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, Brian Schaechter, David Koptyra, Dan Nelsen, Nelson Russell, Frank Wilpert, Jr., Kim Mott, Sandra Stotler, Howie Weiss

Members Excused: John Mania, Henry Fastert

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

Professionals Excused: Edward Buzak, Esq.

APPROVAL OF MINUTES

January 15, 2015 Public Meeting

Motion: Joe Fleischner
Second: Brian Schaechter

Roll Call:

Joe Fleischner	- yes
Brian Schaechter	- yes
David Koptyra	- yes
Dan Nelsen	- yes
Nelson Russell	- yes
Frank Wilpert	- yes
Howie Weiss	- yes

APPROVAL OF RESOLUTIONS

RES. #PB 14-24 – LUIS GARZON – (BLOCK 3207, LOTS 8.01 & 9)

Motion: Joe Fleischner
Second: David Koptyra

MR. WEISS: David thank you. I have one question Tiena the copy I have in front of me the numbers are slightly different from what I'm seeing on the agenda. I see resolution number 6-13 and this is PB 14-24.

MS. COFONI: Oh 14 . . . yep that should be changed then I'll make sure and change that 14-24.

MR. WEISS: Yeah so this is wrong so we'll go with . .

MS. COFONI: Yeah so don't sign that one I'll get you a new one.

MR. WEISS: Okay so that being said with that slight modification that Tiena said she will amend it to reflect the proper PB 14-24 Joe still okay?

MR. FLEISCHNER: Yep.

MR. WEISS: David?

MR. KOPTYRA: Yes.

MR. WEISS: Thank you. Any other comments? Seeing none roll call.

MS. NATAFALUSY:

Joe Fleischner	- yes
Brian Schaechter	- yes
David Koptyra	- yes
Dan Nelsen	- yes
Nelson Russell	- yes
Kim Mott	- yes
Howie Weiss	- yes

RES. #PB 14-12 – MICHAEL & COLLEEN SZAREK- (BLOCK 7702, LOT 42)

Motion: Dan Nelsen
Second: Nelson Russell

Roll Call:

Brian Schaechter - yes
Dan Nelsen - yes
Nelson Russell - yes
Kim Mott - yes
Sandra Stotler - yes
Howie Weiss - yes

RES. #PB 14-20 – EDWARD NEWHAUSER – (BLOCK 4100, LOT 94)

Motion: Nelson Russell
Second: Dan Nelsen

Roll Call:

Brian Schaechter - yes
Dan Nelsen - yes
Nelson Russell - yes
Kim Mott - yes
Sandra Stotler - yes
Howie Weiss - yes

RES. #PB 15-03 – MICHELLE HOWARTH – (BLOCK 8103, LOT 65)

Motion: Brian Schaechter
Second: Dan Nelsen

Roll Call:

Brian Schaechter - yes
Dan Nelsen - yes
Nelson Russell - yes
Kim Mott - yes
Sandra Stotler - yes
Howie Weiss - yes

COMMITTEE REPORTS

MR. WEISS: Thank you everybody we'll move into committee reports. Henry is not here tonight so there will be no Mayor's report. John is technically not here for the council report. Environmental commission?

MR. RUSSELL: We met on the Wednesday before last we decided not to do well testing this year due to lack of interest last year. That's it.

MR. WEISS: Nelson I just wanted to follow up I think on our last communication we had, was the environmental commission going to go forward and have any comment on this particular application we're hearing tonight?

MR. RUSSELL: I wrote a text to the Chair asking that very same question he was not at the meeting that Wednesday and I haven't heard anything.

MR. WEISS: Okay so I suppose that if you have any questions this evening you'll address them coming from you personally.

MR. RUSSELL: Yeah.

MR. WEISS: Rather than any kind of official capacity from the environmental commission. Thank you, ordinance committee Joe?

MR. FLEISCHNER: Not at this time.

MR. WEISS: Thank you. Nothing from the street naming committee. David anything from open space?

MR. KOPTYRA: No not at this time.

MR. WEISS: Not at this time okay perfect. Anything else legal, engineering, planning? Catherine anything for us?

MS. NATAFALUSY: No.

MR. WEISS: I think before we just move on real quick I think we might some time maybe Ed might want to help us with some new COAH regulations that came down recently I think that might be good when we have a lighter schedule.

MS. TIENA: Yes Ed and I'm sure Chuck will . . .

MR. WEISS: Yeah I think we should because I tried to follow I'm very confused. So I just thought we might want to . . . So it's something we might want to, as you get information you'll share that with us in a report.

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

MR. WEISS: Okay that brings us to our lone developmental matter this evening PB 14-03 Roadranger Holdings Inc. requesting a d-1 variance a d-3 variance preliminary and final site plan with bulk variances located at 398-400 Route 46 west Block 8301, Lots 17 & 18. And for the record Kim Mott has stepped down on the application, John Mania being here in present is in the audience and will not be sitting on this application. He does not represent the Planning Board during the evening he's here as a member of the public. Michael welcome back.

MR. FLEISCHNER: Excuse me one second Mr. Chairman? Is Dan and Sandra certified to vote?

MS. NATAFALUSY: I was just going to say that they both gave me certifications although it is seven members voting tonight so Sandra would not be . . . it would be the seven members.

MR. FLEISCHNER: Thank you.

MR. WEISS: Good pick up Joe thank you very much.

MS. NATAFALUSY: Because Sandra is the eighth.

MR. WEISS: So Mr. Selvaggi welcome as I started to say you know I look at my notes and I see that you're here for the fourth meeting. What I always like to do and I'm not going to go into too much detail you were here last on the 8th of January we heard quite a bit of testimony from Mr. Mulhall your hydrogeologist, we took our exhibits right up through A-7 I believe is where we left off. Kind of detailed testimony that most of the evening was between Mr. Mulhall and your traffic engineer. I don't know if we need to get more into it I just want to make sure that we're on the same page that if you were to present any more exhibits the next one would be A-8 is that correct?

MS. COFONI: Yes.

MR. WEISS: Everyone agree with that? Okay so I won't take anymore of your precious time.

MR. SELVAGGI: Mr. Chairman thank you very much your chronological summary is accurate we've heard from our engineer, we've heard from our hydrogeologist, traffic and we are seeking site plan approval with a number of variances unique to this particular piece of property. What we're going to engage in tonight is planning testimony and Betsy McKenzie who's behind me will be our planner and the idea here is Betsy is going to kind of take all of the data and information that's been presented over the course of the past several meetings and synthesize it and go through the positive and negative criteria and establish we hope with you the justification for the granting of the relief that's being sought. So rather than you listening to me I think it's best that I have that come from Betsy.

MS. COFONI: That would be great and I'll swear you in if I may?

(ELIZABETH C. MCKENZIE SWORN IN FOR THE RECORD)

MS. COFONI: If you could state your full name spelling your last name and giving your business address for the record please.

MS. MCKENZIE: It is Elizabeth C. McKenzie (M-C-K-E-N-Z-I-E) and my business address is 9 Main Street in Flemington, New Jersey.

MR. SELVAGGI: Betsy have you testified before this Board?

MS. MCKENZIE: I testified here in 1999 on a Citgo application for this very same applicant. It then became a BP but it was a Citgo at the time that he applied. I have not had the pleasure of coming back in the last 15 years to Mount Olive. I don't know whether it's because nobody wanted me here or because nothing was happening here, but in any case I haven't been back before you.

MR. WEISS: But either way we don't have to answer those questions.

MR. SELVAGGI: So why don't we just run through your qualifications.

MS. MCKENZIE: I am the president of my own planning consulting firm which I started in 1980 and I am licensed in the State of New Jersey as a professional planner. I also have National Certification through the American Institute of Certified Planners. I have a Masters Degree in city and regional planning from Rutgers University, my undergraduate degree was in English literature so I had to go back to do something else besides read and write. Since opening my own . . . well prior to opening my own firm I was employed by the Township of East Brunswick in Middlesex as an Assistant Planner I then went on to be a Senior Planner at Girshin and Capolla Associates which later became known as Alvin E. Girshin Associates in Trenton, New Jersey and from there I opened my own firm in 1980 and I've been doing that since then. Since opening my own firm I've provided planning consulting services to over three dozen municipalities or municipal agencies as their planner. I've also been a court appointed Master in a number of Mt. Laurel cases I'd say another two dozen cases involving other municipalities. And I've also appeared before Boards in New Jersey in over 200 different municipalities in the State some of them many times over. I have, I sit on the Site Improvement Adversary Board, I have . . . I don't know what other qualifications or things that you need but I am . . .

MR. SELVAGGI: I mean look she is very qualified she really is.

MR. WEISS: I wasn't going to stop her Mr. Selvaggi.

MS. MCKENZIE: I'm happy to give you a copy of my CE which lists all of the municipalities in which I have appeared.

MR. WEISS: No, no the testimony has been very convincing.

MS. MCKENZIE: Thank you this is an excerpt if you want to write on the back of it or something?

MR. WEISS: No, no, no that's fine that's okay thank you very much I certainly have no problem accepting Ms. McKenzie as a qualified expert planner. I don't see anyone from the Planning Board . . . as a matter of fact I've heard nothing but great things about you and so I kind of sit here looking forward to what you have to tell us tonight. So you can sit down get comfortable and we'll turn it back over to Mr. Selvaggi.

MS. MCKENZIE: Thank you.

MR. SELVAGGI: Okay before we start you're going to be referencing that plan over here?

MS. MCKENZIE: Yes.

MR. SELVAGGI: Rather than lose momentum in the middle let's mark that A-8 . . .

MS. NATAFALUSY: That's already been marked.

MS. MCKENZIE: It's already marked as A-4.

MR. SELVAGGI: Oh okay I thought that was yours okay.

MS. MCKENZIE: This was Jim's previous exhibit and I just put it up there so that we'd have a point of reference if we were talking about specific site issues that we would be able to . . .

MR. WEISS: That was from December 18 actually.

MR. SELVAGGI: Yes I was just going to say. All right . . .

MR. WEISS: Okay that's sheet 4 of 12 so when we look it . .

MS. MCKENZIE: So I'll be referencing A-4.

MR. WEISS: That's sheet 4 of 12 of the Site Plan Layout.

MR. SELVAGGI: Yes.

MS. MCKENZIE: Right.

MR. SELVAGGI: Betsy why don't we start I guess first with a description of the property and you know what's proposed here and kind of what the impact is of the applicable zoning.

MS. MCKENZIE: Certainly and if I am going over some ground that was covered by other witnesses I apologize but I think it's important to sort of acknowledge those factors about the site and also the proposal that I think are particularly relevant to the planning arguments I'm going to be making. So I will try not to bore you but you might feel some of it is repetitive. Right now we have a property that is a little under a third of an acre its .294 acres and it's a combination of two lots its Lot 17 and Lot 18 both in Block 8301. And they're being merged and the new merged lot will be identified as Lot 17 so Lot 18 will essentially disappear. The property as you can see from the exhibit and as you know from the prior testimony is roughly triangular in shape. It has extensive frontage on two streets it has 284.9 feet of frontage on Sand Shore Road and it has 278.73 of frontage on Route 46 but its depth measures only 45 feet if you sort of take the average depth which is how your ordinance requires it to be measured. And even if at its greatest point I think the depth isn't very much but as a result of the dimensions of this site its extensive frontage and it's very limited depth you have basically a negative building envelope on this site. If you consider the front yard setback requirements for the C-2 zone in which this property is located and I think that's going to be relevant when we talk about something of the variances that we're seeking. It's a site that is problematic as you know because you heard an application involving this site back in 2008 which involved a lot of variances and that never went forward which is why this site is back before you again. But it's a characteristic of this site I think that you will see as we go through it that there's really no way you're going to meet all of the setback requirements you're going to have variances for something somewhere on this site at least with respect to setbacks. It's a relatively flat site and as you know Lot 18 was previously developed with a building and pavement areas associated with an auto service and repair facility. It was an older one I don't know that it ever had site plan approval it probably predated all of that and also a separate dwelling. Now those improvements have since been removed from the site although as you go by the site you cannot miss it only when it's snow covered but ordinarily you can tell that this site has been disturbed and that there was something on this site. Lot 17 which the applicant acquired is wooded and vacant and the reason that the applicant acquired Lot 17 to merge with Lot 18 is not because it would give him a lot more ability to develop this property but only because it would give him some flexibility. As you know this property as well as other properties in its vicinity is located in the Highlands Preservation Area and consequently it is subject to DEP regulations with respect to development in the Highlands Preservation Area. It has qualified there was an exception issued exception number 4 for the redevelopment of this site and that exemption only allows you to develop up to 125 percent of what's existing on the site as of the date that the Highlands Act was adopted. And that was established under the previously existing exemption and the applicant is not deviating from that, all he has been able to do with acquiring Lot 17 is to be able to be relocate some of the impervious coverage on the site so it's not all on what used to be Lot 18. But he can't even relocate everything further into Lot 17 because everything has to be contiguous to the previously existing coverage they're very strict in the way that exemption is applied as you know. So there are some limitations on what can be done even with the additional land that he's acquired. The site is identified in your Master Plan and also shown on the maps that accompany your Highlands Preservation Area Master Plan Element and Natural Resource Inventory as being located in a wellhead protection area. And in your own Master Plan it classifies the wellhead protection area that encompasses this site as Tier 1. So that is an issue obviously with respect to this site that is going to affect first of all it is part of the reason that we're here, there are other reasons why we're here as well, but it's going to affect how you view this application. The applicant's proposing to redevelop the property with a new gas station it's going to consist of three pump islands with an 1120 square foot

canopy over it and a very small service building which will only be 128 square feet. So it will be a tiny service building it will basically have one unisex handicapped accessible bathroom facility within it and the rest of the building will be occupied by all of the equipment monitoring equipment that was described to you in Matt Mulhall's testimony at the previous hearing. Oh and by the way this is purely for the sale of gas there will be no repairs undertaken on the property this will not be that kind of a gas station. And the proposed development will comply with all of the restrictions that are imposed by DEP under the previously issued Exemption #4. The existing curb cuts along the Route 46 frontage of Lot 18 are going to be removed and there will be a single curb cut that will be moved to the western end of Lot 17 and used for ingress only. So that was one of the benefits of acquiring Lot 17 was to be able to relocate the ingress and egress so it wasn't so tight on Lot 18. As well there will be a two way curb cut at the eastern edge of Lot 18 out to Sand Shore Road. There will be two parking spaces one handicap space and one regular space and those are shown on the plans at the western end of the site in front of the proposed service building. And then you'll have a 10 foot by 60 foot loading area that was demarcated in the vicinity of the (inaudible) along Sand Shore Road that's within the public right-of-way on Sand Shore Road but it will be outside of the cartway. And that is proposed there mainly because that is pretty . . . has been determined to be the safest place to have a truck pull off the road, the travel way and be able to fill without interfering with traffic on the site. The property as you know it's located in your C-2 commercial zone. Your C-2 commercial zone is a widely based commercial district and it permits a lot of uses as of right including a lot of retail sales uses, automobile and truck sales, Laundromats, professional and medical offices, veterinary hospitals, restaurants, bars and nightclubs, banks, financial institutions, health and fitness centers, theaters, gymnasiums, other recreation centers, hotels and motels, clubs lodges things of that nature, houses of worship, medical centers and mortuaries, utilities excluding radio and communication towers, public uses and antennas for wireless communication services. As conditional uses you do allow service stations and auto repair facilities as well as car washes, you also allow convenience markets and fast food restaurants provided they comply with the conditional use standard set forth in the ordinance. The C-2 commercial zone anticipates 2 acres lots that's the minimum lot area requirement in the C-2 zone. Very clearly we are not in compliance with that. The minimum lot width required for the C-2 zone is 200 feet, the minimum lot depth is 250 feet and the maximum floor area ratio is .3. You also have limitations on building coverage of 20 percent and the maximum impervious surface coverage or lot coverage is 60 percent and then you have yards of 90 feet in the front and you can see its in the middle of the site we've got that 45 foot street to street which is about the only way I can measure the depth of that lot. You don't have enough room to do your 90 foot front yard setback requirements from either street. Your minimum rear yard is 50 feet, your minimum side yard is 60 feet and your minimum parking setback is 15 feet. Service stations because they're permitted as conditional uses in the C-2 district also have to comply with a number of standards that are very specific to that use. Again a minimum lot area of 2 acres so that's not different for the C-2 zone that it is for service stations generally. There's also a climate for a minimum distance between service stations of 2500 feet measured to the nearest lot line. We easily meet that if you're measuring on a linear basis along the westbound lane of Route 46 in Mt. Olive but we don't meet that if you're looking at the eastbound side too because on the eastbound side you've got the Exxon Station at Naughright Road and that is 93 feet from the subject property so that's a deviation from your conditional use standards. You also have minimum setbacks for buildings shall be as provided in the zone and the minimum setback for a canopy over the gasoline pumps shall be 60 feet. It says that you can have a structure no larger than 300 gross square feet in size to sell gasoline and automobile related products. We're proposing one that's 128 square feet and no auto body work is permitted but we're not even proposing auto repair so the auto body work is not an issue. There are sign regulations in the C-2 zone as well you limit free standing signs to a maximum of 90 square feet per sign face a limit of 15 feet in height and a minimum setback from the street of 10 feet. And then finally we have the fact that the subject property is identified in your Master Plan as being located in the Tier 1 wellhead protection area and your ordinance has wellhead protection regulations that's Section 400-76.1 which are part of your zoning ordinance and those regulations prohibit the location of a gasoline service station within a Tier 1 wellhead protection area. So the proposal to locate first of all the proposal to locate the service station in the wellhead protection area on the subject property which is in a wellhead protection area is going to require a use variance or a d-1 variance regardless of whether it is permitted or not permitted as of right or as conditional uses in the C-2 zone. Also we have certain deviations from the conditional use requirements those are going to require d-3 variances one is the minimum lot area, the other is the distance to another service station I guess it's 90 feet proposed I said 93 and misspoke, the minimum front building setback 90 feet required, 5 feet is proposed from Route 46 west, 1 foot proposed from Sand Shore Road and the minimum canopy setback 60 feet is required 14.8 feet is proposed from Route 46 west and .2 feet is proposed from Sand Shore Road. Now those are measurements from the right-of-way line there is additional distance and I can give you those distances if you want I think they were put into the record by the engineer at the last hearing. But there was additional distance to the actual cartway so this sounds sort of worse than it is but it is what your ordinance requires you to do in terms of measuring setbacks so I'm giving you the extent of the variance we need. There are also some

additional requirements applicable to all lots and uses in the C-2 zone that we don't need and those are going to require c variances. And that is the minimum lot area, again we only have a third of an acre a little less and 2 acres is required, the minimum lot depth 250 feet is required, a lot depth measurement technically doesn't apply to this lot because you don't measure lot depth normally between streets but the only way I can give you some idea how much depth we have is to measure it according to your lot depth definition and so that would be an average distance of 45 feet from the front lot line not to the rear lot line but to the next front lot line. And then the minimum front setback for the principal building again 90 feet required and we have 1 and 5 feet from Sand Shore Road and Route 46 west respectively. I will say that there is some overlap between the d-3 variances that we need and the c variances but I'm calling them out anyway just as a matter of record so you know because there are a lot of variances involved with this application and I want you to have them all. And then the minimum parking setback 15 feet is required and we're not proposing any setback for the parking. The maximum height of the freestanding sign we had sought a variance from that before because we were talking about 20 feet but at the last hearing there was an agreement to relocate this sign so that it would be more visible and but we can knock it down to 15 feet so we no longer need a variance from that from the height of the sign. So we did take that off of the table. And the minimum setback of the freestanding sign 10 feet required 2 feet proposed we are continuing to propose to be located within the setback area for signs because of the configuration of the site. All of those are c variances, there are also some additional what appear to be c variances because the proposal is required under the C-2 zone regulations its required to comply with certain development standards that you set out in Section 400-94 of your ordinance and those are listed separately from the enumerated conditional uses so they're not conditional use requirements under your ordinance. But they are nevertheless standards for service station development that are cited in your ordinance and some of those standards assume that they are going to be auto repairs and things other than the sale of gasoline on the site, since we're not proposing those they're not necessarily applicable to this proposal. But looking at the applicable standards there are a couple that will require c variances. It says all structures including gas pumps; air pumps of the islands upon on which they are located shall be setback from all street and property lines a distance of at least 60 feet. And the nearest pump island and the kiosk are going to be located 8.9 feet from Sand Shore Road and the nearest pump island will be located 23.5 feet from Route 46 west that will require c variances. A minimum space of 25 feet is supposed to exist between any two pump islands and between any island and the service station building and the proposed distance between islands in this case will be 11-1/2 feet. Although the distance between any island and the service station building will be well over 25 feet so it's only between the islands but that requires a c variance as well. It also says that it is intended that service stations be designed compatibly with other permitted commercial and industrial uses in the zone in which they are located that they not be stripped along the available highway frontage or at each quadrant of a convenient intersection and that they be located within shopping centers and in office and industrial complexes as an integral part of the overall design. This site is not located within a shopping center or an office or industrial complex clearly and there's no possibility of (inaudible) or a complex being constructed on the adjacent vacant land due to not only it's size and it's configuration but it's designation as Highlands Preservation Area you're simply not going to get more there unless it was previously approved prior to 2004. A c variance therefore may be required to have a freestanding service station. D talks about ingress and egress shall recognize the turning movements generated and access points shall be coordinated with the access points required for nearby uses. I'm sorry did I miss something? I just want to make sure I'm not missing something.

MR. FLEISCHNER: No you're not.

MS. MCKENZIE: Okay, okay the frequency of intersecting side streets, the minimizing of left turns off collector and arterial streets and the maintaining of building setbacks compatible with the required setbacks and landscaping. To the extent it's physically possible on this site the applicant has tried to do that and these objectives I think have been achieved in the design of the project which has been pretty carefully structured to fit with this reduced sized site. And you have had testimony from the applicant's traffic expert on the traffic related issues. If due to the reference to the setback requirements we need another c variance so that we need two c variances and a d-3 for a lot of the same setback issues then obviously it's requested otherwise I don't believe a variance is required. There finally one other provision that I think would be applicable except that we don't need a variance from it and that's the provision that no gasoline service station shall be permitted within 1500 feet of the high water mark of Budd Lake, Drakesbrook, the Southbranch of the Raritan River or Lake Musconetcong. And this site is located well over 1500 feet from any of those water bodies so we don't require a variance. But I just thought it was important to call that out because water quality is an issue it's obviously an issue for you with respect to wellhead protection this is more a service water quality issue but I think it's important to know that this site at least does not require a variance from that. So based on the foregoing analysis of those provisions you're going to require c variances for the setbacks of the pump islands from Route 46 west and Sand Shore Road and for the distances between the pump islands

and you might have to have a c variance for the fact that this is a freestanding location for the service station rather than being in a shopping center or other comprehensive development. Obviously this Board is well familiar with the criteria that we have to satisfy in order to get all of these variances that we're seeking. For the d-1 variance we have to satisfy that there are special reasons . . . yes.

MR. FLEISCHNER: I apologize for interrupting but to keep my mind clear, exactly you've said you need numerous variances.

MS. MCKENZIE: Yes.

MR. FLEISCHNER: I'm at 9 or 10.

MS. MCKENZIE: Do you want me to count them up?

MR. FLEISCHNER: Could you tell me how many variances you're actually asking for?

MS. MCKENZIE: Okay we have one d, . . .

MR. FLEISCHNER: Could you do it mentally you're an expert so I'm . . .

MS. MCKENZIE: Oh you want me to just count them all, the number of variances.

MR. FLEISCHNER: Yeah and just give me a number.

MS. MCKENZIE: Okay bear with me I have to count them but I have them listed. Twelve and maybe thirteen if the freestanding station requires a variance is what I have.

MR. FLEISCHNER: Okay thank you.

MS. MCKENZIE: And of those there's a d-1 and I think there's four d-3's. Four d-3's one d-1 and the rest are c variances.

MR. FLEISCHNER: Thank you.

MS. MCKENZIE: At least that's what I count.

MR. WEISS: Hold on what second.

MS. COFONI: I'm sorry the one possible maybe one more what is that one I'm sorry I didn't catch that one?

MS. MCKENZIE: That's the issue of having . . . there's a in the design standards for, and I don't know whether you consider your design standards waiveable for variance but I'm conservative in treating it as a variance.

MS. COFONI: Oh okay.

MS. MCKENZIE: But you say that there is a preference for gas stations to be in shopping centers and not be freestanding. We are proposing a freestanding gasoline station if that is a design waiver fine but if it's a c variance I'll deal; you know I'll make a record.

MR. FLEISCHNER: Okay.

MR. WEISS: Okay.

MS. COFONI: Thank you.

MS. MCKENZIE: As you know for any d variance we have to satisfy you that there are special reasons that justify granting the variance in this particular case. And also we have to satisfy you that if you do grant the variance there will be no substantial detriment to the public good and no substantial impairment of the intent and purpose of your zone plan and zoning ordinance. There is also for a d-1 variance there is an additional criterion that has to be satisfied and that was set forth by the New Jersey Supreme Court in the 1987 Medici vs BPR Company decision. When you're considering a variance for a use that is not permitted in the zone which is sort of kind of applies and kind of doesn't apply but I'll get

into that. You have to reconcile the granting of the use variance with the rebuttable presumption that the governing body's continuing omission of the proposed use from the list of those permitted in the zone is deliberate in light of the ongoing review and reexamination process that is called for in the Municipal Land Use Law. And you have to basically be able to address the enhanced quality of proof that is required in order to make that reconciliation. So the applicant has to satisfy that you know this is a situation where you actually can grant a variance without substantial detriment to the public good or without impairing the intent and purpose of your zone plan. Because it looks on the face of it like it would go against it and that's essentially what the Medici standard is with respect to the enhanced quality of proof. In this case you have the gasoline service station which is in fact a permitted conditional use in the C-2 zone. There is a necessity for the d-1 use variance arises solely out of the fact that you have wellhead protection standards in your ordinance which prohibits certain uses involving hazardous substances and that includes gasoline service stations in your ordinance from being located within a Tier 1 wellhead protection area. So the Medici issue that we have to resolve here relates to whether or not the intention of the governing body in prohibiting gasoline service stations within a Tier 1 wellhead protection area can be overcome in this particular case. I mean in other words can we satisfy you that their intentions in prohibiting uses which might generate hazardous substances, I don't think the gas station all by itself is a hazardous substance but it does deal with hazardous substances or potentially hazardous substances can be overcome in this case. And we will go back to that you had a lot of testimony from Matt Mulhall about how we're going above and beyond but I'll come back to that in my discussion on that. What I would like to do is to go, and I want to talk before I go back to the d-1 variance which normally I would start with that because it's sort of a . . . it looks like a threshold variance, I first want to go to the d-3 variances and also the c variances. And the reason I want to do that is because for you to accept what I'm going to say on the negative criteria with respect to the d-1 variance you first have to accept what I'm saying to you about the site being peculiarly suited to the proposed use and that the location of this use on this site makes sense from a planning perspective and promotes the purposes of the Municipal Land Use Law. If you don't agree with me on that we're not going any place with the rest of it so I feel it's important to first address those issues because we are permitted as a conditional use not an as of right use, we don't meet all of the conditions for the conditional use. So on the face of it it doesn't look good but I think by the time I finish going through this I hope you will agree with me that in this particular case under these particular circumstances this use is in fact very appropriate for this site and probably resolves the issue of what do you do with this site in the best possible way under the circumstances. The New Jersey Supreme Court treats an application involving a deviation from a standard or specification pertaining to a conditional use a little bit differently from how it treats a d-1 variance. For the conditional use itself we don't have to satisfy the enhanced quality of proof that is set forth in Medici. But we do have to demonstrate that, and this is the proof of special reasons according to the Coventry Square vs Westwood Supreme Court decision. We have to demonstrate to you that the site is suitable for the use despite the deviations from the conditional use regulations and that the problems the ordinance intended to overcome by establishing the particular conditions that are in your ordinance can be accommodated on this site despite the deviations. So that's the burden of proof that I have to get over first to even satisfy you that a gas station might belong on this site. We also have a number of c variances and as you know for a c variance to be granted we can demonstrate either that there is a hardship or practical difficulty in complying with the ordinance based on a condition relating to the property or the structure is already located on it whether it's the narrowness, shallowness, shape of the property or some other topographic conditions or extraordinary physical features that uniquely affect the property. Or in the alternative if we can satisfy you that granting the c variances would actually promote the purposes of the Municipal Land Use Law and the benefits of granting the variance the variance would substantially outweigh any potential detriment. That's another type of proof we could offer you for the c variance. And also in all cases all of these variances no matter what you have to be comfortable, and I hope you will be, that if the variance is granted there will be no substantial detriment to the public good and no substantial impairment of the intent and purpose of your zone plan and zoning ordinance. So I want to give you first a little bit of an overview of how I view the development of this property and then go right into the d-3 and then the c variances and then go back to the d-1 variance and that will wrap it up. And so I'm just sort of telling you where I'm going so you know what to wait for. This is obviously as we described earlier a severely undersized site compared to the 2 acre minimum lot area that's required. Not only for the C-2 zone but for gasoline service stations in the C-2 zone. The applicant has improved the site's lot area through the acquisition and willingness to merge Lot 17 with Lot 18. Even though this increase in the lot area doesn't actually create more room for the development in terms of additional impervious coverage or it doesn't allow the development to be relocated away from the existing previously covered area, all that it really does is provide a little bit more flexibility in how we can arrange things on the site. It does allow us to relocate the driveway which is I think a significant improvement over what we would have had to work with had we remained with only Lot 18. We cannot increase the coverage beyond 125 percent of what previously existed, that is the absolute limit and we are stuck with that. The site did originally have a service station repair garage on it, one that was obviously not built to

modern standards and specifications for tank design it just was there. And nothing that you could have done about it and nothing that anyone could have done about it until the business finally closed and it was taken down.

MR. FLEISCHNER: I've got to interrupt.

MS. MCKENZIE: Sure.

MR. FLEISCHNER: You said you know the applicant has added Lot 18.

MS. MCKENZIE: Lot 17 to Lot 18 yes.

MR. FLEISCHNER: But isn't that where we're putting all of our septics and everything else?

MS. MCKENZIE: We're using; we're using what we can of Lot 17.

MR. FLEISCHNER: Right so if we didn't do that we'd have no place to put the septic system. Am I correct?

MS. MCKENZIE: Well you had a previous develop approval for this site in 2008 but that's gone.

MR. FLEISCHNER: I understand but we're not . . . that ship has sailed.

MS. MCKENZIE: Right that is gone that ship has sailed but I believe that . . . I think the applicant at one point had looked at a septic system on Lot 18. I think there had been one proposed on Lot 18 as part of the prior development but relocating it to Lot 17 obviously makes more sense as a place to put it and pulls it further away from the streets and the farm across the street and some of the other aspects of it. So you know we've used Lot 17 to the extent we can to improve the development which is why I said it's given us some flexibility. And that's pretty much all that it has done is given us some flexibility.

MR. FLEISCHNER: Right.

MS. MCKENZIE: But due to its very small size, its triangular shape and the limitations on what we can do on this site. Due to the fact that its located in the Highland Preservation Area and even though it got an exemption the limits on the extent and location of new coverage that is allowed. And also the site's extensive street frontage on two streets there really is no way to develop this property for any purpose without some variances being granted. They may not necessarily be use variances but there are going to be variances. The site has as I said before a negative building envelope, it only has its greatest depth at the eastern most lot line between the two streets is 85 feet its average is 45 feet. Your ordinance in the C-2 zone and also referenced in the service station requirements the conditional use requirements requires front yard setbacks of 90 feet each. Even if the canopy is required to be setback a distance of 60 feet from each street for a combined front yard setback distance of 120 feet it's clear that there's no way that a use could be a permitted use or a conditional use service station could be located on this site and comply with all of the setbacks. It's an unusual lot and it's in private ownership. You know this is a lot that you look at it and you think well maybe DOT should have bought this lot why didn't they? But they didn't and it's privately owned the applicant now owns it and it has been developed and he is proposing to develop it. You acknowledged all of these conditions about this site already in 2008 when you granted variances and preliminary and final site plan approval for a 1700 square foot two-story retail office building that was intended to house a highly specialized very low intensity use. And there were only something like 5 parking spaces associated for that building. And you said at that time the Board finds that due to the unusual configuration of the lot, and at that time it was only Lot 18, with its more or less triangular shape and double frontage a strict application of the bulk standards of the C-2 zone would prohibit any development on this site. Therefore the Board finds that exceptional practical difficulties and undue hardship exists by imposing the strict application of the regulations. So that is something that this Board already made a finding about with respect to this site and the bulk criteria for the C2 zone, some of which obviously feed into the conditional use standards and are similar to the conditional use standards except while we have to overcome for a conditional use is that even if we don't meet those standards is this site suitable for a gas station use. And I will be talking about that in a moment.

MR. WEISS: Let me interrupt real quick. Although I don't disagree with what you're saying I don't appreciate the fact that your bringing up something that we did in 2008 about an application that's got absolutely nothing to do with what we're doing here. And those conditions were totally unique to that application.

MS. MCKENZIE: Right and I beg your pardon if you feel that I was citing what you did in that application, I was citing only the findings you made about the property itself and the inability to meet the setback requirements. Not the specific variances you granted we're not entitled to those that was a different application. And I am not saying we get those variances if they got those variances I am only citing your recognition that this site is a highly unusual site and that it has a negative building envelope and that it can't meet the requirements of the C-2 zone. Because that stands no matter what is proposed. And even if we go away and a third or a fourth proposal comes before you all of those same conditions would apply because that's a condition of the property. I mean you properly described those variances that you granted at that time as conditions relating to the property and I just wanted to acknowledge that those are property conditions not use or proposal conditions.

MR. WEISS: That's a fair enough summation. And again your correction of the fact that because we granted variances then you made it very clear that you're not expecting them now.

MS. MCKENZIE: We're not entitled to anything that you did before, that use never was built on the site, it never existed that's not the issue.

MR. WEISS: I agree with that 100 percent.

MS. MCKENZIE: Good okay. My only concern is to acknowledge a common recognition of the fact this is a really difficult site.

MR. WEISS: Okay.

MS. MCKENZIE: Relative to your ordinance. I think the . . . for a number of reasons in my opinion the property is peculiarly suited to the proposed use as a gasoline service station despite the fact that it doesn't comply with all of the conditions. First of all when you deal with a conditional use you are dealing with a use that the courts have said are presumed to be allowed. It's just that there's a sense that the ordinance wants to regulate them further to make them work on a site that might not normally be developed with that use. It might hold other types of uses. And even though we don't meet all of the conditional use requirements on this site in part due to some of the constraints on the property itself and the Highlands Preservation Area designation which prevents us from adding land and changing the site dramatically. I think it should be noted, and this is the most important thing about this application, that the scope of the development that the applicant is proposing here that might normally be associated with a gasoline service station the type where you have like six or twelve pump islands and a big store, none of that is proposed here. He's not proposing even to have vending machines anymore because they're not going to fit with all of the extra equipment that he is putting in to make sure that groundwater quality issues are taken care of. So the building that he's going to have on the site is going to be far smaller even than the very small building that your ordinance allows as part of a gas station use.

MR. WEISS: Betsy can I interrupt you more time?

MS. MCKENZIE: Sure.

MR. WEISS: Earlier and I made a note to myself you mentioned something that I haven't heard yet which was an air pump. You mentioned it and maybe . . .

MS. MCKENZIE: Well that's something that you have in your ordinance. It's a regulation in your ordinance.

MR. WEISS: Okay so my question is you alluded to one I never heard us say there is going to be one. Is there going to be one?

MS. MCKENZIE: Hang on I don't think so because I didn't see it on the plan. Let me ask my client. No there is no air pump I didn't see it on the plans.

MR. WEISS: Nor did I.

MS. MCKENZIE: It's a fair question and I didn't have the answer so I'm glad you asked it, and obviously that's not part of the application if you wanted to add an air pump you would have to come back.

MR. WEISS: I agree because then that brings in a parking space in a very tight spot.

MS. MCKENZIE: Of course.

MR. WEISS: And we never ever spoke about an air pump and you mentioned it and I didn't want to just . . .

MS. MCKENZIE: Right it was just a standard in your ordinance that I was citing but it isn't proposed in this case. There aren't going to be any repairs, we're not going to have an air pump we now know, the size of the service station will be small and even . . . we'll have three pump islands but only four potential fueling positions will be available at any one time on this site. So that it's going to be a very limited service station use. It's not going to be a full blown gasoline service station that you might see in other locations. And I think that's important because the whole notion of a gasoline service station has been pared down to fit this site. And grant you we still need variances but we are not . . . I think that we have come up with something that is reasonable and that you've heard testimony from the site engineer and the traffic engineer as going to work on this site. It is you know I don't think we can get away from the fact that this site has limitations but I think we have created a proposal that fits the site. I think the other thing is that the site is located along Route 46 west which is a major east/west arterial highway and that if you're traveling westbound this gasoline service station will be something in addition to the westbound side that doesn't exist for some distance down Route 46 west. And even though there is another gasoline service station the Exxon Station that's 90 feet away on the other side of Route 46 I think the advantage of having one on the westbound lane is you won't have people queuing up to make that left turn to go to Naughright Road to get into the gasoline service station over there which I think your own traffic people said was a problematic left turn at peak hours anyway. So to the extent that we might be able to take some of the pressure it will probably be a drop in the bucket but if we're taking some of the pressure off of that that's to the good. The applicant's traffic consultant testified at length on the fact that the site's frontage on two streets and our ability to place the new. . the ingress only from Route 46 as far away from the intersection as possible and to have people going back out onto Route 46 at a signalized intersection actually promotes safe and controlled access to this station. He testified that that was the case. As you know and as he testified but you already know this a gas station is a type of use that for the most part people don't decide to go out to go get gas. Most of the time people go out and get gas on their way to doing something else. They may be getting gas as one of the things they want to get done but it's part of pass by traffic if you will or traffic that involves other activity in the same vicinity. And it tends to draw its customers from whoever is going by the site already. Granted a gas station introduces turning movements the traffic engineer testified as to the safety of those turning movements into the site and out of the site you had that testimony. I'm not a traffic expert I'm not going to repeat it for you or attempt to draw any conclusions from it other than to say that that's in the record and you have heard that testimony. But basically his conclusion was that the impact of the gasoline service station would not have a substantially detrimental impact on area traffic and I think that was the conclusion that he drew from the findings he made and testified to before this Board and I think it's important to recognize that. Although, and I talked to you about the fact that we have a 2500 foot separation I think there are very few if any other uses that could occupy this site given its limitations and unique characteristics. It is too small for any kind of fast food restaurant about the only thing that might fit on this site if there were already a building there might be a Rita's Ice Cream or something like that. But the problem with a Rita's is they usually rent spaces in existing buildings they usually don't build their own buildings. So that's a problem, I can't think of another use. I have an applicant for a Dunkin Donuts in Montgomery on a lot that's about a half an acre which is bigger than this and he's having a heck of a time with all of the variances he needs to fit his Dunkin Donuts on that site. I don't think that there are other uses that fit neatly. You had in 2008 a really specialized use there was going to be owner occupied where he had very specific needs and they could be met on this site. I don't know that that's something that's going to come along in our lifetime again. I never say never because I'm old enough to know that never is a bad word but I don't see that that is something you can count on as a potential redevelopment of this site. I think the type of gas station use that we're proposing in this case is in fact the right way to use this site. It introduces a use to this site that actually could be beneficial in terms of providing a service to motorists and people in the area who are traveling back and forth to work. It is a, and I'm not saying it's inherently beneficial or anything, I'm just saying that given the fact that you don't have another gas station along the westbound side for quite a distance it you know it may help you know draw people a little bit away from turning left to go to the Exxon Station. I think any of the other types of uses that you list professional offices, veterinary clinics, indoor recreational facilities of the kinds you list, clubs, lodges, houses of worship all of those require a bigger site than this is and all of them involve . . . and none of them would be able to locate here given the constraints of the Highlands Preservation Area exemption which limits us in terms of the amount of area the amount of impervious surface that we can deal with on this site. So we have to deal with a use that's going to fit within those limitations. You've seen now applications

for two one you approved it went away, I don't know if another one will come. We have this one and I think it fits well and I think the testimony has been that it can be done safely on this site and that it can be done in a way that will work. The applicant has done what he can to acknowledge some of the concerns, legitimate concerns that the Board raised can't you lower the height of the sign by moving the sign on the site he did that. Making sure that we don't even have vending machines for food inside the building so people aren't going to park to go inside the building unless they've got to go to the bathroom and you know that's usually a quick trip. In terms of the specific conditional use deviations and the proofs required for them the proximity to another service station is a requirement that I see in almost every gas station conditional use ordinance. But what the standard is is all over the map it's anything from 300 feet to 1500 feet to 500 feet to 2500 feet to you know three within a mile and it is something that there is no hard and fast rule as to what is appropriate. When those distributional proximity requirements were starting to gain popularity in local ordinances it was when towns were first adopting zoning ordinance in the 1940's and 1950's. And you had different kinds of gasoline service stations than you have now. First of all you didn't have a Uniform Construction Code, you didn't have site plan review that didn't happen then it didn't happen until quite a bit later when municipalities started to undertake site plan review. At that time you had no statutory authorization for it and the construction codes were not consistent from town to town and you didn't have the strong environmental protection regulations that you have now. So there was understandably there was a concern about the visual, environmental, fire, safety all of those other impacts associated with gasoline service stations. Obviously drove a sense that you didn't want to have a lot of them in one area because you didn't want what that would bring. A lot of the early gasoline service stations also included repairs and you know that could be noisy and you had cars parked all over the lot that's unsightly that kind of unsightliness isn't something that you want in a developing municipality. So I think that there were obviously at the time a typical and a logical response to a lot of the concerns that the towns had at that time but they've kind of gone away as being a major issue. There's really not a need for them we have very rigid construction codes and fire safety codes. We have very rigid, very rigid DEP standards for gasoline service stations now. We have site plan review, you have landscaping requirements, and we are not proposing the type of service station that involves cars parked all over the site and doors being left open while repairs are going on and the sounds of you know all of the equipment that's involved in automotive repairs. So none of that is going to occur on this site. There also have been some court cases that actually struck down the proximity requirements, Livingston, Bernardsville, there was several cases that were reported that struck down those regulations. And there is not a cohesive there is not a coherent logic to why the standard exists or what the standards should be. So what I have done is recognizing that you obviously don't want to have alot of gasoline service stations clustered at a particular intersection, I think that what I need to address with you is whether or not you're going to have a sense of proliferation of gas stations if we put one at this corner. And I think despite the fact that we've got an Exxon across the street from it and despite the fact that we've got the Exxon Station across the street there will not appear from a driver's perspective or somebody passing by to be a proliferation of gas stations. If they're in the westbound lane traveling on the westbound lane and they see a gas station they're going to go to that one they're not going to be paying attention to one in the eastbound lane unless they're looking for a gas station and they're desperate and they've got to get over to the eastbound lane to be able to go to the only gas station around. So I think that you're not going to have that perception of a proliferation. I can also tell you that the likelihood of having anymore gas stations developed in this area is pretty slim. You've got a car dealership on the other corner from the Exxon, you've got a farm market and a house located on the site on the other side of Sand Shore Road you're going to always have issues with respect to the Highlands Preservation Area regulations with respect to any redevelopment in this area. So I think the likelihood of another gas station coming in is pretty slim in this case. So in terms of the proliferation issue and the issue of the 2500 foot separation I think we can overcome that in this particular case because I think that this type of gas station in this particular location I don't think it is going to create the types of problems that a 2500 foot distance standard was meant to address in the first place or that even your ordinance might be concerned about with respect to a proliferation of stations in this location. And I think to use this type of proximity requirement which potentially could be invalidated if it went to court only because it has been invalidated in other towns in the past as a basis for denying this application will preclude the use of the property for a use to which it is otherwise in my opinion particularly well suited. Particularly with the use as we have proposed it not necessarily gas stations generally but this gas station. And I believe that the criteria set forth in the Coventry Square decision for approval of a conditional use deviation is satisfied in this case because of the fact that circumstances have changed since this type of requirement went into the ordinance. I'd also point out that this site probably had a service station on it at the time that the Exxon Station was put in in the first place. So there may have been . . . . it was taken down already? Okay, pardon me?

MR. FLEISCHNER: Just the buildings were there.

MS. MCKENZIE: The buildings were left there okay I stand corrected. I didn't know when the buildings were actually vacated so I'm glad you pointed that out. In any case it had been a potential service station because it had been one before possibly depending on whether or not it was considered abandoned. But the Exxon Station went in it's there we're dealing with it I think I can justify the variance from the 2500 foot proximity requirement. In terms of the lot area and setbacks we've already talked about the fact that this is a very small lot that we can't . . . we've increased the lot area as much as we reasonably can but we can't do anything to increase it in a meaningful way in terms of changing what we can build on this site or its configuration. It has the extensive frontage on the two streets and which creates front yard setback issues no matter what we do and it's extremely small and it's in the Highlands Preservation Area. I think that despite these deviations from the lot area and setback requirements, and the fact that we are constrained by being within the Highlands Preservation Area and the exemption that was issued, I think that if you look at the very limited opportunities that exist for any kind of development on this property what we are proposing in this case and the applicant's willingness to restrict the size and intensity of the proposal so that it fits the small size and the limited development area makes a good argument for approving this use as its proposed at this location. Were you to come back and ask for additional pump islands, no I don't think you could justify that. But I think that what is proposing is reasonable and appropriate to this site from every other perspective. It's location, the fact that it is limited and constrained and we are similarly constraining the proposal to fit the site and the fact that there is some benefit to having a gas station serving this part of the westbound side of Route 46. So I think that the site is in all respects peculiarly suited for this proposed use despite the deviations from the conditional use requirements. And that satisfies the special reasons that is required in the Coventry Square decision. I'll talk about negative criteria in a moment but I think the other thing is that if you grant the d-3 variances that are sought in this case I think you also incidentally are relieving the property from some hardship and practical difficulties associated with its size and shape. In terms of recognizing some of the limitations on any development of this property and you're allowing a reasonable use of the property and in my opinion an appropriate use. It also promotes two of the purposes of the Municipal Land Use Law one is to encourage municipal action to guide the appropriate use or development of all lands in this State in a manner which will promote the public health, safety, morals and general welfare that's purpose A. Purpose G is to provide sufficient space in appropriate locations for a variety of uses including commercial according to the respective environmental requirements in order to meet the needs of all New Jersey citizens. And I think this is a great site for a gas station in terms of meeting the needs of the people that drive on Route 46. In terms of the satisfaction of the negative criteria I don't think that granting the d-3 variance is in this case for the conditional use deviations will be substantially detrimental to the public good. Nor do I think it will substantially impair the intent and purpose of the zone plan and zoning ordinance of Mount Olive. Now put aside for a moment the wellhead protection issue because I'll take care of that separately. But you have as I said the use has been tailored to the particular circumstances of the site so that it can accommodate the use in a reasonable fashion despite the deviations from the setback requirements and the lot area requirement. You've had testimony from the traffic expert demonstrating that it's suitable for the use in terms of safe ingress and egress. You've had I think you've had testimony from the architect about the visual impact of the station it's going to be simple and streamlined. There's not going to be a lot of visual clutter there will be the logos on the canopy and there will be the freestanding sign. You're not going to have noise and unsightliness and clutter, there's not going to be little signs advertising air and you know you'll have a very simple streamlined service station use at this location. And it's a small site it shouldn't be cluttered and busy. And I think the other thing is that looking at your Master Plan over the years the intent of your C-2 zone is to accommodate a lot of the auto related businesses and you allow car washes and automotive sales and truck sales and car repair and service stations as part of the uses that you allow in this zone. And I think that even though you don't want to encourage their proliferation this is the place for those uses in Mount Olive Township. So I think permitting the proposed gasoline service station which will accommodate the needs of westbound travelers especially during peak hours from going to the Exxon Station is less convenient I think makes good sense and is appropriate from a planning perspective.

MR. SELVAGGI: Betsy I just want to intervene there too because you looked at the 2010 Master Plan Reexamination Report?

MS. MCKENZIE: Yes.

MR. SELVAGGI: Now one of the things I thought that was interesting and I'd like your opinion on it the township went out of its way to, and it's referenced in 2004 to leave the C-2 commercial district intact.

MS. MCKENZIE: Exactly.

MR. SELVAGGI: Why was that and how does that principal apply here?

MS. MCKENZIE: The intention that was expressed in the 2010 Reexamination Report was to try to, it said the creation of the Professional Business Zone on the northerly side of Route 46 in Budd Lake, and then they go on the Land Use was adopted in December 2004 to leave the C-2 Commercial district intact so as to allow development to the extent possible under the new restrictive controls imposed by the Highlands Act. That is exactly the sentence . .

MR. FLEISCHNER: Could you repeat that. To the extent possible?

MS. MCKENZIE: To the extent possible under the new restrictive controls imposed by the Highlands Act. So to the extent possible recognizing those controls.

MR. SELVAGGI: So was it intended to let the C-2 zone in light of now there's the Preservation Area to kind of create some flexibility to still encourage some type of commercial development?

MS. MCKENZIE: To the extent allowed by the Highlands Preservation Area yes. I mean it was respectful of the Highlands Preservation Area standards but a recognition that you still wanted those business uses to the extent that they could be accommodated.

MR. FLEISCHNER: Could I ask you a question?

MS. MCKENZIE: Sure.

MR. FLEISCHNER: Okay I'm going to go back into . . . you stated that this property would be suitable for this gas station.

MS. MCKENZIE: Yes.

MR. FLEISCHNER: Okay. Would you say any property is suitable if I got 13 variances? In other words if I went to President Obama and said would you give me 13 variances so I can put a gas station in front of the White House? And of course if he would say well you have to go to the Planning Board. If it needed 20 variances would you say it was still suitable?

MS. MCKENZIE: I think you have to look at what the conditions are of the site, you have to look at the uses around the site, you have to look at the site itself and what it can accommodate, what might logically go there or might not be able to go there. And I think that you have to look at what kinds of variances you're being asked to grant and whether in each case with those variances you are creating a situation that is going to be . . . I mean assuming we can justify each of the variances in terms of the positive criteria, if there is no substantial detriment to the public good and no substantial impairment of the intent and purpose of your zone plan and zoning ordinance the number of variances is irrelevant. It is the quality of the variances that you're granting. In other words on each of these variances when you look at them can you grant that variance in this particular case because of the circumstances that your confronted with in this particular case. But I've dealt with a number of applications, many, many applications over the years I'm older than I'd like to think, that involve numerous variances. Sometimes its because the use is entirely different from what they contemplated for the zone. For example if you're putting a commercial use in a residential zone there are likely to be a lot of variances. You know if the use is suitable for the site and the variances can be justified on that particular site the number of variances involved is not the issue. The issue is really the findings you have to make as a Board it's are there special reasons if it's a d variance or it's a c variance is there either a hardship or you know purposes of the Municipal Land Use Law being promoted if you will and if you do grant the variance will there be a detrimental impact on the public good or the intent and purpose of your zone plan.

MR. FLEISCHNER: But you'd have to admit that we've got a lot of variances.

MS. MCKENZIE: I do acknowledge that I counted them up for you we have a lot of variances. And it doesn't surprise me that we do with this lot.

MR. FLEISCHNER: I would think that when one looks at a property one would look and say initially what am I really going to need? What constitutes suitable and what doesn't? I mean that's just my own thinking. And also you stated that the traffic expert he gave his opinion.

MS. MCKENZIE: Yes.

MR. FLEISCHNER: My four year old grandson Harrison can count cars too. That's his opinion we also had our traffic Sergeant and traffic Corporal although they are not traffic experts so they deal with the accidents all around town I believe it was 1125, they had a different opinion.

MR. SELVAGGI: I will object only because . . .

MR. FLEISCHNER: I retract the statement, get into that later.

MS. MCKENZIE: And I also want to tell you that I'm not a traffic expert.

MR. FLEISCHNER: I understand that.

MS. MCKENZIE: I can only take note of the testimony that went in that was uncontroverted there was uncontroverted testimony on some aspects, there was some issues that were raised by the gentlemen that were here from your police department who were obviously you know very sincere and people who know a lot about what goes on in Mount Olive I mean that was clear to me. And you know one of the things I gleaned from that is you know you have some existing problems and there are existing problems with roadway configuration, existing problems with traffic lanes on Route 46, existing problems with driver behavior already. Some of those can't be cured no matter what we do with the site.

MR. FLEISCHNER: Right the question is do we want to make it worse.

MS. MCKENZIE: And then I suggested a way in which we might make it better to the extent that somebody is going to make a right turn into this site and not line up to make a left turn into the Exxon site during peak hours when Route 46 is busy that could be . . . . I'm not going to claim this is going to save you all.

MR. FLEISCHNER: If that occurs.

MS. MCKENZIE: If it occurs.

MR. FLEISCHNER: Because we don't know for a fact.

MS. MCKENZIE: Of course we don't know but to the extent that it may occur and it may only be a drop in the bucket but that is in a positive direction. And that's what I testified to I didn't make it like this is going to save you it's not your still going to have the problem because a lot of people go down Naughright Road to go home.

MR. FLEISCHNER: Correct, correct.

MS. MCKENZIE: So it's going to be an issue . . .or they want to go to the Burger King or they want to go to the shopping center I mean whatever. So it's whatever it is. But I didn't want to over blow that but I thought that it was important to note that that was a concern that they raised and you know possibly this development can actually do something to maybe mitigate that a little bit once in a while.

MR. FLEISCHNER: Thank you.

MS. MCKENZIE: That's the best I can say. Now I think I'll go now to the d-1 variance and I can cover the c variances afterwards. You had a lot of testimony from Matt Mulhall about the fact that that DEP regulations first of all do not prohibit gas stations from being located in a Tier 1 or any other Tier of a wellhead protection area. The reason he gave for that, and this was in his testimony, is that the ground surface delineation of a wellhead protection area is somewhat arbitrary. I mean it's a circle and that it doesn't really bear a relationship to underlying geological or topographical conditions in terms of the real issue which is how long is it going to take a contaminant, a piece of contamination if you will to reach the groundwater and even whether it will reach the groundwater in that particular case. Matt's testimony addressed the issue of how long it would take. He also talked about and he testified that he didn't think that there was any . . . he said little or no probability that a gas station located on this site would cause contamination of any of the three wells that are the basis for the Tier 1 wellhead protection designation area given the topography of the site. But more than that first of all you have DEP regulations that are supposed to be designed to protect groundwater supplies. Now for a long time stations didn't have those, the double walled tanks and all of the other things that they needed to have that DEP requires as a minimum they didn't have all of that and you had leaks. I mean there were places all over Morris County particularly . . . and Sussex County too where you were having problems with gas

stations that were constructed that were causing huge groundwater contamination problems. Those have largely been addressed by the gas stations having to upgrade and the requirements for upgrading. So most of that is being taken care of in a general way but you had the testimony from that and also from the applicant as to the fact that they're not going to just do the minimum, they're not going to do what any other gas station is required to do in this case. What they're actually proposing to do is to go above and beyond what is required in terms of the level of monitoring, the design of the tanks I think every single question that the Board had and they were all very good questions you should be concerned about groundwater quality, all of those questions were addressed in the testimony at the last hearing. And I think you know you yourself evaluate those findings or recommendations that were made by the experts that testified but I think that what we are proposing to do is not just do a gas station that will be a typical gas station and pop it down in an area that you've designated as a wellhead protection area, we are proposing to go above and beyond. And we've also had testimony that even though this is designated as a wellhead protection area and has a circle around it that because of the topography of this area the likelihood of contamination of any of those wells, the likelihood of contamination reaching any of those wells before something could be done especially. And I think that was the most important point is it was very, very, very slight and so slight as to be unlikely to happen in any case. Again I can never say never but it would take a long time for the pollution to reach those wells by that time a leak would have been discovered and addressed and mitigated. So that your goal of protecting your groundwater resources and protecting the wells that people have that are serving this area I think are more than promoted by the testimony that you've heard in support of this particular application. I don't know that we would be able to satisfy you that you could grant a variance in this case to put a gasoline service station which while not necessarily in and of itself hazardous does deal with hazardous substances. I don't think we could ask you to grant a d variance to allow that unless we could satisfy you that we have gone above and beyond on the negative criteria. Because that's really the whole purpose behind having a wellhead protection ordinance in the first place is to the protection of public water supplies.

MR. FLEISCHNER: Could you also comment then on the negative criteria about the farm that feeds .. . . .

MS. MCKENZIE: I think Matt Mulhall . . . yeah no he addressed that and he talked about . . .

MR. FLEISCHNER: He talked about the truck that pumps 340 gallons per minute on Sand Shore Road and if a leak springs in that where does that go? He got hazy when we checked the minutes.

MS. MCKENZIE: Well he addressed that I believe, that was addressed by the fact that your only concern that might have been fuzzy was in terms of the certainty that was given in the answers had to do with what if the hose itself breaks. Not if somebody drives away and pulls it out at either end but what if it cracks, what if it cracks. And apparently because of the way the hose operates, this is what was explained to me afterwards that maybe didn't come across to the Board, because of the way that the vacuum way that the how operates if you introduce that type of air by having a leak and gas starts coming out your going to have the shut off, it's going to engage the shut off. That's what was explained to me, did I design these systems, do I know how to do them? No I can only tell you that that is what I gleaned from what I heard but I realize that it may not have come across as smoothly as perhaps it should have in the record. But that is what I heard and I also after the hearing even questioned the witnesses to make sure I understood better what was being said. And that is the testimony. So that's all I can tell you is that even that is going to be . . . which is sort of an odd worse case type of scenario, even that situation . . . and again even if the truck carries that many gallons I think you also had testimony that it's baffled so you're never going to get access to everything that's in the truck if there's a leak.

MR. FLEISCHNER: Like (inaudible) compartments approximately 9000 gallons . . .

MS. MCKENZIE: Now even 9000 gallons isn't good I don't think that's pretty either.

MR. FLEISCHNER: I don't think I want to eat the corn that comes out of there.

MS. MCKENZIE: Right you don't want a puddle you know if you can avoid it I get that, I think that's perfectly reasonable. But you had testimony that basically said that the likelihood of that occurring is so slim as to be not problematic in connection with this use. And the fact that all of these other bells and whistles have been put into place to address leaks, and of course if there's a leak on the surface it has to be immediately addressed by hazard mitigation people. So that's you know it's not something where gas stations can no longer get away with just ignoring leaks.

MR. FLEISCHNER: No I fully understand that but during Hurricane Sandy that side of the road had no electric. The other side had electric so all of the electrical safeguards wouldn't have done anything.

MS. MCKENZIE: But if they have no electric they're not operating.

MR. FLEISCHNER: I understand that, I understand that but you know if something happens . . .

MR. SCHAECHTER: Joe it's irrelevant at this point. If there's a tanker accident right in front of the farm you have the same issue except for one thing, there's no oil separators in the drains that we've heard, we heard testimony on that.

MS. MCKENZIE: Yes there was testimony about the oil separators.

MR. SCHAECHTER: We're going back and visiting the what if's and its irrelevant now.

MR. FLEISCHNER: Well that's your opinion and I'm entitled to my opinion.

MR. SCHAECHTER: Well then let's save the comment for commentary please and not just badgering . . .

MR. FLEISCHNER: I'm not she is doing a great job; she's doing a great job.

MS. MCKENZIE: Oh I don't feel badgered I'm all good.

MR. SCHAECHTER: You're confusing the Board with your testimony.

MR. FLEISCHNER: I'm not confusing them.

MR. BUCZYNSKI: One thing too we just mentioned the oil separators; they said they're going to put them in the inlets on the plans.

MS. MCKENZIE: Yes they did yes.

MR. BUCZYNSKI: They did.

MS. MCKENZIE: So I think the other thing is in terms of the positive criteria I think that it is noteworthy that when Mt. Olive adopted its wellhead protection standards and regulations they put them not as a police power ordinance that was a separate regulation, they put them in the zoning ordinance where they could qualify for a variance. And I think that is very telling because I think it then puts the burden of proof on the applicant to demonstrate that we are in fact doing exactly what we are saying we're doing and that's going above and beyond to demonstrate that there will not be a negative impact on groundwater quality or on existing wells. And I think we've done that, I think that testimony has gone in, I think that it's been good and credible testimony. And I think it has been backed up by good information and a lot of descriptive detail about the . . . how it will work mechanically, how everything will work. And I think that based on that I think it was intended that there be variances granted in particular cases and for special reasons and I think in this case for this type of ordinance the special reasons are really the negative criteria. If you can't meet the negative criteria then you haven't got an argument. But if you can meet the negative criteria then I think you satisfied the intent of the ordinance, there will be no substantial detriment to the public good and that becomes in itself its own special reason for granting a variance from the wellhead protection area regulations. At least with respect to whether or not to locate a gasoline service station at this site. So I think we have satisfied the criteria for the d-1 variance and I think above and beyond that you know this is a d-1 variance that if you grant it then also allows us to go forward with a use that in my opinion, and I've already testified on the d-3 variances that we need from the conditional use requirements, is appropriate for this site despite the deviations from the conditional use requirements. I cannot think of a better type of use to put on this site except possibly for that use that was a dream use that was proposed in 2008, and that was a dream. But that was obviously the kind of use that would fit very well on this site but we can't . . . that isn't likely to come along I think as I said in the foreseeable future in our lifetime. Because it requires owner occupancy of the building that they're building for their own needs and you're not going to build a spec building that's that small with five parking spaces. I mean you preclude almost anybody else; it's simply not something that you're likely to see. And that doesn't take being any kind of a marketing expert to figure out that once you . . .

MR. FLEISCHNER: That's her opinion.

MS. MCKENZIE: It is my opinion is once you limit parking in relation to the building you are constraining who can go in there and that's what that proposal was for. And that is a zoning issue because there are many issues that would be precluded from going in there once they built a building with five parking spaces. And if that use had been built and had left it probably would have sat vacant until someone took it down again because there would be no one else that could use a building of that size with five parking spaces. And if you look at the uses you allow in your zone there aren't any that would fit into that category, and that's not my opinion that's your zoning ordinance. The c variances I think can all be justified as . . . or not all of them I have one that's a c-2 but nearly all of the c variances can be justified as c-1 or hardship variances for the reasons that I've already given with respect to the fact that you've got a site that is this small and this constrained by street frontage so that you're dealing with 90 foot front yard setbacks. And also 60 foot canopy setbacks and even 15 foot parking setbacks, even with 15 foot parking setbacks at the middle of the site you end up with 30 feet in which you can do something and that's with parking and building. So it gives you an idea of how much of a constraint you've got. You don't have 180 feet to meet two front yard setbacks, you don't have 120 feet to meet the canopy setbacks so you don't have a way of applying the C-2 bulk standards and setback standards to this lot in any kind of meaningful way. What you have to look at is the specifics of the proposal relative to this lot in this location recognizing that the cartway, even though we're not entitled to say you know we're not seeking a variance from . . . . We have to seek a variance from the right-of-way not from the cartway but there is some additional land between the right-of-way and the cartway and I think that's . . . it may be relevant to how this use will look on the lot and how it will be perceived in terms of the proximity of parking to the lot lines, the proximity of the canopy and the building. I think that it is significant that despite the number of setback and bulk type variances that are associated with the development of this site the most important parameters those that determine the intensity of the use of the site from a zoning perspective will all be more than satisfied. You have a floor area ratio proposed at .009 which would be well below the .30 maximum that is permitted. You have a building coverage at .99 percent which will be well below the 20 percent maximum permitted, and you have an impervious coverage which will be 33.99 percent which is well below the 60 percent maximum permitted in the C-2 zone. So it's a really pared down use, now some of that obviously is related to the Highlands Preservation Area restrictions it's not just the goodness of our hearts. Obviously if we could do more we would do more but we can't. But in terms of the fact that if you're looking at overall intensity of use this is a pretty low intensity use of the site. The variances that we are seeking for the 2 foot sign setback vs the 10 foot required is justified by, and this was already testified to I think at length by the engineer, its justified by the constraints of where you could put a sign on this particular property and still achieve the visibility you need for motorists so that they can make a responsible deceleration to turn into the site and signal other drivers of their intention. You don't want them coming up on the service station realizing its there and realizing they really want to go into a gas station and making any kind of sudden moves. That's where you get safety issues and I think that at the last hearing the agreement was to reduce the height of the sign and move it over so that it would be more visible from further away without it having to exceed the 15 foot height limit. And I think that the granting of the variance in this case it has c-1 components in terms of you know the practical difficulties of where you're going to put the sign, but it also has a c-2 component in that signs are intended to serve a purpose they're intended to alert motorists of what's there so they can make a rational and safe decision and take safe actions. And in this case I think that's a c-2 argument that it promotes public safety to have a sign located where people can see it and it makes sense and it alerts them to what they need to do. And I think that was the testimony that was given at the last hearing that the relocated sign that was talked about would achieve that if the Board would grant the variance from the 2 foot setback requirement. And that is again to allow the sign to be placed close enough to the right-of-way line so that it would have that visibility. And we were able to eliminate the sign height variance that we had originally be seeking as a result of that. Now I had already subtracted that from the 13 just so you know. So, and I also think that the fact that we're asking for a sign setback variance in my opinion given the very slim probability that you're going to get a lot of new businesses occupying vacant lots along this stretch of Route 46 because of the Highlands Preservation Area and this site's particularly circumstances I don't think this is going to set a precedent I think this is a question of the Board making a decision to do what is appropriate on this site but would not necessarily be appropriate elsewhere. You would have to listen to the circumstances of those cases but I don't think this sets a bad precedent. To the extent that we need a c variance for a freestanding gasoline service station, obviously one that's not located in a shopping center or in an office or industrial complex, and again this may be a design waiver but I'm treating it as a variance. I would say in this case again its justified by the unique circumstances of this site and the fact that you know it is peculiarly suited for this particular gasoline service station proposal and not for a lot of other uses if any. Since 2004 and the Highlands Act you haven't had an opportunity for a new shopping center or office or industrial complex, the ones you've got are pretty much developed, and the pad sites are developed. I mean you know it's pretty much set and nor should there be new opportunities for development. So you're limited to sites that are previously developed and I

think that in this case you have a site that previously developed, it's a limited site we are proposing a use that fits and I think again this is both a c-1 and c-2 variance to allow for the freestanding building.

MR. MCGROARTY: I can save you the trouble on that one. We've already eliminated that in the ordinance, the ordinance has been revised and that particular section has been removed.

MS. MCKENZIE: Oh I guess I got my ordinance too late to get that.

MR. MCGROARTY: It came late.

MS. MCKENZIE: So none of those applied.

MR. MCGROARTY: Your last reference to being part of a shopping center has been eliminated.

MS. MCKENZIE: That one has been eliminated.

MS. NATAFALUSY: Right.

MS. MCKENZIE: Okay.

MS. COFONI: Not all of them.

MS. MCKENZIE: Okay thank you I missed that I did not see that amendment.

MR. MCGROARTY: Likewise the distance one as well. I didn't want to interrupt you earlier . . .

MS. MCKENZIE: Oh I wish you had you would have saved yourselves a lot of time listening to that I went on and on and on. Thank you Chuck I did not realize that thank you. So basically it is my conclusion that all of the c variances that we're seeking can be justified based on the two alternative statutory criteria that are set forth in the Municipal Land Use Law. And that there will not be any substantial detriment to either the public good or an impairment of the intent and purpose of your zone plan and zoning ordinance if you grant these variances. This is a unique site it's unique in Mount Olive, it's unique in the C-2 zone. I think it is particularly well suited for the type of use and the scope of the use that we're proposing to make of it and I think despite the very many setback variances that we're seeking, some of which are the same variance but one it's reflected In two different parts of the ordinance, I think this proposed development fits a site that cannot be developed for any purpose without some variances. I mean when you approved it in 2008 there were variances, maybe different ones but there were variances. And I think that you've already acknowledged that this site is not an easy site it doesn't fit the C-2 zone. And for those reasons I think this application is one that can be approved and should be approved. And I think the alternative to that is to leave this site with really no reasonable use under your zoning.

MR. FLEISCHNER: I have a question. Did you say it's good planning for a gas station at this location which does not allow the employee who runs it to even park there? Do they have to (inaudible) because there's only one parking spot. There's two, one is a handicap and what happens if someone has to go to the bathroom?

MS. MCKENZIE: I my client addressed that at the last hearing.

MR. FLEISCHNER: Right and he said they would park somewhere else.

MR. GLASSON: No they would be at the pump and they would get out and go to the bathroom.

MS. MCKENZIE: He said his customers, he would use the parking space the employee would use the parking space. If somebody was handicapped and needed to go to the bathroom they could pull into the handicapped spot.

MR. FLEISCHNER: Even in this tight configuration what happens if someone . . .

MS. MCKENZIE: That was the testimony I mean I'm not going to replicate what was already said on the record but what I want to say is that . . .

MR. WEISS: That's fine let's drop it because it's not testimony that you need to give.

MS. MCKENZIE: Okay, okay it's in the record.

MR. FLESICHNER: Doesn't make sense.

MS. MCKENZIE: You disagree.

MR. FLEISCHNER: Yes.

MS. MCKENZIE: Okay.

MR. FLEISCHNER: Really disagree.

MR. SELVAGGI: Joe we've given up trying to convince you.

MR. WEISS: Betsy I don't know if you were done I've been watching it looks like you're at the end of you're . . .

MS. MCKENZIE: Oh I'm done I finished I'm done I'm sorry I should have said so.

MR. WEISS: Let's do this I know I want to turn to Chuck so we can review his report and we can do that together. Before we do that does anybody on the Planning Board have any questions for Betsy? I hope we took some good notes I certainly did and I will open it to the public once we hear from Chuck. But Chuck let's turn to your report, we have two reports from you the first one dated December 15 the second one a day later on December 16, 2014. I want to make sure the concerns in your report have been satisfied by Betsy and if there's any other comments that have not let's discuss them now.

MR. MCGROARTY: Just for the record the initial one was in October, October 2, 2014 and then . . .

MS. MCKENZIE: Right and then the 15th and 16th right.

MR. MCGROARTY: You know I did have some other comments. Mr. Russell had asked about some other issues and I did that supplemental report with tree removal and so on that's not the testimony now so I won't touch on that now. I think that Ms. McKenzie has addressed the requirement, the ones that I perceive to be required and I laid them out in the report. The use variance which is a d-1 because of the wellhead, the d-3 because of the conditional use standards and I don't really have anything to add and I don't take issue with any of the testimony that was offered. I don't see anything that I would have an argument with. I would say just one additional thing, we all know of course about the Highlands and while that may not play into a hardship issue at this point, the fact remains that a portion of the tract that's been assembled if it were available for development and it otherwise could be developed under our ordinance some of the impervious coverage, etc. could have been shifted to the east but they can't. And that has nothing to do with our ordinance our ordinance says you can develop the site up to 60 percent coverage. Superimposed on us is the Highlands Preservation regulations so in my judgment if your convinced that the development as proposed can work independently of that I think that that's worth at least taking into account that that's an imposition that we all have to live with and I think it's in some ways a detriment to the township because I think it impedes on our local zoning and the potential for development along the highway. So I would almost almost add that as a separate hardship. I know Ms. McKenzie did not do that but for what it's worth that's my thoughts on it as well.

MR. WEISS: Thank you Chuck. Anybody have any questions for Chuck? Let me at this time open it to the public, if anybody in the public has any questions for Ms. McKenzie based on the testimony that she just delivered now would be the right time to ask any questions of Ms. McKenzie. Mr. Mania if you would I think you know the rule.

MR. MANIA: My name is John Mania 42 First Street, Budd Lake, New Jersey. I notice the site is very small; would there be any consideration in putting a generator in? The reason why I say is when we had Sandy most of us residents had to go out of town and spent three or four hours on line to get fuel.

MS. MCKENZIE: Oh two people are telling me we're putting one in.

MR. MANIA: I got my answer thank you.

MS. MCKENZIE: It's a good suggestion because I know what it was like during Sandy.

MR. MANIA: Thank you.

MR. WEISS: John one day we'd like to have every gas station to have a generator so we might as well get new ones to do it. Thank you. Anybody else from the public? Anybody else from the Planning Board have any questions or comments for Ms. McKenzie? Seeing none and before you step down Ms. McKenzie I just wanted to tell you I'm very impressed. I believe an application of this nature is so dependent on planning testimony and there's so many issues as we know. I had a whole series of questions and I started checking things off and I really think you did a great job.

MS. MCKENZIE: Thank you.

MR. WEISS: Whether the Planning Board agrees with you or not is a different story I'm just impressed. I was impressed at every meeting you sat in the corner and you listened and that's kind of what Mr. Selvaggi said you were going to bring everything together and you delivered on his promise so I thank you for that.

MS. MCKENZIE: Thank you coming from you that's really high praise and I really appreciate it Mr. Chairman.

MR. WEISS: Although it was long testimony I thought it was . . .

MS. MCKENZIE: Yeah it was long I'm sorry about that. And it could have been shorter had I only known. Thank you.

MR. WEISS: Okay Michael?

MR. SELVAGGI: Yeah we've concluded in terms of our direct testimony. I know there may be public comment and we would certainly reserve the right if there is and there's issues raised but at this point we'll rest.

MS. COFONI: Okay.

MR. WEISS: I think what I want to do is it's five to nine I want to take a five minute break because I think we still have a lot of comments, a lot of conversation we sat for a very long time listening to testimony so let's take a five, six minute break we're going to break for five minutes we'll come back at about 9:00.

(FIVE MINUTE BREAK TAKEN)

MR. WEISS: Okay let's bring the meeting back to session we briefly ended as you wrapped up Michael I'll turn it over to you.

MR. SELVAGGI: Yeah just real quick the night keeps going this will become fully conforming. We're actually down to 10 bulk variances if Mr. McGroarty agrees. Mr. Glasson in sitting there realized that the lot depth variance we called out doesn't apply. And Jim you can certainly give your explanation why or Betsy.

MR. GLASSON: If you look at your ordinance your definition of depth it doesn't meet . . . there is no way to measure depth the lot has double frontage.

MR. MCGROARTY: Yeah I listed the variances in my report I didn't put that . . .

MR. GLASSON: You didn't right, right.

MR. WEISS: Okay well noted thank you. Okay so what I want to do at this point is again Michael I assume you're still done you're wrapped up for now?

MR. SELVAGGI: Yes.

MR. WEISS: Let me open the meeting to the public and I know some members of the public have been coming to all of the meetings. This is going to be the opportunity to have a comment, question, concern anything that's on your mind about this application this is the time to come up speak your mind and let the Planning Board know how you feel. So if anybody from the public has anything to

say about the application please approach the podium, and I see none no comments from the audience so let me close it to the public. And what I'll do then is let me . . . we've had a very long application it has been four meetings as I mentioned earlier, we've had some contentious testimony, we've had some disagreements with the applicant and that's all very healthy in the end of the day. When we turn to our vote this evening I'd like you to speak your mind as to why you're voting the way you are and before we get to the vote if anybody has any comments, anything they'd like to say before we speak to the attorney about any conditions that might be applied to a motion, let me open it to the Planning Board if anybody has any comments that they'd like to discuss. If anybody has anything?

MR. FLEISCHNER: I have a question though I wish to make comments why I vote a certain way do I save that for when the vote is or how would you prefer that it be handled?

MR. WEISS: I'm giving you the opportunity if anybody has a general comment maybe for whatever reason, and yes my request is that please give a comment as to why your voting the way you are. So maybe that was yes to both your questions Joe. So I just have one comment before we turn it to the attorney, I think that the whole application in my mind comes down to that wellhead protection. Now I'm not going to downplay the importance of the variances and all of the other issues from circulation to traffic those are very important. But I think this application came down to wellhead protection and I'd like to praise the Planning Board, the applicant, and the professionals because I think what we accomplished since October of 2014 is that we addressed a concern which is the protection of the wellhead. We addressed it, we beat it up and I think we've developed a standard certainly for this gas station and hopefully for every other gas station ever built going forward that we've essentially raised the bar. And I think that's because of the work that we did by questioning you and by your work responding to us. And so I look at this application and I'm not making any commentary if I think it's good or bad because I think there's a lot of negative things I'll be saying later, but I think the point here is that we as a collective group have done some great things during this application and I think that as Ms. McKenzie said the applicant has gone above and beyond in my mind as far as addressing the concerns of protecting the water supply. Now not everyone is going to agree with me I just think that the applicant has done a tremendous amount of things that that's a positive result. Whether this goes down or this passes I think we've identified that there's great ways to protect water supply. So I think that's a compliment.

MR. FLEISCHNER: I have to agree with Howie but I think there's two issues and the one being wellhead protection area certainly and I also think . . . .

MR. MANIA: Joe can you speak louder you know I don't have an opportunity to sit in the audience but when you guys talk it's hard to hear you back here.

MR. FLEISCHNER: I don't think I have a problem with that John so I'll speak more loudly. I don't know if that's proper English but anyway,

MR. WEISS: That's good enough for this group.

MR. FLEISCHNER: I think certainly the wellhead protection is very, very important but I think there's another issue which is also very, very important and I'll get to during my vote and that is safety. Because the traffic expert did say that his two concerns were capacity and safety. I'll address that later. Thank you John.

MR. WEISS: Okay so let me turn to the attorney, Tiena has some notes going as to why, and anybody else that has notes again going back to October we've kind of identified certain conditions that we would add in the event of an approval and so before we make a motion let's identify what those conditions would be. I don't want to put Tiena on the spot but I believe that she has some notes of conditions and again I invite the members of the Planning Board to review your notes and if you've had other notes, conditions please lets chime in when Tiena is done.

MS. COFONI: Okay I have a deed description to be submitted for the proposed sight triangle easement along Sand Shore Road. Proposed septic disposal system and new on-site well are subject to the approval of the Township of Mount Olive Health Department. Applicant will be responsible to keep loading space clear of snow subject to town Council approval; I believe that loading space within the right-of-way is also going to be subject to town Council approval. And then in conjunction with that delineator for loading area for the curb way for during snow plowing they're going to be putting that up. This one I don't . . . I must have gotten interrupted somehow, I put deliveries of gas but I don't have anything . . .

MR. FLEISCHNER: Time of day.

MR. SCHAECHTER: Time of day it's going to be at night.

MS. COFONI: I can look back at my notes of that but that helps me time of day.

MR. SELVAGGI: Yeah night time may be, what would you define night time? After 11:00?

MR. SANDHU: 10:00 p.m. to 4:00 or 5:00 a.m. I think it was.

MR. SELVAGGI: Okay.

MS. COFONI: What did you say?

MR. SELVAGGI: 10:00 p.m. to like 5:00 a.m.

MS. COFONI: Okay thank you.

MR. WEISS: Tiena for whatever that's worth that was testimony from the 18th of December. If you needed to go back to any notes or minutes.

MS. COFONI: Yeah, right okay. If it's not going to be a BP the applicant is to submit revised architectural plans for review and approval by the township engineer and the township planner. We need details for lighting of the building and canopy to be put on revised plans. There will be quarterly monitoring of the monitoring well on the applicant's property in the direction of the farm to make sure there are no effects from the storage of the gas. Oil separators will be included in all catch basin inlets to be installed on Sand Shore Road by the applicant and the plans to e revised accordingly.

MR. SELVAGGI: Just on the one I'm not sure I'm looking here in my notes about the monitoring well.

MR. BUCZYNSKI: There was supposed to be a monitoring well to be installed downstream from site, that was in my notes from the last meeting.

MR. SELVAGGI: On our property.

MS. COFONI: Yes on your property yes.

MR. SELVAGGI: Okay, all right, all right.

MS. COFONI: Mr. Glasson was going to work on language regarding nothing over 10,000 pounds on this site, we're going to work through something on that.

MR. GLASSON: Yes and signage yes.

MS. COFONI: Okay and . . .

MR. BUCZYNSKI: I don't know if you mentioned it I know I had in my notes about monitoring systems to be installed?

MS. COFONI: Monitoring systems?

MR. BUCZYNSKI: Monitoring system (inaudible) compliance a site management system correct?

MR. SANDHU: We have . . .

MS. COFONI: It's already proposed.

MR. SANDHU: Yeah its automatic you have to have that.

MS. COFONI: I have Lot 17 and 18 to be merged and a generator on site.

MR. GLASSON: And revised freestanding sign location.

MR. SELVAGGI: I think plan revisions will be in order for that.

MS. COFONI: Revised freestanding sign location.

MR. GLASSON: And height.

MR. MCGROARTY: Yeah I think on the sign the sign detail needs to be changed so it reflects that it conforms. There's also they have to comply with the tree replacement requirements, we identified that in a December 16 memo they testified they would. If I may also Tiena?

MS. COFONI: Yeah please.

MR. MCGROARTY: Just looking at my own comments in my report the façade sign that we that we wanted that as you indicated we want that on their revised architectural plans but we want method of . . . with respect to the sign any building signs if there are any or the canopy signs we want details on the color and materials as well.

MS. COFONI: Is that on your report?

MR. MCGROARTY: Yes December 15.

MS. COFONI: Oh yeah I see.

MR. MCGROARTY: And if there are any building signs they should be shown on the plans.

MR. BUCZYNSKI: Did you have something too about a sign prohibiting trucks to be installed too?

MR. FLEISCHNER: No diesel.

MR. WEISS: No I had that we would deal with that as a weight restriction is that correct?

MS. COFONI: Yes. Building signs and what comment number are you talking about Chuck for the previous one? I'm sorry I didn't . . .

MR. MCGROARTY: On the December 15 memo 6.6

MS. COFONI: All right okay good. Okay I'm sorry Gene you have one?

MR. BUCZYNSKI: It was the December meeting about a sign prohibiting trucks to be installed.

MS. COFONI: Yeah that's the language that Jim is going work on because we had the discussion about certain regular vehicular that people drive; we don't want to prohibit those.

MR. SCHAECHTER: Excuse me you're selling diesel right?

MR. SANDHU: Yes we are only for autos, and pickup trucks.

MR. SELVAGGI: But there's signage proposed here.

MS. COFONI: We just found in the notes Mike . . .

MR. BUCZYNSKI: Mike Paul mentioned about deliveries between 10:00 p.m. and 5:00 a.m. but I noted on the hearings we had 11:00 p.m. to 6:00 a.m. Is 11:00 to 6:00 okay? Limited to 11:00 p.m. to 6:00 a.m.? You had 10:00 to 5:00.

MR. SANDHU: 11:00 to 6:00 works.

MS. COFONI: Okay so we're going to go back to 11:00 to . . .

MR. SANDHU: I didn't remember what we discussed.

MR. BUCZYNSKI: It was a good guess.

MS. COFONI: Okay 11:00 to 6:00. Okay does anyone else have conditions I should take note of?

MR. WEISS: Let me go . . . I don't want to be repetitive but maybe for the sake of missing one let me go through what I had.

MR. RUSSELL: (Inaudible) they're going to do something on the angle of the corner?

MR. WEISS: The sight triangle?

MS. COFONI: The sight triangle?

MR. WEISS: That's part of the plan.

MR. BUCZYNSKI: No he's talking about something different I think. There's going to be an improvement to that corner where you have the triangle right now, the right-of-way is going to be a radius.

MR. FLEISCHNER: If the DOT is doing nothing the traffic light is still going to stay where it is.

MR. BUCZYNSKI: Correct.

MR. GLASSON: To be honest with you the DOT has given me comment if I can just comment on this, they don't want me to do that. The other thing we came up with the last application . . .

MR. BUCZYNSKI: As far as the radius instead of the turn?

MR. GLASSON: Yes they asked us not to do that in their comments.

MR. BUCZYNSKI: Why?

MR. GLASSON: I don't know they came back to me and said that's not in our plans do not do that.

MR. BUCZYNSKI: Well they weren't doing improvements just doing the right-of-way that's all.

MR. GLASSON: I know, I know.

MR. BUCZYNSKI: I think it's our land we should do what we want to do.

MR. SELVAGGI: Because they did say we will dedicate to you so you have it if (inaudible).

MR. GLASSON: Right, right but they did say that . . .

MR. BUCZYNSKI: Right yeah well they can fight with us later on if they're going to want to do something there.

MR. GLASSON: Yeah they kind of said so.

MR. BUCZYNSKI: I think we should make a radius right away.

MR. GLASSON: Okay.

MR. FLEISCHNER: But they're not moving the traffic light.

MR. BUCZYNSKI: No they're not moving the traffic light.

MR. FLEISCHNER: So you still have to make that sharp turn.

MR. BUCZYNSKI: Yeah well you know we can't do anything about that.

MR. GLASSON: Right what they said to me in the letter was we would never move that traffic light so there's no reason to make it. That was their response.

MR. FLEISCHNER: I spoke to someone them also.

MR. SELVAGGI: Fine if attitudes change you'll have the dedication.

MS. COFONI: And that's already proposed that doesn't have to be a condition right?

MR. GLASSON: Yeah that was already proposed.

MR. WEISS: We mentioned . . . Nelson was that . . . I know you had mentioned . . . that was your question?

MS. COFONI: Yeah that was something . . . .

MR. WEISS: Okay I have something here in my notes about the second lane of gas where there's no clean turning radius prohibited to a car and needs to make a K-turn?

MR. GLASSON: Yes what we're going to do is when you head to the site . .

MR. SELVAGGI: He's going to be looking at A-4.

MR. GLASSON: Yes. When you enter the site from Sand Shore if you enter any one of these pumps in this direction you can make a maneuver to get out other than what I'll call is the second pump lane. If you were to pull out of this pump lane and you wanted to go turn you would have to actually make a K maneuver, make an actual backup maneuver to get out. So we're going to sign this kiosk here on that side to try not to have people enter from that site from to that lane.

MR. WEISS: That's right I do remember that was that a condition of approval that you're going to add a sign? Or is that part of the plan?

MR. SELVAGGI: Yes.

MS. COFONI: No that's part of the plans.

MR. GLASSON: I'm going to put it on my plans.

MS. COFONI: Oh it's not on your plans now.

MR. GLASSON: No I'm going to put a sign.

MS. COFONI: Okay then I'll put it as a condition.

MR. SELVAGGI: And the same thing with the truck signage you know prohibited.

MS. COFONI: Right yes.

MR. WEISS: Right I had a note no tractor trailers allowed but I think we then spoke about revising that.

MS. COFONI: Right.

MR. WEISS: I found a couple of things out of Gene's report, Gene's report number 8 we need a condition of approval a septic system?

MS. COFONI: Yep I have that.

MR. WEISS: Anything else in Gene's report? I know we made a comment about trees, 29 trees? That's item number 9 in your report.

MR. GLASSON: Yeah replacement, there's more replacement trees required which we're going to do.

MR. WEISS: Right so does that need to be a condition?

MR. BUCZYNSKI: They're going to do it, no.

MS. COFONI: They've already got it on the plans?

MR. BUCZYNSKI: You've done that already haven't you Jim?

MR. GLASSON: No, no I need to add more Chuck had it in his; it was in conformance with Chuck's we need to add more replacement trees.

MR. MCGROARTY: Tiena that's the memo of December 16.

MS. COFONI: Number 2?

MR. MCGROARTY: Yes.

MR. SELVAGGI: Yeah Mr. Russell had raised the questions about the trees and then . . .

MR. GLASSON: We're taking out trees in the right-of-way so we're going to do a replacement on our property to add additional trees.

MS. COFONI: Okay.

MR. WEISS: And the question is do we need to make that as a condition?

MS. COFONI: Yes.

MR. WEISS: Okay so we need to identify for the trees. I know that we talked about the generator so that's good we don't have to repeat that. And I clearly heard you say that we need detail of the lighting on the canopy.

MS. COFONI: Yeah.

MR. WEISS: You did mention that.

MR. BUCZYNSKI: And regarding permits too if you're going to add them it should be Morris County Soil Conservation District and the DOT Major Access Permit.

MS. COFONI: That's on your report?

MR. BUCZYNSKI: Yes it's in my report number 12 that's the December 10th.

MS. COFONI: Yep okay.

MR. WEISS: I can just throw in my language as we talked about the monitoring well, my notes tell me that we're going to have a monitoring well to be installed that will be regularly checked by Roadranger and the results submitted to the Mount Olive Health Department and DEP.

MR. SELVAGGI: Yep.

MR. WEISS: That's what we talked about you might want to add that language to the conditions.

MS. COFONI: Wait you said to Township Health and DEP?

MR. WEISS: Results submitted to the Mount Olive Health Department and the DEP.

MS. COFONI: Okay.

MR. SELVAGGI: And that will be on the western side of the property I think is the location of that.

MR. WEISS: Actually we got very specific, yearly inspections of volatile components and quarterly inspections to monitor sheen.

MR. BUCZYNSKI: Gasoline sheen correct.

MR. WEISS: I make notes. We did talk about the separators to be installed in all catch basins and plans will be revised to show such.

MS. COFONI: Yearly monitoring of what was that?

MR. WEISS: I have yearly monitoring of volatile . . .

MS. COFONI: Oh volatile.

MR. WEISS: Components.

MS. MCKENZIE: Compounds.

MR. WEISS: Compounds you're right my notes do say compounds.

MS. COFONI: Okay got it.

MR. WEISS: And quarterly inspections to monitor sheen.

MS. COFONI: Got it.

MR. SELVAGGI: And the Chairman is correct I think earlier somebody said the oil/water separators in the drains only along Sand Shore. They'll be on the entire property.

MS. COFONI: Oil separators to be included in all catch basin inlets to be installed . . . yeah I have on Sand Shore Road; it's going to be throughout the property.

MR. SELVAGGI: Yes.

MR. SCHAECHTER: Those monitoring tests you have to go through, that's what the State requirement is correct? Or are you going above the State requirement?

MR. SANDHU: They do annual inspection automatically.

MR. SCHAECHTER: Right but for sheen, for volatile compounds . . .

MR. SANDHU: Yeah they have (inaudible).

MR. SCHAECHTER: So the requirements to do the monitoring that is what the State requires you as a gas station operator to do.

MR. SANDHU: Yes.

MR. SCHAECHTER: That's not going above and beyond what you're required.

MR. SANDHU: They require you to monitor it on an annual basis; you have to keep all of your leak detector record on file. They could show up any time to check all of these records. And your (inaudible) water and debris, underneath the pumps has to be clean and if they're not clean it's a gigantic fine.

MS. MCKENZIE: The quarterly for sheen is above and beyond.

MR. SANDHU: Right.

MS. COFONI: Yeah well they don't have to report it to the Township Health Department so that's something that . . .

MR. SCHAECHTER: I believe they do.

MS. COFONI: Oh they do?

MR. WEISS: It doesn't matter if it's above and beyond these are what we agreed upon.

MR. SELVAGGI: In response to a question I think it was from Joe it was annual but we agreed to do it four times a year for sheen and present the results.

MR. WEISS: It doesn't matter if it's above or beyond you're going to do it so we're good so let's move on.

MR. SELVAGGI: The testing itself for the record, the testing itself is required the frequency of the testing we're going above and beyond.

MR. WEISS: We'll give you a star for that thank you.

MR. SANDHU: And (inaudible) it tests every 24 hours automatically. It prints out (inaudible) the tanks are tested.

MR. WEISS: Okay. I have one other one prior to tonight, again we touched upon it instead of restricting tractor trailers we talked about weight restrictions and Title 39 to enforce it and I don't know where that conversation went.

MS. COFONI: I don't think that we were thinking Title 39 I think we ended up talking about Jim was going to come up with some language because if you remember we talked about limiting trucks and then we talked about the weight of the trucks. And then I think it was Sandra who said you know her truck is, I forget whatever the weight is and she would go in there and get gas. So we need to kind of massage that language a little bit and Jim is going to work on that. And I do have that as a condition.

MR. WEISS: I don't have a problem with that because I have a lot of question marks that that wasn't a definite. And then the only other thing, and I don't think we need it, but tonight we talked about no air pumps. I don't want to start saying no we can't but an air pump is something that's commonly found at gas stations so let's make sure that the resolution says . . . because it's very easy to just stick an air pump and say why not.

MR. SELVAGGI: That's fine.

MR. WEISS: So no air pump. That's the only things I have from tonight.

MS. COFONI: Okay.

MR. WEISS: So they're duly noted and if anybody has anything else now is the time to ask otherwise we're going to go at this point is I will entertain a motion . . .

MR. FLEISCHNER: Can I just ask how many conditions do we have? Just to best of your . . . best guess, 24?

MS. MCKENZIE: I count 24.

MR. FLEISCHNER: And she says we got 24.

MS. MCKENZIE: Maybe I worded some things differently, maybe some of them are a little bit repetitive but that's what I came up with.

MS. COFONI: 21.

MR. WEISS: So those conditions will obviously be part of a motion. So I will enter a motion I will ask for someone to make a motion regarding this developmental matter and obviously considering all of the conditions as Tiena has noted.

MR. SCHAECHTER: I'll make the motion for PB 14-03 Roadranger Holdings with all of the conditions.

MR. WEISS: Let me just be clear Brian you're making a motion to approve?

MR. SCHAECHTER: Approve yes.

MR. WEISS: PB 14-03 Roadranger Holdings for the variances noted and with the conditions as Tiena has stated.

MR. SCHAECHTER: That is correct.

MR. WEISS: Someone second that motion.

MR. WILPERT: I'll second.

MR. WEISS: Okay so we've had comments, we've had conversations I want to jump right into a combination comment and vote. So Catherine I'm going to ask you for a roll call.

MS. NATAFALUSY: Joe Fleischner.

MR. FLEISCHNER: I get to go first. Aren't you happy? I have a few comments as you can imagine. First of all I'd like to say this is looking . . . trying to take a square and put it in a circle. Your planner stated that it's suited for this location. Ten variances, 21 conditions is not to me suitable. I can come up with 40 conditions and as many variances as I think I need to get this approved. The first one is the variance obviously the d-1 in the wellhead protection area, we have that on record and had I sat on this Board when the Exxon Station came here for approval I would have voted no. We have a well protection area and that's what it's for. Not that we're going to create all of these safety factors. The space shuttle that blew up had millions of safety factors but it blew up. And someone on this Board I won't name said all the what if's but I am concerned about the what if's so I am against granting that variance for approval within the well protection area. Then we have numerous, numerous other variances we're asking for some that really I worry about are the proximity of the gas tanks to the highway and to Sand Shore Road, and since I travel Sand Shore Road every single day I know what takes place. So I'm going to jump a second to the traffic expert who sat there for one day and did state to this Board that his concern is capacity and safety. We had two police officers who monitor this town on a daily basis and are involved and I think they stated they investigated 1125, I think that was the number that rang in my head I have it somewhere in my notes, accidents. But the applicant's attorney said they're not experts. I said previously my grandson four years old can count cars he doesn't qualify as an expert but somebody who can count cars and got a certification is an expert. Safety is a real concern on that corner, cars backing up coming out of Sand Shore Road either to make a left turn onto Route 46 maybe one or two cars at the most can make that left during the rush hour when traffic is coming from Naughright Road, you can't make that turn. I've seen many, many near misses at that intersection. This evening before coming to this meeting I drove, I came down Smithtown and I went up to Route 46, traffic trying to make a left turn onto Naughright Road was backed up into the left lane of Route 46. So there was only one lane and if you wanted to go you had to immediately cut into the only lane that was open. If we have a gas station there people are going to want to turn in and granted you know I can understand that, oh I didn't get gas at the other gas stations before there, so instead they might have to wait until they get to the bottom of Hackettstown hill. To say that just because there are no gas stations in the immediate proximity because it was stated by the planner that he might turn into that gas station take the load off if you go down Route 46 you've got the Shell on the corner, the Hess station, you make the left on the other road and you're right by the Delta station. So there are plenty of gas stations it's not an issue that there aren't any gas stations. My concern is the safety, we've had a lot of snow Frank knows the snow has been plowed there Sand Shore Road basically was a lane and a half for a number of days. It wasn't two lanes one in each direction on Sand Shore it was one and a half lanes. And now you're going to put a gasoline truck at night in the dark on that road. People travel that road at night after 11:00 at night that's a real safety issue. Our traffic expert was not there at 11:00 at night, that's all he basically did was count cars. Now all the additional variances that were asked for and the use variances again I fully appreciate trying to put something in that lot and we can ask for as many variances as we need there's no problem with that. Just like, and it was raised by the planner about a past business that wanted to go in that, that has nothing to do with this application, absolutely nothing. It was unique to that application and the Board made the decision. I was on that Board and I made my decision with that based on what they wanted to do it did not . . . . and I'll testify now just as I did with that application, it did not create a safety hazard. We have way too many accidents in this town; we have way too many people I don't want to see people get hurt. I don't want to see water contaminated, we have a farm across right next to where this gas station is going to go. Thousands of people buy that produce, I'm one my family buys produce there I don't think I want to take a chance the if that there's a leak or there's a problem there. That's a real concern. That land has been preserved, that is a preserved farm it's going to be there for a long time unless the ground gets contaminated. And then what do we do, who is going to pay for all of that? This gas station goes in I hope he's got five hundred million dollars worth of insurance because that's what it would take if you're going to clean up a farm that gets contaminated. And those people have every right to sue that gas station. I think we've asked for too many variances that we do not have to give. Just because someone asks for a variance we have regulations in our town, ordinances that do not allow for . . . they can ask but you don't have to give it. So guess what my vote is no thank you.

MR. WEISS: Thanks Joe. Catherine?

MS. NATAFALUSY: Brian Schaechter.

MR. SCHAECHTER: You know when the testimony started out several months ago I had the same opinion as Joe and what I saw out there was an applicant who was willing to pretty much bend over backwards to put whatever safety requirements or testing we asked him to do. We asked him to look at trucks being refueled there, we asked them to look at the sign the height of the sign, everything we did everything we asked them to do they came back with a, yeah we're going to take care of that. You know you want a generator yeah we got one. You want oil separators yeah we got it, I mean there were probably a dozen different requirements that we had asked, there were questions that we asked them and they came back with it. So it tells me that when you take the emotions out of it and you look at safety the applicant is really concerned about the safety of the citizens of Mount Olive. Listen it's not going to be a big ratable to the town you know we brought up things like downstream traffic, you know what the roads are designed to handle truck traffic so we can't use that. Everything that we asked . . . yeah is it fitting a round peg in a square hole? Well yeah but sometimes with a little hammer you can do that you can make that happen. You know can Joe's grandson count cars? Absolutely. Can he write a traffic report? Nope.

MR. FLEISCHNER: Not yet but pretty close.

MR. SCHAECHTER: He's smart but at four he's not doing that. I mean we have to go with the experts and when you talk about the what if's and the to the extent possibles I think we've covered everything that we could possibly do here. I mean the applicant has done his job, you know the number of variances you know what are there a lot of variances? Absolutely. Are there a lot of conditions? Yeah but the conditions are because we've asked for conditions. And those are for the safety of the citizens of Mount Olive and I think the applicant has gone above and beyond what he needs to do in order to put something on his property. And a gas station is a viable solution. You know is there a farm next door? Yep, yep there's a farm the farm has been there, there's also a gas station across the street, there's also a car dealership. All of them have the same hazards of polluting that well and this applicant has gone above and beyond to protect that wellhead. Yeah you can't protect anything 100 percent you know there's railroad cars that go down yeah that's it you know you've got Route 46 there's trucks that travel that all day long. Could there be an accident with a spill? Yep there could be but to the extent possible has this applicant protected the people? Yeah, yeah, am I crazy about yeah you can't come in off of Sand Shore and you can only go one way and you might have to make a K turn? Yeah and if people do that and they don't like doing that or they don't like a K turn they're not going to go in that way I wouldn't, I wouldn't do it twice. So you know I think you have to look at it and go yeah well to the extent possible or to the what ifs yeah well they've done everything that they can. They put the signage up, they've got the people there if somebody needs to make a K turn they're not going to do it twice they're just not going to go to that gas station. If they're going to be inconvenienced they're not going to go. And I think those are the reasons for me. I am voting yes because the applicant did a great job. This job is the poster child for wellhead protection putting in a gas station in a sensitive area.

MR. WEISS: Catherine?

MS. NATAFALUSY: David Koptyra.

MR. KOPTYRA: Um I have the same concerns mostly as Joe has as far as the wells. The amount of variances and conditions that have to go into the property and I just feel that the property is just undersized. I don't like the idea of only having one parking spot and one handicapped. Gas stations today people go to them for coffee and go for other things and to me if people are going to see a BP or whatever kind of gas station they're going to make a turn in there. They're going to cause more congestion when they find out that they can't purchase anything. Because Route 46 is traveled more than just citizens its people going on vacations and stuff and wouldn't realize that there isn't anything in there. And I have to agree with their own traffic safety guy he even emitted it's the worst intersection to put that kind of . . . . in my opinion and I have to agree with him. So I vote no.

MS. NATAFALUSY: Dan Nelsen.

MR. NELSEN: I share Joe and Dave's concerns I think the professionals in this case and the applicant himself have addressed most of those concerns, all of those concerns. I've looked for a reason to vote no on this and I can't find it and I'm going to vote yes.

MS. NATAFALUSY: Nelson Russell.

MR. RUSSELL: I've never voted against Mr. Selvaggi's applications or Mr. Glasson's clients but the land is too small and the variances are too large. I'm going to have to vote no.

MS. NATAFALUSY: Frank Wilpert.

MR. WILPERT: Due to the nature of the property, corner lot, undersized lot the applicant has addressed a lot of the concerns that we've had since the start of this application. I feel that they've met the needs of this Board due to the hardships so my vote is yes.

MS. NATAFALUSY: Howie Weiss.

MR. WEISS: I need one second I have to get an opinion. Okay I made some comments earlier about the importance of the wellhead protection and I think the key word with that ordinance is protection. You heard me earlier say that I think the amount of protection that's going into this application is tremendous. So from that standpoint I was very impressed. I agree with everything we said, Joe and I do agree on this that safety is a concern of mine. I think when you're moving what is it maximum five cars can fuel at one time? That's not a big traffic impact in my opinion. It's a very difficult site as Ms. McKenzie said I agree with you. I made a little chart positive/negative, when I look at the negatives I think that the circulation plan on this project stinks. It's awful which tells me that it's too small for what it is. And so what we've done essentially or the Highlands have done is essentially taken Mr. Glasson and asked him to be a magician they handcuffed him, tied his feet together and said do something special here. And as always Mr. Glasson did a great job with what he can do but what he can do is still very limited. If I was a consumer here I wouldn't go to that gas station I'm not going to be bothered by it. And that's a risk that the applicant takes is that he's building a project that's relatively small it might be difficult to get in and out of and that's the risk that your taking but I think that it's very clear that this is a small station. It's not your typical gas station where people are . . . not like it's the Quick Check where you know that's where you're going to go to get a meal, go to the bathroom, pick up lottery tickets; this is not that kind of a station. It might take a couple of times but people aren't going to go there. My decision came down to the proofs that needed to be made to prove the variances. It clearly says that in order to prove your variances you need to show certainly on the negative side of these variances that there's no substantial detriment to the community. And I agree with Joe yes what if and what are these potentials are there. But that's not substantial that's potential and the Land Use Law is very clear to say substantial. And so if we're ruling here from a Land Use perspective I have to accept what's given to me which is we have to make a decision based on our feeling if there's substantial detriment to the community and I don't think they're substantial I think it's potential I think it's small. I also think that when we look at the other negative criteria will it substantially impair the intent of the zone plan. And I think even with all of the variances it does not substantially affect the zone plan. Minor it does affect it but not substantially and as I sit up here trying to be the person who is honoring and protecting the rules of the land of the Municipal Code Land Use Laws there's no substantial impact in my mind. I think the traffic testimony was awful, I think for the expert to talk about the lack of traffic and the lack of problems I think he's dead wrong but it's just my opinion and I'm entitled to it right now. When I looked at my list of positive versus negative the positive side of my list outweigh the negative and I made it very clear there's certain things I don't like but I don't think that that from a Land Use perspective is enough for me to say no. And therefore I'll keep it briefer I'm going to vote yes for this application. So that being said on a regular application the vote is four to three, on a regular application that would pass and unfortunately this is a use variance we're supermajority was needed this application does not pass. I don't know if there's any other comments and so therefore this application does not pass on a vote of four to three. I'm sorry but that's kind of the position of the Planning Board. Michael I don't know if you have anything to say I'll turn to you for . . .

MR. SELVAGGI: Thank you. No, no we'll wait for the resolution.

MR. WEISS: Okay everybody thank. We're not done yet but let's conclude this application.

MR. FLEISCHNER: Although you state that it does not substantially meet with the criteria I do believe it does substantially and I think that's what the Judge will have to weigh on. I know what you said and why you said it.

MR. WEISS: We'll talk about that off line. Okay have a good night.

Mr. WEISS: Before we adjourn I understand . . . well actually let me do this let me open it to the public for anybody in the public that has anything to talk about regarding any issue that might be on your mind? Sir if you do your certainly welcome to address the podium tell us your name and address. Thank you for your patience it's a long night.

MR. LEGORA: Okay it's about permission you gave Colleen and Mike Szarek for the shed.

MR. WEISS: What I need you to do though sir before you start is just announce for the record your name and address.

MR. LEGORA: My name is Dominick Legora I live at 6 Johnson Avenue in Budd Lake here directly across from Mike Szarek and Colleen Szarek. And you guys gave him permission at your last meeting you gave him extended permission, five more months to put his shed . . . just let me read this here. All right because I wrote stuff down and I just don't want to forget. Okay my name is Dominick, and said all of that okay. Mike Szarek neighbor I live next door I just have some questions, back in October we came to this session about Mike's shed you gave him three months to move it. All right and then they . , . in which was plenty of time so October, November, December went by he did nothing about moving the shed all right? I had plans to move my fence on my property over because his shed is on my property all right, 7 feet. I had a guy come out and we were going to move it but the shed was never moved. So I went up to the town and talked to Catherine I guess the lady right over there and she was in charge I guess of that now I'm not sure since that other guy left. She told me why don't you go and knock on Mike's door and ask him okay? Which I thought was wrong I tried to do it the judicial way you know I didn't want to go over there and fight with him or his wife or whatever. Okay? Okay. All right I told her I like to do it the judicial way and then about three days later Mike came over to me I was out shoveling my driveway because I live next door and he said why did you go to Catherine. So and I thought it was wrong that somebody went to Mike and told him. So it's starting a war you know his stuff should have handled here. Pardon?

MR. WEISS: I think Catherine wanted to just answer that one comment so let . . .

MS. NATAFALUSY: I told you that . . .

MR. LEGORA: Yes I didn't say you did you said you didn't you told the Board here.

MS. NATAFALUSY: I said I had said it at public meeting of the Board and Mike and Colleen were sitting here.

MR. LEGORA: So what I'm asking is why did the Board go tell Mike? Why didn't it handle it that way why do you start a problem?

MS. COFONI: We didn't go tell him . . . sir we didn't go tell Mike . . .

MR. LEGORA: How did Mike know?

MS. COFONI: Because he was sitting at the Planning Board meeting when Catherine said it. She said it to the Planning Board at a public meeting like we're having right now and he was sitting in the audience.

MR. LEGORA: All right well why would you say Dominick come up here and complained to me . . . .

MS. NATAFALUSY: I said the neighbor has concerns because he wants to put a fence up. You came into the building you told me that you wanted to put your fence up but you couldn't come to the meeting.

MR. LEGORA: Right.

MS. NATAFALUSY: So I told the Board for the record a neighbor has concerns because he wants to move . . . he wants to put his fence in and he won't be able to if they don't move the shed.

MS. COFONI: She wanted that to be something that the Board considered when they determined whether or not to permit his request.

MR. LEGORA: Okay.

MS. NATAFALUSY: I tried to help you.

MS. COFONI: Yeah ultimately she's trying to help you.

MR. LEGORA: Oh yeah I'm sure you did. All right I told her that I'd like to do this the judicial way okay and then about three days later . . . okay. I said because I wanted to move my shed, he said again why didn't you go to Catherine okay and again I said I wanted to move the fence and he said do you see the snow on the ground? I said Mike you're not going to move the shed which you're not going to move he's going to have it moved. The shed he said I have to empty it. I said what about October and December when you had that nice weather and that three months were nice, no snow everything. And he said he hurt his back that was his answer. Okay so to me he has a 30 year old son, he has sixteen and fifteen year old grandchildren okay which could have moved what was in that shed. Okay I lived there 32 years and it's my property and I went out one day and he told me he was going to put a shed there. Now I didn't know that he was going to put it right there so when I come home the shed was on my property. We always got along and that and I still get along with him I mean . . . but I want my 8 feet of property back. I went up to see Cathy and I said I can talk to you in your office she said we can talk here about okay three or four girls in the area and so I asked her why she went to Mike or Colleen told them but then she told me that she didn't do it she told the Board and that's okay.

MR. WEISS: I don't mind answering some of the questions.

MR. LEGORA: All right wait a minute I'm not done yet. I would like to know why the Planning Board gave Mike and Colleen an extra month. Okay which I didn't even know, you people didn't even write me a letter saying we gave him an extra month.

MR. WEISS: Mr. Legora did you know the meeting was happening?

MR. LEGORA: Let me finish this then you can say.

MR. WEISS: Okay.

MR. LEGORA: Now Mike and Colleen came to the Planning Board and you gave them five months to August. Okay? I was planning maybe to sell my house me and my wife talked you know. You had the people that live next door to me had a big fight with them and they moved because you know it's almost like your getting pushed out of the area and that you know? I mean I know the people work for the town and everything so you know . . . All right to move the fence back where it should be after I had to do . . . why should I have to wait 9 months to move a shed that takes an hour to move. You know I just had to say what I had to say. I don't understand why you people gave him five more months. I had the guy who was going to move the fence you know this summer we're probably going to sell and I want to move my fence I want to get my property and everything sorted out over there and I think it was wrong. That's all I mean you've got to understand if it was Mike over there and it was me he'd have that fence would have been moved a long time ago. But I was decent enough in them 32 years to let him have that property. In fact I tried to sell him that property for $1,000 I wanted to sell him that nice piece of property where he would have benefited from that. So he had his land surveyed and he come over to me and he said you know Dominick he said I can't afford $1,000. I said well Mike I can help you out you know, $700 I'll give you the land for. I said Mike if we sell the house the land is going to be worth more to you than it is to me I said you should buy it. So Colleen comes over about 6 months later after they had it all done and that, oh we're not going to buy the land Dominick. So and in a way I'm glad they didn't because the land, what the real estate people told me it's worth more to me now to them so I wouldn't sell it to them for $10,000 now. But I want to move my fence and now it's being like an aggravating thing to get it moved. You know I wanted to get it moved by this summer so I can have everything done you know maybe I get lucky and sell it. But then I went up to see Cathy and when you had your meeting a month ago or whatever it was she told me that they gave him five more months. And I said five more months why? Why would you give him five more months? That's August.

MR. WEISS: Okay so there's a series of questions you asked and you certainly deserve some answers. Let's deal with Catherine. When we deal with issues like this they're always done in public, Catherine's opinion is just that she is one person's opinion. When the Planning Board made an action and gave, I'm sorry I don't remember their last name.

MR. BUCZYNSKI: Szarek.

MR. WEISS: Szarek?

MR. LEGORA: Mike Szarek yeah he works for the town.

MR. WEISS: Okay Mr. Szarek, when we granted him that extension that takes the power out of Catherine's hands as it does out of our Zoning Officer. Normally this is an issue for the Zoning Officer if somebody is putting a shed on your yard you can simply go to the Zoning Officer, file a complaint and it would be resolved that way. But the Planning Board made a decision that supersedes any power that Catherine or the Zoning Officer has so it needs to be done in this forum. So Catherine is 100 percent correct.

MR. LEGORA: Well she told me she was only the secretary I didn't know I thought she was a part of your Planning Board.

MR. WEISS: Catherine is the Planning Administrator with a ton of planning experience but Catherine is smart enough to know that the Planning Board made a decision that takes away her ability to make any decision as it does, takes the power away from the Zoning Officer to enforce the violation. That's what happened. So you asked why did we do it and so I'm going to go on memory and I invite the Planning Board to help me with this answer. But Mr. Szarek did talk to us about a back injury we had no idea he had adult children and that's no knowledge of ours. At the same time I understand that you were traveling and couldn't be here but there's got to be some obligation on your part to send us a note to explain I'm on a time frame and I need this done by "X". Because the Planning Board could have easily, no you can't point at Catherine, the Planning Board needs information. The Planning Board didn't know anything about your time frame.

MR. LEGORA: Well didn't Cathy tell you?

MR. WEISS: It wasn't her job to explain your position.

MR. LEGORA: Well she told you I told Mike.

MR. WEISS: That a neighbor objected and we made it very clear and Mr. Szarek was told we'll give you to August but you need to do the neighborly thing and get this done as early as possible.

MR. LEGORA: But being this is my land, my piece of property why couldn't you write me a letter. Dominick we're giving Mike five more months or Dominick can you come to the meeting if you have a problem. We didn't get no letter at all, nothing.

MR. WEISS: Did you know that there was a meeting?

MR. LEGORA: Yeah when we went.

MR. WEISS: There's an obligation on you Mr. Legora.

MR. LEGORA: Hey certain things do you know that you can't do that's you can't make in your life? Did you do it?

MR. WEISS: Then the obligation is to simply write a letter to help us make a better decision.

MR. LEGORA: When you make a decision like that you should write the person a letter saying we gave . . . . so being that it's my property you know not that I'm . . .

MR. WEISS: I understand it doesn't pay to debate I hear you that makes very good sense but that's not the way our structure works.

MR. LEGORA: Well it should. You should have the decency to write that person a letter. Right?

MR. WEISS: No.

MR. LEGORA: No, no you would think that way. Right?

MR. WEISS: You asked me a question.

MR. LEGORA: Yeah, yeah you wouldn't have the decency to write that person a letter.

MR. WEISS: It's not a decency thing we have public hearings there is no secret there's complete transparency.

MR. LEGORA: No you people all stick up for everybody that work for the town that's why.

MR. WEISS: I don't think that's true.

MR. LEGORA: I shouldn't have to wait six months for them to move a lousy shed.

MR. WEISS: Can I make a recommendation.

MR. LEGORA: Yeah.

MR. WEISS: If you still have a nice relationship with Mr. Szarek, Mr. Szarek gave us his word that he would remain a good neighbor and get it done well before August. So maybe you can sit down with Mr. Szarek and ask him when . . .

MR. LEGORA: Why should I have to sit down with him? That's your job.

MR. WEISS: Because it's your home. It's not my job; it's my job to answer the request of what comes in front of us. That's our job we had a member from the public . . .

MR. LEGORA: Well I shouldn't have to go deal with the neighbor you're supposed to deal with him.

MR. WEISS: We did.

MR. LEGORA: Yeah you did you gave him five more months.

MR. WEISS: Based on the information that we had we gave him until August.

MR. KOPTYRA: You gave him permission to put the shed there.

MR. LEGORA: Yeah but when I gave him permission to put the shed he said I'm going to put a shed over here I said go ahead I went to work me and my wife both work. I came home and the shed was right here over my property line.

MR. KOPTYRA: How many years ago?

MR. LEGORA: 30 years.

MR. KOPTYRA: Well 30 years.

MR. LEGORA: All right so I'm a decent person I let him stay I let it stay there and that.

MR. KOPTYRA: And you're blaming us because you're a decent person and he wouldn't move his shed in five months that you let him go there for 30 years. You're going to tell me.

MR. WEISS: I don't think we need to be argumentative Dave good point 30 years and we're saying five months.

MR. LEGORA: I want to get my fence and put it and everything back to where it was that's all. I've got nothing against them you know what I mean? All I'm interested in is getting my fenced moved on my property.

MR. WEISS: I think that's a very fair request and I don't understand why if he's your neighbor say Mike when are you going to get this done?

MR. LEGORA: He said in five months.

MR. WEISS: No I think it was a max of five months. We gave him the five months he gave us enough testimony and I don't remember Mr. Legora what exactly he said. I remember he had a back

injury we had no reason to believe there was any other problem. There's an obligation on you to let us know that there's a problem.

MS. STOTLER: I think it was weather it was definitely weather I remember weather.

MR. LEGORA: Well in November, December there was nothing it was beautiful.

MS. STOTLER: Well we're not talking about then we're talking about now. We're talking about last month's hearing.

MR. LEGORA: Well I remember the first meeting you guys said we want the shed moved by January or February and I don't care if you got to put it out on the street. If I can get them records of what you guys told him you know and now he comes along and tells you well you know he had a bad back. I understand he's got a bad back he always had a bad back but that still shouldn't stop from moving the shed.

MR. WEISS: I think if we're going to have productive conversation you've let him keep his shed there for 30 years and now we're talking five months. I don't think it's unreasonable. It's not unreasonable we made a decision on what we were told that night. We had nothing from you, we had no idea.

MR. LEGORA: So I own the property and everything and you're telling me I've got to wait five months. You think it's reasonable because he's had it there for 30 years. Right? That's what you would do right?

MR. SCHAECHTER: Howie what does he want us to do?

MS. COFONI: There's nothing that can be done at this point the decision was made and the resolution was adopted. I appreciate your comments and I think the Board is all listening but there's nothing that can done at this point the decision has already been made. The Board is without jurisdiction to reconsider what they've already done. They can't do anything about it now they've made the decision and the resolution has been adopted.

MS. MOTT: If we would have had you here we would been . . .

MR. LEGORA: Well if I could have been here I would have but certain circumstances I couldn't be here.

MR. SCHAECHTER: Did you call Catherine up and tell her that you couldn't be here?

MR. LEGORA: I did yes.

MS. NATAFALUSY: That's why at the night at the meeting I said for the record the neighbor is concerned.

MR. LEGORA: I went up to Catherine and she said . . . I told her I was going away for a week and that you know but . . .

MS. NATAFALUSY: That's why I brought it up the night of the meeting.

MR. LEGORA: But I mean . . . .

MS. STOTLER: I would sit down with him personally and see what you can do and try to make it . . .

MR. LEGORA: He's not going to move it he already come over to me and told me.

MS. STOTLER: Is there any way . . like how hard is it . . .

MR. LEGORA: Well you've got to have somebody move it you can't move it yourself it's a big shed. The Planning Board should move it there's enough guys here. But anyway I was just wondering why gave him five months.

MS. STOTLER: The only reason why we gave him it was because he said his back hurt and the snow and that was what we had in front of us.

MR. LEGORA: Well I mean it's not in . . .

MR. WEISS: You know what based on what the attorney just said we adopted the resolution.

MR. LEGORA: This is why I'm here because it doesn't go into law or affect right?

MR. WEISS: He's got up until August to move that shed.

MR. LEGORA: So if I went to a real estate lawyer and got a real estate lawyer and came back here because you guys are 100 percent wrong that your telling me I got to wait because you told me I got to wait.

MR. WEISS: I think that's a very fair option that you could certainly get a lawyer if you feel that your rights are violated I think that's certainly a right have. This Planning Board has made a decision based on the testimony that we had and you know when we make a decision sometimes half the people are happy and the other half are not. Again I don't want to tell you what to do but the right thing to have done would have been to notify us with what your problems are, what your concerns are.

MR. LEGORA: I did.

MR. WEISS: You didn't.

MS. COFONI: By coming to the meeting.

MR. WEISS: No he couldn't come to the meeting that's okay, send us a letter.

MS. COFONI: No he can't you can't accept a letter as testimony.

MR. LEGORA: I think it would have been nice if you wrote me a letter and told me you were going to give him five months.

MR. WEISS: Okay so we can go round and round. I don't know what else we can do.

MR. LEGORA: All right I guess you can't do nothing but I just wanted you to know you know that my feeling, you know that's it.

MR. WEISS: I think Sandy made it very clear maybe you can speak to Mike and hopefully work it out for the best.

MR. LEGORA: So you want me to intervene that way. That's your decision then right? To do it myself.

MR. NELSEN: Thank you Mr. Legora.

MR. LEGORA: Yeah right thank you.

MR. WEISS: Anybody else have anything? Anything else from the public? Motion to adjourn?

MS. STOTLER: Motion.

MR. WEISS: All in favor?

EVERYONE: Aye.

(MEETING ADJOURNED AT 10:03 P.M.)

Transcribed by:
Lauren Perkins, Secretary
Planning Department