

In compliance with the Open Public Meetings Act of the State of New Jersey adequate notice of this meeting has been mailed to The Daily Record and posted at the municipal building.

ROLL CALL:

Members Present: Joe Fleischner, Judy Johnson, David Koptyra, Nelson Russell (7:04), Brian Schaechter, Kim Mott, Frank Wilpert, Jr., Kim Mott, Howie Weiss

Members Excused: Dan Nelsen, Sandra Stotler, John Mania

Professionals Attending: Chuck McGroarty, Planning Consultant, Eugene Buczynski, Township Engineer, Edward Buzak, Esq., Catherine Natafalusy, Planning Administrator/Secretary

Professionals Excused: Tiena Cofoni, Esq.

APPROVAL OF MINUTES

August 21, 2014 Public Meeting

Motion: Brian Schaechter
Second: Kim Mott

Roll Call:

Brian Schaechter - yes
Kim Mott - yes
Howie Weiss - yes

APPROVAL OF RESOLUTIONS

Resolution #PB 10-23 – Richard & Lydia Bruno (Extension) – (Block 1201, Lot 2.02)

Motion: Joseph Fleischner
Second: Brian Schaechter

Roll Call:

Joe Fleischner - yes
Brian Schaechter - yes
Kim Mott - yes
Howie Weiss - yes

Resolution #PB14-08 – John Davis, Sr.
(CARRIED TO OCTOBER 16 MEETING)

COMMITTEE REPORTS

MR. WEISS: All right committee reports. Judy Johnson you have something from the Mayor.

MS. JOHNSON: I do. He said he expects the Marveland project to break ground soon; he expects Siemens to seek a CO in February or March and hopefully expects a large development matter to be announced within 60 days.

MR. WEISS: It sounds like a little teaser to me.

MS. JOHNSON: It is a tease yes that's all he gave.

MR. WEISS: All right very good thank you very much. John is not here, Nelson is not here, Joe from the ordinance committee?

MR. FLEISCHNER: We did hold an ordinance committee meeting and Chuck do you want to comment on it?

MR. MCGROARTY: All right the ordinance there's a first reading scheduled I think next Tuesday?

MS. NATAFALUSY: Yes.

MR. MCGROARTY: With the Council next Tuesday it will come back then to the Board for review but it's a long ordinance and it goes into all of the changes or most of the changes that were recommended in the 2013 reexamination report and a lot of other administrative changes that Catherine had put together. So you'll be seeing that soon.

MR. WEISS: Perfect that's next week. Thank you and I do thank Joe and Kim for meeting with Chuck and Catherine and myself we got very productive on that ordinance. Street naming I have nothing and Dave anything from open space?

MR. KOPTYRA: Nothing.

MR. WEISS: Perfect. I just have one other bit that's not on the agenda tonight. Next week we have an application by Kirk Allen Trucking, I'm going to encourage our site visit committee which is Joe, who else Catherine? I know you told me I'm sorry I forgot.

MS. NATAFALUSY: Joe Fleischner, Dan Nelsen, Nelson Russell and Brian Schaechter.

MR. WEISS: Okay so I'm going to encourage the committee to go but I also if you can get to the site by next Thursday and take a look. The information that's been given to me is that there might be some discrepancy between what maybe you'll look at on paper versus what you'll see with your eyes. So I'm encouraging everyone on the Planning Board at separate times, to not deal with a quorum to just take some time and go over to Kirk Allen Trucking. Catherine the information has that been sent out?

MS. NATAFALLUSY: Tomorrow I'll be sending out (inaudible) to the Board.

MR. WEISS: Okay I happened to get Gene's report but Catherine will send it out tomorrow so maybe early next week.

MS. NATAFALUSY: Could you let me know possibly when you're going so I can let Mr. Allen know?

MR. WEISS: Okay.

MS. NATAFALUSY: If you have an idea of when you're going you can give me a call.

MR. WEISS: That goes for everybody. Perfect okay just for the record Nelson has arrived, welcome. Nelson do you have any environmental commission, usually it's the second meeting of the month.

MR. RUSSELL: The only thing of interest is that we discussed getting speakers at the library to speak on environmental issues.

MR. WEISS: Okay.

MR. RUSSELL: That was it.

MR. WEISS: Thank you. Okay there's no other legal report, engineering report we're ready to move on?

APPLICATION #PB 14-12 – MICHAEL & COLLEEN SZAREK – (Block 7704, Lot 42)

MR. WEISS: All right that brings us to our first developmental matter of the evening we'll first hear PB 14-12 Michael & Colleen Szarek requesting bulk variances for 4 Fairfield Way which is Block 7704, Lot 42. Mr. & Mrs. Szarek if you would you come to the front table. Our attorney will swear you in if your both going to testify then the attorney will swear you both in.

(MICHAEL & COLLEEN SZAREK SWORN IN FOR THE RECORD)

MR. BUZAK: Please be seated and just for the record can you restate your individual names with your addresses.

MS. SZAREK: Colleen Szarek 4 Fairfield Way, Budd Lake.

MR. SZAREK: Michael Szarek 4 Fairfield Way, Budd Lake.

MR. WILPERT: Mr. Weiss I'm going to have to excuse myself from this matter.

MR. WEISS: You just got here.

MR. WILPERT: I know but I do sorry.

MR. WEISS: All right thank you have a seat relax. Okay so Mr. & Mrs. Szarek we all have a copy of the application and what you're requesting. What I need you to do is walk us through the property, the conditions of the property what's there now and what you want to do and perhaps why you want to do it. What we're going to do is we're just going to create a record and you'll be telling us as if we have nothing in front of us.

MR. BUZAK: But we do have in front of us the submission that you made the two sheet submission and the survey so if you want to make reference to that you can as well and we'll all pull it out and take a look at it if that would be helpful to you.

MR. WEISS: Okay.

MS SZAREK: We are moving the shed in the front next to the shed on the side of the house.

MR. WEISS: Okay so let's try to . . what you just told us is that there's two sheds in front of the house.

MR. SZAREK: One on the side and one (inaudible) in the front and take that one and put it behind the other one and get rid of the little one.

MR. BUZAK: All right why don't we do this we all have this map that shows the sheds can we do this I'm going to label the one closest to the dwelling house to the left and closest to Fairfield Way shed #1, and the one that looks like it's attached to it that's closer to the side line we'll label that one number 2 and is there another shed on there or those are the only two sheds?

MS. NATAFALUSY: Are you looking at the existing conditions or the proposed?

MR. WEISS: We're looking at proposed.

MR. BUZAK: I don't know what I'm looking at. Oh okay I'm sorry these are the proposed? I'm sorry.

MR. WEISS: Yeah we're used to seeing page one as existing. So page two is existing conditions you have two sheds one of them is larger than the other, as we orientate ourselves on the plan the one that's lower we're going to refer to that as shed one.

MR. BUZAK: Right the larger shed is number 1 and then the one behind it to the right will be number 2 and now there's a third shed that's off this lot to the right which is number 3. All right so if you can refer to one, two and three then we'll be able to . .

MS. NATAFALUSY: Can I just clarify this okay? The Szarek's have sheds on the property now okay, they're removing one of the sheds if you look at the existing conditions map they're removing one of those sheds. The shed that is on the Johnson Avenue property that's their shed and years ago was put down on that property; they are relocating that shed onto their property behind the existing wood shed.

MR. BUZAK: Okay.

MS. NATAFALUSY: So they're removing one and relocating one that's from another property onto their property.

MR. BUZAK: All right and for the purposes of the record if we label the sheds as we've just done, the big one to the left number one closest to Fairfield Way on their property, the one behind it number two and the one off of their property number three you can now explain to us or you explain to us what you're doing.

MS. SZAREK: Remove number two.

MR. BUZAK: All right you're going to demolish number two.

MS. SZAREK: Right. Number three is behind number one.

MR. BUZAK: Mam you're going to have to speak up I know it's hard but I'm having difficulty hearing you.

MS. SZAREK: I had surgery so it's hard to.

MR. BUZAK: Okay well maybe your husband can . .

MR. SZAREK: We want to take shed #3 and move it behind shed #1 and take down shed #2.

MR. BUZAK: Okay.

MR. SZAREK: The reason we have all these sheds is we have a large family and we have a small house and we have no room. When we put these sheds up (inaudible) we spoke to the old . . Sonny Wolski he didn't say that any variance would be needed he said just put it up and (inaudible). Now of a sudden we have you know we need a variance.

MR. BUZAK: Now is there an existing house on the lot that's not your lot to the . .

MR. SZAREK: Yes.

MR. BUZAK: There is a house there.

MR. SZAREK: Yes.

MR. BUZAK: And I assume you have their permission to remove your shed from there and relocate it onto your property is that correct?

(CANNOT HEAR APPLICANT SPEAKING)

MR. WEISS: Okay so that' the first part of your application is to demolish the one shed and bring the other shed over to you resulting in two sheds on the property. Is that the extent of what you're asking tonight?

MS. NATAFALUSY: There's a pool on the property that they need to have a variance for because it doesn't meet the setbacks. Pools have to be 15 feet from the rear and the side property lines and the pool is 6 or 7 feet from the rear lot line and about 9 feet from the side lot line so they need a variance for that.

MR. WEISS: So tell us a little bit about the swimming pool, how long has that swimming pool been there?

MR. SZAREK: 22, 23 years.

MR. WEISS: Was it there when you bought, did you put the pool up?

MR. SZAREK: We bought a smaller pool and got a permit for that again we spoke to Sonny and told him that the pool was deteriorating and we wanted to put up a bigger one did we need to do anything? He said no as long as you're taking one down and putting one up in the same spot.

MR. WEISS: And that pool has been there for 20 some odd years?

MR. SZAREK: Yes.

MR. WEISS: Okay so I just want to make sure that the pool is . . . it also needs a variance for where it is so what we want to try to do is bring everything under compliance. So the swimming pool, Catherine do you want to read the bulk standards?

MS. NATAFALUSY: For the property? Okay I can do that. In addition to the variances for the pool and the shed they need variances for exceeding the permitted amount of building coverage and impervious coverage. Calculations by our office calculate that the existing coverage on the property is 49 percent where 25 percent is the maximum impervious permitted in the R-2 zone. Building coverage

with the existing and proposed structures will be 25 percent whereas a maximum is 15 percent so they are almost double over on impervious coverage and 10 percent over on building.

MR. WEISS: Okay so do you understand what that means? Okay what happens is according to the zone you're allowed to cover if you will or build upon 25 percent of the property. And based on the calculations that the engineer has done your property is covered by 49 percent of your property so your exceeding the standard by double. And that's why you're here for a variance to clean it up. As far as the building area the same thing 15 percent of our lot can be covered and with the buildings that are there now you're at 25 percent. So again a variance needs to be issued in order to come into compliance with the bulk standards. So we take those two items which that's why I asked if you understand it, and you add that to the swimming pool which is encroaching on the rear and side yard, and as far as the sheds are encroaching on the front yard setback. For both sheds Catherine?

MS. NATAFALUSY: Yes.

MR. BUZAK: Can you give us the numbers Catherine I don't have that report for some reason so the pool in the rear yard is 15 feet required and they have between 6 and 7 feet?

MS. NATAFALUSY: 6.29 feet from the rear lot line and 9 feet from the eastern side lot line.

MR. BUZAK: And what's the side yard requirement?

MS. NATAFALUSY: 15.

MR. BUZAK: 15 so it's 15 rear and 15 side?

MS. NATAFALUSY: Right.

MR. BUZAK: And the front where the sheds are proposed?

MS. NATAFALUSY: Okay the shed that's existing that they want to maintain is located approximately 6 feet from the front lot line on Fairfield Way and the front yard setback is 65 feet.

MR. BUZAK: And the second one?

MS. NATAFALUSY: This relocated shed is proposed to be situated approximately 20 feet from the front lot line on Fairfield.

MR. BUZAK: Okay and that would be covered by the 65 foot as well.

MS. NATAFALUSY: Right.

MR. BUZAK: Is there any issue regarding the shed in the front yard separate and apart from the setback?

MS. NATAFALUSY: No.

MR. BUZAK: No okay.

MS. NATAFALUSY: It should be for the record that this property is in the R-2 zone, minimum lot size of 20,000 square feet is required and this lot is 6,559 square feet so it's a nonconforming lot within the zone district.

MR. BUZAK: 65 . . .

MS. NATAFALUSY: 6,559 square feet. I also did calculations just for the Board's information based on the building coverage; the house alone is 19 percent coverage on this lot so anything added on it's over what the standards would be.

MR. WEISS: Mr. Szarek can you tell us about the other homes in the neighborhood? What we were just told is obviously the house itself puts you over the bulk standard for coverage. And so we consider that a preexisting nonconforming situation. How long have you lived in the house?

MR. SZAREK: 33 years.

MR. WEISS: 33 years and tell me about other houses in the neighborhood are there other homes of similar size? Because again the zone calls for essentially half an acre 20,000 square feet and yours is not even close, your property is not even close. And my question just so we can become familiar with the neighborhood most other homes are approximately the same size?

MR. SZAREK: Some might have a little bit more property but not much.

MR. WEISS: But it's all close enough.

MR. SZAREK: Close enough yeah.

MR. WEISS: Not like you have a very small . . .

MR. SZAREK: I have the smallest one.

MR. WEISS: But you might be technically the smallest but it's not like your living amongst 4 acre homes or some big pieces of property. All the homes are essentially in this same area.

MR. SZAREK: (Inaudible).

MR. WEISS: Okay so what I want you to tell us is tell us about the condition of the property, do you have any kind of steep slopes is it a flat piece of property?

MR. SZAREK: No it's on a hill.

MR. WEISS: It's on a hill, where does the slope go? Away from the house?

MR. SZAREK: Down the back, down the sides (inaudible).

MR. WEISS: Okay so essentially Catherine technically we're looking for the issuance of four variances.

MR. BUZAK: Well I just want to get this straight for the purposes of the record. The pool, we're looking at the variance for the pool side yard and rear yard.

MS. NATAFALUSY: Um, um.

MR. BUZAK: We're looking at a variance for the sheds for just front yards for both of those.

MS. NATAFALUSY: Right.

MR. BUZAK: While that lot is undersized I'm assuming that we are not looking at granting a variance for that that's a preexisting house on a preexisting lot. Is that correct?

MS. NATAFALUSY: Right.

MR. BUZAK: So that's a whole other issue. If we grant a variance for an undersized lot with an undersized structure on that eventually when this house is eliminated its old and demolished and decrepit, one if we granted a variance they can simply rebuild that house exactly the way it is. The purpose of the change in the zone I assume is an attempt to upgrade the area and create larger lots, etc. so we shouldn't be encouraging that particularly when we don't have to. They have a right to continue to live there and do what they're doing there, they don't have a right to expand what they have but they have a right to keep that there. So I didn't see that the only thing I saw in the application was the pool and the shed.

MS. NATAFALUSY: Maintain the pool and the sheds right.

MR. BUZAK: So let's not expand the application beyond what's here. I assume the notice and all of that referred to just those two things.

MS. NATAFALUSY: Um, um.

MR. BUZAK: Now Catherine with respect to the coverage issue was there again they're not increasing the coverage from what was there before but is it because . .

MS. NATAFALUSY: From what's there now you mean?

MR. BUZAK: Yeah let me ask this question perhaps. How did this come before us since all of this existed and now as the applicants are saying they've now apparently been told to come. Or maybe you can tell us how this came about?

MS. NATAFALUSY: I can tell you. There was an issue with neighbors and it was brought to the town's attention so we followed up on it.

MR. BUZAK: Okay.

MS. NATAFALUSY: I'll leave it at that.

MR. BUZAK: Okay and that's fine and was the determination made that the, and I'm asking this to Catherine not to you and there's a reason for that, was the determination made that the sheds, leaving aside the one off the property the sheds that were put on the property and the pool that was put on the property were installed without approvals that has now been determined should have been obtained.

MS. NATAFALUSY: Yes.

MR. BUZAK: Okay and the purpose then of this application is to legitimize or assuming it was granted to legitimize all of that.

MS. NATAFALUSY: Yes.

MR. BUZAK: Okay so in that case then we need to deal with the two sheds that are going to remain on the property, we're going to have to deal with the pool that is going to remain on the property that was both of which were the subject matter of the inquiry and as a result of those items since both of them involve impervious area and building coverage, is that correct Catherine that those are included in the building coverage and impervious area?

MS. NATAFALUSY: Yes.

MR. BUZAK: That's an additional violation so we have to cover those six. We don't have to cover the lot size.

MR. WEISS: And that's the way I have it so I know you went through with the pool it actually has a rear yard and a side yard variance request. The shed there's two sheds that's four, the building coverage five, the impervious coverage is six.

MR. BUZAK: Correct.

MR. WEISS: Okay this is an interesting application because everything is already there you're not adding anything.

MS. NATAFALUSY: Well they're relocating one shed from their neighbor's property onto their own property.

MR. BUZAK: What's the relative size of the shed that's being removed as compared to the shed that you are relocating to the main lot? Is the shed on the neighbor's property larger than the one that you're removing?

MR. SZAREK: Yes.

MR. BUZAK: Okay.

MR. SZAREK: By about (inaudible).

MR. BUCZYNSKI: It's more than 6 square feet it's . . .

MR. BUZAK: How wide is the shed? So it's about 72 square feet? More okay so by moving the shed that's now off of the property onto the property they're going to be increasing the building coverage and impervious area by another 72, roughly 72 square feet and that was included in the calculations.

MS. NATAFALUSY: I included that in my calculations.

MR. BUZAK: Okay.

MR. WEISS: As we try to develop the landscape and area of your home Mr. Szarek would you say there's other homes in the neighborhood that have sheds similar to yours? Are there homes in your neighborhood that have swimming pools similar to yours above ground connected to a deck?

MR. SZAREK: (inaudible).

MR. WEISS: So, and this is interesting since your already there but your pool and your sheds don't stand out as an abnormality compared to others in the neighborhood. That's a fair statement? I've got to be honest with you Mr. Buzak I'm not really sure . . .

MR. BUZAK: I'll ask a few more questions if I could and maybe develop a few more things. Can you tell us what's behind you, behind the pool?

MR. SZAREK: Woods.

MR. BUZAK: Woods? Okay and do you know when you say woods is it a vacant lot or is it open space?

MR. SZAREK: Woods (inaudible) Route 46 to the left of it is 7-Eleven, the right of it is the neighbor in question.

MR. BUZAK: On Route 46 you're referring.

MR. SZAREK: The neighbor on Johnson Avenue.

MR. BUZAK: Okay and I see the property on which the shed is being moved they have an above ground pool and that looks like that's . . . is that in the front yard of that house?

MR. SZAREK: That's the back of the house.

MR. BUZAK: And where does that house front?

MR. SZAREK: Johnson Ave.

MR. BUZAK: Okay which doesn't show . . . oh maybe it shows on the survey?

MR. WEISS: Is there a concern about that home?

MR. BUZAK: No no I was just trying to get oriented to see what the neighborhood was like. How about on the, as I'm looking at the same drawing that you are to the left of you to I guess it's the west, what's next to you on that side?

MR. SZAREK: Woods all around us except on the right side.

MR. BUZAK: Also woods.

MR. WEISS: The right side being where the shed is being relocated from.

MR. BUZAK: Correct.

MR. WEISS: Okay.

MR. MCGROARTY: Actually the pool is I may on the adjacent lot is probably also in the front yard because Fairfield goes through it has two front yards then.

MR. BUZAK: Okay that was I was thinking as I looked on the map.

MS. NATAFALUSY: But his lot line is here.

MR. MCGROARTY: Oh his lot line is out here.

MS. NATAFALUSY: It's not . . .

MR. MCGROARTY: So it's set back okay.

MR. BUZAK: Oh I see his lot line is way out here. So Fairfield ends there? Fairfield Way ends . . .

MR. SZAREK: We're the only house on Fairfield Way.

MR. MCGROARTY: Oh so it's a paper street.

MR. WEISS: Let me do this I don't know if you have any other testimony for us Mr. Szarek you've answered the questions we heard you say that you put up the shed because you didn't realize that they needed variances. That's not an uncommon situation it's really our goal to make as many conforming situations as possible. This application is a little bit different because I see there's a lot of interest from the community, from your neighbors. And I'm assuming that the folks from the audience are here from the neighborhood so I can't think of any other questions so perhaps before I go back to the Planning Board I'm going to open it to the public and let's hear what brought some of the people out and maybe there are concerns that we could all work with. Before I do that Brian?

MR. SCHAECHTER: Mr. & Mrs. Szarek I'm looking at the drawing proposed conditions, the wood shed number 3 which is the one you're moving from Johnson Avenue property over to your property, is there a reason why you staggered it? Is it because of the hill that's in the back?

MR. SZAREK: No it's just that it's more convenient to get to it up there than it is to go behind the other shed and it's flat there.

MR. SCHAECHER: And if you pushed it back the additional 6 feet that he needs so you don't need a side variance that would be a problem?

MR. SZAREK: Further to the left?

MR. SCHAECHTER: Further to the right closer to your house.

MR. FLEISCHNER: You wouldn't need a variance.

MR. SCHAECHTER: So it didn't stick out.

MR. SZAREK: Then it would be right in front of our house.

MR. BUZAK: Catherine is it true we're not giving a variance for the side yard for the shed. I guess it complies with . . .

MS. NATAFALUSY: Yeah because it's an accessory structure.

MR. BUZAK: Okay so . .

MR. WEISS: They're both front.

MR. BUZAK: The front yard . .

MS. NATAFALUSY: Actually you know if we scale out that area 60 feet deep so 65 foot setback he can't meet that setback for an accessory structure in that area.

MR. WEISS: So again it's a preexisting nonconforming situation.

MR. BUZAK: Well the house is and the you know the house is well into the front yard where it's located.

MR. WEISS: Okay are there any other questions from the Planning Board?

MR. FLEISCHNER: Just one, how old is this house?

MR. SZAREK: (Inaudible).

MR. FLEISCHER: Okay because I thought it was there for a while. Okay all right because most of the houses around there weren't there, there were a lot that were knocked down, etc. over the years. Okay thank you.

MR. WEISS: Okay so let's do this there's a lot of folks from the public here, if anybody from the public had a comment or a question I'd invite you to come to the podium state your name and address for the record and tell us what brings you out here and what the concern is.

MS. SZELL: Hi I'm Melissa Szell I'm from 4 Johnson Avenue.

MR. BUZAK: Can you spell your first and last names.

MS. SZELL: Sure Melissa is (M-E-L-I-S-S-A) and last name is Szell (S-Z-E-L-L). Basically why I'm here tonight is because their yard actually is pretty much right next to our yard and we're attached by a fence.

MR. BUZAK: Excuse me mam I'm sorry if you're not going to ask any questions which you don't have to then we need to swear you in because your testimony is going to be part of the record.

MS. SZELL: Okay well then my question is . . .

MR. BUZAK: You can testify as well just I want to swear you in before you do that. So why don't I do that and this way then if you switch from questions and testimony we don't have to worry about that.

(MELISSA SZELL SWORN IN FOR THE RECORD)

MR. BUZAK: Please proceed I'm sorry to have interrupted you.

MS. SZELL: So basically why I'm here tonight is because our property is right next to our pretty much is connected by a fence. And when we tried to do anything on our property because of our land since we're in the same situation as them where we can't go anymore than 25 percent and our lot is very small. I've tried to put a patio in and I was denied because I didn't have enough lot coverage because our driveway and our house is taking up all of our property usage. So the reason why I came tonight is because that property obviously consumes 49 percent coverage and we're only over maybe by 27, 28 percent. And we've been denied for permits for our patio. So I don't understand why we would be denied and then others you know would be allowed to have all this done and this is one of the reasons why I'm coming here because basically if they get approved for these variances your basically saying that these laws that are in place saying your only allowed to use 25 percent doesn't mean anything if you want to pay for a variance.

MR. BUZAK: Can you just identify where you are?

MS. SZELL: I have a picture if it makes sense.

MR. BUZAK: I'm sorry?

MS. SZELL: I brought pictures if it makes it easier.

MR. BUZAK: Okay as you face the applicant's property is your lot to the right?

MS. SZELL: In the backyard yes right.

MS. NATAFALUSY: Behind the lot with the above ground pool.

MR. BUZAK: Oh behind the lot with the above ground pool.

MS. NATAFALUSY: Yes.

MR. BUZAK: Okay. And that fronts on what street?

MS. SZELL: Johnson Avenue.

MR. BUZAK: Okay.

MR. SCHAECHTER: You're closer to Route 46.

MS. SZELL: Closer to Route 46 yes.

MR. BUZAK: Lot 40? Okay.

MR. WEISS: All right so you made a comment I just need a little clarification. You were denied, did you have an application in front of the Zoning Board?

MS. SZELL: We now have to file a variance for our patio in the back.

MR. WEISS: Okay so just to keep the record straight you have not been denied.

MS. SZELL: No we were.

MS. NATAFALUSY: They were denied a zoning permit.

MS. SZELL: I actually had put the patio in; I'm a new homeowner so I don't really know much about any of this stuff to be honest with you. And you know I'm learning the hard way obviously I put the patio in, me and my fiancé, without getting a . . . well the paver patio and did not get a permit and I was called on by the neighbor and told that we had to obtain a permit by who was it at the time.

MR. WEISS: Zoning.

MS. SZELL: Zoning told us that we had to obtain a permit for it so I submitted for a permit and they denied me for it telling me that I'm using more of my land than I'm allowed to. So the patio is still there and I now have to file for a variance for it in order to keep it.

MR. WEISS: That is the correct process.

MS. SZELL: Basically what they told me is that I'm not allowed to do anything on my property because I'm already over 25 percent of my land usage so anything that I do I would have to get a variance for.

MR. BUZAK: As do the applicants.

MS. SZELL: Yes.

MR. BUZAK: And it's not a dissimilar situation, they have sheds that they put up that now has been determined they put up without a permit and they were likewise denied a permit because they don't meet the requirements. And the remedy for that to attempt to resolve that is to file this application because this Board has the jurisdiction to deal with that.

MS. SZELL: Yes and the reason for all of this is because I brought it to the attention of the town because of the issues that we were having and you know it seemed like we were being treated unfairly. So this is how it all came about to be honest with you.

MR. WEISS: I think when you have a better understanding of the system you're realizing that you needed a zoning permit before you got a building permit or before you got the approval to build.

MS. SZELL: Yes.

MR. WEISS: You were denied if you will the zoning permit because of the standards that are in place and the variances required. We follow law, we follow law and variances are an allowable thing. Land Use Law permits requests like this any kind of varying from the established zone. Any applicant, yourself included has to make certain proofs, now as a homeowner I try to make the process a little bit

easier for you because It's kind of different language. If you sit around afterwards and there's some attorneys in the back room they don't get the help that I we give. So we're trying to establish, and you might see on your application positive and negative criteria and when you prove those then you've earned the ability to be considered for a variance. And so you said what good is the bulk standards if you just pay for a variance that's not really accurate. Anyone is afforded the ability to get a variance by making certain proofs. So if you can't prove the positive or the negative criteria, and I know your head spinning saying what does that mean . . .

MS. SZELL: No I understand.

MR. WEISS: As the Chairman it's my job to help you with that process so if in a month from now you come in front of us I would be helping you understand how to testify to the positive and negative criteria. And once you prove that then the Planning Board, and through the confirmation through from my attorney we will determine that you've made such proofs and we vote based on the merits of your application having nothing to do with theirs. And the same, their application will be judged based on what they provide having nothing to do with and their application will be judged based on what they provide having nothing to do with what you've been provided or denied.

MS. SZELL: I understand that.

MR. WEISS: So if we say yes to them it doesn't mean we're going to say yes to you but again we're not here to necessarily, arbitrarily turn anybody down.

MS. SZELL: My only other concern is the pool is not 15 feet from my yard either. That's another concern that I have being that I have children and you know I really don't care for the pool being so close to my property especially when their children are out in the pool playing. Because there has been you know when our dogs are outside it bothers our dogs because the kids do sometimes you know splash the dogs or you know . . .

MR. WEISS: I don't know if the Planning Board is the authority to make judgments on quality of life.

MS. SZELL: No I understand that but he's not set back the way he's supposed to so it is affecting us because it's not setback where it should be.

MR. BUZAK: So are you saying that if the pool were setback another roughly

MS. SZELL: If it was 15 feet from our fence if it's you know the way it's supposed to be 15 feet from the side and the rear yard and . . .

MR. BUZAK: Well it's not 15 feet from the side is that correct Catherine?

MS. NATAFALUSY: its 15 feet.

MR. BUZAK: Side and rear yard?

MS. NATAFALUSY: Yes.

MR. BUZAK: Does this meet . . . does this violate both?

MS. NATAFALUSY: Yes.

MR. BUZAK: I'm sorry okay.

MS. NATAFALUSY: So it's about 9 feet from their fence as opposed to 15 required.

MR. BUZAK: My mistake thank you.

MR. WEISS: It's an interesting concept because the Planning Board certainly, maybe I'm not right if I say this Mr. Buzak can say we don't like what we see and Mr. Szarek you have to rip it down. I suppose that's an option for us is that correct?

MR. BUZAK: Well it's an option to deny the variance and the consequence of that would be that yes.

MR. WEISS: But then at the same time the homeowner can come back to us tomorrow after he has to respond to the zoning officer who is going to fine him for being in violation would take the pool down and there would be nothing to stop them from coming back tomorrow and applying for a new pool application . . .

MS. SZELL: And I would be here again.

MR. WEISS: And because of now they have a smaller lot and if they could prove the positive and negative criteria they could most likely come in with a brand new application and get a pool. And I'm saying that without hearing anything about that.

MS. SZELL: And I might come in for an application for a pool myself because I do have children too.

MR. WEISS: So it's not the intention of the Planning Board to turn anyone down it's the intention to keep . . . to at least rectify those things that are in violation if you would or varying from the bulk standards.

MS. SZELL: Then I'm basically here to state why I think it shouldn't be allowed where it's at right now.

MR. WEISS: That we should not allow it.

MS. SZELL: Yes.

MR. WEISS: And I'm only concerned because if I listen to you and you want to do similar things on your property then . . .

MS. SZELL: Then I would be denied also I understand.

MR. WEISS: Okay. I don't know if it's going to work that way but . . .

MS. SZELL: No but I understand that there's a possibility of that I understand.

MR. WEISS: The comment is consistent I applaud you for that. Brian you're looking at me like you have a question.

MR. SCHAECHTER: When you bought your house did you buy it in the winter or was the pool . . . you know the pool has been there for 20 something years?

MR. SZAREK: Well we had a small pool and this pool has been there as long as we've been there.

MR. SCHAECHTER: How about the big pool?

MR. SZAREK: 23, 24 years.

MR. SCHAECHTER: So when you bought the house your new neighbor . . .

MS. SZELL: We bought the house in the spring and to get into everything with you basically when we bought the house our property wasn't marked. We had paid for a survey and they had recently, what two years ago now? Came out and surveyed our property and marked the property. We at that time found out that they had 60 by 10 foot of our property their fence was over on. So we after moving our fence taking back our property the pool then got closer to our property. Because at that time they were using our property and the current owner was unaware of it or never had the property marked and we didn't find that out until after we moved into the home and had our property surveyed. If that makes sense if not I can kind of clarify it.

MR. FLEISCHNER: Well I think if I may you do have recourse to go back to your mortgage company because before you close on the house a survey must be done. And if they didn't do the survey . . .

MS. SZELL: It was done but it wasn't marked. See I don't know any of that either so you know maybe I could have I have no idea. I mean like I said I didn't find out where my actual property lines were until I moved in.

MR. WEISS: That's not an issue for the Planning Board, Mr. Szarek I think you had a comment?

MR. SZAREK: When we bought the house there was an existing fence a wooden fence on the property (inaudible) we took it down and put a fence up in the exact same spot, a chain link fence. There was five additional people lived in their house never told us that our fence was on their property. They moved in said it was on their property we looked at our old survey (inaudible) and it started all this going back and forth. She took the fence down; she's using part of my fence as their fence I have no recourse to pay for my fence.

MR. WEISS: Oh okay Brian?

MR. SCHAECHTER: The fence is in the right spot now?

MR. SZAREK: To them yes.

MR. SCHAECHTER: To the property.

MR. SZAREK: Yes. The pool was setback to where it was supposed to be but according to our survey said setback but now it's different.

MR. SCHAECHTER: So the pool hasn't magically moved closer to their house or further from their house it has been in the same spot.

MR. SZAREK: It's in the same spot.

MS. SZELL: The fence was, their fence was originally on our property is what it was.

MR. SCHAECHTER: But the pool didn't move magically overnight.

MS. SZELL: No. So those are my concerns and that's the reasons why.

MR. WEISS: Anybody else from the public? Okay let me close it to the public. I don't know Mr. Szarek, Mrs. Szarek do you have any other testimony, anything else you want to . . . okay that's fine. Mr. Buzak based on what I've heard we've heard testimony about a property that's a bit undersized, we have preexisting, we have structures that have been built that should have received variances for but have not. It's kind of a unique situation I'm not sure about, you might have to help me with the positive criteria but from a negative criteria which is usually a little bit harder I don't see that granting a variance causes any negative detriment to the community even though we just heard from the neighbor that it does affect them. I do believe my own opinion is that the pool was there when they bought the house and although the image of when the fence moved it appeared to be closer the pool was there it's a swimming pool it's a family neighborhood. I don't know if the swimming pool into itself is a negative detriment I've given you my opinion, I kind of turn to you to help with the positive criteria.

MR. BUZAK: Well I think that when one is looking for a bulk variance such as this there's two bases upon which you can look at it. One is the conditions on the property itself the lot itself, that it's uniquely shaped and because of that unique shape or other physical conditions to the property there would be a hardship on the property owner to comply with the requirements of the bulk standards in the zone. The second ground would be that you're trying to advance the purpose of the Municipal Land Use Law and the benefits of advancing that outweigh the detriments. Or the benefits what your attempting to do with outweigh the detriments. In this case while we don't have the kind of testimony as from a planner or other professional I think if you look at the property itself from the documentation that has been provided that's about as unusually shaped lot as I've seen. I'm not even sure there's a name for that configuration, maybe there is. And as you can see the house which has been there for the testimony reveals approximately 80 years is extremely close to at least one corner but extremely close to the front property line and is situated probably in . . . if I had to pick how I'd situate this house I would probably would not have put it there. So I think the property itself does create a challenge to its development and where you would locate structures on that particularly given the fact that you started out with the house already being there. So now you're stuck there and now you're looking around on where to put other things. So I think that the existing configuration of the lot certainly is unique enough

to have the Board consider a variance in satisfaction of the positive criteria based upon that configuration. The aspect of that is as you pointed earlier the significant undersize nature of the lot. This is a 20,000 square foot zone the property is under 7,000 square feet about 6,500 square feet so it's about a third or less of what the zone requires. And that's preexisting they didn't create; the current applicants did not create that situation it's preexisting. So you have a number of factors that I think put this in the category of giving the Board the ability to consider a variance based upon the C-1 or the hardship criteria. You then as you said get to the negative criteria where there's any substantial detriment to the public good which is typically examined based upon the surrounding neighborhood and its impact. We had some testimony from one of the neighbors I assume there are other neighbors on other parts of this property to the left where the above ground pool is to the right and well I guess it's really those two even though I guess the testimony was Lot 35 is a vacant lot at this time but everyone got notice and whatever development may take place on Lot 35 would be affected by what's here and we don't see anybody from the public here on that. So the Board has got to consider whether granting of this variance would substantially impact the neighbors. And again I think in considering that you need to keep in mind the undersized nature of the lot, the preexisting conditions separate and apart from the shed and the pool which were not preexisting they happen to be there now but they were not built with the proper permits. The second aspect of the negative criteria is that there's no substantial impairment of the zoning ordinance and zoning plan. Now here you know one could argue that there is a substantial impairment of the zoning ordinance because you have a lot that's about a third of the minimum lot size in the zone. On the other hand we're not creating that lot as part of this application that lot is already there. So I think you have to look at that criteria from the perspective that that's a given you're dealing with a lot that's 6,500 square feet so to take a position that granting this variance will somehow impair the zoning ordinance because your allowing that kind of development is not a question before you it's already there. So then you have to deal with the impacts of the sheds and the pool on that overall zoning ordinance and zoning plan as you pointed out one of the purposes of our Board is to consider deviations from the ordinance if you've met those standards and you look around the neighborhood and are satisfied that there's no substantial detriment to the public good and impairment to the zoning ordinance and zoning plan under the circumstances we have here.

MR. WEISS: So it sounds to me we do have the proofs necessary and the only thing I would add to what you said Mr. Buzak is that the property also does demonstrate a bit of a steep slope. I know we didn't talk about that, you didn't talk about that in your summation but there is some steep slope which falls right into the positive criteria as well. So that being said I think we can entertain a motion on this application. If anybody on the Planning Board would like to make a motion.

MR. SCHAECHTER: I make the motion that we move to approve PB 14-12.

MR. FLEISCHNER: I'll second it.

MR. WEISS: Thank you Brian and Joe. And if we were to move forward on this application I don't believe there are any conditions.

MR. BUZAK: Well I think the only condition, other than the standard ones that we have would be, and this is just to verify what's already been testified to that the shed that's off of their property is going to be moved onto their property because that will eliminate that encroachment on the neighbors property as well I think that's an issue that we need to . . . you know that's important in terms of getting that problem resolved as well and putting that on the existing property while it's slightly bigger than what's there now they are removing one of the sheds that's there and substituting this one for it. So I think if we put that in as a condition.

MR. WEISS: That's acceptable Brian?

MR. SCHAECHTER: Yes.

MS. NATAFALUSY: Mr. Buzak would they have to get building permits for that shed?

MR. BUZAK: Oh yes it would be subject to all of that yes.

MS. NATAFALUSY: Okay.

MR. BUZAK: But this will allow the construction department to consider this because they will have a variance to allow . . .

MS. NATAFALUSY: For relocation.

MR. BUZAK: Right.

MR. FLEISCHNER: Can I make a comment?

MR. WEISS: Sure Joe.

MR. FLEISCHNER: I think one of the problems when we get applications like this, I guess I'm a newcomer I've only been here 40 years in the town, a lot of things were built in different zones without as the Chairman has stated without permits. They asked do we need a permit whoever it was it doesn't really matter said no you don't need it and so a lot of things were built. The problem we face today is we're trying to really keep everything uniform and follow a real process to make sure everything is approved. And just like your neighbors had spoke they or any neighbor or anyone within the township always has the ability to come before this Land Use Board and ask for a variance which is what you're doing. For whatever reason you're here, your process that you're following is the process that's required based on past history. The house has been there for many, many years there are a lot of substandard lots especially in Budd Lake, especially in Budd Lake and I happen to live in Budd Lake. So this is not unique to us, the lot configuration is unique where it is but this happens actually . . . is quite common within at least the Budd Lake section of town and that's why we encourage people . . . you know the zoning office is absolutely correct they did the right thing saying you cannot have a permit. But your alternative is to come to this Board as you've done and as the Chairman has dutifully explained the positive and negative criteria and any citizen of Mount Olive has that right to do that. So your following the right process, I know sometimes it's kind of strange how you get here but you are here so anyway I just wanted to clarify that.

MR. WEISS: Mr. Buzak?

MR. BUZAK: It's been pointed out to me that or I've been reminded that this application came before us as a result of an existing violation. And I think that the Board should consider establishing some deadline by which they need to come in, get their permit and move the shed off of the other property and put it where it . . . demolish the existing shed and do what has to be done. In my own mind I was thinking of a 90 day period we're in October will that work for you will you be able to move that shed onto your property within 90 days?

MR. SZAREK: (Inaudible).

MR. BUZAK: But if you move it over you can't move it to where it's supposed to be right until you get rid of the other one.

MR. SZAREK: The problem I'm having is it's not going to be exactly right behind it.

MR. BUZAK: Okay I'm not sure I understand the situation. The shed that you're going to demolish you need to find a place to store the things that are in that shed.

MR. SZAREK: Right.

MR. BUZAK: Okay how long is that going to take you?

MR. SZAREK: We have (inaudible).

MR. BUZAK: Okay if that shed remained there and you moved the shed from off of your property onto your property will you have . . . we have to demolish the smaller shed in order to move the shed so you can have three sheds on your property for some short period of time. Is that what you're suggesting?

MR. SZAREK: Yes. (Inaudible).

MR. WEISS: Brian?

MR. SCHAECHTER: I'd like to keep it . . . you know we've got so many sheds there it's already a crowded lot I'm going to make the request to keep it to the 90 days so this gets done before the winter. You know I'll add onto the motion December 31st.

MR. FLEISCHNER: Less than 90 days?

MR. SCHAECHTER: End of the year.

MR. FLEISCHNER: Yeah but you don't want to (inaudible).

MR. SCHAECHTER: We'll make it 90 days.

MR. WEISS: 90 days from the date of the resolution being adopted.

MR. BUZAK: Which won't be until November.

MR. WEISS: That's fine. Let's do it from the date of the adoption of the resolution which is November, 90 days Joe are you okay with that?

MR. FLEISCHNER: Yes I'm fine with that.

MR. WEISS: Anybody else? Catherine roll call please.

MS. NATAFALUSY: Joe Fleischner - yes
David Koptyra - yes
Nelson Russell - yes
Brian Schaechter - yes
Kim Mott - yes
Howie Weiss - yes

MR. WEISS: Okay so here's what's going to happen, the application is approved your request has been approved the first meeting in November we will memorialize your resolution at that point you can pick it up and take it to the building office to move forward on your application. Okay good luck to you.

APPLICATION #PB 14-03 – ROADRANGER HOLDINGS INC. – (Block 8301, Lots 17 & 18)

MR. WEISS: All right we move on to our next application we're now going to hear PB 14-03 Roadranger Holdings Inc. it's a d-1 variance a d-3 variance for preliminary and final site plan with bulk variances at 398-400 Route 46 West Block 8301, Lots 17 & 18. For this application Ms. Johnson you're excused have a great evening I would imagine you're not going to come back.

MS. JOHNSON: I'll be back next week though.

MR. WEISS: Next week we will see you then. Mr. Selvaggi it's always a pleasure to see you thank you for not returning my call yesterday. I say that because of the schedule that we keep I did reach out to Mr. Selvaggi so I didn't want him and I know that you did speak to Catherine so I'm only joking, we just want to keep it moving this is a fairly lengthy application and with the fact that we have some things and I do have to excuse myself a little bit earlier this evening I wanted to make sure that we give you the benefit of the full Board and we spoke about giving you 90 minutes and I certainly hope that you planned accordingly.

MR. SELVAGGI: Yeah we had our planner stay home tonight.

MR. WEISS: Perfect.

MR. SELVAGGI: You know even if we got done with the first two witnesses in less time you know that's (inaudible).

MR. WEISS: Perfect so we're on the same page Michael. So let me turn it over to you and you can introduce your application.

MR. SELVAGGI: Yes Michael Selvaggi from Courter Kobert & Cohen on behalf of Roadranger Holdings as the Chairman has described the application it's the property at the corner of Route 46 and Sand Shore and it is as you'll find out it's very unique piece of property it's two lots triangular in shape. The applicant is looking to obtain the necessary approvals to allow for the construction of a gasoline station. Admittedly given the configuration of the property and its location there probably isn't a lot more you could do on this piece. It's very interesting application in so far as we have the interplay of both ordinances, some State regulations vis-à-vis the Wellhead Protection Ordinance we have and then also have a Highlands Preservation. This property will receive Highlands approval for exemption number

4 which would allow a 25 percent increase over the lawfully existing coverage (inaudible) in 2004. There was an application in 2009 (inaudible). What we'd like to do tonight is have our civil engineer James Glasson to go through an overview of the proposal of the property and identify the variances that are required and then we have a hydro geologist Mr. Muhall who will talk about why this reduces the fact of any kinds of local ordinances as well as DEP. But without further ado I'd like to have Jim be sworn and he can start us off.

MR. BUZAK: Mr. Chairman before we get to that I'd like to mention something to the Board to keep in mind as we're going through this. Mr. Selvaggi alluded to it but it's important for you to know what it is now so as your listening to the testimony you can factor this in. He mentioned the fact that they're going to be seeking a variance from provisions in our ordinance and that there's some inconsistencies between what they want to do and what the ordinance says. The one that is an issue here that I need to raise with you at the outset is the Wellhead Protection Ordinance that we have. Several years ago the township adopted a Wellhead Protection Ordinance the purpose of which was to establish guidelines and standards for the installation of wells in areas close to . . . I'm sorry locating other uses in areas in which there are wells. There is different zones, wellhead protection zones or tiers under the terms of the ordinance. In our ordinance this property is considered a Tier 1 or is in a Tier 1 location and the standards that are set forth in that section of our Land Use Ordinance provide that this type of use should not be permitted in that particular Tier 1 zone. We've all agreed at least from the technical end from the professionals on the Board that this property is in a Tier 1 zone and that the ordinance provides that this type of use, this petroleum related use should not be installed in a Tier 1 zone. The question becomes whether this Board has jurisdiction to grant a variance from that. The applicant contends that because the wellhead protection zone provisions are part of our Land Development Ordinances that they have a right under the Municipal Land Use Law to seek a variance from that to deviate from that. So even though the ordinance says you can't do this it's similar to a use variance you can't do it but now we're allowed to do it. From my analysis the jury is still out on that and while I accept the fact that it is in the Land Use Ordinances in the municipality and technicality you can obtain a variance from any Land Use Ordinance and this Board can grant it, this type of ordinance is really an exercise of the police power in the municipality to say where you can put these facilities because of environmental concerns not necessarily because of Land Use concerns. So the question becomes whether this Board has the ability to grant that kind of variance. If this ordinance were adopted but were not part of the Land Use Ordinances in the town we would not have any jurisdiction to hear this case at all the applicant would be unable to do anything because that's a police power regulation. If the town says for example you can't park here, you can't park there. And someone can't go to the Planning Board and say gee we want to park there so can you grant a variance because I want to park there, nor can they go to the municipality and say well we want you to let us park there because we have some special situation. That's not the way it works. So during the course of hearing the application and the testimony that's going to be provided because the applicant is proceeding on the basis that they have a right to seek a use variance to allow this use in a Tier 1 zone, in listening to all of the testimony keep that in mind. They will be going through it a little bit you'll get provisions in the ordinance that will be referred to but at the end of the day when this application is finished and we need to deliberate that's going to be a determination you're going to have to make as to whether you are able to consider granting a variance from that provision. Again the applicant's position is that you have a right to do that so I wanted to put that on the table right at the beginning and go forward and Mr. Selvaggi may have something to say about that or he may just go forward and do what he's got to do and we'll take it from there.

MR. SELVAGGI: We feel quite confident that you have jurisdiction first of all if you were to try to locate this ordinance it's (inaudible) under Section 400 which is your Land Use Ordinance and then subpart F of the ordinance talks about the administrative authority for administering the provisions of this section shall be the Planning Board who have obviously is a fine Board have both the Zoning Board of Adjustment powers as well as the Board of Health of the Township of Mount Olive. Moreover this ordinance as Mr. Mulhall will inform you is premised upon DEP regulations which, not to steel Mr. Muhall's thunder, does not prohibit this type of use. In fact there's some interesting interplay about this ordinance that's impacted a broader basis but I think what we would certainly agree to is that ultimately we would need to get certain DEP permits and your, if we're fortunate enough to get an approval, would be conditional on the receipt of these additional permits that are administered by the DEP. Moreover I don't know if the town engineer can share the information I know Mr. Buczynski put forth his own effort to try to get some more direction and there was an email that was issued represented to you today that it can be remotely be construed in saying you know you can't take action here. So with that being said I don't disagree with Mr. Buzak pointing out the novelty of this ordinance but I think you know the standard black letter law in the Municipal Land Use Law if the ordinance is put in your Land Use and given the fact that you are also identified as the administrative agency that can handle these matters, I don't know where else you (inaudible) but I do think that . . .

MR. MCGROARTY: Mr. Chairman?

MR. WEISS: Yes go ahead Chuck.

MR. MCGROARTY: Your planner will be here I guess next month but it's also it's a little; it's a very unusual situation because it's also a conditional use service stations. And we go in the reports about the deviations for conditional use standards; we'll hear about that no doubt from your planner when the time comes but just to sort of keep that in mind as well. I don't know if that makes sense?

MR. WEISS: Sure.

MR. SELVAGGI: It's really we need the use variance for the Wellhead Protection to say that the use is allowed and this use but for the Wellhead Protection Ordinance is a conditional use in this zone. Obviously given the peculiar shape of the lot you know this is probably one of the few times I can actually stand up and say you know a gas station is probably a particularly suitable use for this property. You know it's a property that doesn't even have a building envelope given its shape. Jim?

MR. WEISS: Again Jim hold on one second I just have a question. This is again a very unique situation and actually Brian just shared a thought and I had the same thing we're dealing this whole application is based upon legal posturing. We've heard Mr. Buzak, we've heard you Mr. Selvaggi shouldn't we clear that up before we go forward?

MR. SELVAGGI: You know look if that's the Chairman's pleasure I would certainly, look I would lead off with that if I was worried but I'm not particularly worried but I mean . . .

MR. WEISS: Well we just heard two conflicting kind of arguments so I know we're here to absorb both of the arguments but it seems like it's a very legal issue. Mr. Buzak?

MR. BUZAK: Well you know it's interesting that you raise that because when we first looked at this application and realized the complexity of it that was one of the issues that we discussed as to whether this Board has jurisdiction to hear the application at all. Not so much on the conditional use aspect and I apologize for not mentioning that I didn't mean to ignore that, but on the use variance issue because of this Wellhead Protection. And candidly you know I was unable to come to a firm conclusion because it's just unclear to me. Part of it is where the ordinance is placed it happens to be placed in the Land Use section which is somewhat of a discretionary factor. On the other hand these ordinances were model ordinances that the DEP had proposed and that language that it's within the jurisdiction of the Planning Board and the Board of Health was not unique to Mt. Olive that was the model ordinance. So when DEP put this out there for municipalities to consider to help protect wells and you know their integrity they're suggestion, perhaps without a lot of thought, was that okay we'll do this as a Land Use issue. And in fairness I don't think they thought much beyond all of that you know that's where it seemed to go so they put it there. And I don't think they realized the difficulty that that created because a Wellhead Protection Ordinance is an environmental ordinance an Environmental Protection Ordinance. And if the ordinance says look we have different Tiers meaning there's different areas and in a Tier 1 and Gene you can help me out a most sensitive area and the Tiers go down to, I don't know how far they go down.

MR. BUCZYNSKI: 2 and 3.

MR. BUZAK: 2 and 3? Two and three which are less sensitive areas and they say well look in Tier 1 you can't have a new use or a change of use that introduces petroleum products in that area. That's pretty clear. And the question is okay well if one can seek a deviation from that from the Board how does the Board evaluate it? You know the Chairman went through and I went through to some extent on the earlier application here's the criteria that you use for bulk variances and if you think about those is there any substantial detriments in public good and is there any substantial impairment to the zoning ordinance and zoning plan. When you talk about the second one zoning ordinance and zoning plan this really has nothing to do with zoning in terms of whether you should allow petroleum products to be put there. Maybe it has to do with the public good but not the public good as I've explained it which is what is the effect on the neighbors and you know what do the neighbors think about it. So you start trying to apply the criteria that you're supposed to apply to these kinds of variances to this particular issue and it becomes very difficult. And Mr. Selvaggi and I have been very candid about this and have discussed it and you know what he's satisfied that he can produce sufficient evidence that will give this Board the basis upon which to grant that variance. I have my doubt about that because I think the evidence that you need is to somehow demonstrate that this prohibition in the ordinance is

unnecessary. You know if the testimony is well we can do a number of things to safeguard, you know we can put double or triple tanks, we can put liners, we can put all sorts of bells and whistles the DEP currently has a whole set of standards to put these tanks in and they're pretty stringent and they've been made more stringent in the recent past because of the problems that are there. So to come in and say well I've going to comply with DEP regulations when DEP said we shouldn't have them in Tier 1, that was a given. The tanks wouldn't be put there with all of those bells and whistles and yet they've said we shouldn't have them in Tier 1. Mr. Selvaggi I think, and we haven't heard any of the testimony but you know I know Mr. Vogel I know his qualifications, is of the view that he can convince the Board that allowing a deviation, allowing this to be constructed in the zone will not create a substantial detriment to the public good and again you have to I think hone that in a sense of an environmental issue and we're not environmental people so it's going to be a little bit more difficult for you to do.

MR. SELVAGGI: That's a little bit different in terms of . . . I think the merits of whether it can or the impact is immaterial because the question of who makes that decision is really one of a matter of law. Forgetting what the tank is going to be and everything else and for that I can only be guided, you can only be guided by what the ordinance says. Whether we engage in a backwards looking analysis and say well look they really should put in the police powers they didn't, when I say they this is the governing body. And by putting this type of ordinance under your Land Use section and then also adding that you are the Administrative Authority I don't know where else you would go. Because now all of a sudden you have an ordinance that for all practical purposes there's never any relief from. I think now would be a good time to have Matt say here look I agree with Mr. Buzak refer to the maps he's probably one of the guys in the State on these types of issues. And hopefully after you listen to Matt you'll feel as comfortable as we do, obviously this issue has been raised we've looked at it my client is paying a lot of money to continue to pursue this and we're not stupid and I don't think we'd be engaged in this exercise if for a moment we thought we were before the wrong Board or you know not able to go at all. So perhaps maybe that's what we should go on. I don't have a problem I have Matt here in fact earlier today we were debating whether maybe this would be the direction we should go in and lead off with that.

MR. WEISS: Gene?

MR. BUCZYNSKI: Yeah just before we start that just so the Board has some idea we mentioned the language regarding Tier 1, Tier 2, and Tier 3. The Tiers are developed through DEP geological division and what it is is Tier 1 means that groundwater can enter a well within two years. Tier 2 means groundwater can enter a well within five years, and Tier 3 says groundwater can enter the well within twelve years. I'm just showing the severity of the three different tiers.

MR. WEISS: Okay I think then it would probably be in our best interest to at least listen to the argument I don't think that would be fair to the applicant, fair to us if we didn't hear the arguments. Michael I think I will take your suggestion and we'll start with your different expert.

(MATTHEW J. MULHALL SWORN IN FOR THE RECORD)

MR. BUZAK: Would you please state your name and business address for the record spelling your last name.

MR. MULHALL: Matthew J. Mulhall (M-U-L-H-A-L-L) my business address is 56 Country Acres Drive in Hampton, NJ 08827.

MR. BUZAK: Thank you sir.

MR. SELVAGGI: Matt I don't know if you ever testified before this Board so if you could let them know your experience, education and background and licenses in engineering.

MR. MULHALL: I have a Masters Degree in geology from (inaudible) College, a Master Degree in geological science from Northwestern University. I've been practicing in New Jersey and Pennsylvania for since 1985 so that makes it almost 30 years. I have a licensed subsurface evaluator in New Jersey which I am qualified I have been since 1992 and I continue to do continuing education course for that requirement. That means I'm entitled to deal with New Jersey development of underground storage tanks, I'm a licensed professional geologist with the State of Pennsylvania. I don't know if you need more I can tell you I have testified in front of Planning Boards throughout New Jersey, I've testified in Superior Court in numerous counties I've been classified as an expert in matters of hydrogeology and geology.

MR. SELVAGGI: And you're familiar then with the pertinent regulations promulgated by DEP concerning underground storage tanks and groundwater regulations?

MR. MULHALL: Yes.

MR. WEISS: I don't believe we've ever had a geologist testify in front of us.

MR. BUZAK: A hydro geologist.

MR. BUCZYNSKI: We have.

MR. WEISS: We have okay. You know what just a quick question, how come you don't have a DEP approval first?

MR. SELVAGGI: Because (inaudible) like under your ordinance it talks about contingency plans (inaudible) so we can't get that without knowing we're going to be allowed to do it.

MR. WEISS: So it's procedural.

MR. SELVAGGI: Yeah.

MR. MULHALL: I think Roadranger would have to submit all of the plans to the DEP to get permits to do the construction.

MR. WEISS: The approved plans.

MR. MULHALL: The approved plans.

MR. WEISS: Fair enough answer. Okay Matt so go ahead let's . . . does anybody have any questions for Mr. Mulhall? Okay so we will accept Mr. Mulhall as a professional hydro geologist testifying on behalf of the applicant.

MR. MULHALL: I was asked to review the Section 400-76.1 which is your Wildlife Protection Ordinance of Mount Olive Township Land Use Code. With respect to the proposed gas station installation (inaudible), this ordinance was adopted in 2010 primarily because as it says in the intent groundwater is the primary source of water for the township residents and businesses. The groundwater is hydraulically interconnected to surface water resources and spills and discharge and contaminants could adversely affect water quality and contaminants could be hazardous to the environment. Section 400-76.1F(2) states the following, *any applicant for a permit requesting a change in the Land Use or activity is subject to review under the provisions of the Municipal Land Use Law and other pertinent regulations of the Township of Mount Olive which is located within the delineated wellhead protection area and they use the term WHPA as defined in Subsection V it involves a Potential Pollutant Source as defined in Section 213-20, shall comply with the requirements of this ordinance.* Well there's two types of wellhead protection areas in the State of New Jersey both were designed by New Jersey Geological Survey. The first is public community water supply wells, these are the ,major wells within the State of New Jersey that are used to supply water to the public for more than 25 interconnections, 15 interconnections and (Inaudible) people receiving water year round. So this would be Mount Olive Water Department who is to provide water through that method. There are no public community water supply wells, wellhead protection areas that use this site. This site is not in a public community water supply, this is what's called a public non-community wellhead protection area. Basically the State adopted these wellhead protection areas or drew them up, delineated them meeting the requirements of the 1986 Federal Community Water Act. They looked at over 7,000 wells in New Jersey most of those wells 5,000 are more public non-community wells. Of the non-community wells there's a well that serves less than 25 people transient means people coming and going you can see a proposed location of this non-transient would be people that are living in let's say an apartment building or typically its associated with mobile homes. There are three wellhead protection areas that confiscate a portion of Block 8301, Lots 17 & 18 one of those is Enterprise Park site that's in the back area, the second one is the Exxon gasoline station directly across the street on Route 46 and the other one is Johnson Dodge Chrysler auto dealer. The Exxon service station and a portion of the Johnson Dodge Chrysler Dealership both incorporate a portion of our site within the Tier 1. The Exxon the entire site is within the Tier 1 for Exxon and a portion of the site is in the Tier 1 for Johnson Dodge. So while we have no major water supply wells delineated or major water supply when I talked about that public community water supply wells in our area we do have the two the Exxon and we've got the Johnson Dealership which are basically water supply wells for employees and customers for those businesses.

Now a gasoline service station and for that matter an automobile dealership both meet the definition of a major potential pollutant source as defined in the Land Use Subsection G (inaudible). So therefore based on that based on the fact that we have a Tier 1 and gasoline stations will be a potential source the ordinance would apply for site plan approval process. Now Section E(4) states any changes in Land Use or activity that introduces a major or minor potential source a pollution source as defined in subsection G shall be prohibited within a Tier 1 (inaudible). Block 8301, Lots 17 & 18 is located within that Tier 1. If you were to look at most of the Route 46 corridor in Mount Olive you would find that almost every business in Mount Olive on Route 46 is located in a Tier 1 facility. Primarily their own because they all have wells on that stretch of roadway. So basically any business along that highway would fall . . . these township ordinance to put it back. That would mean dry cleaners, that would mean any gasoline station and automobile dealership any facility if you look at the minor and major pollutant sources (inaudible) I just want to bring that up. One of the sections, Section 400-76.1C safety quality, under provisions of the underground storage and hazardous substance act NJSA 58:10A-21A a municipality may adopt with State approval a municipal ordinance that is more stringent than NJAC7:14B that's not obligated to ensure . . .

MR. BUCZYNSKI: No sorry but it is obligated you said it's not.

MR. MULHALL: It is obligated thank you to ensure the provisions of the ordinance are not carried out in a manner that is inconsistent with NJAC7:14B. And I guess this is the crux of some of the discussion we're going to have. 7:14B is the . . . these are the regulations for underground storage tanks, gasoline stations wherever they are installed in New Jersey. They are the underground storage hazardous substance acts and regulations in place. Basically the township ordinance is more stringent than the DEP regulations. The township ordinance will prohibit anything within a Tier 1 the DEP regulations do not prohibit anything. There no prohibitions in the DEP 7:14B, there are specific regulations within NJDEP regulations for installing underground gasoline storage tanks, piping, dispensers and all the other associated matters within wellhead protection areas. The only rule is you cannot install anything within 150 feet of a water supply well in the regulations. So you can install a gasoline storage tank and you can install everything within there and there are regulations for installing it in a wellhead protection area and that falls under Section 6.4. As we talked about Roadranger is going to have to apply under Section 10.2 through the DEP for permission to install, actually to construct a gasoline service station but in addition to that construct one within a wellhead protection area a public non-community wellhead protection area. The DEP regulations establish ways that tanks can be installed in those areas, double wall containers, leak protection, all of the other requirements; they also require that Roadranger hires a New Jersey licensed tank contractor. After submitting the plans and getting those approved by the DEP to install the tank in accordance with the approved plans. So if somebody else is licensed under the regulations similar to me would have . . . would install that tank. I also want to talk about the fact that the way the New Jersey Geological Survey developed what they call the guidelines for delineation of wellhead protection areas in New Jersey. They basically said once WHPA's are delineated the potential pollutant sources may be managed in relationship to their location within a WHPA. These guidelines do not state anywhere within them that a service station is prohibited within any Tier of a wellhead protection area. Given the fact that they use . . . looked at 2,425 public community water supply wells and more than 5,000 public non-community wells the New Jersey Geological Survey used a fairly simple methodology. It does not mean that they drew circles around sites based on the area. It does not mean that a contaminant would migrate from one site to another site just because a circle is drawn around it. They did not take into consideration any of the hydro geological limitations and boundary conditions, its changes in topography, this particular site if you look at the slope and topography and you drive by the site you'll see what I mean. Groundwater flow is very likely because it follows (inaudible) in this area to the bottom of the hill is going to be to southwest and ultimately to the stream and unnamed bond and the unnamed tributary downhill of Mine Brook. It's not going to be flowing towards the Exxon or the Johnson Dodge dealer.

MR. BUZAK: Mr. Mulhall you re referring, you're moving your arm and referring to an exhibit so why don't we mark that exhibit as exhibit A-1. Can you tell us what that is for the purposes of the . . . or is that Mr. Glasson's?

MR. SELVAGGI: It's Mr. Glasson's.

MR. BUZAK: Sorry Mr. Glasson.

MR. MULHALL: It's entitled Existing Conditions and Environmental Plan for Lot 17 & 18, Block 8301 – Mount Olive BP and it was prepared by Mr. Glasson Civil Engineering Inc.

MR. GLASSON: It's your sheet 3 within your plans.

MR. BUZAK: Sheet 3 you said?

MR. GLASSON: Sheet 3 of 12.

MR. BUZAK: Thank you. And you were referring to that Mr. Mulhall as you were dealing with the slope and the topography of the site is that correct?

MR. MULHALL: Yes. What I'm saying is that groundwater flow from this site will likely not go towards the Exxon Station it's going to flow in a (inaudible) direction.

MR. BUZYNSKI: What are you saying a northwest direction or a north direction?

MR. MULHALL: Basically to the south, to the west.

MR. BUCZYNSKI: Okay towards the farm and the reservoir right? The reservoir the MUA reservoir it's further down.

MR. MULHALL: The unnamed tributary down on Mine Road. Basically the DEP has established these regulations they were adopted first by the federal government in I think the 1980's and ultimately by the DEP in the early 1990's. And then enforced as of 1999, the idea is to control discharges from gasoline service stations. A gasoline service station such as this would have leak detection included with that in addition to the fact that they would have double wall tanks and then there's additional monitoring, monitoring between the tanks such that if there was a leak they would know about it and be able to react to it very rapidly. In the past you couldn't react to leaks very rapidly, we didn't find out about it sometimes until much later. Today leaks are found, there's a response action taken if you don't take the response action the DEP immediately removes your permit (inaudible).

MR. BUZAK: Now is that in any area Mr. Mulhall or in the Tier 1 area?

MR. MULHALL: Any area.

MR. BUZAK: Any area.

MR. MULHALL: They don't permit it to leak if you've got a leak anywhere they want to have that. Basically the prohibition is not in accordance with the NJDEP regulations for underground storage tanks because they don't prohibit them. It's not in accordance with the guidelines used by the NJGES to draft the wellhead protection areas for more than 700,000 wells. The plan was that we would be able to identify risks and manage those risks to minimize the potential adverse impacts. That's the type of situation that could happen. If you're using the regulations Roadranger is going to have to apply, they're going to have to obtain approval from the NJDEP to construct the tanks in accordance with the requirements of the wellhead protection area and they construct those tanks using a licensed . . . I'm sorry the intent is that you regulate the risks not prohibit the construction of the gasoline tank. Nowhere do the DEP regulations prohibit such a construction of a gasoline system, construction or operation of a gasoline station within a wellhead protection area. And with that I basically . . . if you have any questions.

MR. SELVAGGI: So the ordinance which talks about prohibition (inaudible) activity is premised I guess essentially on DEP regulations? I mean that's where it gets it's . . .

MR. MULHALL: Mr. Buzak said apparently it's a model ordinance that was provided here it references the DEP regulations. The DEP regulations nor the Board the laws undermining them do not prohibit it. I'm not sure this ordinance . . . I've never seen this ordinance (inaudible).

MR. SELVAGGI: And because the DEP doesn't prohibit this type of activity obviously there can be the right circumstances exceptions made or allowed, and when I say exceptions I guess I'm looking at the town's (inaudible) ordinances. By doing this this is not something that's contrary to the rules and regulations for construction of this gas station.

MR. MULHALL: Right. You construct this gasoline station of course to NJDEP regulations and they will ultimately (inaudible).

MR. WEISS: Gene?

MR. BUCZYNSKI: If I could just regarding this Michael mentioned earlier regarding the fact that I received a memo today from Diane Zalaskus regarding this issue. I've been after her for a couple of months to try and respond to us. I'd like to just put on the record because she does also reference the Mount Olive ordinance as part of her memorandum.

MR. BUZAK: And this is Diane Zalaskus is from the DEP. Gene had inquired as a result of the various conversations that we've had we thought it would be appropriate to see how DEP reconciled the ordinance requirements with what Mr. Mulhall has talked about DEP requirements and how they sort of fit together or not fit together. So our engineer had pursued that with the DEP and somewhat surprisingly we actually got a response.

MR. BUCZYNSKI: It took about four emails but we did get a response.

MR. BUZAK: And that was shared with the applicant so they're aware of this.

MR. BUCZYNSKI: It states: Gene I apologize for the delay in responding the department conducted source water assessments of the public water systems but did not adopt regulations prohibiting realty improvements such as the construction of a gas station within the wellhead protection area. In addition well drilling permit applications processed by the State of New Jersey are not screened to determine whether a proposed well lies within a wellhead protection area nor do the well construction regulations that NJAC7:9D prohibit the drilling of a well within the wellhead protection area.

MR. BUZAK: Excuse me I think all of that is consistent with what Mr. Mulhall has testified to.

MR. BUCZYNSKI: Right so far. Therefore a well drilling permit could be issued by the State to a property within a Tier 1 wellhead protection area which was just previously stated. You attached a copy of the Mount Olive Wellhead Protection Ordinance many municipalities have adopted such ordinances to guide Land Use Development near their wells. The Mount Olive Ordinance contains a detailed language prohibiting certain activities within the Tier 1 wellhead protection area and should be used to guide the approval of projects proposed within the Tier 1 wellhead protection area. And that's how she left the memorandum. So it kind of left you there that they prohibit it but you still have your ordinance.

MR. BUZAK: Oh they permit it.

MR. BUCZYNSKI: They permit it but you have your ordinance to say no.

MR. BUZAK: She didn't deal with the jurisdictional issues which is well outside of their jurisdiction.

MR. BUCZYNSKI: Exactly.

MR. FLEISCHNER: She answered the question with a question like my mother would do.

MR. MCGROARTY: She told us what we know.

MR. MULHALL: I just want to tell you the regulations themselves are really the (inaudible). They do not prohibit gas stations, as a matter of fact they established regulations for construction in a wellhead protection area so that (inaudible).

MR. WEISS: Does anybody on the Planning Board have any questions for Mr. Mulhall?

MS. MOTT: I do. I have a question how come in your study is very extensive there was nothing mentioned of the farmland and the residents across the street? Because from the topography the water is draining to their property. I mean what is their well supply? Do they have well, do they have public water I mean I heard no mention of the farm, that's a concern of mine.

MR. MULHALL: There's no wellhead protection, we're talking about wellhead protection there's no wellhead protection area on farms.

MS. MOTT: So they have public water? There's no well on that property?

MR. MULHALL: They could have a well on their property but

MS. MOTT: So you didn't research that property at all?

MR. MULHALL: No well let me explain why. It would be classified as a domestic well and there are no wellhead protection areas designated for domestic wells. So they may have a well on their property that would be . . . it is not one that is studied by the DEP. Your ordinance strictly talks about those that have wellhead protections areas designated for them.

MS. MOTT: I just thought you would include it since it was so extensive.

MR. MULHALL: I looked at the site and like I said (inaudible) flows is going to follow ultimately down towards the back . . .

MS. MOTT: To their land right.

MR. MULHALL: It's not a situation where there's a wellhead protection area designated for that part of it. The only three parcels right there are the Enterprise Park, the Exxon, the Johnson Dodge.

MS. MOTT: Right which is across the way. We're talking downhill.

MR. MULHALL: Right I understand but there's no

MS. MOTT: That's a huge concern for me.

MR. MULHALL: I understand but there's nothing there . . . like I said the issue is because he's in a Tier 1 he would meet the wellhead protection regulations for the DEP criteria for installing tanks which require more intense leak protection and tank structure than you would find in a normal station. And they have to meet that criteria under Subsection 4 and then they have to apply for a permit more importantly than anything before they can get approval on the subsection tank.

MS. MOTT: Okay.

MR. SELVAGGI: So I guess the rational would be by getting the permit from the State to construct things in Tier 1 the concerns are somewhat accurate but essentially addressed for all of the wells in the area.

MR. MULHALL: You're managing the concerns, your managing the risks more aggressively than that. That's the whole intent so the same inspections that would be offered to the walls across the street would be offered to the wells wherever it already exists downgrade. And again I don't know where that well is located with respect to the stream. The stream is the discharge point for groundwater it may never make it, the pond and stream may never make it to the well. I don't know like I said there's no wellhead protection area designated for that well.

MS. MOTT: Right just a concern of mine.

MR. WEISS: Joe?

MR. FLEISCHNER: I think Kim raises the question and I kind of agree with Kim in that I understand what you're saying about wellhead protection area but we have a preserved farm that's sitting there and I think that's a concern that we have because crops are grown on there that are then sold, etc. So I think yes the protections that are raised within a Tier 1 would also obviously protect that land as well. But it is a concern because that is a preserved farm I believe, I think it is. I mean that's what I recall.

MR. SELVAGGI: Whether it is or it isn't I think that question is the tank that would be installed would be I guess Grade A the most sophisticated technology available at this time. Not just you know farm but in all of the other properties in this area.

MR. MULHALL: I mean the intent is if a leak does occur they could react to it immediately because you have the leak protection alarms going on immediately and therefore clean it up. It's not like in the past where they're allowed to migrate for a very long time and become a (inaudible).

MR. FLEISCHNER: Right that's my concern.

MR. MULHALL: Usually with gasoline you don't find it move much more than 500 to 1,000 feet beyond the point beyond the point of the source area. Simply because natural bacteria will destroy it.

So it's not like a lot of (inaudible). So the issue is naturally you limit its extent but on top of that you're limited to its extent here because the alarms go off if there's a leak.

MR. FLEISCHNER: When you say like 1,000 feet that's three football fields.

MR. MULHALL: I understand.

MR. FLEISCHNER: I understand what you're saying there are alarms.

MR. MULHALL: In this particular case you don't ever want it to get there because your reacting to it very fast because if the alarm goes off at 3:00 in the morning there's a hazmat team responding to empty the tanks out to take the bulk volume out. There's people responding immediately to remove the soils that would be residual source. There have to be you're required under the Underground Storage Tank Regulations to proceed that way.

MR. FLEISCHNER: I don't know if you're the appropriate expert but how sensitive are these you know warning bells, whistles that go off if it detects a leak?

MR. MULHALL: They're very sensitive they work.

MR. FLEISCHNER: And do they run off of electric or do they have their own supplemental power?

MR. MULHALL: I believe they have to have battery backup. I'm 99 percent positive they have to have all backup responses.

MR. FLEISCHNER: Okay because that side of the street during hurricane Sandy didn't have electric for 12 days.

MR. MULHALL: You don't want to rely on . . . you know very few gasoline stations had power during hurricane Sandy as you remember they couldn't dispense the gasoline but the leak protection systems would continue to work.

MR. FLEISCHNER: Okay all right thank you.

MR. WEISS: I think Ed you had a question?

MR. BUZAK: Yes is it fair to say Mr. Mulhall that if this tank were installed in a non-Tier 1 area, a wellhead protection area it would be installed in exactly the same way that you are testifying to.

MR. MULHALL: More or less yes. I mean there are strict regulations within . . . basically you have to meet the criteria of Chapter 4 of the regulations.

MR. BUZAK: And that's of the DEP regulations when you install an underground storage tank of this nature.

MR. MULHALL: Yes.

MR. BUZAK: And I guess the question I have, and let me ask it a different way, is there anything beyond what would otherwise be required to install this kind of tank that is being proposed here in light of the fact that it is being proposed a Tier 1 wellhead protection area.

MR. MULHALL: Well it actually referred to under Section 6.4 requires for underground storage tank systems in wellhead protection areas and number 2 is release detection at new underground storage tanks shall have secondary containment which are designed and constructed with . . . installed in accordance with NJAC7:14B-6.382. So they're more stringent but again those regulations could be applied at other gasoline stations that are not wellhead protection areas.

MR. BUZAK: Is there anything in your experience that can be done that would provide even further protections than what are set forth in the DEP regulations?

MR. MULHALL: The best one is double wall tanks with this (inaudible) monitoring because that tells you if the tank the internal tank fails. You have it before it ever gets out to the environment, you have in between the two tanks so you know you've have a leak and you're responding to it. If the tank itself fails. What typically happened in the past was the tank was one wall and it would fail and you lost

product, fiberglass or metal. These systems are set up that they're completely contained and on top of that they contain it within the tank excavation unit of itself, another way of protecting it. So the potential for it to get out before it's responded to is minimal.

MR. BUCZYNSKI: And that's not just Tier 1 areas that's everywhere really.

MR. MULHALL: You try and do that everywhere.

MR. SCHAECHTER: That's standard install today.

MR. BUCZYNSKI: It is.

MR. MULHALL: Everywhere because everybody is trying to push to stop that because again you've got a lot of domestic wells out to.

MR. SCHAECHTER: Yeah but I think what Mr. Buzak asked was in a Tier 1 area is there something more than that that you can do?

MR. MULHALL: They wanted to do the . . . well let me step back a second. They want you to do monitoring, like I read that's their regulations. The other part of it though is to is we still got to get approval from them knowing full well that you're installing this in the Tier 1 wellhead protection area. So they may impose much like you may impose the addition to approval. The DEP typically does impose conditions of approval and they may require something that is beyond the regulations.

MR. BUZAK: Okay well that partially answers my question. So are you stating however that the applicant is proposing nothing more than what would otherwise be required under the regulations? There's no enhanced protection beyond what is required, minimally required under the regulations.

MR. MULHALL: I haven't talked to the applicant about that.

MR. BUZAK: Okay.

MR. MULHALL: I have (inaudible) simply about the DEP regulations don't prohibit it because I think that was the discussion for tonight.

MR. BUZAK: And I didn't quite get your testimony, did you say that the DEP regulations have a more stringent standard for the installation of an underground tank if it is installed in a Tier 1 area as opposed to a non, either a Tier 2 or Tier 3 or a non wellhead protection area at all?

MR. MULHALL: It's not Tier 1, Tier 2, Tier 3 there's no difference they look at wellhead protection areas.

MR. BUZAK: Okay so . . .

MR. MULHALL: In comparison to non wellhead protection areas they have in fact specific requirement for the leak detection monitor. But you're right today that's the most likely going to be installed everywhere because you don't always have wellhead protection areas but you might have domestic wells. So you know today we try to take and install the tanks to meet the best available engineering processes so that leaks are found if they do occur and we minimize the environmental impacts. These are not cheap when a leak occurs it can be very expensive for an operator and that's why. And on top of that there's insurance requirements and everything else that are mandated by the DEP so that that person who owns a station if they were to go bankrupt there's still insurance money to clean it up. They have to hold certain minimums in insurance.

MR. BUZAK: Thank you.

MR. WEISS: Okay anybody else from the Planning Board have any questions? Michael did you have any other questions for Mr. Mulhall?

MR. SELVAGGI: Not at this time I mean we may call Mr. Mulhall back (inaudible).

MR. WEISS: I have an opinion; I want to share an opinion simply an opinion. We started this hearing about an hour ago and we all heard we started with you Mr. Selvaggi and you gave your opinion from a legal perspective, we sat and we heard Mr. Buzak's legal opinion of the situation of the ordinance

and where it stands. Then we went back and forth and then we bring in Mr. Mulhall who comes in as an expert hydro geologist and I'm expecting to hear testimony, and again this is just my opinion about maybe about the hydrogeology itself and why this piece of land can help get us through the legal. And for 25 minutes I heard another rendering of this document my head is spinning.

MR. SELVAGGI: Well I'll be blunt. Under Section 70 this Board is acting as the Zoning Board has, and I'll read it, grant a variance to allow the departure from regulations pursuant to Section 62 of the Municipal Land Use Law. Section 62 specifically talks about zoning ordinances, you have that power to grant departures. I'm not asking you to decide whether to do that or not your ordinance that we're talking about, Mr. Mulhall spoke about is in your Land Use Ordinance section. By operation of law in my opinion you have no choice but to hear this. You may not like it, you may deny it as a result of that but the way this is set up and the alternative would be to say no and we go to court and let Judge Weisenback find it. I think the better approach is to hear it because I think first of all you have jurisdiction to hear it and then decide it on the merits or you can reject it and say well we don't think we had jurisdiction in the first place and then we still go off. Because if you can't hear it that means that this ordinance is essentially . .

MR. FLEISCHNER: Invalid.

MR. SELVAGGI: Well I don't know if it's invalid but there's no relief it's contrary to the basic standards of constitutional due process I mean you have a right to be heard.

MR. WEISS: Michael I agree with you 100 percent. I agree that we have an issue I hear your point, I've heard Mr. Buzak's I don't understand the testimony that we just sat through for 40 minutes.

MR. SELVAGGI: Well here's, excuse me.

MR. WEISS: Okay.

MR. SELVAGGI: The point here is is that a literal reading that Mr. Buzak is engaged in he said look this is (inaudible) this activity is not. But your ordinance, now we're talking about the wellhead protection ordinance can't be inconsistent with the regulations and the statute in which it's based. Those regulations do in fact allow tanks, underground storage tanks to be built or installed in these wellhead protection areas. So it's clear that despite what your ordinance says there's not an absolute blanket prohibition on this type of activity taking place in a wellhead protection area. Therefore, if we agree that the State law allows that I don't know how we can come back here and you guys say well we don't have any jurisdiction to hear this matter because the ordinance says we're not allowed to allow this type of activity in Tier 1 but wait a minute it references, your ordinance references the underground storage hazardous substance act which Mr. Mulhall's testimony is it does in fact allow it. So if it's allowed under certain you know standards that have to be met how do then we get . . . how do here in Mount Olive, how do you get to that allowance if you guys say well we don't have the authority to hear the applicant in the first place.

MR. MCGROARTY: Mr. Chairman could I?

MR. WEISS: Please.

MR. MCGROARTY: Maybe I'm hearing a question from you I think which is that I think that Mr. Mulhall will give testimony or perhaps will give testimony on the merits of it at another point, tonight or another point.

MR. SELVAGGI: Yeah.

MR. MCGROARTY: Right, I thought tonight I mean the initial discussion was how our ordinance compares with DEP regulations. Because you had mentioned about the land the character of the property itself and so I think you still have to (inaudible).

MR. WEISS: That's encouraging that the answer was in the affirmative but my only point and with all due respect Mr. Mulhall we just took a legal argument and moved it forward by a person who should be giving me more than another version of a legal argument. I understand we're caught up here and there's a major issue that we were going to try to work through, I just I was expecting to hear something else to help me move it along and I didn't hear it.

MR. SELVAGGI: I guess maybe some of Mr. Mulhall's testimony I should have just asked him one question and then I could have maybe argued more on the legal side. Are you allowed to put in an underground storage tank in a Tier 1 wellhead protection area under state law? And the answer to that is

MR. MULHALL: Yes.

MR. SELVAGGI: Yes. All right now if that answer we agree its yes and I think that's consistent with what the email Mr. Buzak sent. How then on a jurisdictional issue here we come before you we file our land use application it's been deemed complete you say well we're not even going to hear it, we're not even going to consider an exception because we don't have jurisdiction in the first instance. When again the activity is allowed it's allowed under state law.

MR. WEISS: And you're surely not hearing that from this Planning Board I'm just saying . . .

MR. SELVAGGI: No, no I'm not saying you are I'm just saying in terms of getting past . . . you know do I get into the batter's box.

MR. WEISS: I can move this conversation forward by saying the fact that you answered in the affirmative that Mr. Mulhall will be back to give us a little more hydrogeology of the piece of land is acceptable to me. I just wasn't satisfied that . . .

MR. SELVAGGI: It wasn't for that purpose.

MR. WEISS: Okay that's fine. Brian?

MR. SCHAECHTER: So is the ultimate decision here whether we have jurisdiction? I mean what's the goal of tonight? Are we voting on whether we have jurisdiction to hear this or are we going to hear it? Because you know it's an hour of our lives.

MR. BUZAK: I understand and the Board can do it in two different ways. The Board can debate the issue as to whether they have jurisdiction and make that determination and if they find they have jurisdiction move forward, if they find they don't have jurisdiction to stop the proceedings or end the proceedings based upon the testimony that we have now assuming Mr. Selvaggi would not want to put any more testimony on as it relates to that issue. Alternatively the Board can reserve on that determination until you hear the balance of the application, hear the testimony with regard to the geology of the site and other issues, hear Mr. Glasson's testimony concerning the engineering aspects of the site and then without waiving your right to make the determination that you may not have jurisdiction hear the whole thing and then make the decision. Those are the two alternatives. Think that initially when we spoke to the applicant we, the professionals, do not have the power to simply reject an application and say we don't have jurisdiction to hear it. In this mode I mean there are some things we can do but that's certainly not one of them.

MR. FLEISCHNER: Mr. Chairman I would ask that we take a straw poll among the Board members as to . . . because I don't want to go through a whole process and then at the end say you know what we don't have jurisdiction or you know now we do but maybe we didn't before. So I think before we even proceed further we should take an obviously non-binding it's a straw poll just among voting members of this Board. Do we believe we have jurisdiction? And if we do we move forward, if we believe we do not then we don't move forward it's that simple. Because I don't want to put in 4 hours or 5 hours of time and then we decide well

MR. WEISS: I think that's not a bad idea because if the Board comes up . . . and Mike if you see that there's not a chance at this Board then maybe you move on and take it to a different direction.

MR. SELVAGGI: Well if that would be the case it would have to be more than a straw vote.

MR. WEISS: No of course, of course.

MR. FLEISCHNER: Right but you get a sense of where the Board is sitting.

MR. SELVAGGI: And by the way I do want, and I hope in terms of trying to establish this jurisdictional question your not necessarily, even if you have concerns about the substantive testimony . . . you know for instance what does it do to the farm and all of that kind of stuff.

MR. FLEISCHNER: This is not a yes or no on the substance of the application should a gas station go here or not, that is not a question.

MR. SCHAECHTER: This is whether we should have jurisdiction to hear it or not.

MR. WEISS: Okay so let's do that we'll start . . . Do we have jurisdiction to hear this in your opinion?

MS. MOTT: I think we do yes.

MR. WEISS: Dave?

MR. KOPTYRA: I would go on the advice of our attorney and I would say no I would want it clearer.

MR. WEISS: That's not really an answer though.

MR. KOPTYRA: No. You wanted me to vote against my own attorney I can't do that.

MR. FLEISCHNER: He didn't say that.

MR. BUZAK: As I think I said the law is not clear on where we go here.

MR. KOPTYRA: So you want me to vote on something that no one is clear on I can't I don't think it's fair to either party.

MR. WEISS: So we don't have jurisdiction.

MR. KOPTYRA: I don't think so.

MR. WEISS: Okay that's fine. Nelson?

MR. RUSSELL: I'm not quite sure what the question is.

MR. WEISS: Do you think we have jurisdiction to make a decision on whether we can allow the development over a Tier 1 wellhead.

MR. RUSSELL: Yes.

MR. WEISS: Okay.

MR. SCHAECHTER: Yes.

MR. WEISS: Joe?

MR. FLEISCHNER: Yes.

MR. WILPERT: Yes.

MR. WEISS: Okay and as do I so I think we're in a good position here.

MR. SELVAGGI: All right I don't know how much time you're going to give us I mean Jim and believe me we can start; he's probably at least a half hour.

MR. WEISS: Well I think what we need to do is we need to open it to the public if anybody in the public has a question for Mr. Mulhall. And so let's see if there's no questions from the public I'd say let's get right into . . . Jim I certainly will go to 9:30. So I did give you 90 minutes starting at 8:00 so we still have . . . so is there anybody from the public have any questions for Mr. Mulhall based on the testimony that he delivered tonight? And I'm seeing none so that moved it along pretty quickly. Let's bring in Mr. Glasson, Jim let's go for like 25 minutes, 20 minutes it might not have enough time to finish but . . . So we're going to swear you in.

(JAMES GLASSON SWORN IN FOR THE RECORD)

MR. BUZAK: Please state your name and business address for the record spelling your last name somewhere close to a microphone.

MR. GLASSON: James Glasson (G-L-A-S-S-O-N) my business address is Civil Engineering Inc. 1 Cove Street in Budd Lake, NJ.

MR. BUZAK: Thank you Mr. Glasson.

MR. SELVAGGI: Well for the record I know Mr. Glasson has testified here Mr. Chairman.

MR. WEISS: Yeah we'll accept Mr. Glasson as an expert engineer.

MR. SELVAGGI: Jim you had prepared the engineering plans that were submitted for this application?

MR. GLASSON: Yes I did.

MR. SELVAGGI: Okay let's start with kind of an overview of the current conditions. I know many of the Board members are probably familiar with the property but nonetheless and I think when you do that what used to be here is probably as significant as what's going to go here.

MR. GLASSON: Okay highlighted on this drawing is . . .

MR. BUZAK: A-1.

MR. GLASSON: It's the same as your sheet 3 of 12 there's two properties that are part of this application Lot 17 in Block 8301 that's this parcel it's 398 Route 46 and the property that is directly adjacent to it Lot 18 in Block 8301 which is number 400 Route 46. Lot 17 has 7,101 square feet, Lot 18 is slightly smaller at 5,761 square feet. As was discussed we're located on the westbound side of Route 46 at the intersection of Route 46 and Sand Shore directly opposite of where Route 46 meets Naughtright Road. The two properties that are involved Lot 17 has 100 feet of frontage on Route 46 and it also has about 105 feet of frontage on Sand Shore Road it's right side is 85 and it's left side 57. The property is colored in somewhat brown on here and if you look at the tree line on yours you can see that that property is a treed property at the present time it's vacant and it slopes slightly from Route 46 towards Sand Shore Road at about 2 percent. The adjacent property the triangular piece Lot 18 has 170 feet of frontage on Route 46 and it has 181 feet of frontage on Sand Shore Road it's a double frontage lot the same as Lot 17. It has that common side 57 feet and then it goes as small as 9 feet at the intersection of Sand Shore and Route 46. Both of these properties are located in your C-2 zone which requires a minimum lot size of 2 acres, a minimum lot width of 200, a depth of 250 and the more important part a front setback of 90, side setback 60 and rear setback 50. Now as I said previously the largest side of this property of all of the properties we start with 9 feet on one end, the common side 57 and the longest side 85. We have dual frontage, we have a frontage on Sand Shore and we have a frontage on Route 46. So if you take your front setback of 90 feet allowed in the C-2 zone there is no building envelope whatsoever on this property. So there's no building envelope permitted from . . . if you were to offset 90 feet it would overlap onto Route 46, if you were offsetting from Route 46 the other way it would offset onto Sand Shore. The Lot 18 property if you are aware of it or know the property was previously had two buildings on it back in the day it was a single-family home a two-story home that's located in this grey area shown here. The home actually infringes upon the right-of-way at some point there was a right-of-way taking along Sand Shore Road, Sand Shore Road now has a 66 foot wide right-of-way. And the previous other building was like a garage area it was a one-story masonry building and that about half of that property was within the right-of-way of Sand Shore Road. So at some time these properties were, or this property was larger and did contain these buildings within the building envelope but presently half of both of those buildings were within the right-of-way of Sand Shore Road. We had appeared before the Board back in 2008 for that property by itself the triangular piece Lot 18 and had been approved for what was called the ITC Phone Center. It was a very small building with a very small parking lot. It's a tough lot to deal with because of where it's located but we did have an approval back at that date it was never constructed.

MR. BUZAK: When was that Mr. Glasson?

MR. GLASSON: It was the ITC Phone Center.

MR. BUZAK: And when?

MR. FLEISCHNER: In 2008.

MR. GLASSON: 2008.

MR. BUZAK: Thank you.

MR. SELVAGGI: When you said we that was you and another client.

MR. GLASSON: Myself and a Mr. Manesch were before the Board for approval of an ITC Phone Center it was a small mom and pop home store with a very small parking lot it was like five parking spaces and it was very minimal use of the land and we did say at that time any other use that came in there would have to come back and change the site plan. But that never got built. At the same time we were before the Board we did have to go for a Highlands Exemption, it took us about 3 years to get a Highlands exemption on this property because we had to go back to old aerial photos to basically show them what existed on the property. In 2011 we actually finally got our Highlands approval on this property and they actually gave us credit for a lot of that coverage that was within the right-of-way that was taken that was done years later. So we did get a Highlands approval and the application that you guys have before you has a Highlands plan within it and we're still within that approval. So we were approved at that time for Exemption #4 and that was based on the coverage and we had to go down to the DEP and go through a lot of issues to get to that point. And that's really important to note when we start talking about this because if you look at these two properties Lot 18 has the coverage Lot 17 doesn't have the coverage. And although it would appear to make sense to spread out what we're proposing I'm going to talk about why we do what we do but in the Highlands when your coverage does not exceed an acre as soon as you start moving coverage around technically you lose it. So you're going to see when I start talking about what we're proposing to do, most of what we're proposing to do or almost all of what we're proposing to do even though we're combining these properties for our application falls on Lot 18 because that's where the coverage legally existed in the year 2004 the date of enactment of the Highlands Act which is very important when you look at it. Although we do have this wooded parcel here it's only of use to us for certain items and I'll explain as I go through the plan itself. Let me just talk about the adjacent properties, to our right or east of our property is this vacant property that I was talking about that's wooded. Directly adjacent to our wooded piece that's owned by Commerce Bank and Commerce Bank is further to the east on Lots 14 and 15 this is actually Lot 16. The only thing that exists is the road has been widened from Commerce Bank along Sand Shore Road up to adjacent to the beginning of our property and then the road feathers back into Sand Shore. So there was some widening that was done with Commerce Bank. Across Sand Shore Road are two lots in the Light Industrial Zone Lots 11 and 12 they're vacant. One of the lots Lot 11 had been approved for office warehouse prior to the Highlands, again that lot had not gotten certain things built before the Highlands and they lost their approvals. So Lots 11 and 11.01 that were over here were supposed to be office/warehouse never materialized because of the Highlands. Further to the west is the Hildebrandt Farms on the corner that also is in the Light Industrial Zone and now across Route 46 in the C-2 zone is the Exxon Station, next to that the shopping center which has a Burger King and I'll refer to it as Mt. Olive Parkade and then opposite directly caddy corner to us is the Johnson Dodge that we were talking about about the wellhead and this was the wellhead that Mr. Mulhall talked about with regard to Exxon and this was the Johnson Dodge opposite us. If I can direct you to my second drawing and this is a little different than your drawing. If you're going to look at my drawings that you have before you . . .

MR. BUZAK: Mark that A-2.

MR. GLASSON: If you look at sheet 4 this is a modification of sheet 4 of my plans. This is a 10 scale drawing that combines the two properties. And I'll just give you an idea when you add those two properties up it comes up somewhere in the neighborhood of 12,817 square feet. I'd say one property was at least . . . that one property Lot 17 is 7101 and Lot 18 is 5761 the simple addition of them would be more than this 12,817 but we do have a slight dedication that we did on the corner. When we were before the Board for the ITC Phone Center Mr. Buczynski accurately laid out that if this intersection was ever revised and the curb line were changed here it might be smart for us to give a dedication it's kind of an odd ball corner on our property anyway. We gave a dedication and we held that same dedication this time but it was for right-of-way purposes if this intersection were ever revised. And if you look on that drawing sheet 4 that you guys have in front of you you'll see a curb line that's . . . there's a dashed curb line that represents the existing curb line and there's a solid curb line on that corner that would be a potential widening in the future if that ever happened. We set the right-of-way of our property back 10 feet so we give additional right-of-way there. That's why the map is slightly different from the straight addition of Lots 17 and 18. Again we're proposing to redevelop this lot I call it the Mt. Olive BP, the BP is the gas station of choice for the applicant although that can change with whether or not he gets that franchise on the property. But its Mt. Olive BP it is an on-site gas station only there is no

repair, there is no service quite frankly the site does not allow for a ton of operation on the site because we're restricted. Now you can see if you look at your plan you'll see a dashed line that exists in this location, that is the old property line and that will show you that the majority of our coverage is lacking on previous Lot 17 and the majority of our coverage is on what was previously known as Lot 18. (inaudible) Lot 17 is the new number it's the lower number but most of our coverage other than an entranceway into the site which we were able to pick up a little bit more coverage which we had left under our exemption previously but all of our coverage is predominantly located where it was before, the same way we had done with the ITC Phone Center. So most of the coverage is on the western end of the property. We have associated with this a very small building and three islands for gas pump. The buildings is 264 square feet it's 31 feet in length on Sand Shore Road and 30 feet in length on Route 46 and it has a right side of 13 and a left side of 5 it's an abnormal shape its triangular almost to the shape of the property. It does not meet like I had said previously it does not meet any building setbacks because if you offset the 90 foot building setbacks there is no setback. So we are going to be requiring variances for the setback of that building where the 90 feet is required from Route 46 we have 31 and where 90 feet is required from Sand Shore Road we have 1 foot. The difference on Sand Shore Road is we've now taken the Sand Shore Road widening that was left off here by Commerce Bank and continued it all the way down through the intersection. So this dark area represents the existing pavement which is 22 feet wide and we've expanded it by 8 feet to stay in concert with the Commerce Bank and run that all the way to the intersection to provide a better alignment of Sand Shore Road. We still with this building are 16 feet off of the traveled way even with the dedication but we are as small as 1 foot from our own property. Like I said that dedication that was given on Sand Shore Road at a previous time Sand Shore Road is actually a 66 foot right-of-way which is a pretty large right-of-way. Our gas pump area we have three gas pump islands, we have six fueling positions. The gas pump islands are 6 foot long 2 foot 8 inches wide they have pumps to provide service on either side there's two 12 foot lanes on either side so that people would pull in and I'll get into the access. They're pulling off of Route 46 they would access these six pump stations or pump lanes fill up with their gas and the store is there to strictly provide a single restroom and vending machines. There is no retail sales in this store because we cannot accommodate parking on this site other than parking for our attendant and a handicap parking space. So this is not a retail store it's a store or a building where you can go in and use a handicap restroom it's the only restroom you will have is a single restroom and we also will have vending machines that's it. We have six pumping positions and there's an overhead canopy the canopy is 24 by 63 it's located 15 feet off of the ground it has a maximum height of 18 feet. So there's a 3 foot hood on the top of the canopy. The canopy will be lighted, yeah there will be LED lights in the canopy I apologize you do not have details of the canopy you will have them before the next meeting we'll have architectural plans of the canopy showing exactly what that will look like with the lighting within the canopy and show you there's some striping proposed on the canopy and stuff like that to be in concert with BP color packet. Access to the site it's kind of peculiar in that we have a single one way in from Route 46 you cannot exit this back out onto Route 46. You enter only from Route 46 it's a 15 foot wide entranceway we met with DOT for major access permit which this is considered and we fell within their threshold of our frontage without acquiring this neighboring property but we felt it would be smarter to allow a queuing area and lengthen that so we did we left an area of about 90 feet when you pull in before you get to the gas pumps so that if someone were to pull in here and decide, oh there's people at these gas pumps I don't want to pull in they can pull back out. There's two exits, there's an exit before the gas pump and an exit after the gas pump, they are not entrances. You have one way in and two ways out.

MR. FLEISCHNER: Mr. Glasson your saying you cannot enter the station from Sand Shore Road.

MR. GLASSON: Correct it will be signed accordingly there will be stop bars and stop signs and you cannot enter from Sand Shore Road.

MR. FLEISCHNER: Why?

MR. GLASSON: For two reasons. First of all if you entered from this way from Sand Shore Road you'd be going in the wrong direction in the pump islands that would be number one. Because you're coming off of Route 46 in this direction this car would not have the ability to come around to you they would be going opposite directions and we do not want people pulling back out onto Route 46 this would be one way in. Route 46 running in a westbound direction. And we don't really have the ability to have two way traffic in there so we're trying to get you in one direction, out if you do not want to go to the gas station or out this way to a lighted condition which gets you back to Route 46 at a lighted condition which is at this corner.

MS. MOTT: Was any type of traffic study done with the traffic flow? I mean it backs up now and there's . . .

MR. FLEISCHNER: It backs up now and is a disaster when someone wants to make a right from Route 46 heading west and there is three, four cars . . .

MS. MOTT: I mean you look at . . . I mean there's accidents all the time you can pull traffic studies from the Police Department.

MR. GLASSON: Right backed up here at the intersection.

MR. FLEISCHNER: Yeah.

MR. GLASSON: Correct, correct well we're leaving that's why we widened the road here and we're leaving both exits out of it there's not an entrance there.

MR. FLEISCHNER: I understand that.

MS. MOTT: But you're dumping all the cars onto Sand Shore Road a.k.a. a country road basically I mean you're widening it a couple of feet that's not really going to . . .

MR. GLASSON: I'm dumping it out to a lighted condition.

MR. FLEISCHNER: But if you, and I travel that road significantly and there are times when there are two or three cars there and during the summer a lot of folks come out that way from the farm when they're buying their vegetables, etc. and now you've got a car that's not going into the gas station but you've got a car on Route 46 who is trying to make a right turn at the light onto Sand Shore and you're going to have all of these other cars there, you need to spend the day sitting there and you work in the neighborhood. And then you've got the people who I hate to say are going to say I don't care if it's an exit I'm going in there because how do I get into the BP Station. I'm not going out onto Route 46 and making another turn I can't make a left so what do I do pull into the A&P parking lot? Well I still can't do it so I'm just pulling into the gas station. So now we're going to have cars that are crashing into each other because there are people that are going to say well it's not going to happen to me, and we know what happens when it happens to me. So I have a real concern about this traffic flow here, a real concern.

MR. GLASSON: Is your concern the staging here at the intersection?

MR. FLEISCHNER: Staging at the intersection and no entrance from Sand Shore.

MR. GLASSON: Well if you were to enter from Sand Shore it would be only one direction you could enter because if you entered . . . you'd have to enter in this direction because otherwise if you entered in this direction you'd be flowing against traffic back out the opposite direction. It would be the only way you could enter.

MR. SELVAGGI: Jim what about a second exit back on to Route 46?

MS. MOTT: It would put you at the light.

MR. GLASSON: It won't be permitted by the DOT.

MR. SELVAGGI: That's the problem.

MR. GLASSON: The DOT liked this set up so that we took people to a lighted condition. They will not allow us to have another exit back out on Route 46. Especially right at the light, you'd be pulling out right here at the light.

MR. FLEISCHNER: So maybe you can correct me I don't mean to sound facetious when I ask this question, does DOT have a regulation that if there's 35 accidents at a light and "X" number of fatalities at that point then they look at the intersection and say well maybe we needed to widen it, we needed to do other things. I mean what is the criteria because . . .

MR. BUCZYNSKI: But DOT doesn't really have jurisdiction on Sand Shore Road.

MR. FLEISCHNER: No but it does on Route 46 and it's been . . . so maybe the town . . .

MR. BUCZYNSKI: The DOT is not telling you you can't have an entrance off of Sand Shore Road. You know they're not telling you that because they have no jurisdiction regarding Sand Shore Road. They like this traffic pattern relative to Route 46 period.

MR. FLEISCHNER: Because they in essence really . . . they really don't care what happens on Sand Shore Road.

MR. BUCZYNSKI: They really don't.

MR. GLASSON: They take it off Route 46 they don't want to put you back out . . .

MR. FLEISCHNER: But this Planning Board cares about what happens.

MR. BUCZYNSKI: Absolutely.

MR. FLEISCHNER: Okay gotcha.

MR. SELVAGGI: Jim could you add an entrance onto Sand Shore . . . I mean off of . . . into the site off of Sand Shore?

MR. SCHAECHTER: (inaudible) that first entrance that first exit and make that an entrance I mean you've mean got enough width there to get two cars back on both lanes . . .

MR. GLASSON: We'd have to change it but I mean technically you do but your fear is that someone is going to pull in here and not want to use the gas station and go the wrong way and go out.

MR. FLEISCHNER: No my concern is that somebody is going to go out that way and somebody else is going to say well I need gas because it's a great location I don't want to wait until I get all the way to Hackettstown. But I'm going to go in there now anyway and somebody else is kind of speeding up I've got to get out of here because I really want to go back the other way. Because I really want to use the gas station to get to the bank and I missed the bank entrance because there was a truck on my behind and I couldn't make that turn. So that's my concern, that's a really busy, busy intersection and road.

MR. SCHAECHTER: Human nature is going to make people take that right and go to that entrance anyway.

MR. FLEISCHNER: Yeah.

MR. SCHAECHTER: Human nature is your going to come across Naughtright you know if you don't want to go to the Exxon station and you need gas you're going to go across and you're going to make your first right. You're not going to go all the way around the block go through the parking lot of the TD Bank, cut around . . . yeah they're going to make a right.

MS. MOTT: Yeah or just go to Exxon.

MR. FLEISCHNER: Because you can't fix stupid, stupid is forever.

MR. SELVAGGI: (Inaudible) we can do that but just simply adding that Sand Shore access in isn't going to address the queuing at the light.

MR. GLASSON: Right you've got all the people going to the pumps.

MR. FLEISCHNER: That's another issue that I have a grave concern,

MR. SELVAGGI: But there's not much . . . I mean you know . . . I mean quite frankly what I would suspect that if most people came in off of here and were going to go back out you'd probably get a fair number that are living somewhere off of Sand Shore Road and they probably stop and make a right out of the site.

MR. WEISS: You know I think what we should do we should table the conversation because of the late hour. What we really need to do though is I'm going to ask you to stop here Jim, if anybody from the public has any questions for Jim.

MR. SELVAGGI: He'll be back by the way.

- MR. BUCZYNSKI: Just one other thing to it might be advantageous for some of the Board members that are not really familiar with that intersection to just go see and observe it.
- MR. WEISS: Okay. Well Jim if you want to make some changes based on some of the commentary feel free.
- MR. FLEISCHNER: I'm just speaking out loud because I travel that road and I see things and . . .
- MR. SELVAGGI: The widening proposed will help it will provide a greater line of sight distance . . .
- MR. BUCZYNSKI: It won't help the queuing going onto Route 46.
- MR. SELVAGGI: But that queuing is going on now.
- MR. BUCZYNSKI: Right.
- MR. WEISS: Again don't we always talk about that if it's really that inconvenient to come here then won't go there. So if they end up in a tremendous traffic jam then maybe they will find another gas station. That's just the nature of doing business. Let's come up with a schedule Michael, Catherine that we can move this certainly the first meeting in November is . . .
- MS. NATAFALUSY: That's the only meeting we have in November because of the League of Municipalities, November 13th.
- MR. WEISS: So that is.
- MS. NATAFALUSY: November 13.
- MR. WEISS: November 13, does that work?
- MR. SELVAGGI: It works for us.
- MR. WEISS: That works for us Catherine?
- MS. NATAFALUSY: Yeah Mr. Selvaggi is going to be here that night for a couple other applications for extensions.
- MR. WEISS: Oh great. We need this one extended right?
- MS. NATAFALUSY: Yes I need an extension from you.
- MR. WEISS: Okay so the 13th of November you're good and you'll sign the extension?
- MS. NATAFALUSY: Mike I need an extension from you through at least the end of November or if not December.
- MR. WEISS: So we carry this application no further notice, anything else I might want to announce?
- MR. BUZAK: No further notice they'll be here on November 13th at 7:00 p.m.
- MR. WEISS: Is this application first on the 13th?
- MS. NATAFALUSY: No I've got Eleventh Hour, ARD, Toll Brothers, Morris Chase & Hunt extension request, Benjamin Moore and then we'll hear this application.
- MR. WEISS: All right. So with that being said no further notice thank you we'll see you soon.

MOUNT OLIVE BOARD OF EDUCATION – (Block 7600, Lot 86) – Corey Road

- MR. WEISS: We have one other application this evening. We're going to hear Mt. Olive Board of Education NJSA 40:55D-31 capital review for the high school turf field located at 18 Corey

Road. Before we do that Brian is going to step down and I have to leave I have a prior commitment and (inaudible) I wanted to personally apologize I appreciate you coming I just have to leave I have a prior commitment so I appreciate you coming here under a much finer situation I'm very happy to see you unfortunately I have to leave. So good luck I know . . . I've seen the plans I've looked at them enough I am personally very excited about what you're bringing to us. I think it's great and I'm sure there will be no resistance but we're just going to take a quick two minute break and when we come back Mr. Fleischner will be handling the gavel.

MR. FLEISCHNER: We're back on the record.

MR. GAFFON: Stephen Gaffon from the (inaudible) representing the applicant.

MR. FLEISCHNER: Thank you.

MR. GIANFORCARO: Anthony Gianforcaro I'm the architect of record for the Mount Olive School District.

MR. GAFFON: We appreciate the opportunity to present this review to the Board it's a very simple application to replace the existing dirt field with a turf field that's demonstrated on the exhibit . .

MR. FLEISCHNER: Please sit down don't stand make yourself comfortable.

MR. GAFFON: Just going to replace the existing dirt old grass fields to be turf fields and make (inaudible). And we are looking for approvals and Mr. Gianforcaro has been advised (inaudible) submission and we are prepared to take bids tomorrow as a matter of fact. So if we can swear Mr. Gianforcaro in?

MR. BUZAK: Yes.

(ANTHONY GIANFORCARO SWORN IN FOR THE RECORD).

MR. BUZAK: Would you please state your name and business address for the record spelling your last name. I know you introduced yourself before.

MR. GIANFORCARO: Sure. Anthony Gianforcaro (G-I-A-N-F-O-R-C-A-R-O) 555 East Main Street, Chester, NJ.

MR. BUZAK: Thank you sir.

MR. GIANFORCARO: You're welcome.

MR. GAFFON: What is your credentials?

MR. GIANFORCARO: I am a licensed engineer and a licensed architect in the state of New Jersey.

MR. GAFFON: Have you testified before this Board previously?

MR. GIANFORCARO: I have.

MR. GAFFON: Your qualifications have been accepted by the Board previously?

MR. GIANFORCARO: Yes they were.

MR. GAFFON: (Inaudible).

MR. BUZAK: I have nothing further the Board will accept him.

MR. FLEISCHNER: Any concerns? No, you're good thank you.

MR. GIANFORCARO: Okay we have a project out to bid at stated that will replace the running track and will take all of the natural grass inside the running track and change it to a synthetic turf. In order to get approval from the DEP there is a ditch behind the visitors stands that is considered wetlands. So we actually got three approvals believe it or not in a little over a year we're very proud to say in order to do what we want to do. One was the Highlands, one was a wetlands permits and one was a flood hazard

area permit. What the agreement we made with the DEP was what you see here in red is going to be rubberized track material, it is exactly the same size that's there today. We are not adding one square foot of impervious. The high jump is on this end, the long jump and pole vault on the other end. Now generally when we do track and fields what we call the "D" zone, okay because it looks like the letter "D" we usually do all track material a rubberized material. We're not doing that here because the DEP said no more impervious material. So the "D" zones around the high jump and around the pole vault and long jump will be the synthetic grass material. So basically that's the plan it's to replace . . . and we're going to do it in phases, the first phase will be to go inside the track and build the turf field we have to take out the natural grass, half of the field the underside of the field will be dug out and 18 inches of stone will be put in because we have to form a detention area underneath the field so we're not increasing any drainage or putting any additional runoff rate into the ditch or there's a small basin here on the property which part of the field will drain. So we had to show drainage calculations, we did soil logs, permeability testing and that was all given to the DEP in order to get out permit which we obtained. One of the things that . . . and just to make you aware we're going to have the words Mount Olive and Marauders in the end zones, we're going to line the fields for football, soccer, field hockey, boy's lacrosse, girl's lacrosse.

MR. GAFFON: A little confusing the (inaudible) players.

MR. GIANFORCARO: It gets a little confusing but they're all different colors, once you start playing you get used to it. But the one thing it will always be green so that's the only difference it's going to be versus today.

MR. FLEISCHNER: I do have a question though, you say you're going to have you know all of the different sports lined on that field, do other schools do that?

MR. GIANFORCARO: Yes. It's a tossup I would say probably more than half will line every sport, some will just line football and soccer and they put what's called a tick mark and it's a permanent mark in the turf that may be blue. And what it is it's the corners and certain areas where you would then put a stake right through the turf, pull a string line and you actually lined the field the way you would line a grass field. And you paint it and it doesn't stay permanent you could actually if you really wanted to scrub it off but it would stay for, you have to do it maybe once or twice a season to keep that line on. And so different schools, you know they have different opinions on it we chose to put them all inlaid so that they don't have to paint them.

MR. FLEISCHNER: And it's not going to be confusing to the kids out there?

MR. GIANFORCARO: No it really isn't I mean obviously you know one thing we do with the football is we actually use a lighter color, a darker color, a lighter color, a darker color it gives you that NFL look if you would, with . . . when you mow the grass in different directions so football's obviously stands out. Soccer is the same length of the football field it's wider, it's the yellow line, it stands out and then it's the athlete and the referee that really needs to be familiar with the lines. And again with the lacrosse and the field hockey its shorter it's brought in due to the length of the field and we've never had a problem with that.

MR. FLEISCHNER: I guess it's great for the Mt. Olive kids because they're going to be used to it but the visiting teams who have never played on that field it could be . . .

MR. GIANFORCARO: Well it is very common in high school athletics today.

(Inaudible – someone speaking, do not know who is speaking and cannot hear)

MR. FLEISCHNER: But it's just you it's . . . I guess the kids learn it.

MR. GIANFORCARO: The advantage of the turf is that if you get . . . it doesn't wear like a grass, when you have a grass field and if it rains here you know if we get torrential downpours you may have to cancel the game because of the fields just isn't playable. Five minutes after it rains you can play on this field so that's the beauty thing of the turf is you can get the continuous ability to have the games on the field. And obviously the band can practice here because it's lined for a football field they use the lines of the football field in order to do their marching and so on.

MR. BUCZYNSKI: What type of turf?

MR. GIANFORCARO: We're going with field turf.

MR. BUCZYNSKI: Field turf.

MR. GIANFORCARO: That's the basis of the design I cannot bring . . .

MR. BUCZYNSKI: Revolution?

MR. GIANFORCARO: Yes I cannot be proprietary when we specify something in a public bid but we are . . . the basis of the design is field turf revolution. That's really the project I do want to mention one other thing that was another agreement that we had to do, we made with the DEP. This is not in color but if you notice towards the . . . behind the track on the one side the small area on the other side we agreed to plant 90 trees and 222 shrubs. That was one of the agreements to build this in the flood hazard area. So we're going to have quite a bit of new vegetation around this field in order to allow that . . . that they allowed us to put artificial turf in this area. So I just want to point that out I think there have been some discussions about having a combined effort between the municipality and the school.

MR. FLEISCHNER: If I may since I was at the meeting with the Chairman and your Board member we did approach the town Council and raised the issued since the Planning Board actually has no control over the tree fund anymore. But we did find out how much money was in the tree fund and there's a significant amount of money. And the Chairman, myself and I guess Mr. Schaechter we felt since the money all comes out of the taxpayers in Mount Olive that a portion of the funding for these trees could come from the tree fund within Mount Olive.

MR. GAFFON: On behalf of the Board I request that this Board support that effort.

MR. FLEISCHNER: Right and what the town Council did was that evening they put a motion on the floor and the Council voted to say that they have no objection to that since it doesn't matter in reality when you pay your taxes in Mount Olive someone is going to pay for it. And like I said there is a significant amount I'm not saying that all of the money should come from that tree fund but it was felt that that would be a good use for . . . because our concern was where some of these . . . however we did feel very strongly that maybe a tree/shrub like we have Dr. Keller could be maybe advisory on exactly what to plant because it is a concern putting the right shrubs or the right trees so they do not cause problems down the road. Because we have planted some trees even at town hall that are the wrong trees they're invasive.

MR. GIANFORCARO: Well I do want you know and no disrespect for an arborist or whoever is involved on behalf of the town, the DEP is the one who approved these trees. We have to plant native trees, we did not just arbitrarily pick these I mean they're Pin Oaks, Northern Red Oaks there were different ones, the shrubs are you know certain Dogwoods and Summersweet and Winter Holly this isn't just because we like that tree. Each one of these specified trees was approved by the DEP. So if we want to switch them we may get a little bit of a feedback . . .

MR. FLEISCHNER: No I'm not saying you have to I just want to make sure that the right trees . . .

MR. GIANFORCARO: But I want the Board to know that this was plan was approved by the DEP it was reviewed and again I kind of think we're stuck with this.

MR. BUCZYNSKI: You are.

MR. BUZAK: So you began to talk about phasing and you said your first phase was the inner part and what's your next phase so if you could just finish out that thought.

MR. GIANFORCARO: Would be the track. What we're going to do is this winter we're going to build a turf field we're going to start it in the fall I should say into the winter it's going to be a turf field. We're then going to stop and let the track season proceed on the old track, as soon as track season is over we're going to dig up the track that summer and build a new track.

MR. BUZAK: Thank you.

MR. GIANFORCARO: So that's the phasing I apologize I didn't . . .

MR. BUZAK: That's okay.

MR. GIANFORCARO: And that's the project and we're very excited about it I think the high school has been waiting a long time.

MS. MOTT: Question, what about the existing lights, they're staying in place they're not being upgraded?

MR. GIANFORCARO: The lights are staying where they are.

MS. MOTT: Okay.

MR. FLEISCHNER: Any other Board members have questions?

MR. RUSSELL: Are you aware of the NBC investigative report that was on last night and again tonight on the nightly news, it was on the Today Show and it was on MSNBC correlating the rubber and turf fields to non-Hodgkin's lymphoma?

MR. GIANFORCARO: I am not aware of that.

MR. RUSSELL: It was particularly pertinent to goalies that were rolling around in it.

MR. GIANFORCARO: Being a former patient of Sloan Kettering with Hodgkin's lymphoma that brings great attention to me right now. I am now aware of it and I can assure you that tomorrow I will be doing quite a lot of investigations. There was a scare that came out several years ago about lead in turf, in artificial surfaces and we looked into that immediately because there was some lead found. Lead was found in the old carpet style, I call it the Cincinnati Reds turf okay if you remember when AstroTurf first came out it looked like a carpet. There was some fields I think there was one in Newark that in the paint of those fields they found lead, a high lead content. We went out and tested the fields that I had designed that were done by actually the same manufactured field turf which is one of the leaders of the industry, we went out and tested those fields and found no lead content at all. This brings, this is something

MR. RUSSELL: Black rubber that's between the blades of grass.

MR. GIANFORCARO: Absolutely. One thing about this rubber is not that it has anything to do with . . . I'm not going to say whether it has anything to do with the non-Hodgkin's lymphoma, this rubber is processed a little different than other turf manufacturers where it's cryogenically pulverized. And the reason field turf is found its been so successful is if you look at shredded rubber and cryogenically pulverized rubber the shredded rubber will float in water a lot more than the cryogenically and what that does is when you're playing on a wet day not as much rubber if any will stick to your shoes. Because if you go on some fields you'll see the players you know shoes and the socks or you know of their uniform down will be filled with the black rubber. And field turf has system where it doesn't stick to you okay, there is a little bit of static electricity at the beginning when you first open the field, if it gets really bad they actually put it's like a dishwasher detergent and they'll put it out in the spreader in order to try to get rid of the static. But I thank you very much for bringing that up I . . .

MR. RUSSELL: According to the NBC report the rubber comes from old automobile tires that are processed. And there were four compounds including arsenic that they found in it.

MR. GAFFON: Fine we'll look into this absolutely.

MR. RUSSELL: The city of New York has banned turf fields so has Los Angeles.

MR. GIANFORCARO: This is the first I've heard of it.

MR. FLEISCHNER: Thanks Nelson, thank you. Anybody have any questions you guys have any questions? Members of the public have any questions? Please state your name sir.

MR. SCHAECHTER: Brian Schaechter (S-C-H-A-E-C-H-T-E-R) 80 Crenshaw Drive, Flanders, New Jersey I'm also a member of the Board of Education. Mr. Russell thank you for pointing out that new study with all studies I think we need to do a little more research before we either put the kids in harm's way or the public in harm's way. So I will take it upon myself to address that with the Board and the Superintendent in the morning.

MR. RUSSELL: I think NBC just put it on the internet.

MR. SCHAECHTER: Yeah well I mean there's lots of studies out there and as Mr. Fleischner knows coming from the pharmaceutical world you know there's always two sides to every study and you actually have to read the study in order to figure out what exactly they're looking at. Secondly thank you once again Planning Board for your support going from the town Council. The estimates that were requested from the town Council to the Planning Board and the Board of Education the cost of those trees, those 312 trees is approximately \$70,000. So I would request that we go . . . there's plenty of money that leaves plenty of money still in the tree fund, almost \$111,000, \$120,000 besides that. So I would request that the support of the Planning Board to ask for the full \$70,000 from the town Council.

MR. FLEISCHNER: Do we need to like . . .

MR. SCHAECHTER: I would assume we would have to go . . .

MR. FLEISCHNER: Have a motion to support?

MR. SCHAECHTER: As my role in the Planning Board I would assume that the Planning Board would have to go in conjunction with the Board of Education to the town Council and request those funds be released.

MR. MCGROARTY: How much would the balance be then?

MR. SCHAECHTER: There was approximately \$189,000 in the tree fund.

MR. FLEISCHNER: It was \$189 that's what we were told the night we went to the . . .

MR. MCGROARTY: So that leaves about \$110, \$120 or thereabouts.

MR. FLEISCHNER: Yes would still leave in the tree fund.

MS. NATAFALUSY: Was there any trees on the Middle School Brian?

MR. SCHAECHTER: When they did the Middle School field?

MS. NATAFALUSY: Yeah.

MR. SCHAECHTER: The DEP did not require trees and there was none that were planted.

MS. NATAFALUSY: Okay.

MR. SCHAECHTER: This is a DEP requirement.

MR. FLEISCHNER: Do we need to like have a motion from this Board to support that?

MR. BUZAK: No I guess if the applicant has completed the Board's role in this is to review it, to make any recommendations to the Board of Education to consider in pursuing this project and to make a determination that it is . . . since we're adopted Land Use Ordinances consistent with the Master Plan. Since it's a replacement of the existing field I assume that it's not inconsistent with the Master Plan and I don't know if the Board has any recommendations that have been made. It seems that the applicant has presented a pretty full outline of what they're going to do.

MR. GAFFON: Mr. Buzak (inaudible) something this Board can do to through the town Council or resolution or otherwise and ask them to participate in some fashion (inaudible)?

MR. BUZAK: Certainly separate and apart from this or related to this once we get through this recommendation part if the Board is willing to consider that a motion should be made to recommend to the township Council whatever you want to do whether its 100 percent or half or whatever it is. And that can then be related to the township through Catherine.

MS. NATAFALUSY: I know the Business Administrator has been working on this already because we discussed it at an agenda meeting tonight about taking the money from the tree fund for this. So it's already in the process.

MR. FLEISCHNER: At what level? 100 percent, 60 percent, 50 percent of what the cost would be to do the tree?

MS. NATAFALUSY: He didn't say anything I don't know if he's gotten anything from the . . .

MR. SCHAECHTER: There was no cost that was discussed.

MS. NATAFALUSY: I don't know if he has received anything from the Board of Education yet on the cost. I'm not sure. Yes? Okay I'll talk to him tomorrow.

MR. WILPERT: Either way it's going to (inaudible) residents so we have the money sitting in an account already they're not going to make it up in another ten years.

MS. NATAFALUSY: Right.

MR. FLEISCHNER: And as long as there's a reserve to still plant some more trees around town where they're needed whether it be at Turkey Brook or to replace the trees that are dying around here.

MS. NATAFALUSY: Do you want me to send a memo to Council tomorrow from the Board saying that they recommend it?

MR. FLEISCHNER: Yes that we're supporting the . . . I would think if everyone is in agreement. If you're not then speak now or forever hold your peace. Well you have our support for funding that. Any other questions anybody?

MR. BUZAK: Any other recommendations or any recommendations that anyone wants to make? I guess there's none.

MR. FLEISCHNER: Seeing none, I guess there's none.

MR. BUZAK: Well done gentlemen.

MR. FLEISCHNER: Thank you. Anything else any Board members want to bring up? If not we'll entertain a motion.

MR. KOPTYRA: I make a motion we adjourn.

MS. MOTT: I second that.

MR. FLEISCHNER: All in favor?

EVERYONE: Aye.

(MEETING ADJOURNED AT 10:00 P.M.)

Transcribed by:
Lauren Perkins, Secretary
Planning Department