

July 26, 2007

Mr. Scott called the regular meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m. The Sunshine Statement was read.

Members Present: Mr. Martin, Mr. Lukasik, Mr. Kirkpatrick, Mr. Walchuk, Mr. Taibi, Mr. Scott

Members Absent: Mr. Mazza, Mrs. Nargi, Mr. Brandt, Mr. Bischoff

Others Present: Atty. Mark Anderson, Carl Hintz, Paul Ferriero, Rick Roseberry, Stephen Souza, Vincent Uhl, Maurice Rached, Atty. Michael Gross, Norman Dotti,

**Issue of Completeness: Schuyler, Gregory & Susan, Block 17, Lot 3, 13 Driftway:**

Mr. Ferriero gave a brief overview of the application for an addition to an existing dwelling on a lot that does not front on a public street. He wrote a letter dated July 23, 2007 addressing the application. Mr. Ferriero said there are Checklist Items missing. He said, however, waivers could be granted for many of the items because of the existing developed nature of the lot. The items required and being waived for completeness only must be submitted at least ten days prior to the Public Hearing. Mr. Ferriero also said applicant's attorney should be told that Public Notice should state that the application is for a variance, not an appeal. Mr. Kirkpatrick emphasized he would like to see a delineation of the wetlands, noting the addition exceeds 750 square feet. Mr. Scott said Checklist Item #26 information must be submitted ten days prior to the Hearing.

Mr. Scott asked for a motion. Mr. Kirkpatrick made a motion to deem the application complete, granting waivers for completeness, with required information on missing items to be submitted ten days prior to the Public Hearing. Applicant's attorney should be advised to Notice properly. Mr. Lukasik seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Lukasik, Mr. Martin, Mr. Walchuk, Mr. Taibi, Mr. Scott

**Public Hearings: Cellco Partnership d/b/a Verizon Wireless: Block 1.06, Lot 3, 78 Route 173 West:** Atty. Mark Anderson reviewed the Notice Documents and found them to be in order, giving the Board jurisdiction to hear the matter. The Documents were marked Exhibit A-1. The matter was carried until the September meeting.

**Fallone Properties, LLC: "Renaissance" Block 22, Lot 34, Perryville Road:** Mr. Scott said the matter was being carried until the September meeting.

**Pilot Travel Centers: Block 11, Lot 24.02, 68 Route 173:** Atty. Gross and Chairman Scott discussed the possibility of Extensions in the matter. Mr. Scott indicated he was prepared to push forward. He also said the two Zoning Appeals would be heard after the variance application. Atty. Gross said his client has authorized an extension at a point where it was considered to be appropriate.

Board Professionals Rick Roseberry, Carl Hintz, Stephen Souza, Vincent Uhl and Maurice Rached were sworn by Atty. Anderson. Mr. Rached, Traffic Engineer, began his testimony. Mr. Rached had reviewed Joseph Staigar's reports dated April 7, 2005 and November 15, 2006. He had conducted four field investigations to observe traffic operations, looked at internal circulation and infra-structure around the facility. Mr. Rached submitted a report dated January 24, 2007. Using Mr. Staigar's numbers, Mr. Rached presented a traffic model to show the impact of traffic on the transportation system. He said the issue was what would happen if the facility generated more trucks than anticipated. Mr. Rached said the site has the potential to attract more traffic. He proposed that should the Board be inclined to approve the application, there be a condition of a monitoring guarantee by the applicant. The Township would then have resources to implement improvements, such as relocating the driveway, making modifications and/or widening the driveway. Mr. Rached also said the intersection of Charlestown Road and Route 173 might need to be improved. Mr. Rached felt that other comments in his report could be dealt with by applicant's engineer. He had presented information on the most critical issue, which was the operation of roadways surrounding the site.

Mr. Scott asked for questions from the Board. Mr. Kirkpatrick raised a concern about queuing spilling onto the highway and interfering with right turning traffic. Mr. Rached said that could be an issue. The model Mr. Rached presented was based on access configuration proposed by applicant. Mr. Lukasik asked Mr. Rached about his comment to move the entrance and would that be better than what applicant proposed. Mr. Rached said it would probably be better, however, it would have to be analyzed in order to gain support from the NJDOT, as well as the Township. Mr. Lukasik asked about trucks coming down Charlestown Road. He said presently they have to go into oncoming traffic or go over the curb. How would that be addressed? Mr. Rached said the intersection would have to be widened. Applicant should address the issue. Mr. Lukasik asked about changing the timing at the traffic light, as recommended by Mr. Staigar. Mr. Rached said that would improve conditions. Mr. Taibi asked Mr. Rached if he had looked at the Charlestown Road access turning north. Was there any gridlock on the overpass? Mr. Taibi said Mr. Rached had shown one or two trucks during his presentation. Mr. Rached said that information was accurate. Traffic happens in random fashion.

Mr. Lukasik asked Mr. Rached if he had taken a traffic count of eastbound trucks. He said there has been a substantial number of trucks traveling in that direction since Pilot has owned the property. Mr. Rached responded. He had been at the site for about five minutes prior to tonight's meeting and counted three trucks coming from the west. Mr. Rached had taken some pictures at the time of the visit. He said if the Board feels there is an issue additional studies could be made. Mr. Taibi asked Mr. Rached if he was aware of studies and changes made when Foster Wheeler (FW) was built. Mr. Rached based his answer on NJDOT experience. He indicated that the DOT might consider this application as a no increase situation, since it was and still is a truck stop.

Mr. Rached believes the site, when improved, would generate more traffic. Mr. Walchuk voiced his concern about there not being an adequate degree of traffic studies. Mr. Rached said he was the Board's review Engineer. He had not been commissioned to do a full study. Mr. Rached said applicant should have to address the matter.

Atty. Gross began his cross-examination. He asked Mr. Rached if he believed proposed improvements would improve conditions at the site. Mr. Rached said that was his opinion. However, if the trip generation is higher than anticipated, it would be questionable whether the improvements would work. Mr. Gross asked Mr. Rached about an improvement if the timing of the traffic signal were changed, as proposed. Mr. Rached indicated it would be an improvement. Atty. Gross asked Mr. Rached if he had studied the movement from northbound Charlestown Road onto eastbound Route 173. Mr. Rached said "Yes". He said there is an encroachment over the left turn lane or the curb. If Pilot proposed improvements in that area it would be good from a traffic perspective. The matter of whether proposed improvements would generate more traffic was questioned. Mr. Rached indicated his experience has been that when sites are modernized, traffic increases. Mr. Rached said he did not recall any trucks bypassing the site at the time of his observation. He also said, in response to Atty. Gross's question, stacking is currently a problem and there was a possibility with proposed improvements that the problem might be mitigated. The issue of peak hour traffic and impact on roadways was brought up. Mr. Rached had not done an analysis. He said traffic counts of similar sites could be taken to determine accurate traffic data. Mr. Rached said if the Board was inclined to approve Pilot's application, a condition could be to request applicant to conduct a traffic study after the site had been in operation. If traffic conditions had worsened, he would recommend that the Board have the means to implement mitigation.

Atty. Gross asked Mr. Rached about internal traffic circulation. Did that which is proposed provide more stacking? Mr. Rached said "yes, it does". Mr. Gross asked if gasoline and diesel fuel price would impact trip generation. Mr. Rached said he did not know. It was not a question within the area of his expertise.

Mr. Scott asked for questions from the Public. John Corcoran, 17 Midvale Drive, asked if consideration had been given to the number of contracts Pilot has with trucking companies, versus the number Johnny's had. Mr. Rached said "No", however that data might help in establishing a more accurate prediction of traffic flow. Arthur Nevins, Charlestown Road, asked Mr. Rached if he was aware of the Pilot site at Bloomsbury and if he had done traffic studies pertaining to that site. Mr. Rached said it was not his function to do traffic studies. He did, however, make a model to illustrate conditions that concerned him. Mr. Nevins said he thought Mr. Rached minimized the amount of traffic getting off and on the eastbound lane, heading north on Charlestown Road and taking a right. Mr. Rached said his model used the same volume as Mr. Staigar. Mr. Rached only increased the volume coming from the east.

Mr. Nevins asked Mr. Rached if he was aware of the overflow of truck traffic at Bloomsbury and if he thought that overflow would be channeled by Pilot to the Union Township site. Mr. Rached was aware of the traffic and said there was a possibility that it would be channeled. Mr. Rached had not done a study on the overflow issue. Atty. Gross asked Mr. Rached if he was aware that westbound traffic could access the Union site by using Exit 13. Mr. Rached said "Yes". He said, however, that logically speaking, Exit 12 would provide the most reasonable access. Atty. Gross said from a turning movement perspective, access from Exit 13 would probably be better. Mr. Rached said traffic exiting the site would be the same. Mr. Gross asked Mr. Rached if he had exited Route 78 at Exit 13 and were there any impediments. Mr. Rached said there are no impediments, however, he reemphasized that Exit 12 would be the logical access. Atty. Gross asked if from a traffic perspective, it might be better for westbound trucks to exit at 13. Mr. Rached said that was a fair statement.

Mr. Lukasik asked Mr. Rached if sites he would use to make comparisons would be similar in size to the Union Township site. Mr. Rached said ideally they would be the same size and in proximity to similar highways in terms of traffic demand on the highways. Ideally they would also be a Pilot. Mr. Lukasik asked if a site that has one fifth of the parking of this site would be used. Mr. Rached said he would try to avoid anything that is not very consistent with this site. Atty. Gross had another question. He asked Mr. Rached the location of sites for a comparison. Mr. Rached said he did not know. He gave a general example to develop a credible trip generation study.

Mr. Scott asked Mr. Roseberry to come forward. Mr. Roseberry had two exhibits. The first Exhibit, a copy of the Site Plan prepared by Robert Stout, revision date of November 13, 2006, was marked B-1. Mr. Roseberry said the application was initially reviewed by Bob Bogart, Maser Consulting. Mr. Bogart is no longer with Maser. Mr. Roseberry said he had reviewed Mr. Bogart's letter dated June 15, 2006, read the transcripts of previous hearings and various reports submitted by Applicant's Professionals. He said he had three concerns with the site. The first concern was the relocation of the truck entrance to the east of the Route 78 jug handle; the second was the change to interior circulation and the third was a lack of any substantial improvements to the surrounding roadway system. Mr. Roseberry provided an explanation of those concerns. He introduced Photos he had taken on May 22, 2007. They were marked Exhibit B-2. Mr. Roseberry said he was heading north on Perryville Road and got behind a tractor trailer that was attempting to make a right turn onto Route 173. The tractor trailer blocked both lanes of traffic which caused queuing along Charlestown Road. That occurred because of a deficiency in the curb radius along the southeast corner of the intersection. Mr. Roseberry said he followed the truck into the site and as he left there was a truck parked in the right turn lane. Mr. Roseberry was able to get a photograph which showed the rear wheel of the truck off the ground. He said the Exhibit shows substantial damage to the curb, a lack of landscaping, and an electrical box that has been driven over quite a bit. Mr. Roseberry noted these were deficiencies indicating the intersection needs improvements.

Mr. Roseberry referenced the future improvements that Foster Wheeler agreed to contribute when their site was fully built out. He said Pilot should be required to contribute to improvements at the intersection, based upon what their impact would be.

Mr. Roseberry commented on storm water management. He said the site is exempt from meeting local storm water requirements since there is not an additional quarter acre of impervious surface proposed. Mr. Roseberry said applicant is proposing a wastewater treatment plant and two disposal beds. He understands that applicant must submit a NJPDES Permit for discharge to ground water for the treatment plant. Applicant will have to undergo a storm water review at the State and comply with State storm water regulations. Mr. Roseberry wants copies of all correspondence and the opportunity to review changes with storm water management. He said applicant submitted a prevention plan and manual that should be reviewed by the Township Engineer and Attorney. Mr. Roseberry said he would recommend that the Planning Board make a recommendation to the Township Committee that any violations of the storm water management plan be subject to strict penalty. The Committee would have to adopt an Ordinance. The Ordinance would give Municipal officials the ability to go to the site and make sure that applicant was complying. Mr. Roseberry said he did not know the status of the NJDOT Permit nor the NJPDES Permit. He said there would be revisions made to the proposed plan. Applicant will have to submit final plans to the Planning Board once Permits are obtained.

Mr. Scott asked for questions from the Board. Mr. Kirkpatrick asked where the pollutants in the storm water came from. Did they come from vehicles, asphalt, or spill? Mr. Roseberry said pollutants come from anything impervious on the site; however, impervious surface did not generate pollutants. Mr. Kirkpatrick asked if traffic increased, would that increase the amount of pollutants generated by the site. Mr. Roseberry said "Yes". The DEP requires that water has to be treated for quality when you have a vehicle parking area or lot. Mr. Kirkpatrick asked Mr. Roseberry if he looked at the storm water management system to see if it was adequate to remove potential additional pollutants. Mr. Roseberry said water quality was reviewed by Dr. Souza. Regarding internal circulation, Mr. Kirkpatrick asked if there would be an alternative site layout that would improve circulation compared to applicant's proposal. Mr. Roseberry said he had not come up with a plan for an alternative layout. Mr. Scott said typically the Board would request an alternative layout for review.

Atty. Gross began his cross-examination. He asked Mr. Roseberry to state his first traffic concern. Mr. Roseberry said it was truck traffic going north on Route 635. He recommended to the Board that they should require applicant to analyze the situation and come up with a recommended solution. Mr. Roseberry said there is an existing septic system on the site. There is no pretreatment of wastewater from that system. Pilot's proposal would include pretreatment before discharge into the septic bed.

In response to Atty. Gross's question about improvement with Pilot's proposal, Mr. Roseberry said there would be improvement if the system was designed properly. Mr. Kirkpatrick voiced a concern about the wastewater treatment system and the implication that a new system would reduce the amount of pollutants. Mr. Scott said Dr. Souza will provide testimony about the system. Mr. Gross asked Mr. Roseberry if he was aware that the NJDEP has the same threshold for storm water as the Township Ordinance. Mr. Roseberry said there was a slight difference. He said because of disturbance at the site, there would be stricter standards with the State.

Atty. Gross asked Mr. Roseberry about the proposed circulation plan. Mr. Roseberry said the existing plan has a better internal flow than that which is proposed. He also had a concern about stacking on site and the potential of stacking onto Route 173. Mr. Roseberry did not agree with Atty. Gross that the proposed plan has more stacking room. Regarding access to the site, Mr. Gross asked Mr. Roseberry if he was aware that the Board's prior traffic consultant favored using Exit 13 versus Exit 12. Mr. Roseberry said he was not. He was aware that the Prior Consultant concluded that the proposed truck maneuvering and stacking areas and circulation around the site was acceptable. Mr. Roseberry said he had his own opinion. Atty. Gross asked Mr. Roseberry about the improvements he would like to see and if they would only be made if the application was approved. Mr. Roseberry said "Yes". He also said he thought improvements would be required at the intersection because of existing conditions. The matter is not within Pilot's control at this time. Mr. Gross asked if the DOT and County would be in control. Mr. Roseberry said it would be the DOT, mainly. Mr. Kirkpatrick asked if Pilot was prohibited by DOT from making voluntarily improvements to existing deficiencies. Mr. Roseberry said anybody could make an application to perform improvements along the highway.

Mr. Scott asked Dr. Souza, who had been sworn in previously, to provide testimony. Dr. Souza summarized his July 2006 report. He referenced some points on Exhibit B-1. Mr. Souza said the site is within a Category 1 Watershed which is a primary tributary to the Spruce Run Reservoir that provides drinking water for residents of northern and central New Jersey. Dr. Souza opined that Pilot would have to comply with Township storm water regulations. He emphasized the importance of pollutant removal and water quality enhancement because of the proximity of subject site to the Spruce Run Reservoir. Dr. Souza said that Pilot's current plan, submitted by Omland Engineering, is much improved over the proposal originally submitted by Stout and Caldwell. Dr. Souza said, however, a true storm filtering type media treatment device had been recommended and that modifications to the plan are needed. Dr. Souza said the operation and maintenance manual must be reviewed. If the application was approved, a maintenance schedule would be required. The DEP mandates quarterly inspections, as well as after rain events that produce an inch and a half of rainfall. Dr. Souza referenced the detention basin in the northeast section and the potential impact on the operation of the septic field. He said data is needed to demonstrate there would not be an impact. Dr. Souza said a full containment system should be provided to handle a catastrophic spill.

Dr. Souza had recommended that an L.O.I. showing the area of disturbance and transition areas associated with wetlands be provided. He had also asked that a letter be obtained from the NJ Heritage Program and an interpretation from the NJDEP pertaining to the sighting or existence of threatened and endangered species. Dr. Souza is awaiting a response. Regarding ground water contamination at the site, Dr. Souza said Mr. Uhl would discuss that in full. He also said Mr. Uhl would address the problems associated with monitoring well Number 8. Mr. Souza said he would take questions. Mr. Scott asked for questions from the Board. Mr. Taibi asked Dr. Souza to expound about a potential catastrophic spill. Mr. Souza said he was thinking about a surface spill, such as an accident between two trucks. That spill would be contained by a surface collection system and subsequently removed as hazardous waste. Mr. Taibi asked about the potential of a tank rupturing and what would happen to the oil. Dr. Souza said the storm water management system would be relied upon

Mr. Kirkpatrick asked about the generation of storm water pollutants. Dr. Souza said pollutants are from vehicles on the site. The amount of traffic through the site increases the pollutants. Mr. Kirkpatrick asked the approximate pollutant removal efficiency of the treatment system proposed, as compared to that suggested by Dr. Souza. Dr. Souza explained the ratings for total suspended solids removal. The storm filter system, which is more expensive, would remove more solids. Mr. Kirkpatrick asked Dr. Souza if he had looked at the amount of pollutants the septic system would generate. Mr. Souza said he had not. He said the proposed treatment system would provide a higher level of wastewater quality enhancement than a conventional septic system. Dr. Souza did not know if that would offset additional usage of the facility.

Mr. Walchuk asked a hypothetical question. What would happen if an 8,000 gallon tanker ruptured? Wouldn't all of the contents flow into a C-1 area? Dr. Souza said you would expect that it would flow off site and into the stream. He said applicant's original engineer said there was no data to support the ability of the system to detain the fuel. Dr. Souza also said it would be a step in the right direction to get improvements. Mr. Walchuk asked if applicant, as owner of the property, could be compelled to provide for mitigation measures. Dr. Souza said he was not able to answer that other than you would expect there would be a spill prevention plan. If the project was approved spill containment would be a part of the operational activities on the site. Dr. Souza said he could not answer Mr. Walchuk's question about whether applicant could be required to adhere to their spill prevention plan if the project wasn't approved.

Atty. Gross began his cross-examination. Mr. Gross asked Dr. Souza about a statement he made that the Township Stormwater Ordinance is different from DEP Regulations. Mr. Souza said that was his interpretation. Atty. Gross asked Dr. Souza about the definition of major development in the Ordinance. Mr. Gross said it is development that disturbs one or more acres of land or would create one-quarter acre of impervious surface. He said that is the same as the DEP.

Dr. Souza said that disturbance could refer to existing lands and there are some major modifications proposed. Atty. Gross said DEP would not consider the proposed improvements new disturbance. Mr. Souza said in a strict interpretation DEP would look at this as redevelopment. Mr. Gross said the DEP requirement for storm water management, in terms of pollutant removal would be 50 percent of total suspended solids. Dr. Souza said the Mulhockaway Creek would be threatened by a pollutant removal of 50 percent. Atty. Gross said "You don't know that, do you"? Mr. Souza said "No, because I'm not the DEP". Mr. Gross asked Dr. Souza if he had any knowledge of a tanker, or two tankers on site, getting into an accident in the United States. Dr. Souza said "Not to my knowledge". Atty. Gross asked Mr. Souza about the proposed spill containment system. Dr. Souza said it would be a high-end type of approach. Atty. Gross said the containment system Dr. Souza referred to would contain catastrophic spill as well as storm water. Mr. Souza said it would take some engineering to separate storm water runoff. He had not seen that design in a gas station context.

Atty. Gross asked Dr. Souza to assume the proposed improvements would not increase the generation of traffic to or from the site. Mr. Souza said "Okay". Mr. Gross asked Dr. Souza if the proposed Stormwater management system would be a far better system than what exists. Mr. Souza said "Absolutely". Atty. Gross asked Dr. Souza if the proposed wastewater management system would be far better than what exists. Dr. Souza said "Yes". Mr. Gross asked if Dr. Souza agreed that if the Board approved the application some of his concerns could be conditions of an approval. He asked if the mounding analysis would be a condition of an approval. Mr. Souza said it could be a condition.

Atty. Gross referenced the freshwater wetland and threatened and endangered species. He said there is no encroachment outside the boundaries of the pavement. Dr. Souza said there is a potential encroachment in the northeast section. Mr. Gross asked Dr. Souza about his experience dealing with the DEP Administration of the Freshwater Wetland program. Would he agree that entity has exclusive jurisdiction over fresh water wetland under the Freshwater Wetland Protection Act? Dr. Souza said "They do". He agreed that an applicant could not encroach on a transition area without appropriate approval from the DEP. Mr. Gross said any approval would be predicated on obtaining all other governmental approvals. Mr. Souza said that would be the norm in a situation like the one proposed. Atty. Gross asked Dr. Souza if applicant believed that it was not encroaching on wetland or transition areas, it would be free to proceed without obtaining anything from the DEP. Dr. Souza said that would be a risk of the applicant. Mr. Gross asked Mr. Souza if he believed that the Pilot proposal would have an overall environmental benefit. Dr. Souza said that any site that is 50 percent impervious creates a situation for potential environmental impact. Mr. Gross said that was not the question he asked. He asked if given the hypothetical that there would be no increase in traffic, isn't Pilot a net environmental benefit to the site. Dr. Souza said it could stand to be improved from what is proposed, but it is a net improvement over what exists.

Atty. Gross said he had no other questions. Mr. Scott asked for questions from the Public. Matthew Mulhall reminded those present that Raritan Valley Disposal/Manella was required to contain all runoff from their facility for the truck washing operation. Dr. Souza said that was true. Arthur Nevins said it appears there are two systems countering one another; the storm water runoff system with water flowing to four corners and the proposed container system which would catch spills. Dr. Souza explained.

Frank Goldberg, Cooks Cross Road, asked when any wastewater and spillage improvements had been made at the site, alluding to the site as flint stone era and saying that anything would be an improvement. Dr. Souza basically concurred. He also agreed with Mr. Goldberg's statement about the potential for serious problems.

Atty. Gross questioned the reference to the Manella Site since no truck washing was proposed. That example was given because of the concern about highly contaminated runoff.

A recess was taken at 9:25 p.m. and proceedings resumed at 9:33 p.m. Mr. Scott said he spoke with Atty. Gross and applicant has agreed to complete Board professionals' testimony and hopefully some of Pilot's witnesses. Applicant will extend the time to act until the September 27, 2007 meeting for both the site plan and variance. The violation notices will also be addressed at the September meeting.

Mr. Scott asked Mr. Uhl, who had been sworn previously, to provide testimony. Mr. Uhl said he would be addressing ground water, hydro geologic and some environmental issues. He said the Township is totally dependent on ground water. Mr. Uhl said the Pilot site has two production wells and a number of monitoring wells. He referenced data, September 2006, from the NJDEP about contaminants in the water. Mr. Uhl said the principal contaminant was benzene. He also mentioned the additive that was introduced to substitute for lead. Both contaminants exceeded allowable levels. Mr. Uhl referenced free product and ground water. He had asked White Stone to quantify the amount of free product and requested that it be cleaned up quickly because of the impact on ground water. Mr. Uhl was also concerned about the production wells pumping rate and the potential for vertical migration of contaminated ground water. He said an agreement had been made with Pilot that they would be pumping about 3,200 gallons per day. Mr. Uhl said it was unknown what impact increased pumping would have in terms of vertical migration.

Mr. Uhl mentioned the total containment of liquids to the pump islands. He wanted to know that matter was being addressed. He also had a concern about the potential for spills outside the Pilot facility from lost, wandering trucks on rural roadways. Mr. Uhl noted that the DEP is the main regulatory authority for a facility such as Pilot. Because of the busyness of the DEP and the amounts of fuel moving in and out of the subject facility, Mr. Uhl thought the Township might want to set up a timetable for site clean up.

He said a good practice would be to require perimeter monitoring wells around the facility. Mr. Uhl said ground vapor migration studies, an aggressive fuel product removal program and monitoring wells for the septic system should be addressed. He said Pilot's expert testified that septic system wells were dry. Mr. Uhl said he had requested, but never received, logs and records for the wells. He emphasized the Township might consider requiring total containment of the site using a pump and treatment system. Mr. Uhl said nothing should leave the site and impact other water in the Township.

Mr. Scott asked for questions from the Board. There were none.

Atty. Gross began his cross-examination. He asked Mr. Uhl about the DEP having primary responsibility for site remediation in the State. Mr. Uhl said that was correct; however, he hoped the site operator would also feel a responsibility. Mr. Gross asked Mr. Uhl if the wandering trucks that he was concerned about were owned by Pilot. He said he didn't know who owned the trucks nor did he know if those trucks were headed to the Pilot facility. Atty. Gross asked Mr. Uhl if he agreed with Dr. Souza's testimony about containment in the event of a catastrophic spill. Mr. Uhl said "Yes". Mr. Gross asked about the geological formations underlying the site. Mr. Uhl said there are two formations, the Locketong and the Jutland Klippe. He said the type of formation could impact depth to ground water. Mr. Gross asked Mr. Uhl if he would advocate the Township be advised of site remediation efforts by Pilot and be copied on any reports pertaining to the remediation. The aquifer test requirement matter was raised. Mr. Uhl would like to see results of a test before Pilot would increase the pumping rate. Atty. Gross asked Mr. Uhl if it was his understanding that site contamination originated before Pilot's purchase. Mr. Uhl said the latest data he had was from September 2006. Pilot took ownership of the property in 2007. Mr. Uhl said he did not know whether Pilot has contributed to the contamination. Mr. Gross said he had no other questions.

Mr. Scott asked for questions from the Public. Mr. Mulhall asked Mr. Uhl about the composition of geologic formations, the potential for cavities and the possibility of water migrating to the Reservoir. Mr. Uhl indicated that water would travel rapidly because of conditions. An audience speaker had a question about measurements taken at wells on the site. Mr. Uhl said he had requested, but not received, logs on wells. Mr. Scott asked Mr. Uhl about contamination under the area where Pilot proposed razing the existing structure and erecting a new one or expanding the canopies. Mr. Uhl said there was ground water contamination. Atty. Gross asked Mr. Uhl if he was aware that DEP would not require a clean-up of contaminated soil underneath an existing building. Mr. Uhl said he was aware. He said, however, that he is working with a project that has an existing building with contaminated soil underneath. The building is on steel girders during contamination remediation and will remain. Atty. Gross asked Mr. Uhl about Mr. Mulhall's mention of migration of contaminants into aquifers. Mr. Uhl said there is a map showing contamination in monitoring wells and aquifers. Mr. Gross asked Mr. Uhl if there was any indication that there was migration off the site.

Mr. Uhl said a transport analysis had not been done, therefore he would not know. Atty. Gross asked if it would be easier to remediate contaminated soils underneath the building if it was removed. Mr. Uhl said "Yes". Mr. Kirkpatrick asked Mr. Uhl if there had been an analysis of gasoline vapors in the soil. Mr. Uhl said there was nothing in the documents he reviewed. Mr. Kirkpatrick asked if vapors in the soil would create any special hazard during construction of a new building and would it rise to the level of flammability? Mr. Uhl if there was a concern, it should be investigated. Mr. Kirkpatrick asked if the hazard would be greater than if things were left alone. Mr. Uhl said if there is a source fuel, it should be removed. Mr. Mulhall asked about delineation around the gasoline tank as well as other portions of the site. Mr. Uhl said, in his opinion, there has not been a full delineation of the extended ground water contamination. Mr. Mulhall asked if Pilot, since taking over the site, had submitted a plan to the DEP or started an investigation to delineate the extent of contamination on the site. Mr. Uhl said he did not ask that question of the present DEP Case Manager. Mr. Mulhall asked if it was true that contamination should be removed quickly, because most petroleum is biodegradable once you start to remove the product. Mr. Uhl said if you have product in the ground you want to get it out. The technology has been around for decades. Mr. Mulhall asked if Pilot had instituted any measures with DEP with the previous Case Manager, Michael Flite. Mr. Uhl said Pilot had met with DEP and discussed product removal. No details were provided. Mr. Uhl's Exhibit was marked B-3.

Mr. Scott asked Mr. Hintz, who had been sworn previously, to provide testimony. Mr. Hintz had three Maps. They were marked Exhibits B-4, B-5 & B-6. The Maps were included in Mr. Hintz's report dated July 6, 2007. Mr. Hintz highlighted some issues in the report. He said the proposed travel center is not a permitted use and requires a D-1 variance. Mr. Hintz said the Township Land Use Ordinance does not have a definition for a travel center. He evaluated the individual uses proposed. They are the convenience store and the fast food restaurant and both would require use variances. The gasoline and diesel fueling station are not permitted in the Professional Office District. The proposed addition of three new fuel pumps, more parking spaces and an increase in the area of disturbance due to the new disposal beds constitutes an expansion of the non-conforming truck stop use and would require a D-2 variance. Mr. Hintz said the Ordinance spells out that there can be no more than one principal use on the property. There is a heating oil business on the premises. Applicant proposes other uses that could be interpreted as another use. Mr. Hintz said there are a number of bulk variances and waivers requested. They include impervious surface coverage, buffering, lighting and signs.

Mr. Hintz addressed negative impacts. Applicant's Planner indicated there would be no negative environmental impact due to a slight increase of site coverage and the fact the site has been disturbed. Mr. Hintz said the site is adjacent to approximately 3,700 acres of state owned property. He said there are areas of threatened or endangered species immediately adjacent to or on the site. There is also indication of a wood turtle habitat on the portion of the site where the septic and detention basin are proposed. Mr. Hintz addressed the issue of surrounding land use.

Mr. Hintz said testimony was given that the property is generally compatible with the character of the area, a mix of rural, industrial and commercial use. Mr. Hintz said the property is opposite the Exxon Gas Station and Liquor Store. To the north and east are the Spruce Run Reservoir and other watershed lands owned by the State. There is a sprinkling of single family homes and some office uses east of the site and more open space. West of the site along Route 173 there is an office building. North of the site there are farmland and large single family home uses. To the South, there is a mixed character of land uses. Mr. Hintz said the zoning of the site was changed to Professional Office and was based primarily because of recommendations of the Spruce Run Initiative and the Water Supply Authority. He said the use is inconsistent with the land use policies of the Master Plan (MP). The Board should consider if approval of the application would jeopardize or enhance the character of the area. Mr. Hintz said there are about eight design issues to be addressed, if the Board granted the use and bulk variances.

Mr. Scott asked for questions from the Board. Mr. Lukasik asked if the scales would be considered a use. Mr. Hintz said he thought they might be considered to be accessory to the trucking. Mr. Scott asked Mr. Hintz if the uses east of the site, a travel agent, veterinarian and Plaza 78 would have a professional office character. Mr. Hintz said that was right. Those uses are more compatible because of the Spruce Run Reservoir and State owned property. Atty. Gross cross-examined Mr. Hintz. Mr. Gross asked Mr. Hintz if he talked to anybody prior to preparing his report. Mr. Hintz said he talked to the Chairman about coordination of the presentations. He was not given any direction. Atty. Gross asked if he had ever represented a travel center, gas station or truck stop. Mr. Hintz said he had not. Primarily, he does public work.

Atty. Gross asked Mr. Hintz questions about the location of the subject property and its proximity to a major transportation corridor in New Jersey. Mr. Hintz said the site sits on a State road and backs up to a large open space area. Atty. Gross asked if Route 78 was the most predominant feature in the area. Mr. Hintz said it was very predominant. Mr. Gross asked if that had been taken into account in the Planning Analysis. Mr. Hintz said not in the Master Plan. Atty. Gross asked if the suitability of the site for the proposed use had been taken into account. Mr. Hintz said the highway was not taken into account; however, the low intensity uses along Route 173 had been. Mr. Gross asked about other properties within 200 feet of the site, including the Liquor Store and Gas Station. Mr. Hintz acknowledged those sites and said the nearest residence is approximately 1,500 feet away. Atty. Gross asked about the INO facility, Clinton Truck Stop, a Self-Storage Facility and an Equipment Rental Center. Mr. Hintz acknowledged their existence.

Atty. Gross asked Mr. Hintz about proposed signs. Mr. Hintz said he didn't concentrate on the sign issue. He thought lighting was more of a concern. Mr. Gross asked Mr. Hintz if he believed the proposal would be a more intense use and an expansion of the existing use. Mr. Hintz said yes. Atty. Gross asked Mr. Hintz if the expansion of a prior existing non-conforming use would be a separate type of variance.

Mr. Hintz said it could be construed that way. He had not addressed the issue in his report or testimony. He had addressed the convenience store and fast food restaurant. Mr. Hintz said any variance required for an expansion of a pre-existing non-conforming use would be left up to attorneys. Atty. Gross asked Mr. Hintz about the MP and if it addressed continuation of and expansion of existing uses. Mr. Hintz said "No". Mr. Gross asked Mr. Hintz about his reference to the Medici case, involving enhanced standard improvements, and was the site vacant. Mr. Hintz said he didn't know offhand. Atty. Gross said to assume that site was vacant. Did Mr. Hintz think Medici applied to a utilized site? Mr. Hintz said there probably would be a different standard. He agreed that you have to be practical about what exists on a site. Atty. Gross asked if special reasons were a consideration a Board has to undertake when determining whether a use variance should be granted. Mr. Hintz said they had to be weighed against the negative and positive. Mr. Gross asked if Mr. Hintz had taken into account that Pilot has title to the site and did that make any difference in his analysis. Mr. Hintz said his analysis considered what the MP called for and what the Zoning Ordinance recommends.

Atty. Gross asked Mr. Hintz about the testimony of Messrs. Staigar and Rached as relating to negative impact to the levels of service on roadways, if proposed improvements were made. Mr. Hintz said he believed their testimony indicated there would be relatively little impact. Mr. Gross asked Mr. Hintz about his statement that proposed modifications by Pilot would increase traffic to the site and what would be the basis for that conclusion. Mr. Hintz said he had not worked with a travel center or taken traffic counts in such a circumstance, however, he had reviewed other applications for truck stops. They were new truck stops. One was an expansion. Atty. Gross asked Mr. Hintz about personal knowledge of modifications to the building, as proposed by Pilot. Would there be an increase in traffic, as opposed to the amount of business the building does. Mr. Hintz indicated a fast food restaurant would generate more traffic.

Atty. Gross addressed the COAH obligation. He asked Mr. Hintz if he recalled Pilot's Planner's testimony that the contribution was based upon an increase in the number of employees and that there would be a decrease in that number. Mr. Hintz said he recalled that was the testimony; however, that would have to be reviewed at the time of an approval. He would defer that matter to Mary Beth Lonergan of his office. Mr. Gross asked Mr. Hintz if he recalled that his report indicated the primary uses of the existing non-conforming truck stop use were the gasoline and diesel fueling station, travel amenity and sit-down restaurant and those uses were a continuation of the prior use prior to the Ordinance. Mr. Hintz said the difference was that the convenience store had not been opened. The differences between a travel center and truck stop were mentioned. A truck stop services trucks and a travel center services cars and trucks. Mr. Hintz agreed it was more akin to a travel center and saw that as another use variance. Atty. Gross mentioned the proposed reduction in non-conformities in terms of bulk standards. Mr. Hintz acknowledged that any reduction would be good. However, the proposal would not be in compliance with the Ordinance.

Atty. Gross referenced Mr. Hintz's statement about the negative impact the proposal would have on air quality, noise, traffic and lighting and if his opinion would be different, since Pilot now owns the site. Mr. Hintz said he has observed that traffic has increased. Mr. Gross asked if Mr. Hintz was aware that the State adopted new truck idling regulations. Mr. Hintz was cognizant of that fact. However, he was not familiar with all details. Atty. Gross mentioned the proposal to upgrade the storm water and septic systems and the positive effect. Mr. Hintz said it would be positive, if it was workable. Mr. Gross said Mr. Hintz had brought up the matter of wood turtles and the fact that this is an existing site. There is no evidence that proposed improvements would have an adverse impact on the turtles. Mr. Hintz said the cited area was where there is currently a storm water facility. He would rely upon other experts to address that matter. Atty. Gross referenced lighting and Mr. Hintz's report about the need to reduce illumination. Mr. Hintz said it was important to reduce illumination. He recognized that safety issues should be considered, especially around fueling areas. Mr. Hintz said more testimony was needed. He believes the Lighting Ordinance provides for safety illumination. Mr. Hintz told Atty. Gross that if the Ordinance had no provisions, he and the Board would consider that issue.

Mr. Gross asked Mr. Hintz if his analysis took into account the existence of the Pilot Travel Center, or was it assumed the site was vacant when analyzing the use variance criteria. Mr. Hintz indicated that it assumes properties change over time. He thinks the long-term solution is to see office uses there. He would like to see the facility removed and thinks that might be realistic. Atty. Gross asked Mr. Hintz if he had any indication that Pilot intended to abandon the site. Mr. Hintz said he had seen all sorts of changes in his career. Atty. Gross asked if the proposed improvements were a positive evolution to the site. Mr. Hintz said he didn't think all of them were.

Atty. Gross indicated a list of benefits and asked Mr. Hintz to agree or not. Mr. Hintz said he believes Pilot benefits the trucking industry and that according to testimony Pilot is the largest travel center in the Country. Mr. Hintz understands that Pilot has contracts with most commercial trucking companies and is not certain there is a demand for services that Pilot offers. He said there may be a need for more capacity than can be accommodated at the Bloomsbury site. Mr. Hintz agreed that the proposed building is a diminishment of the square footage of the existing building. The proposed fast food restaurant would be a more intensive use than the sit-down restaurant. Mr. Gross asked if Johnny's Truck Stop was outdated in terms of what you see now for travel centers. Mr. Hintz said he does not visit travel centers. Atty. Gross asked Mr. Hintz if he thought the proposal is an upgrade to the site access from a traffic perspective. Mr. Hintz said he felt the better site access is to use the existing driveway. He believes the proposed circulation plan is better defined than what exists but isn't sure it's a better solution. Mr. Hintz said the proposed parking areas are better than what exists.

Atty. Gross asked about the signage. Mr. Hintz agreed it was better, with the exception of the amount of trucks ending up on Charlestown Road. He said he could not comment on the proposed stacking capacity. Mr. Hintz recalled Mr. Mulligan's testimony about the upgrade to the fueling efficiency of the operation if the proposal was approved. He did not recall that there was a proposal to move the fueling positions away from the fuel tanks and would look into the matter from a safety factor. Mr. Hintz thought there should be an upgrade to underground storage tanks. He also said he was sure that the proposed upgrade to the plumbing system would have to comply with plumbing requirements. Mr. Gross asked about the upgrade to the septic system. Mr. Hintz said it would be better than what exists. He also said upgrades to storm water management, lighting, landscaping and the fence, which is in bad shape, would be better. Atty. Gross said Pilot proposes upgrading the appearance of the site and Mr. Hintz agreed that would be a good thing. The reduction in the number of restrooms and showers would also be a good thing. The elimination of the truck repair facility would decrease the use intensity and would be a good thing. The proposed elimination of cooking and preparation of hot foods would be a good thing. Mr. Hintz said he thought there would be less water usage. Mr. Gross said he had no further questions.

Mr. Scott asked for questions from the Public. Mr. Scott referenced Mr. Hintz's report that suggested it is the degree of inconsistency and negative impacts that are to be engaged in any decision to permit deviation. Also, the Board should consider whether an approval of the application would jeopardize or enhance the standard character of the area and the zoning district. Mr. Hintz said that was correct. It was a balancing act.

Mr. Kirkpatrick said that applicant did a wonderful job of expounding on the benefits and it was refreshing to hear some of the negative impacts. Mr. Lukasik asked if the benefits would exist if the use was intensified several times over. Mr. Hintz said "No". Mr. Lukasik asked "On all the items?" Mr. Hintz said "No".

Mr. Scott asked Atty. Gross if he wanted Mr. Dotti to provide testimony. Because of the lateness of the hour, it was decided to adjourn the Hearing until September. Mr. Scott said no further notice was necessary. The Hearing will be at the Municipal Building.

**Comments from the Public:** None

**Correspondence: Frace: Block 17, Lot 24:** For Board's information.

**Approval of Minutes:** Mr. Kirkpatrick made a motion to approve the minutes of the June 19, 2007 meeting, as amended. Mr. Lukasik seconded the motion.

Vote: All Ayes

July 26, 2007 Planning Board/Board of Adjustment Minutes, Page 16

Mr. Taibi made a motion to approve the minutes of the June 19, 2007 Executive Session.  
Mr. Kirkpatrick seconded the motion.

Vote: All Ayes

Mr. Taibi made a motion to approve the minutes of the June 28, 2007. Mr. Kirkpatrick seconded the motion.

Vote: Ayes: Mr. Taibi, Mr. Kirkpatrick, Mr. Martin, Mr. Scott,  
Abstain: Mr. Lukasik, Mr. Walchuk

A motion to adjourn was made by Mr. Kirkpatrick. Mr. Walchuk seconded the motion.

Vote: All Ayes (11:20 p.m.)

Grace A. Kocher, Secretary