what would happen ten (10) years from now? Mr. Johnson indicated it would be good "PR" (public relations) to fix. Vice-Chairman Aponte asked in Mr. Johnson's opinion if the basin needed to be fixed could the Township make them? Mr. Johnson advised if the Township had a property maintenance code.

Attorney Gasiorowski stated it is in the Township's best interest for the applicant to fix the basin should anything happen. He continued by saying though the Township also has demanded in its design ordinances that the depth of water be no more then 2' ft. in a 50 year storm. Mr. Johnson stated this is corrected. Attorney Gasiorowski asked if there is any way this basin could function and be in compliance with the ordinance standards. Mr. Johnson advised the

larger basin has to be expanded out to a larger size in order to meet the standards.

Attorney Gasiorowski asked so in a 50 year storm it is designed to have five (5' ft.) feet of standing water. Mr. Johnson stated the basin will hold about a foot and a half (1 ½) of water. He indicated the storm will dissipate by the detention part of the basin and then the infiltration part of the basin will work. Township Administrator Miller asked if Attorney Gasiorowski had misspoken? He indicated the basin would hold five (5') feet of water? Mr. Johnson stated no. He advised it will not be five (5') feet it will be a foot and a half (1 ½'). Mr. Johnson further noted he thinks the basin is designed to draw down less than 72 hours, which complies with the ordinance requirements.

Township Administrator Miller asked Mr. Johnson to place up the exhibit that Mr. Litwornia testified to about the size of the basin next to the one (1) he placed up. Township Administrator Miller asked what has been changed in Mr. Johnson's exhibit to Mr. Litwornia's? Mr. Johnson indicated they are close, however, within Mr. Litwornia's exhibit (O13-11) does show a concept design added for the connector road. He indicated the important thing of both is the area of basin (III). He stated the expansion of the basin is in the same spot, which goes into the Walmart.

Township Administrator Miller asked which exhibit, Mr. Litwornia's or Mr. Johnson's (Exhibit O24-11) is being testified to as being correct? Mr. Johnson indicated Mr. Litwornia's is approximate and his is actually done by using computer data in order to get close to exact area.

Township Administrator Miller asked which exhibit does he rely upon? Does he rely upon exhibit O24-11 and ignore O13-11? Since Mr. Litwornia's exhibit did not use data? Mr. Johnson stated he prepared both Exhibits and he relied upon data for both. Attorney Gasiorowski stated he is moving both Exhibit(s) into evidence. He advised the first Exhibit (O13-11) is to be considered. Attorney Gasiorowski also indicated Exhibit (O24-11) was prepared after testimony concerning O13-11 was given. He stated Exhibit (O24-11) information was extracted from using computer data.

Board Engineering Representative Watkins indicated there was a question concerning the maintenance of the basins. He then read into the record section §94-44-(6)F, thereafter he noted that the Township is called to inspect the basin and the applicant will have to maintain. Attorney Gasiorowski asked if one of the waivers being sought by the applicant is to eliminate a 15' ft. accessway around the basin, which is used for maintenance. Board Engineering Representative Watkins stated the 15' ft. accessway is for maintaining the slopes so vehicles can access and mow the sides. He indicated with this one there are no sides because it is walled.

Attorney Gasiorowski called Mr. Higgins. Board Solicitor Brown asked Mr. Higgins if he understands he is still under oath? Mr. Higgins stated yes.

Attorney Gasiorowski asked Mr. Higgins if he can recall where he left off with his testimony last month? Mr. Higgins stated yes. He indicated he was discussing the soil conditions based on the soil logs presented by the applicants' consultants. Attorney Gasiorowski asked Mr. Higgins if the borings were taken for basins (I), (II), and (III). Mr. Higgins stated yes.

Attorney Gasiorowski asked if Mr. Higgins personally conducted any borings on the site and if he supervised anyone performing the borings? Mr. Higgins advised this is correct. Attorney Gasiorowski asked whom were the firms that performed the borings. Mr. Higgins advised the borings were performed by CMX and Whitestone. Attorney Gasiorowski asked Mr. Higgins if his testimony is based on the information provided by the applicant's professionals. Mr. Higgins stated yes.

Attorney Gasiorowski stated basin (III) is proposed with a smaller size then what Mr. Johnson drew on the previous referenced exhibits. Mr. Higgins stated yes. Attorney Gasiorowski asked if Mr. Higgins reviewed other borings referenced on site? Mr. Johnson stated yes, he further noted that not only did he review the borings on site he also reviewed, through public records in the Township and The Department of Environmental Protection, other borings for other projects.

Mr. Higgins stated based on the review of information within the Township it did show there is some contamination on site from off-site sources that are migrating onto the applicant's site. Attorney Gasiorowski asked if the soil conditions the same throughout the site or there specific conditions to basin(s) (I), (II), and (III)? Mr. Higgins advised the soil conditions are basically the same throughout the area. He further noted there are horizons throughout this area of Egg Harbor Township that are hydraulically restrictive.

Attorney Gasiorowski asked if Mr. Higgins provided assistance and information with the preparation of Exhibit O24-11? Mr. Higgins indicated yes. Attorney Gasiorowski asked if he and Mr. Johnson came to a conclusion as the size basin (III) should be to meet the design standards of the Township? Attorney Nehmad objected. He indicated Mr. Higgins is not a design engineer. Attorney Gasiorowski indicated he is asking Mr. Higgins as a soils expert or analyst. Mr. Higgins advised the information reviewed with Mr. Johnson concerned the soils and the size of the basin in order to have a two (2') foot in a 50 year storm, which is shown on Exhibit (O24-11).

Attorney Gasiorowski asked Mr. Higgins if he visited the applicant's site. Mr. Higgins stated yes. Attorney Gasiorowski asked what dates did Mr. Higgins go to site? Mr. Higgins advised he has been visiting the site since January, when the applicant had their first meeting so he could be familiar with the conditions on site. Attorney Gasiorowski asked if Mr. Higgins has any exhibits to show what he observed? Mr. Higgins stated yes.

Attorney Gasiorowski referenced Exhibit O25-11 records located in Township Archive depicting the site plan for London Court II development, which is adjacent to this property along Delancy Avenue. Attorney Gasiorowski clarified that London Court II is northeast of the applicant's site. Mr. Higgins stated that is correct. Attorney Gasiorowski asked as a soils analyst would Mr. Higgins compare the site and basin to the applicants? Mr. Higgins stated yes.

Mr. Higgins indicated that from doing field work he wanted to be familiar with existing basins in the area. He further noted he also requested information from public records. Mr. Higgins stated from the public records he has found the elevation of the London Court II basin has a bottom elevation of 41, which is he believes in the northeast section of the applicant's property will also at 41.

Mr. Higgins explained based on the public records he was trying to become familiar with the stratigraphy of the area. Township Administrator Miller asked what stratigraphy meant? Mr.

Higgins advised it means the study of the layers, the strata. Attorney Gasiorowski asked if it meant the layers of different soil types. Mr. Higgins indicated yes. Attorney Gasiorowski asked what was found in the comparison?

Mr. Higgins advised he made the comparison since the proposed basin is close to the existing and because there were available soil logs. He indicated the London Court II basin is a retention basin, which infiltrates water. Mr. Higgins further noted that all three (3) proposed basins of the applicant will have some type of infiltration design.

Mr. Higgins explained that in order to see if the basin would drain according to the soil logs and it would drain within 72 hours after a rain he kept documents of the rainfall since the beginning of the year to current. He indicated that he wanted to make sure if there was a problem with the soil being silty clay he wanted the analogy that next door may have a problem so he wanted a comparison. Attorney Gasiorowski asked what had Mr. Higgins determined? Mr. Higgins stated that since he has been watching the basin since the end of January to now there have been no major storms, however, there has been 12 inches of rain in this area and the existing basin has never dried out.

Attorney Nehmad objected, he indicated Mr. Higgins is venturing into the field of civil engineer. He advised two (2) civil engineer's were not questioned concerning these issues and the Attorney can not ask a soils scientist to express an opinion in civil engineer. Attorney Gasiorowski stated Mr. Higgins is not providing that type of testimony. He just advised the basin was not drying out.

Attorney Gasiorowski asked if Mr. Higgins have photography's of the London Court II basin? Mr. Higgins stated yes. Board Solicitor Brown asked this what is being presented is Exhibit O26-11 which is a series of photographs. Attorney Gasiorowski advised there are 16 photographs. He asked if they were taken by Mr. Higgins. Mr. Higgins stated yes.

Mr. Higgins advised the top left photograph, which is number one (1) is the head wall discharge at the Marriot. The photograph shows the vertical walls. Mr. Higgins stated this picture was taken the day after a large rain event, in the middle of February. He advised that because of the trees in the area depositing material into the basin the basin filled up with water.

Township Administrator Miller asked if Mr. Higgins can tell the Board what day he took every picture and the amount of rain we had within 72 hours preceding taking the picture. Mr. Higgins advised he can provide. Township Administrator Miller advised this is important information, especially since there was a lot of snow that fell in January and maybe there was a problem with cleaning basin out. He further noted if picture one (1) was taken 24 hours after the rain event and ordinance allows 72 hours this is important information.

Mr. Higgins advised picture one (1) and five (5) were taken the same day, on February 25, 2011. Township Administrator Miller asked what was the precipitation 72 hours before the photography's being taken. Mr. Higgins indicated picture five (5) shows the outlet structure of the Marriot. Advising due to the tree material muck appears. Attorney Nehmad objected, stating Mr. Higgins is providing testimony on an opinion for a civil engineer. Attorney Gasiorowski stated Mr. Higgins can say muck.

Board Solicitor Brown advised the Board needs to know what rain occurred and when. You can say you saw much or mud. Mr. Higgins advised he is trained to understand the materials coming from the trees and what muck looks like. He advised that this is why engineers hire him

to help them understand.

Mr. Higgins advised he came back later and the basin at the Marriot was dry. Township Administrator Miller asked if it was later the same day the pictures one (1) and five (5) were taken? Mr. Higgins stated no. He advised it was done the following Tuesday and the basin was dry. Township Administrator Miller stated that picture nine (9) is actually the same basin shown in picture(s) one (1) and five (5), however, in picture nine (9) the basin is dry, which the first two pictures were taken on February 25, 2011 and nine (9) was taken four (4) days later and it was dry/ Mr. Higgins advised based on the pictures it appears the Marriot basin could drain out with a vertical wall effectively. So it appeared to be suitable for drainage, as long as, it was designed and constructed correctly.

Attorney Gasiorowski asked if there were any other basins he visited. Mr. Higgins advised on Delancy Avenue, picture two (2) (going left to right on the top of Exhibit O26-11) shows a pharmaceutical building, which has been existing for a while. He advised their basin was filled and he took a photograph from the road. He indicated the next photograph is number three (3) which is the London Court II basin. He advised this photograph shows how much water is in basin. He advised it is spread out over a wide area and it was not concentrated.

Township Administrator Miller asked when was photograph number two (2) taken? Mr. Higgins advised it was also February 25, 2011. Mr. Higgins advised photograph's one (1) through eight were taken on February 25, 2011. Mr. Higgins photographs three (3), four (4), seven (7), eight (8), eleven (11), twelve (12), fifteen (15) and sixteen (16) are all London Court II, which he advised had water in it. He advised during the following month he came back to the site every Tuesday and Wednesday during the month of March and into the beginning of April and the basin still held water.

Township Committeeman Carman advised he can not understand how a soils scientist can provide testimony concerning the functionality of a basin and the water standing? Attorney Gasiorowski advised Mr. Higgins is providing his observations of what he saw in the field and providing the soil conditions. He further noted Mr. Higgins is testifying that the elevation of the bottom of the basin in London Court II is the same as the bottom of the basin proposed for the site.

Township Committeeman Carman advised was there not testimony advising there are two (2) different types of basins? Mr. Gasiorowski stated Mr. Higgins is discussing the permeability of the soils. Board Solicitor Brown advised that he should discuss the permeability rather than going into the pictures. Attorney Nehmad stated it is difficult in having someone testify outside their field. He indicated that to say the soil conditions may be similar between the two (2) sites is an influence over the Board. He indicated it is inappropriate. Attorney Nehmad indicated a civil engineer should discuss this.

Board Solicitor Brown asked if in his opinion are the soils for both sites similar. Mr. Higgins stated this is correct. Board Solicitor Brown advised he has shown the photograph's and indicated the soils are similar. He advised anything additional such as if it is filled because of soils, because it is malfunctioning, or even maintenance are not issues for Mr. Higgins to address.

Attorney Gasiorowski asked if Mr. Higgins has the dates for when he visited the sites. Mr.

Higgins stated what he has with dates are the precipitation in Egg Harbor Township from the beginning of the year until now.

Township Administrator Miller asked if Mr. Higgins knows when London Court II's basin was completed? Mr. Higgins stated he does not know when this basin was completed or constructed.

Township Administrator Miller asked if the London Court II project is built out. Mr. Higgins stated no. Township Administrator Miller asked Mr. Higgins if he knows where the basin may or may not be finished? Mr. Higgins stated he would not know.

Attorney Gasiorowski asked Mr. Higgins to number and date each picture within Exhibit O26-11. Mr. Higgins did so. He also advised based on his observation of the London Court II basin he had not seen it without water.

Township Administrator Miller indicated he wants Mr. Higgins to place on the record the date each photograph was taken and the precipitation for the preceding 72 hours.

Mr. Higgins advised on Exhibit O26-11 the following: Photograph one (1) was taken on 2/23/11. Township Administrator Miller advised Mr. Higgins testified earlier that he took the photograph on 2/25/11. Mr. Higgins advised he is clarifying when the picture was taken. He stated he took Photograph one (1) on 2/23/11. Mr. Higgins also produced the rain fall information for Egg Harbor Township from the beginning of the year until current. He advised this information was taken from the rain gauge near the Egg Harbor Township High School

Township Administrator Miller asked how many miles is the Egg Harbor Township High School from the applicant's site? Mr. Higgins stated he does not have this information. Attorney Gasiorowski asked Township Administrator Miller if he would like Mr. Higgins to go through the rainfall information day by day? Township Administrator Miller indicated it can be marked into evidence and it can be reviewed by the Board. Attorney Gasiorowski marked into evidence Exhibit O27-11, which is the rain fall amounts/data for Egg Harbor Township from January 1, 2011 to current.

Attorney Gasiorowski asked Mr. Higgins other than the information outlined within the Whitestone report and the CMS report. Did he review any other information from Egg Harbor Township, Atlantic County, the State of New Jersey or the Department of Environmental Protection with respect to soil conditions and contaminants? Mr. Higgins stated yes.

Mr. Higgins advised he would like to read from the CMX geo-technical dated March 5, 2010, which was submitted to the Board. He advised he would be reading from page 17 section 16.4, which references the seasonal high water table. After reading this section Mr. Higgins then stated when he sees something like this he must determine where the seasonal high is especially for drainage. He stated that as an environmental soil scientist site investigator you must determine this as part of the best management practice requirements. Attorney Nehmad objected, he indicated Mr. Higgins can not testify concerning an opinion with the New Jersey Department of Environmental Protections best management practices. He stated this is civil engineering and should be discussed by the engineer.

Vice-Chairman Aponte stated Mr. Higgins needs to stick to stratigraphy. Mr. Higgins when you discuss stratigraphy, as a site investigator, you must determine where the seasonal high is and

how it will effect drainage. Vice-Chairman Aponte indicated if Mr. Higgins testimony borders civil engineer he wants the Planning Board Engineer to advise and it will stop.

Mr. Higgins stated that based upon the information provided within the CMX report there was no seasonal high found, therefore, his in his opinion it should have been advanced to where it could be measured and determined and it was not.

Mr. Higgins then read into the record section 16.5, which discusses limiting layers. He advised that his comment concerning this is when you do sampling you have other options to follow. When you perform an investigation and you have limiting soils you need to further evaluate the situation. Mr. Higgins indicated this is so you do not misread the permeability report. He stated if you have more then one option in order to decide how the soil will drain then you should consider.

Mr. Higgins stated these options could be a basin flooding test, or go into the water table and do a piezometer test, which were not considered by CMX. Mr. Higgins then read from section 16.6 of the CMX report concerning permeability rates. He stated when you look at the permeability logs there are gaps where soils were not tested. He indicated when you use other options for taking these test you would better understand the site conditions.

Attorney Gasiorowski asked if there were any disclaimers in the reports concerning the observations that were made? Mr. Higgins stated he did not see any. Attorney Gasiorowski asked if there were any possible contaminants referenced in any the reports submitted? Mr. Higgins stated yes.

Attorney Gasiorowski advised the Planning Board Engineer has a few questions for Mr. Higgins. Planning Board Engineering Representative Watkins indicated Mr. Higgins stated when the test pits were dug in the basin the seasonal high water table was not encountered. He asked if Mr. Higgins would have gone deeper, even though, the applicant was meeting the seasonal high to the bottom of the basin elevation? Mr. Higgins stated yes. He advised he would have brought in a bigger excavator or a drilling rig in order to find the seasonal high water table. Mr. Higgins advised the applicant's professionals only went down 15' ft. He stated he would have went deeper.

Mr. Higgins stated using a drilling rig would also give the stratigraphy description of the soils. He advised he would want to make sure there is no clay above the water table .Planning Board Engineering Representative Watkins asked in Mr. Higgins opinion how far should they have went. He asked if they should have went deeper then the 15' ft. when the basin bottom is 8' ft. He asked what would change his opinion on how deep to go. He asked if 20' ft. below the bottom or 30' ft. below?

Mr. Higgins advised based on the investigation that he did the water is at 20' ft. down. He indicated this is based on information pertaining to the contamination conditions. He further noted that he has dug a test pit past 25' ft. Planning Board Engineering Representative Watkins advised he has never seen one done that large. He stated once the basin bottom is dug the applicant is required to go down another 10' ft. below the bottom basin so there is no clay or hydraulic restrictive layers. He further advised this information is placed as a note on the plans which advises they will do this at time of construction and the Engineer's office will inspect.

Planning Board Engineering Representative Watkins asked Mr. Higgins based on the information that was provided by the applicant do you believe they met their requirement to go far enough in the basin according to the Land Use Ordinance of the Township. Mr. Higgins stated yes.

Planning Board Engineering Representative Watkins asked if the applicant did two (2) permeability test in accordance with the ordinance? Mr. Higgins stated yes. Planning Board Engineering Representative Watkins stated that Mr. Higgins previously discussed an SC type of soil (sandy clay), he asked what the percolation rate is? Mr. Higgins advised he would agree to what the applicant's report stated it is greater than 30" inches per hour.

Planning Board Engineering Representative Watkins asked Mr. Higgins this rate would be quick for K-5 soils and does he look at these soils as sandy clay or sand. Mr. Higgins advised he did not believe the sandy clay was tested. Mr. Higgins indicated he does not believe you can rely upon upon rates sampled from a tube. He advised a larger look at the dimension of the system is necessary. Planning Board Engineering Representative Watkins stated Mr. Higgins advised the applicant met the ordinance requirements. Mr. Higgins stated as a site investigator he would go further. Planning Board Engineering Representative Watkins the applicant does not have to go further than what the ordinance requires..

Planning Board Engineering Representative Watkins asked what classification listed for the SC soils? Mr. Higgins advised it was Unified. Planning Board Engineering Representative Watkins asked why Mr. Higgins was comparing Unified with USDA, which is required by the Township Ordinance and the New Jersey Department of Environmental Protection? He asked are they performed the same? Mr. Higgins advised in describing yes. However, in physical structure they are in the same range. Planning Board Engineering Representative Watkins stated then they are not the same.

Mr. Higgins indicated he believes there is a disparity between the CMX and the Whitestone reports. Planning Board Engineering Representative Watkins asked Mr. Higgins if a test pit with soils and classification more revealing. Mr. Higgins stated they are more revealing and gives four (4) walls to look at. However, he advised you should have a bigger machine, deeper depths, do both borings and pits so you have a three dimensional view of the soils. He stated in his opinion this is why basins fail. Attorney Nehmad Objected, he stated Mr. Higgins is not an engineer.

Board Solicitor Brown asked Mr. Higgins if he is specifically referencing the soils. Mr. Higgins stated when doing these borings you have to be aware of the horizons. Planning Board Engineering Representative Watkins if Mr. Higgins was comfortable with the method of taking soils out of the bucket when taking test pit soils? Mr. Higgins advised only if were a beach sand type sample. He indicated test pits could be done, but when you find wavy boundaries and mixed horizons you should use redox equipment. Planning Board Engineering Representative Watkins asked Mr. Higgins if he has gone to depths of 25' feet for a test pit with an excavation? Mr. Higgins stated yes.

Planning Board Engineering Representative Watkins asked how he can determine at 25' ft. without shoring up the walls? Mr. Higgins stated he does not go into the hole. He advised he

can determine by the change in the soil coloring and redox equipment. Planning Board Engineering Representative Watkins asked Mr. Higgins if he feels the test pits were not done properly when the Township Inspector witnessed the pit and it meet the ordinance? Mr. Higgins advised the test was done in based on the ordinance requirements. Board Solicitor Brown asked that what Mr. Higgins is saying the applicant followed the ordinance, they did what they were suppose to, but in his opinion more should have been done? Mr. Higgins stated yes, he advised it was sufficient based on the ordinance, but should have been further examined.

Township Administrator Miller asked how familiar is Mr. Higgins with CMX? Mr. Higgins stated he was not familiar. Township Administrator Miller asked if CMX followed the protocol and methodology or did they deviate from ordinance standards? Mr. Higgins advised they were in accordance with ordinance standards. Township Administrator Miller asked if that there was no Voodoo practice. They met the ordinance standards. Mr. Higgins stated yes.

Township Administrator Miller asked if Mr. Higgins was familiar with Whitestone Associates? Mr. Higgins advised he is familiar with Whitestone, however, he has not worked with them or reviewed any of their work. Township Administrator Miller asked if they information meet the protocol with industry standards in order to meet the Township ordnance requirements? Mr. Higgins advised no, not completely.

Township Administrator Miller asked if Whitestone prepared their information based on an environmental review assessment or on a geo-technical basis? Mr. Higgins advised they did soils report for whatever the reason. He indicated they did was stop at 10' ft., which is less than the 8' ft. from the botton of the basin. Township Administrator Miller asked if Whitestone was derelict in their duties in performing their study? Mr. Higgins stated no. He advised it was not complete based on designing a storm water basin. He advised they did not do a permeability test or explore anything past the minimum requirements. Mr. Higgins stated he believes this was just a preliminary assessment that was followed up by a comprehensive assessment done by CMX.

Township Administrator Miller asked in Mr. Higgins experience it is common for an applicant to hire two (2) different soil companies to do an analysis? Mr. Higgins stated it was common. Township Administrator Miller stated in Exhibit O26-11 Mr. Higgins discussed being present ever Wednesday in the Month of March at London Court II. He asked if he ever visited the Atlantic Electric Site to see their soil conditions or if water was or was not percolating? Mr. Higgins advised Attorney Gasiorowski did ask for a site investigation, not sure if a response was received?

Attorney Gasiorowski indicated he wrote a letter requesting Mr. Higgins be able to go onto site, otherwise, he could be considered guilty of trespassing onto the applicant's site. Attorney Gasiorowski stated he was told no, so he could not make any observation. Attorney Nehmad advised Mr. Higgins could have walked around the public right of way. He stated the site is over 35 acres Attorney Nehmad stated Mr. Higgins did not have to go on site to look at the site. Vice-Chairman Aponte asked Mr. Higgins to answer the question? Mr. Higgins advised he looked at the applicant site, but he never trespassed on the property. Township Administrator Miller stated that Mr. Higgins just trespassed on the properties shown on Exhibit O26-11, but not the applicant's. Mr. Higgins advised this is correct.

Attorney Gasiorowski asked what documents were referred to in order to determine whether there is or is not contamination on site? Mr. Higgins stated when he reviewed public documents he

found a preliminary assessment report. Attorney Gasiorowski asked who prepared it. Mr. Higgins advised it was a phase one environmental report, done by Whitestone Associates, dated September 11, 2000 and received by the Township on March 19, 2010, which discusses the site conditions and the adjoining site conditions.

Board Solicitor Brown stated Mr. Higgins has a 50-page document in his hand. He asked Attorney Gasiorowski if he was having he go over everything in this report as he has been doing. Attorney Gasiorowski stated no. He indicated he is going over whether the documents reference the presence or absence of contamination on the applicants site.

Township Administrator Miller asked if the record can reflect that Mr. Higgins has read both reports and that each company did not go as far as he would have gone in the testing, which he finds that there work is unacceptable on behalf of his client instead of having him read pages of the report into the record.

Attorney Gasiorowski advised Mr. Higgins is going into a different report and is discussing contamination, which the reports, which were submitted to Egg Harbor Township show there is. Attorney Nehmad objected. He stated the Planning Board has the obligation to administrator the land use and zoning ordinances. He indicated it is not their responsibility to deal with contamination. He stated this is the responsibility of New Jersey Department of Environmental Protection not the Planning Board.

Attorney Nehmad explained the applicant, submitted information, as part of this project a "no further action letter" concerning an underground storage tank at the Atlantic Electric site. He also advised that across the street from this facility (diagonal) there is an Exxon Mobil that is currently in the process of cleaning up a spill. Attorney Nehmad stated because of this there are monitoring wells on the applicant's property in conjunction with the Exxon Mobil's clean up.

Attorney Nehmad indicated the Township Ordinance does not deal with Environmental remediation. He advised remediation is being handled by Exxon Mobil, which is one of the most financial responsible companies. He again noted this issues goes beyond the authority of the Board. Attorney Gasiorowski advised he does agree the jurisdiction of this issue falls to the State. However, the plan shows only two (2) monitoring wells when there is actually two (2) more. He advised through his witness he wants to show based on the Department of Environmental Protection records where it has migrated to and if it will impact development. Attorney Gasiorowski asked what if the plume is present under one of the proposed basin, doe it not impact the site.

Board Solicitor Brown stated Exxon is responsible to excavate and whatever contamination is there must be removed. He indicated he believes this is a fishing expedition. Attorney Gasiorowski stated it is his understanding based on conversations with the expert that the plume is in the area of the basins in question.

Vice-Chairman Aponte asked Board Solicitor Brown if the board were to approve the application and there is a plume the applicant could not go forward without fixing? Board Solicitor Brown stated this is exactly correct. Attorney Nehmad stated the applicant can not move forward until the Department of Environmental protection has authorized it.

Attorney Gasiorowski asked if Attorney Nehmad was stipulating to this. Attorney Nehmad stated he was not stipulating to anything. He offered the law is the law and Attorney Gasiorowski can

be guided accordingly.

Attorney Gasiorowski stated he had no further questions for the witness. Attorney Nehmad advised he does have cross-examination for the witness.

Vice-Chairman Aponte advised Mr. Higgins will be going through cross-examination and then Mr. Zimmerman will be coming up. Attorney Gasiorowski advised this is correct.

Attorney Nehmad asked when Mr. Higgins was retained? Mr. Higgins stated it was in January, 2011. Attorney Nehmad asked by whom. Mr. Higgins stated it was Mr. Sumas. Attorney Nehmad asked if Mr. Sumas is a principal in Village Supermarkets, Incorporated the object. Mr. Higgins stated this is correct.

Attorney Nehmad asked how many miles is Mr. Sumas' site from this one. Mr. Higgins indicated he would be guessing that it is more than two(2) miles. Attorney Nehmad stated it is about four (4) miles away. Attorney Nehmad asked if Mr. Higgins spoke with Mr. Sumas concerning this application. Mr. Higgins stated yes. Attorney Nehmad asked Mr. Higgins if Mr. Sumas told him what his objection was to this application? Mr. Higgins stated no, no specifics.

Attorney Nehmad asked how many times did he speak with Mr. Sumas? Mr. Higgins advised twice by phone. Attorney Nehmad stated as a result of those calls you learned you were to be retained and that he wanted to oppose the application. Mr. Higgins stated yes. Attorney Nehmad asked if Mr. Sumas specifically told him during the two (2) conversations what the objection was? Mr. Higgins stated no.

Attorney Nehmad asked if Mr. Higgins as a professional has he ever been retained by a client when he did not know what the basis was for his retention. Mr. Higgins advised he does know why he was retained. He indicated it is to assist in this matter with respect to an environmental assessment. Attorney Nehmad asked if he knew that assistance was to oppose this application. Mr. Higgins stated this was correct. Attorney Nehmad stated though Mr. Higgins never learned the basis of the opposition to this site. Mr. Higgins advised he never had the conversation. Attorney Nehmad asked if Mr. Sumas is opposing this application because it is a competing facility. Attorney Gasiorowski objected. The question has been asked and answered.

Attorney Nehmad asked Mr. Higgins if he was a soil scientist? Mr. Higgins advised he is an environmental consultant with a soil science background. Mr. Nehmad asked if he was a certified soil scientist. Mr. Higgins he stated in New Jersey there is no certification that he is aware of. Attorney Nehmad indicated that is not what he asked. He advised there is an organization in the Country that certifies soil scientist. He asked if Mr. Higgins was aware of it. Mr. Higgins stated yes.

Attorney Nehmad asked if it was the Soils Science Society of America? Mr. Higgins indicated yes, he is a member of the New Jersey Chapter of the New Jersey Soil Scientist Association. Attorney Nehmad asked if he was certified by the Soil Science Society of America? Mr. Higgins stated no. Attorney Nehmad stated they have a procedure for testing so someone can become licensed or certified as a soil scientist. Mr. Higgins stated he was not aware of their procedures and he is not sure if you receive a license or a certification.

Attorney Nehmad asked what Mr. Higgins charge was concerning this application? Mr. Higgins

stated it was to review information available through the Township and any other information available to support his opinions with respect the environmental issues dealing with the site. Attorney Nehmad asked if it was his responsibility to review the soils related information concerning the application. Mr. Higgins stated yes.

Attorney Nehmad further noted that Mr. Higgins mission and responsibility must be free from bias. Mr. Higgins stated his is correct. Attorney Nehmad stated it was also your client's desire to oppose this application. Attorney Gasiorowski objected. He stated Mr. Higgins stated he was aware of the fact his client was an objector that is all. Board Solicitor Brown advised Mr. Higgins can answer Attorney Nehmad's question. Attorney Nehmad asked again, when Mr. Higgins took responsibility of this project he did so on behalf of a client who was oppose to the application. Mr. Higgins stated he know his client was objecting.

Attorney Nehmad asked when he reviewed the Whitestone report and the CMX report it was with a view to find some fault with it so it could be opposed. Mr. Higgins stated this is not ture. Attorney Nehmad asked Mr. Higgins if he went back to client and told him anything was done appropriately. Mr. Higgins stated yes.

Attorney Nehmad asked if in Mr. Higgins would agree based upon his experience in land use law it is important to have standards. Mr. Higgins stated standards are the process that have to be followed. Attorney Nehmad if it is not true the Township has ordinances concerning site plans that advise what has to be done in order to file an application for review. Mr. Higgins stated yes.

Attorney Nehmad does the standards indicate the level of detail that has to be submitted and the testing which has to be done. Attorney Gasiorowski objected, he advised Mr. Higgins testified that there was compliance to the reports. Vice-Chairman Aponte agreed. Attorney Nehmad indicated the questioning is important.

Vice-Chairman Aponte asked for Attorney Nehmad to get to the point. Attorney Nehmad stated Mr. Higgins acknowledge that his client met the standards established by ordinance within the Township. Mr. Higgins advised from an administrative standpoint yes. Attorney Nehmad asked if there was an ordinance that Mr. Higgins could reference where his client does not meet the requirements of Mr. Higgins expertise? Mr. Higgins stated no.

Attorney Nehmad asked if Mr. Higgins reviewed the Whitestone report and the CMX report fully and completely? Mr. Higgins stated yes. Attorney Nehmad stated in direct testimony Mr. Higgins stated that even though the ordinance doesn't require it his client should have went down to groundwater by either borings or test pits. Mr. Higgins stated yes, plus other things.

Attorney Nehmad asked if Mr Higgins was familiar with a piezometer test? Mr. Higgins stated it determines the permeability rate of groundwater table. Attorney Nehmad asked if it also determines where groundwater is? Mr. Higgins yes. Attorney Nehmad asked if the CMX report incorporated the Whitestone report? Mr. Higgins stated yes. Attorney Nehmad asked if the Whitestone report references where groundwater was found? Mr. Higgins stated yes.

Attorney Nehmad stated "Table #1" of the Whitestone report is entitled Piezometer Summary . He asked Mr. Higgins how many are listed. Mr. Higgins stated sixteen (16) readings. Attorney Nehmad asked if the piezometer readings show where ground water was encountered. Mr. Higgins stated yes. Attorney Nehmad asked at what elevation? Mr. Higgins stated at elevation 42 and half the surface elevation it was encountered at 23.15' ft., as noted in boring P-3.

Mr. Higgins stated P-10 has a surface elevation of 58 at a depth of 36.71' ft. ground water was

encountered. Attorney Nehmad asked if this is 22' ft. below the elevation of surface elevation? Mr. Higgins stated not it is 36' ft. below surface elevation and a ground water contour of 21.

Attorney Nehmad asked Mr. Higgins if it not true that the applicant's engineers and geo-technical consultants did go down to determine groundwater. Mr. Higgins stated they did through out the site. Attorney Nehmad asked if some 15 or 16 readings taken. Mr. Higgins stated yes.

Attorney Nehmad asked if it is not true that his client's engineer's went down to the depths they were suppose to go? Mr. Higgins stated yes. Attorney Nehmad advised there were some 25 borings and test pits done for the basin? Mr. Higgins stated yes. Attorney Nehmad asked if Whitestones test pits and borings reference some clay? Mr. Higgins stated this is not ture he advised there are isolcated pockets of clay. Attorney Nemand asked what the CMX report clarifies. He referred to page seven(7) of the CMX report dated March 5, 2010. Mr. Higgins read into the record what was found in stratum number one (1). Attorney Nehmad asked if Mr. Higgins had any specific idea why the word "Sand" is capitalized? Mr. Higgins stated he does not know. Attorney Nehmad asked if Mr. Higgins is familiar with "Suggested methods for Identification of Soils" by Dr. D.M. Brewmister? Mr. Higgins stated yes. Attorney Nehmad stated this is a classification system used by CMX and is an accepted classification system. Mr. Higgins advised it is a standard for applications that it was intended to be designed for. Attorney Nehmad asked Mr. Higgins on the sheet referenced as a soils components. What did it say under principal components when it is capitalized Mr. Higgins stated it means it is the principal component which is the majority of the material.

Attorney Nehmad stated under the Brewmister system the principal component is "Sand". Mr. Higgins stated yes, but only in stratum one (1). Attorney Nehmad asked, however, he also stated only one (1) stratum was done. Mr. Higgins stated yes. Attorney Nehmad asked if Whitestone indicated the principal component of soil at the applicant's site? Mr. Higgins advised he does not have this information in front of him. Attorney Nehmad indicated he should look at page 11, dated January 10, 2005, advising there is sandy soils. Mr. Higgins stated he is not refuting this.

Attorney Nehmad asked Mr. Higgins if he looked at the permeability of the soils in CMX's report? Mr. Higgins stated yes. Attorney Nehmad asked if the rating system does not give a range of K-4 and K5. Mr. Higgins stated as a soil scientist he does not like to lump them together for classification. Attorney Nehmad asked if it is accepted in engineering? Attorney Gasiorowski objected he can not answer question because he is not an engineer. Attorney Nehmad advised it is accepted in geo-technical engineering. Board Solicitor Brown asked Mr. Higgins to answer. Mr. Higgins stated yes it is accepted in some application

Attorney Nehmad asked if it is common for Mr. Higgins not to date his photograph's presented. Mr. Higgins stated he should have placed them on, however, he does normally place them on. Attorney Nehmad asked if Mr. Higgins kept logs with respect to what he found with each photograph presented. Mr. Higgins have some general notes, however, the pictures speak more

Attorney Nehmad asked Mr. Higgins based on Exhibit O-26 showing water in basin you have no knowledge as to why water is standing in basin. Mr. Higgins advised the has rational observations. He advised it is either groundwater as a wet basin because it exposed the water table or it is because it rained and the snow melted and it is sitting in the bottom of basin where it was intended. Attorney Nehmad asked if Mr. Higgins knows who is responsible for the

maintenance of the basins in Exhibit O-26. Mr. Higgins stated no. Attorney Nemat asked if Mr. Higgins knows when the last time of the basins were maintained, scarified, or scraped? Mr. Higgins stated no.

Attorney Nehmad stated Mr. Higgins advised the London Court II basin is not his client's site based on Exhibit A2-11. He asked Mr. Higgins where it is in comparison? Mr. Higgins showed on Exhibit A2-11 the general location by proposed basin (III). Attorney Nehmad stated Mr. Higgins advised he compared some elevation to the bottom of London Court II basin to his client's basin. He asked if he reviewed plans prepared by Doran Engineering. Mr. Higgins stated he reviewed plans dated March 7, 1986 concerning the London Court II basin.

Attorney Nehmad asked what the elevations were between the common boundary between London Court II and his client's property? Mr. Higgins they are 53, 52 and 51 on the London Court II plan. Attorney Nehmad stated his client's plan show 52, 53, and 50. Vice-Chairman Aponte asked what Exhibit is being referenced. Attorney Nehmad stated it is Exhibit O25-11.

Attorney Nehmad asked Mr. Higgins to review Exhibit A15-11 and advise what the elevations are as referenced. Mr. Higgins stated it is between 46 to 49. Attorney Nehmad advised this is a significant difference? Mr. Higgins it is a measurable difference. Attorney Nehmad are the plans drawn using different datum scales. Mr. Higgins advised this is correct. He indicated there is a difference of two (2) to three (3) feet, however, the bottom of the basin is still correct and he further noted he compared the soils to the soils not elevations.

Attorney Nehmad asked Mr. Higgins if it is not true that he can render an opinion if his client's storm water management plan will or will not work as designed? Mr. Higgins stated he is not an engineer. Attorney Nehmad advised he had no further questions.

Attorney Gasiorowski asked Mr. Higgins that he was previously given an oath and he was truthful and honest? Mr. Higgins stated this is correct. Attorney Gasiorowski asked if his testimony was effected in any way whether he was hired by him, his client or by Mr. Litwornia. Mr. Higgins stated no. Attorney Gasiorowski asked the testimony given by Mr. Higgins was relied upon the information provided by the applicant. Mr. Higgins stated this is correct. Attorney Gasiorowski stated the piezometer was used to determine the water table at certain locations throughout the site. Mr. Higgins stated yes. Attorney Gasiorowski asked what was the greatest depth it was used? Mr. Higgins advised it was in the basin areas and it was used in reports indicated 15' ft.

Attorney Gasiorowski asked if the applicant took test to the depth of where the high water table would be in the area. Mr. Higgins indicated not as he could find. Attorney Gasiorowski asked does the mere fact a sample has a predominant area of sand change Mr. Higgins testimony concerning the soil conditions? Mr. Higgins stated no.

Attorney Gasiorowski advised he has no further questions of Mr. Higgins.

Township Administrator Miller asked stated it appears different datum was used by the applicant and the London Court II engineer. He stated Mr. Higgins advised it was only two (2) to three (3) feet, however, there is two (2) sets of data you do not know the basis that was used? Mr. Higgins stated he was going by what was on each plan. Board Engineer Representative Watkins explained he does not know what datum was used previously, but it was more then likely 29 datum. So there is probably a 2.7' difference between each site. However, Mr. Higgins

advised when referring to soil logs it is a a large difference, therefore, he should explain. Mr. Higgins advised he was not debating surface control elevation relationship to subsurface elevation. He indicated his finds were plus or minus two (2) feet it still had no change to the soil horizon's.

Township Administrator Miller asked where Mr. Higgins obtained the information that the bottom of the London Court II basin was 41' ft? He asked if he physically measured it? Mr. Higgins stated he read it off the plans. Township Administrator Miller asked if Mr. Higgins knows if the London Court II basin is built in accordance with the plan? Mr. Higgins stated he does not know.

Attorney Gasiorowski called Mr. David Zimmerman. Board Solicitor Brown swore in Peter David Zimmerman. Attorney Gasirowoski asked Mr. Zimmerman to give a brief background of his education. Township Administrator Miller advised Attorney Gasiorowski had submitted this to the Board. Board Solicitor Brown moved Exhibit O28-11 into the record. This is the resume of Mr. Peter David Zimmerman.

Attorney Gasiorowski asked if Mr. Zimmerman was hired by him to provide testimony with respect to this application? Mr. Zimmerman stated this is correct. Attorney Gasiorowski asked Mr. Zimmerman if he familiarized himself with the Township, the zoning ordinance and the master plan? Mr. Zimmerman stated this is corret.

Attorney Gasiorowski asked Mr. Zimmerman has reviewed the transcripts of the meetings he has not been present at and has he visited the applicant's site? Mr. Zimmerman advised he was present at the March, 2011 meeting and he reviewed the transcripts from the November, January, and February meetings. He further noted he has been to the site on one occasion.

Attorney Gasiorowski asked if Mr. Zimmerman reviewed the file at the Township office? Mr. Zimmerman advised yes, he had. Attorney Gasiorowski asked what variance(s) and waivers is the applicant seeking before the board?

Mr. Zimmerman advised the applicant is seeking sign variance(s) for three (3) signs. He advised he did not review the variances, therefore, he has no opinion concerning them. Mr. Zimmerman advised the applicant is seeking certain exceptions. Such as providing landscaping irrigation, having a basin not meeting the 2' ft. in a 50 year storm, the side slopes of the bsin, a basin access way. The applicant is also loking for a waiver for the type of road, however, it is not a road but an easement so it is not an issue with the application.

Mr. Zimmerman advised he reviewed the RCD Zone concerning the four (4) conditional uses, which are a drive through bank and three (3) fast food facilities. Attorney Gasiorowski asked when Mr. Zimmerman reviewed the transcripts did he make any observations as to the professional testimony provided by the applicant's witnesses?

***May the record reflect:** Board Solicitor Brown and Attorney Gasiorowski went back and forth concerning what Mr. Zimmerman will be testifying to and the delay of the hearings. Vice-Chairman Aponte interceded advising concessions were made on both sides and asked that Attorney Gasiorowski move forward.

Mr. Zimmerman stated he would bunch together the exceptions for the interest of time. Attorney Nehmad Objected. He advised Mr. Zimmerman should not testify concerning waivers related to

civil engineering that has already been done by Mr. Litwornia and Mr. Johnson. Mr. Zimmerman advised he will not be discussing engineer it will be planning.

Mr. Zimmerman read into the record pages 50-51 and page 59 of the transcript prepared from the November 15, 2010 Planning Board Meeting. Mr. Zimmerman stated the thrust of the request is that if the applicant were to comply with the ordinance would it make it impracticable or cause an undue hardship because of the conditions of the property.

Mr. Zimmerman advised he does not believe the conditions of the site create a situation that requires the applicant to propose the type of basin they are proposing. He advised the site does not have wetlands, there are no historic buildings that have to be considered, however, they do have an unique tree stand. He advised there is nothing in the ordinance that makes the applicant have to come in with a different type of basin. He stated this is why Mr. Johnson testified and produced Exhibit O24-11.

Attorney Nehmad objected. He indicated the applicant is summarizing and not providing testimony in his field of expertise. Board Solicitor Brown advised this is a question and answer period not a narrative period. Attorney Gasiorowski should be directed to ask Mr. Zimmerman questions and let Mr. Zimmerman answer.

Attorney Gasiorowski asked if Mr. Zimmerman has reviewed the land use ordinance of the Township. Mr. Zimmerman indicated yes. Attorney Gasiorowski asked Mr. Zimmerman if Exhibit O24-11 reflects the site as to how it would look if the basin were designed to the standards. Mr. Zimmerman indicated yes. Attorney Gasiorowski asked if it is impractical to construct a basin of the size referenced on Exhibit O24-11. Mr. Zimmerman stated there is none and there is no hardship.

Attorney Gasiorowski stated the only impact would be that the applicant would have less developed area? Mr. Zimmerman stated the applicant would lose about 40,000 sq. ft. of building area. Attorney Gasiorowski asked if as a planner does this mandate the board granting the design waiver? Mr. Zimmerman stated no. He advised that he does not thing that by adhering to the ordinance and having the minor reduction in the amount of square footage can be considered a hardship.

Attorney Gasiorowski asked if the size of the building area was reduced could the applicant still construct a Walmart. Mr. Zimmerman stated a Walmart could still be constructed.

Attorney Gasiorowski asked Mr. Zimmerman if he is aware of the connector road? Mr. Zimmerman stated yes. Attorney Gasiorowski asked based on the municipal land use law is it equivalent of a road, roadway or street? Attorney Nehmad objected, he advised it is not based on municipal land use law, but on the Township ordinance. Mr. Zimmerman advised in his opinion the connector road meets the definition in the ordinance of street. He further noted the buffer have done a creditable job concerning the landscaping, except for one side along Old Egg Harbor Road, which is absent of some landscaping, which is a detriment to the site. He advised this is along the new connector road on one (1) side.

Attorney Gasiorowski asked if Mr. Zimmerman was familiar with speed limits on public roadways? Mr. Zimmerman stated no. Attorney Gasiorowski asked concerning the conditional uses. Mr. Zimmerman advised in this zone there are two (2) conditional uses. He advise one is fast food and the other is drive-in bank facilities. He indicated that in his opinion the applicant does not

meet the standards for conditional uses.

Mr. Zimmerman advised he has prepared an exhibit to demonstrate. Attorney Gasiorowski asked if an exhibit has to be submitted or can Mr. Zimmerman use what is already up. Mr. Zimmerman stated he would first like to read onto the record from section 225-38D(f) which discusses fast food restaurant's. Let the record reflect he did. After doing so he advised the first 20' ft. in front of out parcel #5, which is the fast food restaurant is not exclusively used for landscaping. He advised there is a sidewalk. The sidewalk could be re-aligned, but as it shows now it does not meet the condition.

Mr. Zimmerman then read into the record section 225-28(3)[b] which discusses drive in banking facilities. He advised there should be no more than three (3) drive in teller windows and one (1) drive in ATM., and this is met, however, the applicant needs eight (8) stacking spaces for the first drive in window and that is not met. He advised each space that is used for stacking must be 20' ft. in length so it is not satisfied. He indicated that in his opinion the applicant must either redesign or go before another board to receive variance relief.

Attorney Gasiorowski asked in Mr. Zimmermans opinion as a professional planner has the applicant satisfied the standards established under the municipal land use law for the granting of the exceptions. Mr. Zimmerman stated no. Mr. Zimmerman stated there is nothing about the land that results in impracticality or hardship if the applicant were to adhere to the standards of the ordinance. He indicated the whole application is about maximizing the amount of square footage on the property.

Attorney Gasioroski stated he has no further questions.

Attorney Nehmad asked whom Mr. Zimmerman's client is. Mr. Zimmerman advised it is Village Supermarkets. Attorney Nehmad asked if has spoken to his client. Mr. Zimmerman stated no. he advised he was retained by Mr. Gasiorowski.

Attorney Nehmad asked Mr. Zimmerman where his office is located. Mr. Zimmerman stated it is Morristown, New Jersey. Attorney Nehmad asked if this is the first application he has worked on in Egg Harbor Township? Mr. Zimmerman stated this is correct.

Attorney Nehmad stated during Mr. Zimmerman's testimony he advised his client does not meet the standards. Mr. Zimmerman stated this is correct based on the statutes. Attorney Nehmad asked if most of the waivers being sought are related to civil engineering? Mr. Zimmerman stated no. Attorney Nehmad stated the ordinance requires a depth of two (2') feet for a 50 year design storm, which is not civil engineer. Mr. Zimmerman stated yes and no. Attorney Nehmad asked if the 15' access way around the basin perimeter is also engineer? Mr. Zimmerman stated this is the same answer as previous. They serve planning in determining the intensity of the use on the property.

Attorney Nehmad asked in Mr. Zimmerman's 40 years of experience is it not unusual to see an ordinance requiring a depth in a commercial storm water basin to be two (2') feet? Mr. Zimmerman stated he can not answer. Attorney Nehmad stated this is a serious matter and Mr. Zimmerman is here to render and expert opinion. Mr. Zimmerman stated he can not recall in reviewing other ordinances whether or not it is or is not a requirement, therefore, he advised he can not answer the question.

Attorney Nehmad asked if by requiring a two (2') foot requirement for storm water in residential, commercial, industrial, recreational, is omnibus legislation? Attorney Gasiorowski Objected he advised the ordinance speaks for its self. Board Solicitor Brown advised Mr. Zimmerman can answer. Mr. Zimmerman stated it is for all land uses.

Attorney Nehmad stated it is not uncommon for the board's to grant design waivers or exceptions. Mr. Zimmerman stated it is common. Attorney Nehmad asked if the standard or the burden of proof for a design waiver is less then a variance? Mr. Zimmerman stated this is correct, he further noted it depends on variances being requested. He advised if someone comes in with a 5' ft. setback and it is not a big deal variance, however, if someone is seeking an exception it may have an impact on the development and the amount of square footage that can be built.

Attorney Nehmad asked Mr. Zimmerman if there is less of a burden of proof because the applicant is seeking waivers verus variances. Mr. Zimmerman stated if the applicant was looking for a C-1 variance whose criteria relates to the shape, environmental and function of the land. It is basically the same characteristics. There is an overlap.

Attorney Nehmad asked if Mr. Zimmerman has had a chance to review the experience of the Board in granting waivers for the depth of the basin and the 15' ft. access way for commercial development over the last ten (10) years? Mr. Zimmerman stated in the transcripts he saw that Attorney Nehmad has advised of at least ten (10) exceptions to the storm water basin requirements, which is the most relevant issue in this case.

Attorney Nehmad asked Mr. Zimmerman if he has examined any of the cases where the board has granted a waiver for the depth of the basin being greater then two (2') feet? Mr. Zimmerman stated he has not. Attorney Nehmad asked if Mr. Zimmerman though this was relevant. Mr. Zimmerman stated every application stands on its own merits. He indicated what applies to a hotel application may be different for another. He indicated what is relevant is the fact that this board has granted storm water basin exceptions to the extent referenced. He stated this is important.

Attorney Nehmad stated the Board has the authority to grant a site plan waiver if requested. Mr. Zimmerman stated this is correct. Attorney Nehmad asked if he believes the request the applicant is making for waivers is reasonable? Mr. Zimmerman stated no. Attorney Nehmad asked if Mr. Zimmerman is aware this site was approved in 2004? Attorney Gasiorowski objected, he stated what was approved in 2004 is not before the board. Board Solicitor Brown asked he can answer the question. Attorney Nehmad stated Mr. Zimmerman indicated the reason why the applicant is seeking waiver is for more intensity, however, he asked Mr. Zimmerman if he was aware the in 2004 the planning board approved a site that allowed 50,000 sq. ft. more of leased area then for this application. Mr. Zimmerman advised this is correct. He further noted he had said the applicant is trying to place more on this property then what is appropriate.

Attorney Nehmad asked Mr. Zimmerman if this site is irregular in shape. Mr. Zimmerman stated no. Attorney Nehmad asked if placing an public accessible connector roadway through the middle of the site an unusual requirement? Mr. Zimmerman stated it does not go through the center of the site. It is on the eastern edge of the site.

Attorney Nehmad asked Mr. Zimmerman what this area is zoned. Mr. Zimmerman stated it was RCD. Attorney Nehmad asked if he would agree that the RCD zone is the most intense zoning district. Mr. Zimmerman stated no it is not. He advised the neighborhood business zone is. He advised because it has the most intense coverage. He advised this zone requires the most buffers and setbacks then any other zoning district. Attorney Nehmad asked what is the maximum lot coverage allowed in this zone? Mr. Zimmerman stated 70 percent. Attorney Nehmad asked if Mr. Zimmerman would agree it is interest of the municipality to see lands that are developed with intense commercial develop to its potential. Mr. Zimmerman stated yes. Attorney Nehmad asked if the Board has a right to grant waivers between commercial development versus residential. Mr. Zimmerman stated the criteria is listed in the code. He further noted that every application stands on its own.

Attorney Nehmad asked Mr. Zimmerman if he agrees that having a shallow basin in a residential community is more important then in a commercial. Mr. Zimmerman stated he does not agree. He advised the ordinance indicates the type of basin that is required. He advised he is not in the position to rewrite the ordinance. Attorney Nehmad asked Mr. Zimmerman if he believes that every time the board grants a waiver then it re-writes the ordinance. Mr. Zimmerman stated if you look at the history of what the Board has done in granting waivers for ten (10) basins over the last ten (10) years then he believes the Board has moved into area of rewriting the ordinance.

Attorney Nehmad stated the conditional uses that are requested are for preliminary site plan approval. Mr. Zimmerman stated they are on the plan, however, they don't satisfy the ordnance standards and He does not believe the Board can entertain them. He indicated this would be the fast food restaurant (OP-5) and the drive-through bank, however, he stated the applicant can make design changes in order for the uses to fit.

Attorney Nehmad indicated the connector road will remain in ownership by his client but is subject to the right of the public to yes. Mr. Zimmerman stated this is correct. Attorney Nehmad asked Mr. Zimmerman if he has reviewed the definition of street in the Township Code? Mr. Zimmerman stated he is looking at it currently (94.3). Attorney Nehmad asked if Mr. Zimmerman looked at the zoning ordinance? Mr. Zimmerman stated yes. Attorney Nehmad asked if it was the same. Mr. Zimmerman stated no.

Attorney Nehmad referred Mr. Zimmerman to section 225-3 of the zoning code and asked if the connector road is an existing state, county or municipal road way. Mr. Zimmerman stated no. Attorney Nehmad stated it is not shown on any plat. Mr. Zimmerman stated other then what has been submitted by the applicant. Attorney Nehmad asked Mr. Zimmerman if the planner and engineer for the board reviewed this road as private then they made a mistake? Mr. Zimmerman stated the Engineer has a letter dated November 2 stating your client was seeking an exception from the pavement standards and then in December a letter from the State Department of Transportation was issued advising the road could be a functional equivalent.

Attorney Nehmad asked if this proposed connector road is an arterial street, under section 198-4. Mr. Zimmerman advised he would have to review. Attorney Nehmad asked if under the definition of a if it fits. Mr. Zimmerman stated this is correct.

Attorney Nehmad stated he had no further questions for Mr. Zimmerman.

Attorney Gasiorowski stated under the municipal land use law or law that he is aware of that

excepts out Egg Harbor Township from complying with the mandates of the municipal land use law? Mr. Zimmerman stated no. Attorney Gasiorowski advised he had no further questions.

Township Administrator Miller asked before Vice-Chairman Aponte opens the hearing to the public. He would like Attorney Gasiorowski to place on the record that he is finished so the Board can move forward with additional objector's? Attorney Gasiorowski stated he has concluded.

Motion Eykyn/Cafero to open public portion.

May the record reflect no one came forward.

Motion Miller/Eykyn to close public portion

Attorney Gasiorowski stated for housekeeping purposes he would like to move all exhibits into evidence. Attorney Nehmad advised he would like to move all exhibits into evidence. May the record reflect there was no objections from either party.

Township Administrator Miller asked the Board planner if he believes this application is in conformance with the conditional use standards? Board Planner Polistina stated he believes the site plan meets all the conditional use standards for both the bank and the restaurant.

Attorney Nehmad stated if the Board request they do not have to act on the conditional use? Attorney Gasiorowski objected. Board Solicitor Brown asked if Attorney Nehmad was going to withdraw this part of the application. Attorney Nehmad stated if the Board wants the applicant to do so.

Township Administrator Miller stated he is not going to tell the applicant what to do. He advised he is acting upon the application submitted. If the applicant wants to withdraw that is their consideration. Board Solicitor Brown stated he knows of no reason that would not allow the applicant to withdraw. Attorney Gasiorowski stated he is going to object. He stated the matter has been concluded and rested. He believes the Board has to vote on the application as applied for based on its merits.

Attorney Nehmad stated the applicant would ask to defer taking any application for the pad sites for the bank and fast food restaurants and they will be separate applications. Attorney Gasiorowski again objected. He states it casues a more compelling issue that he has reduced the square footage of the stores so he can construct the basin to the ordinance requirements. Attorney Nehmad stated his client objected to the Walmart not the pad sites. Township Administrator Miller asked both Attorney Nehmad and Attorney Gasiorowski to sit down.

Township Administrator Miller indicated he is gathering information and the Board Planner has advised conditional use section has been complied with. He further noted he does not believe a sidewalk in a buffer area is an issue. He also indicated he has counted eight spaces for the bank. He stated he believes Mr. Higgins stated both reports meet the Township standards, the minimum standards.

Township Administrator Miller asked if unsuitable soils are found the Township Engineer can direct the applicant to excavate the material until the soils are deemed suitable. Board

Engineering Representative Watkins stated this is correct. Township Administrator Miller asked what section of the ordinance is this. Board Engineering Representative Watkins advised it is under 94-44VI(F).

Township Administrator Miller asked if there is irrigation on site? Board Planner Polistina stated the waiver it is limited to the planter areas and open space. Township Administrator Miller stated he is not inclined to grant a waiver for irrigation. He indicated the landscape aisles begin looking like dirt mounds.

Township Administrator Miller asked if the basins have chain link fences. Board Engineering Representative Watkins stated the large basin has a 6' ft. fence and the other two (2) basins have a 4' ft. fence. Township Administrator Miller stated the basins are not proposed with a four (4 to 1) to one slope and a 15' ft. wide access way because it is in a commercial zone not residential and the Township does not maintain. Board Engineer Representative Watkins stated this is correct.

Township Administrator Miller stated the objector advised that other than the Marriot there were no other basins with retaining walls they looked at. Though the applicant advised of at least ten (10) in the Township. He asked Board Engineering Representative if in his experience do they work and percolate within the Township. Board Engineering Representative advised ones he has seen with retaining walls do work and percolate based on his experience during the last four or five years, however, he has seen others in some different municipalities fail because they are not maintained.

Board Planner Polistina stated the standards of the basins were placed in because of the high level of residential development that the Township was receiving because of Pinelands. The Township looked at these basins because of the young children in the developments and the ordinance was adopted Township wide, but it really applied specifically to the Pinelands basins and the residential development a number of years ago.

Vice-Chairman Aponte stated during Mr. Zimmerman's testimony he discussed a clause in the Master Plan advising if something is not working take it out. Board Planner Polistina stated he may have authored this portion of the Master Plan. Vice-Chairman Aponte stated he sat on the Master Plan Committee and basins were not discussed. What was discussed was the amount of tree clearing. He advised it was more environmental.

Township Administrator Miller also indicated the design of the basin is to assist the applicant in keeping the 200 trees that will remain based on the Environmental Commissions desire. He indicated the basin design did not spread out to a large landmass so that the applicant could save the trees. Board Engineering Representative Watkins advised the applicant took extra care in saving the existing trees. He advised this included proposing the basin vertical walls and placing sidewalk around the trees. Board Planner Polistina stated the applicant has tried to save as many existing trees as possible.

Board Planner Polistina advised the only other issue not listed in his report but brought to the Board's attention concerns the impact to the site created by the State Department of Transportation requiring the roadway to be constructed. He stated it is a huge factor and takes up a good portion of the site. He stated this is something that may impact the decision making versus reasons why the Board would grant waivers to your design standards. Township

Committeeman Carman stated is it because of the public benefit? Board Planner Polistina advised it is due to the public benefit, because it is being mandated by the Department of Transportation and it takes up a large amount of land on site.

Township Committeeman Cafero stated he believes this site has changed considerably since it was originally submitted in 1999 and even when it was approved in 2004. Board Planner Polistina stated this is a result of other agencies reviewing this application. He noted he can not see how anyone could honestly say the site is not an irregular shape. It has several issues that had to be dealt with. He indicated it has transformed over the last several years.

Board Engineering Representative Watkins asked to verify that the applicant is withdrawing item number five (5) from the design waivers concerning the pavement thickness. Board Solicitor Brown advised it is withdrawn. Board Engineering Representative Watkins indicated as a condition of any approval granted it should be stipulated that the Township will not be dedicated to the Township and that the Township will not own. Board Engineering Representative Watkins stated if the Department of Transportation does not like this then the applicant will have to come back to the Board and design the road in accordance with Township standards to possibly take it over.

Township Committeeman Carman stated he agrees with Board Engineering Representative Watkins recommendation. Township Committeeman Cafero asked if the Board Professional's have any comments concerning the variances requested? Board Planner Polistina advised the only comments he has is within his report. He indicated he does not see any problem with granting the variances requested. Board Planner Polistina stated there is no negative impact to the zone plan or zoning ordinance. Township Administrator Miller indicated the objectors placed nothing on the record concerning the sign variances nor did anyone else.

Motion Carman / Eykyn to grant requested checklist waiver(s): Vote 8 Yes: Aponte, Carman, Eykyn, Kearns, Cafero, Miller, Rosenberg Saslav

Board Planner Polistina stated the applicant has withdrawn the request being sought for design waiver number one (1) as listed on the agenda.

Township Administrator Miller indicated the design waivers requested are in order to save a large amount of trees. He indicated if the soils are found inappropriate they will be excavated and replaced with suitable soils based on the Township Ordinance requirements. Township Administrator Miller further advised that the Board has granted retaining walls at other sites, which work.

Township Administrator Miller advised the objectors two (2) engineer's and soil's professional did not inspect any of the basins with the retaining walls, however, a picture of the Marriot basin was taken. He advised not much information was provided to the Board from them concerning this. Township Administrator Miller indicated the basins will have fences around them for safety.

Township Administrator Miller indicated because the basin is privately owned the 15' ft. perimeter access way is not needed because the Township will not be taking responsibility for it. Township Administrator Miller also noted Mr. Johnson did not give an opinion concerning whether the design of the basins were reasonable. He did indicate that the objector did present conflicting exhibits (013-11 and O24-11) with respect to how large the basin would be if it

complied with the ordinance.

Township Administrator Miller stated when discussing strata one in the soil reports that were submitted it was determined that it was mainly sandy so it will drain. He also advised the proposed road will serve a public good by allowing movement between the Black Horse Pike and Old Egg Harbor Road. Township Administrator Miller also noted that 80% of the people using this road will do so because they are going to the shopping center, which was outlined in the traffic study. Also, he advised the Township has the control to determine the speed on this road.

Township Administrator Miller indicated he feels the applicant has provided enough proof that the proposed will benefit the community. He also indicated the owner will be responsible for the basins care and maintenance, for which the Township has an ordinance to make sure the applicant does maintain the basins. Township Administrator Miller explained that based on all these reasons he will support the granting of the design waivers requested.

Township Committeeman Carman advised Township Administrator Miller hit most of the points. Vice-Chairman Aponte stated he also agreed. He further noted the applicant will have a performance and maintenance guarantee with regards to the basin. He also stated if there is a plume found on site then the Department of Environmental Protection will have to deal with this issue. Board Member Saslav advised Township Administrator Miller hit on the connector road and the benefit it will have by taking some relief off of other roads. Township Committeeman Cafero stated Mr. Johnson advised the water in the basin will be 1 ½ ' ft. after 72 hours, thus he has no issue. Vice-Chairman Aponte stated he does not believe the professional's presented by the objector were as creditable as the applicant's professional's.

Motion Carman/Rosenberg to grant design waivers #2, 3, and 4 as listed on agenda. Vote 8 yes: Aponte, Carman, Eykyn, Kearns, Cafero, Miller, Rosenberg Saslav

Township Administrator Miller stated shopping center this large need signs for each tenant that are large enough to direct people to the correct entrances. He advised it is also a safety issue. Township Administrator Miller indicated the signs also allows the motoring public to identify where they are going so they can determine where to park and where to enter the building. He indicated the applicant is seeking a reasonable request and since there were no objections from anyone during hearing he has no problem granting the relief sought.

Township Committeeman Cafero stated the objectors did not object to the variance relief sought for the signs and no one else from the public did either. Vice-Chairman Aponte indicated this is a huge property and the signs help the public to get around.

Motion Miller/Rosenberg to grant requested variance relief: §225-63A: Building Mounted Signage (Quantity): Three (3) building mounted signs permitted for each tenant (three (3) tenants proposed for one (1) building), WalMart one (1) tenant is proposing four (4) building mounted signs. Vote 8 Yes: Aponte, Carman, Eykyn, Kearns, Cafero, Miller, Rosenberg Saslav

Township Committeeman Carman stated the buildings are so far back off the road way the applicant has to seek variance relief in order to make them visible. He indicated it is a safety factor.

Motion Cafero/Carman to grant requested variance relief: §225-63A(1): Building Mounted Signage (sign area): Building mounted signs shall not exceed two (2) square feet in area for each one (1) foot width of the front building facade which is devoted to the business to which is attached and not to exceed 250 sq. ft. The applicant is proposing four (4) building mounted signs for the WalMart with a total area of 550.64 sq. ft, in lieu of the maximum area of 250 sq. ft. permitted for a business with a front facade of 500 ± feet. Vote 8 yes: Aponte, Carman, Eykyn, Garth, Kearns, Cafero Miller, Rosenberg Saslav

Township Administrator Miller asked for clarification. He indicated the only reason this variance is being requested is for the star? Board Engineering Representative Watkins stated it is a spark. Township Administrator Miller stated the lettering of the Walmart name meets the ordinance, however, there is a small spark on top of the name for which the variance is requested.

Township Administrator Miller stated since the variance is not for the whole sign just the spark which is recognized trademark, he has no issue in granting the request. He stated it does not create a safety issue and it does not detract from the building. Board Member Kearns advised he believes the same issue had to be done for the Lowe's. Township Administrator Miller indicated the same variance was requested for the Sam's Club. Therefore, the Board has made exceptions when it had to do with trademark issues. Board Planner Polistina also added the building is large and is set back off the road, so a larger sign is needed for visibility.

Township Administrator Miller stated the front yard setback is 80' ft. and the store is about 200' ft. off the road.. Board Planner Polistina the building is significantly set back so the signs need to be visible from the Black Horse Pike.

Motion Miller/Cafero to grant requested variance relief: §225-63A(3): Building Mounted Signage (vertical dimension): building mounted sign shall have a vertical dimension in excess of five (5') feet. Applicant is proposing a building mounted sign with a vertical dimension of eight (8') in lieu of the five (5) feet is permitted Vote 8 yes: Aponte, Carman, Eykyn, Garth, Kearns, Cafero, Miller, Rosenberg Saslav

Board Solicitor Brown advised there is only one (1) condition with respect to this application. He advised the applicant has agreed to maintain ownership of the roadway. He further noted the applicant agrees to take responsibility of maintaining the roadway also.

Board Solicitor Brown explained the applicant must apply and receive the necessary approvals from the Department of Transportation based on their issued on December 30, 2010. He further advised should the applicant not receive approval from the Department of Transportation they must return to the Board and meet the requirements of a public street based on the ordinance.

Township Administrator Miller indicated he does not believe it is up to the Board to determine the standard for the Department of Transportation. He stated they will do this. Township Administrator Miller indicated the Department of Transportation did modify their position from a municipal street to a road that functions in the that capacity. He stated he is of the opinion for it to function in that capacity it is because it moves people from one public point to another.

Township Administrator Miller indicated the Township has the right based on the ordinance to establish a speed limit. He stated Mr. Litwornia provided testimony that the speed limit would be

between 25 to 30 miles per hour, however, within Chapter 213 of the Township Code the speed limit for the Shore Mall is 15 miles an hour and have a perimeter road. He stated other shopping centers also have a speed limit of 15 miles an hour. Township Administrator Miller advised he sees a similar speed limit for this shopping center.

Township Administrator Miller explained that he was at the Shop Rite last night. He indicated most people were going less than ten (10) miles per hour. He stated it is an acceptable speed when you have the pedestrian traffic moving in and out between cars and going in and out of the facility. Township Administrator Miller advised the Shop Rite also has a perimeter type road.

Township Administrator Miller stated as a condition of the road way it should be referenced that the Township will not own it, the Township is not taking ownership of it. He stated should this cause the applicant to return to the Board so be it, due to the Department of Transportation to determine otherwise.

Township Administrator Miller advised he did want to express there is a community purpose being served. He stated the applicant is placing a mural on their building which is considered art in a public place. He advised Mr. Dotti has indicated the walls proposed along the bays of the building and the buffer proposed along Old Egg Harbor Road for the residential properties is well screened. Township Administrator Miller further explained that the delivery trucks will be entering the site off the Black Horse Pike and not Old Egg Harbor Road, which based on the design benefits the Township and the residential neighborhood. He stated based on this he can vote in favor of the Walmart and the other commercial buildings.

Township Committeeman Cafero stated for the past six (6) months this application has been scheduled and this application has been around for more than six (6) years. He advised he has been present and he advised the applicant has placed a tremendous effort into the proposal. Whether it was the eight (8') foot or ten (10') foot berm along Old Egg Harbor Road with the eight (8) or nine (9) foot of vegetation on top to protect the residential neighbors or having the trucks coming in and out of the facility off the Black Horse Pike. He stated this project will serve the community in many aspects.

Township Administrator Miller added that during the cross-examination of the Mr. Zimmerman he indicated the proposed road was a functional equivalent, as requested in the letter from the State Department of Transportation. Township Administrator Miller advised even the objector's planner agreed the road meets the intent of the State. He indicated that from the standpoint of the pavement design, the speed limit setting, and should the State not agree the road meets the intent of their letter then they will advise the Township and the applicant.

Vice-Chairman Aponte stated he agrees with Township Administrator Miller and Township Committeeman Cafero. He stated the applicant had done a lot to mitigate noise and to take care neighbors by proposing a berm and parapets. He indicated if there was an issue brought up in the process the applicant addressed it. He stated this is a large property and if approved it will be in the Township for a long time, thus he indicated he would vote in favor.

Board Member Kearns stated he has lived in the Township for 38 years and he is impressed with the professionalism presented with this project. He stated he is in favor of the project. Board Member Saslav stated the development of this parcel will be an asset to the community.

Motion Saslav/Rosenberg to grant conditional preliminary and final major site plan

approval Wal-mart, commercial buildings: “a” and “b”. Vote 8 yes: Aponte, Carman, Eykyn, Garth, Cafero, Miller, Rosenberg Saslav

Township Committeeman Cafero asked if there is any discussion the Board Solicitor may have concerning this request. Board Solicitor Brown advised the applicant has advised they will table the application and there is nothing that stops him from doing so. He indicated if the applicant were to table the application the applicant can come back and develop the pads in the future.

Attorney Nehmad indicated his client will do whatever the board would like. He stated if the Board is hesitant the applicant will come back, however, if the board would like to make a determination tonight this will be fine.

Board Solicitor Brown asked if the Board has any concerns. Township Committeeman Carman asked Board Planner Polistina that he felt the applicant met the conditions of the conditional use? Board Planner Polistina stated all the pads sites meet all the conditions for the conditional use. Township Committeeman Carman stated the pad sites integrate well with the plan. He stated he does not have a problem with it all. Township Committeeman Cafero advised he agrees with Township Committeeman Carman. Vice-Chairman Aponte stated he does not have a problem with the pad sites. He indicated the Township professionals have advised it is acceptable.

Motion Carman/Cafero to grant conditional preliminary major site plan approval for pad sites designated #1, #2, #3, #4, and #5. Vote 8 Yes: Aponte, Carman, Eykyn, Garth, Kearns, Cafero, Miller, Rosenberg Saslav

Township Administrator Miller asked for a clarification. He asked if the applicant comes in for final approval and they do not have the stacking, even though, he indicated he has counted the proper number of stacking spaces, could the applicant amended the preliminary approval for the pad site to meet the conditions. Board Solicitor Brown stated they would have the ability.

Board Planner Polistina advised the applicant does not know who the users of these pad sites will be, therefore, they may have to modify regardless. Township Administrator Miller stated he would like to grant the preliminary approval for the pad sites. He feels they met the intent of the ordinance and when they come back we can deal with each one specifically with both the final and possible amended preliminary.

Board Member Eykyn asked at that time the Board would be able to see what the setbacks will be for the proposed pads. Board Planner Polistina stated this is correct and the applicant would have to meet the conditions of the conditional use.

Attorney Nehmad stated he and his client would like to thank the Board and the applicant looks forward to working with the Township.

Attorney Gasiorowski stated he would like to thank the board for its time and patience. He stated he appreciates the courtesies that have been extended to him and nothing that was said by him should be taken personal. He stated he took nothing personal and he has enjoyed appearing before the Board.

SUMMARY MATTER(S):

1. Discussion of matters pertaining to the Board:

Township Administrator Miller advised during the last Township Committee meeting Ordinance 16-2011 was introduced. He stated this ordinance prohibits auto service centers from developing their facilities in the fashion where their garage doors would be facing the road way. Township Administrator Miller indicated this ordinance originated from a Planning Board recommendation.

Township Administrator Miller advised the Board must make a motion advising this ordinance is consistent with the master plan.

Motion Kearns/Saslav to recommend Ordinance No. 16 of 2011, to Township Committee for review and approval, finding it meets the requirements of the Master Plan. Vote 8 Yes: Aponte, Carman, Eykyn, Garth, Kearns, Cafero, Miller, Rosenberg Saslav

Motion Eykyn/Kearns to adjourn at 11:15 P.M. Vote 8 Yes: Aponte, Carman, Eykyn, Garth, Kearns, Cafero, Miller, Rosenberg Saslav

Respectfully submitted,

Theresa Wilbert, Secretary

