

September 27, 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. Mazza, Mrs. Nargi, Mr. Martin, Mr. Brandt, Mr. Lukasik,  
Mr. Kirkpatrick (Absent for Roll Call), Mr. Walchuk, Mr. Taibi,  
Mr. Scott

Members Absent: Mr. Bischoff

Others Present: Atty. William Sutphen, Carl Hintz, Rick Roseberry, Atty. Matthew Stanger, Atty. Michael Gross, Norman R. Dotti, Joseph Staigar, William Mulligan, Tom Poggi, Atty. James Lott, Atty. Nancy Lottinville, Alan Ford, Betsy Piner, Matthew Mulhall, Joe Bubulis, Laura Fiorello, Aleta Lambert, Marie Edwards, Pat Lingelbach, Catherine Walters, Bruce Rossi, John Corcoran, Joe Bubolis, George McGowan, Michele McBride

Mr. Scott said the Schuyler and Cellco Resolutions will be placed on the October 2, 2007 agenda. P.S. Construction Hearing has been carried until the October 25, 2007 meeting. Atty. Sutphen said no further notice will be required.

Mr. Scott announced Training Sessions for Board members. Secretary should be notified if any member wants to register.

**Toll Bros.Lookout Pointe: Block 11, Lot 8, Rupell Road & Bank Street:** Mr. Scott said the Historic Preservation Committee had advised the Board that all conditions pertaining to the barn restoration were acceptable. Toll Bros. requested written confirmation in order that they could obtain the remainder of their building permits. Atty. Matthew Stanger was present on Toll's behalf. Atty. Sutphen said secretary should be authorized to issue a letter.

Mr. Mazza made a motion to authorize secretary to write that letter. Mr. Brandt seconded the motion.

Vote: Ayes: Mr. Mazza, Mr. Brandt, Mrs. Nargi, Mr. Martin, Mr. Lukasik,  
Mr. Walchuk, Mr. Taibi, Mr. Scott

**Pilot Travel Centers: Block 11, Lot 24.03, 68 Route 173:** Mayor Mazza and Mrs. Nargi recused themselves prior to the Hearing. Atty. Michael Gross, representing Pilot, said he had four witnesses; Noise Expert Norman Dotti, Traffic Engineer Joseph Staigar, Operations Manager, William Mulligan and Tom Poggi, a prior owner of the property. Mr. Gross said Atty. James Lott was present and would be representing Pilot on the Notice of Violation Appeal. Mr. Scott said there were housekeeping items to address, including barring witnesses because of timing of a report. Mr. Scott said that issue was moot. Mr. Scott also said he received a new set of plans. The plans were marked Exhibit A-33. Atty. Gross called Mr. Dotti forward. He was sworn by Atty. Sutphen.

Mr. Dotti said he is the Principal Engineer and associated with Russell Acoustics of Butler, NJ. He is also a Professional Planner. Mr. Dotti serves on the NJ Noise Control Council. The Council develops and writes regulations and reports to the NJDEP. There were no objections to his credentials. Mr. Scott said Mr. Dotti would be qualified as an expert in acoustical engineering. Mr. Dotti was present when Lewis Goodfriend testified on behalf of an objector. Mr. Dotti indicated there would not be a significant increase in noise levels. Mr. Scott asked for questions from the Board, its' Professionals and the Public. Joe Bubolis, 450 Mine Road, Bethlehem Township asked about the 3-decibel measurement. Mr. Dotti said you wouldn't be able to hear that.

Atty. Gross recalled Joseph Staigar. Mr. Staigar had taken additional traffic counts in May after Pilot took over ownership of the property. The purpose of the counts was to make a comparison between his projections based on what was happening in Bloomsbury. The information was reported in a letter dated July 23, 2007. Mr. Staigar described conditions in and around the site and the improvements proposed. He had a Plan for the entrance driveway that would be implemented, if needed. It was marked Exhibit A-34. Mr. Staigar said the proposed smaller building would attract more gasoline traffic. Traffic projections were greater than what traffic counts have shown, however aesthetic improvements would increase car traffic, not truck traffic.

A recess was taken at 7:40 p.m. to honor longtime Planning Board Member and Township Committeeman Joseph Martin. Senator Leonard Lance presented Mr. Martin with a plaque from the State. Mrs. Martin was present for the well-deserved recognition.

Atty. Gross asked that Mr. Dotti be released since he had completed testimony. Mr. Scott said "Absolutely".

Mr. Taibi had concerns about the backup of trucks onto the highway. He thought Mr. Staigar's Plan would make conditions worse. Mr. Brandt asked about the proposal to change timing of the light. Mr. Staigar said the addition of more green time would allow the processing of more vehicles in the westbound direction. Mr. Scott asked if traffic flow would depend upon what trucks do once they enter Pilot. Mr. Staigar offered an explanation. Mr. Staigar said traffic problems could be alleviated by utilizing Exit 13. Mr. Scott asked about moving the driveway and the impact on the wastewater treatment plant. Mr. Staigar said the driveway would not have an impact. Mr. Scott asked Mr. Staigar what he thought Pilot would pay as their fair share of improvements. Mr. Staigar said they would probably pay 50% and that was better than zero. Mr. Scott asked if NJDOT would pay the other 50%. Mr. Staigar said they might, if money was available.

Mr. Taibi asked Mr. Staigar what he thought about a modification that would eliminate northbound traffic from crossing the yellow line or jumping the curb. Mr. Taibi also asked if another lane was being added. Mr. Staigar said "No". Mr. Staigar said Pilot proposed moving two traffic lights, reconstructing the curb and adding pavement. Mr. Taibi asked about eastbound traffic coming off of I-78.

Mr. Staigar said no changes are planned. He did not think there was much of a concern. Mr. Taibi disagreed. He said the problem could be observed if you sat in front of the Bagel Smith. Mr. Staigar said Pilot might move the stop bar. He also said DOT would be approached about improvements.

Mr. Lukasik asked if Mr. Staigar or someone from his office had taken the traffic counts. Mr. Staigar said "Yes". Mr. Lukasik thought there were not enough traffic counts and they should have been done for a longer period of time. Mr. Lukasik noted that the eastbound intersection had not been studied. He sees substantially more traffic. Mr. Staigar said he had not seen trucks backing up onto Route 78. He also said the traffic study was in compliance with what is typically done in the industry. Mr. Staigar emphasized his belief that the easiest way to Pilot is to utilize Exit 13.

Mr. Lukasik asked what would happen when the facility was redone. Mr. Staigar said there would be an increase in gasoline sales, but no truck traffic. He said the improvements proposed would ease problems at the site. Mr. Staigar said a trucker's decision to stop at the site would not be influenced by aesthetics. Mr. Lukasik agreed to an extent, however, he thought the diner versus fast food and the convenience store could change a trucker's mind. Mr. Staigar believes the price of fuel influenced the decision. Mr. Lukasik asked Mr. Staigar if his traffic projection was wrong and how could the issue be fixed. Mr. Staigar said Exhibit A-34 is the Fix. Mr. Lukasik said Pilot was willing to do their fair share of improvements; however, the problem was the doubling of truck traffic. Mr. Staigar said Pilot's proposal would make the intersection of Route 173 and Charlestown Road safer for Township residents. Mr. Lukasik said his concern pertained to a traffic study not having been done on eastbound traffic. Mr. Staigar said the projection was that minimal traffic would be coming from the west. He also said the traffic was about the same as it was at Johnny's. Mr. Staigar said Pilot would be willing to make improvements for the traffic coming from the east.

Mr. Brandt said he recalled a conversation about what brings truckers to a site. He thought it was the price of fuel and that Pilot had contracts with truckers. Signage had had little to do with the decision. Mr. Staigar said that Mr. Mulligan could answer that question better.

Mr. Taibi asked if Pilot looked at adding a lane to Route 173 since that is where the backup occurs. Mr. Staigar said land would have to be acquired from Exxon and that would be very costly. Pilot had not looked into that matter.

Mr. Walchuk said he understood that a more aesthetically pleasing building would increase car traffic. Mr. Staigar said he suspected that would create an increase in car traffic. Mr. Walchuk wanted to know if the proposed improvements would address that situation adequately. Mr. Staigar replied in the affirmative since car traffic was included in his study.

Mr. Kirkpatrick referenced the Weigh Station in Greenwich Township. He said when the Station is open there is a greater volume of traffic at all truck stops. He asked Mr. Staigar if he had done a comparison when it was open versus when it was closed. Mr. Staigar said he did not know if the Station was open or not when the traffic study was done. Mr. Kirkpatrick asked if pricing policies were in place. Mr. Staigar said Mr. Mulligan could answer that question. Mr. Kirkpatrick asked if policies were different would it change the traffic count. Mr. Staigar said "Yes, it would". Mr. Kirkpatrick asked the impact on traffic if no left turn was permitted from eastbound 173 into Pilot. Would that eliminate the number of problems at the intersection? Mr. Staigar said "No". As long as Pilot can physically get the left turn vehicles out of the through lanes of Route 173, they would have accomplished what needed to be done. Mr. Kirkpatrick said he thought other Board members had concerns that there would not be enough room even if the driveway was shifted to the east. Mr. Staigar said the capacity analysis shows the volume of traffic in the westbound direction can accommodate the left turn. Mr. Kirkpatrick asked if shifting would alleviate the problem. Could Pilot eliminate the left turn into the facility? Mr. Staigar said DOT controls driveways on Route 173. Mr. Kirkpatrick asked if Pilot would be willing to make the changes. Mr. Staigar said Pilot would have to go to DOT since it would require a new access permit. Pilot would have to do that in concert with DOT.

Mr. Kirkpatrick referenced internal circulation. Can trucks see on-coming traffic when backing in or pulling out of a space? Mr. Staigar said trucks back into parking spaces so the front end is always facing out. Mr. Kirkpatrick asked how a truck would get to a fuel pump, if a truck was pulling out. Mr. Staigar said the inbound truck would have to stop. Mr. Kirkpatrick said he had not seen that type of interaction in his travels. Mr. Staigar said truckers are very cognizant of what they are doing.

Mr. Roseberry referenced Mr. Staigar's report. He said there was a substantial difference between the March 2005 and May 2007 reports. He wanted to know the percent of increase of trucks and cars. Mr. Staigar said comparing Johnny's to Pilot, it would probably be double or maybe triple. Mr. Roseberry wanted to know what the increase would be attributed to. Mr. Staigar said he thought Pilot was a different retailer than Johnny's. Mr. Mulligan could be asked that question. Mr. Roseberry asked Mr. Staigar about his projections and had improvements been taken into account or was the projection based on the 2007 traffic count. Mr. Staigar said it was based on the count. Mr. Roseberry thought the additional fuel stations would generate more traffic and increased congestion. Mr. Staigar did not foresee a problem. Mr. Roseberry asked the status of the DOT Major Access Permit Application. Mr. Staigar said it is under review. Mr. Roseberry voiced a concern about the exit driveway being used as an entrance. Mr. Staigar said signage, the geometry to accommodate and enforcement should prevent problems. Mr. Roseberry was concerned about the proposed modification on the east side of the site. Mr. Staigar said DOT is aware of the proposal and viewed it favorably.

Matthew Mulhall voiced a concern about the additional fuel islands and increased truck traffic. Mr. Staigar felt the additional fuel positions would allow better service. Mr. Mulhall said Messrs. McDonough and Mulligan testified that the primary factor was the profit derived from selling diesel fuel to truckers. Mr. Staigar said he thought it was derived from gasoline also. Mr. Mulhall asked if the ramp at Exit 12 and the entrance to Pilot had been studied. Mr. Staigar said "Yes". Mr. Mulhall voiced his concerns about traffic backing up and blocking the road. Mr. Staigar said he had concentrated on Exit 13 because of the objector to Pilot. He said that Exit works great. Mr. Mulhall said that Exit is very narrow. Messrs. Mulhall and Staigar continued their discussion about traffic. Mr. Mulhall emphasized the situation is dangerous.

George McGowan had a question about increasing the timing of the green light on Route 173. Mr. McGowan said that would create a bottleneck on Charlestown Road and by the Bagel Smith. Mr. Staigar said if that became a problem, the timing of the light would not be changed. Mr. McGowan said the situation will get worse. Mr. Staigar said Pilot proposed improvements that would make things better.

John Corcoran, 17 Midvale Drive, asked if Pilot intended to keep prices the same at Bloomsbury and Union Township. Mr. Staigar thought so; however, Mr. Mulligan could answer that question. Mr. Corcoran had a question about Mr. Staigar's observation on trucks coming from the west and why the 15% mentioned would not get off at Bloomsbury. Mr. Staigar said he didn't know.

Catherine Walter, Bethlehem Township, voiced a concern about the traffic at Bloomsbury and wanted to know how things would be different in Union Township. Mr. Staigar said the improvements proposed would make things better. Ms. Walter emphasized that people do not change and there will be a problem.

Michele McBride, Old Forge Lane, asked if box trucks were counted as cars or trucks in the 2005 study. Mr. Staigar said they were counted as trucks. The 2007 study had three categories; tractor trailers, single unit trucks and cars. Ms. McBride asked Mr. Staigar about the most recent report pertaining to fewer trucks in the a.m. and more in the p.m. Were they tractor trailers only? Mr. Staigar said they were tractor trailers. Ms. McBride asked the number of trucks in the study. Mr. Staigar provided the numbers. Ms. McBride wanted to know if Pilot had met or exceeded the forecast of what was expected after Pilot's improvements were made. Mr. Staigar said "No". Not in total volume. Ms. McBride said she has observed up to six tractor trailers leaving in tandem. She asked why that might be. Mr. Staigar said traffic is random. He said there may be platoons that happen to leave at the same time. Ms. McBride asked if it had something to do with the weigh station. Mr. Staigar said he had no idea.

Alan Ford, Country Acres, asked Mr. Staigar to clarify who would pay for all on-site improvements and who would pay only the fair share of off-site improvements.

Mr. Staigar said Pilot would pay all on-site improvements and anything along Frontage Road. Improvements at the intersection would be shared. A resident had a question about the sharp right turn trucks make when coming off the ramp at Exit 12. Was that sharp turn the reason trucks swing into the left-hand side? Mr. Staigar said "No". There is ample geometry for the trucks to straighten out. Joe Bubulis asked Mr. Staigar to clarify how box trucks were counted. Mr. Staigar explained. Mr. Bubulis also asked how much eastbound traffic increased. Mr. Staigar said it was in the order of 15%. Mr. Bubulis asked about visibility when making a left turn out of Exit 12. He said you can't see westbound traffic. Mr. Staigar said there would be a minimal amount of trucks waiting to make that turn.

Aleta Lambert, 10 Grove Farm Road, asked Mr. Staigar if he thought Pilot could manage trucks coming off Exit 11 by signage, posting directions and managing of fleet movements. Mr. Staigar thought it would be self-managed. An eastbound trucker would tend to stop at the station at Exit 7. Ms. Lambert asked Mr. Staigar if he had ever interviewed a driver who passed the Pilot at Bloomsbury and came to the Union Township site. Mr. Staigar said "No". Ms. Lambert asked Mr. Staigar if he thought it would be a good idea. Once more he said "No". He said he had to watch and count traffic. Ms. Lambert had interviewed a driver and was told that Pilot instructed him to come to Union.

Marie Edwards, 24 Charlestown Road, had a question about the amount of eastbound trucks. Mr. Staigar said the traffic counts showed that about 15% of eastbound trucks went to Pilot's Union Township facility. Patricia Lingelbach, Main Street Jutland, asked Mr. Staigar how many other communities had two Pilots within 10 miles of one another. Mr. Staigar did not know. He said Mr. Mulligan could answer that question. Laura Fiorello, Perryville Road, asked the times of peak hours. Mr. Staigar said 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m. Ms. Fiorello asked why counts were not done at different times. She said truck traffic is heavy in the early morning and later in the evening. Mr. Staigar said traffic volumes are lower at those times. If truck traffic is generated during non-peak hours it is a good thing. Ms. Fiorello asked if the new Pilot would take business from the Bloomsbury site. Mr. Staigar said it could. Mr. Mulligan could answer that question.

Mr. Lukasik asked Mr. Staigar if he had ever driven a tractor trailer. Mr. Staigar said he hadn't. Mr. Lukasik referenced Mr. Staigar's statement about geometry. Mr. Staigar said geometry was based on a truck with a smaller wheel base than most of those in use today. Bruce Rossi, 75 Race Street, asked if tandem trailers impacted findings. Mr. Staigar said "No". They have better maneuverability than non-tandem. He did say the tandems turn differently as they go around corners.

Atty. Gross asked Mr. Staigar if off-site and on-site improvements were typically a subject of a site plan as opposed to a use variance. Mr. Staigar said off-site improvements are not usually connected to a use variance and on-site improvements are for any type of site plan.

Mr. Scott announced a break. (9:10 p.m.). The Hearing reconvened at 9:20 p.m.

Atty. Gross called Mr. Mulligan to testify. He had been sworn previously and continued under oath. Mr. Gross asked Mr. Mulligan if he was aware that the Planner for one of the Objectors and the Municipality's Planner assumed the demolition and construction of a new building would increase truck traffic. Mr. Mulligan understood that was their assumption. Mr. Mulligan said that, based upon his experience, the conversion of the existing restaurant and facility into a Subway and convenience store would not increase truck traffic. The main purpose of the facility is to sell diesel fuel for trucks. Mr. Mulligan agreed with Mr. Staigar that a modern facility would increase the volume of cars at the site. Mr. Mulligan said there has been an increase in diesel sales since Pilot took over the site. Last month, 715,000 gallons of diesel was sold. Pilot projected sales of 800,000 gallons after 15 months. Decreasing the diesel price would impact truck traffic. Mr. Mulligan said that when they reduced the price of diesel fuel at Union Township their volume increased approximately 20%. The price was not changed at Bloomsbury.

Mr. Gross asked Mr. Mulligan about the proposal to add more diesel pumps. Mr. Mulligan said Pilot would be able to speed up the process. He did not anticipate the additional pumps would increase truck traffic. Atty. Gross asked Mr. Mulligan about Dr. Souza's testimony that recommended full-site containment of a potential spill of a fuel delivery. Mr. Mulligan said that was not the standard in the industry. The Standard is to have spill containment where you off-load into the tanks and under the diesel island.

Mr. Mulligan is now in charge of environmental and maintenance matters for Pilot. This is in addition to Operations Manager. There is a site remediation effort in progress at the site. Pilot has changed environmental consultants and since purchasing the site, three remediation and work plans have been submitted to the state. Remediation has been done on Monitoring Well #8 and there has been monitoring of the drinking wells. Mr. Mulligan said there is no contamination in any drinking water.

Mr. Mulligan said Pilot will be presenting a storm water plan to the State. Dr. Souza recommended that the Township adopt an Ordinance that would penalize an applicant for not filing a storm water plan. Mr. Mulligan addressed the concerns about trucks going north on Charlestown Road. He said the Sign for Pilot would be moved close to the corner. Mr. Mulligan also said he thought it would be best if westbound traffic used Exit 13. Truckers with whom Pilot has contracts would be provided with a directory. Blue Boards would also provide directions.

Michele McBride asked Mr. Mulligan if there were other Pilot sites within 3,000 feet of a drinking water reservoir. Mr. Mulligan said not know of any. He said Pilot has wells on their sites that are checked. Ms. McBride asked if Pilot had other sites within the Highland Preservation or Planning areas. Mr. Mulligan was unfamiliar with the Highlands. Ms. McBride asked the amount of water pumped through Pilot's wells per month. Mr. Mulligan did not know. Aleta Lambert asked about road sharing. If the Bloomsbury site was backed up, could truckers be notified to go to the Union site? Mr. Mulligan did not know how that could be done. If the price of fuel was lowered, the trucking company would be notified.

Patricia Lingelbach wanted to know if Pilot had two station ten miles apart in any other state. Mr. Mulligan said there are probably twenty in the United States. This would be the first in New Jersey.

Mr. Taibi asked about the 800,000 gallon projection and Mr. Staigar's comment about traffic not increasing. Atty. Gross said Mr. Staigar said there would be no increase during peak hours. Mr. Taibi thought there would be an effect on peak hour traffic. Mr. Mulligan thought the increase would be minimal.

Betsy Piner, 34 Grove Farm Road, referenced Aleta Lambert's interview with the trucker and his being told to stop at Exit 12. Mr. Mulligan explained there is a system truckers use called a fuel optimizer. The optimizer is a computer that would be used to guide truckers to the best location to stop. He thought the situation Ms. Lambert described was unique.

Mr. Lukasik asked if Pilot installed new fuel pumps. Mr. Mulligan said they were the original ones. Mr. Gross said he understood there are pumps that are twice as fast as ten years ago. Mr. Lukasik thought it would make more sense to install newer, faster pumps than to add more islands. Mr. Mulligan said that would be more expensive.

Tom Poggi came forward. He was sworn by Atty. Sutphen. Mr. Poggi is Vice President of Hilltop Fuel. He has worked at Johnny's Truck Stop full time since 1979 and part time prior to 1979. Mr. Scott asked Atty. Gross what Mr. Poggi would be testifying to. Atty. Gross said it would be for his application and Atty. Lott's Appeal from the Notice of Violation. Mr. Poggi would testify about the use prior to the zoning change in 2006. Mr. Lott had asked for Certification from the Zoning Officer that the use was a Continuance of the Pre-Existing, Non-Conforming condition. The Zoning Officer denied the request and Pilot appealed to the Board of Adjustment. A Notice of Violation was issued with respect to alterations of the interior. Atty. Lott appealed that decision to the Board of Adjustment. Mr. Poggi would testify to all those matters. Atty. Sutphen asked if the testimony was all that would be considered for the Board to make its decision on the Appeal from the Violation and the Non-Issuance of the Certificate of Non-Conformity. Atty. Gross said that was correct.

Atty. Gross asked Mr. Poggi who owned the site when he began working at Johnny's. Mr. Poggi said it was owned by his mother and his uncle. They started the business in 1954 and opened it at this location in 1960. Mr. Poggi became an owner in 1998. He has performed various duties at the site, including pumping gas, cashiering and janitorial work. Mr. Poggi became the manager in 1979. He described the uses of the building in March 2006. There was a restaurant, scales, a lounge, a room with vending machines and video games, an office and bathrooms. The vending machines had snacks, soda, water, etc. Log books, oil filters and sundries were also available for purchase. There was a fuel desk that handled all transactions. Mr. Poggi said that did not change when the building was sold to Pilot in February 2007. Atty. Gross asked Mr. Poggi if Site Plan approval had been obtained. Mr. Poggi said "Yes". The approval was in two phases. Site work that included pumps, landscaping, the driveway and fencing was done. No changes were made to the building at that time, or afterwards. Mr. Poggi described conditions as of this date. He said there have been minimal changes to the restaurant. The lounge is now a convenience area. He said Pilot has basically the same items for sale. There is different packaging and greater quantities and more varieties. Dog food is now offered. Pilot doesn't sell t-shirts, jackets, hats or boots. They were previously sold by Johnny's.

Atty. Lott questioned Mr. Poggi about the hours of operation before 1996. Mr. Poggi said the business is open 24 hours a day, seven days a week. It is closed 18 hours on Thanksgiving and Christmas. Mr. Lott asked if Final Site Plan approval had been received. Mr. Poggi was unsure. His cousin handled that matter. Atty. Lott said Mr. Poggi stated sales were from vending machines or over the counter from a refrigerator. Mr. Poggi said there were no coolers. In response to a question from Mr. Scott, Mr. Poggi said they now have coolers. Atty. Lott asked the size of the room. Mr. Poggi said he could not answer that question. Mr. Scott asked for other questions from the Board. Mr. Kirkpatrick asked Mr. Poggi if he was familiar with the 1993 application. Mr. Poggi replied "Not really". Mr. Kirkpatrick gave background information on that application. It was specific to add a convenience store. Mr. Poggi said applicant wanted to expand the area into a trucker's store and that was not done. Mr. Scott asked if any licenses were required for sale items at Johnny's, in March 1996. Mr. Scott mentioned a milk license. Mr. Poggi said that license would be associated with the Diner.

Atty. Lott asked if cigarettes were sold. Mr. Poggi said there were vending machines. Those machines were not owned by Johnny's. Mr. Kirkpatrick asked about candy and soda machines. Mr. Poggi said Johnny's owned them for a few years. They were taken over by the same people who owned the cigarette machines.

Mr. Scott asked for questions from Professionals and the Public. A member of the Public asked about the lounge area. He said there was nothing that you would call a convenience store. Also, he did not remember any clothing items. The focus was mostly on vending machines. Aleta Lambert said when she went to Johnny's, none of the employees had any knowledge of the existence of a convenience store.

Mr. Poggi said there wasn't a pre-built convenience store. It was a point of sale area. Betsy Piner said she visited the site when it was still Johnny's. She asked about vending machines in the lounge area and what is now the convenience store. Mr. Poggi said there was only one cigarette machine left when they sold Johnny's.

Atty. Lott had a legal argument. Atty. Sutphen said to wait until the Hearing was through. Mr. Scott said the Public Hearing was concluded. Applicant's witnesses had completed their testimony and the Public had an opportunity to present testimony and/or objections. Mr. Scott asked for a motion to close the Public Hearing.

Mr. Kirkpatrick made a motion to close the Hearing. Mr. Lukasik seconded the motion. Vote: Ayes: Mr. Kirkpatrick, Mr. Lukasik, Mr. Martin, Mr. Brandt, Mr. Walchuk, Mr. Taibi, Mr. Scott

Atty. Lott addressed the Notice of Violation dated April 27, 2007 from the Zoning Officer that alleged that the conversion of the lounge into a convenience store constituted a change of a non-conforming use. Mr. Lott provided a letter dated July 23, 2007. He thought the Board was aware that a non-conforming use could continue as long as it was not expanded. The use could change slightly provided four conditions were met; the character is maintained, there is no deleterious effect to the community welfare, no significant increase in the time of operation, or the intensity of use. Atty. Lott said the only change is the manner in which goods are sold. He asked the Board to consider the totality of the circumstances. Atty. Lott asked that the Zoning Officer's Notice be dismissed, with prejudice, and that the Board reverse the Zoning Officer's decision. Mr. Taibi asked Mr. Lott to define intensity of use. Would it be the number of items or the dollar value? Mr. Lott said from a land use perspective, it would be the physical characteristics of the use and not the business aspect. Mr. Taibi asked the definition of character. Atty. Lott said that would be the sale of convenience items to the motoring public. Mr. Taibi said Mr. Lott made a point that the hour didn't change substantially, however, he didn't make a point regarding the amount of products. Wouldn't that have a bearing as to the intensity of use? Atty. Lott replied. He indicated that it would not seem a use would remain static.

Atty. Gross asked Mr. Scott if the Board wanted to vote on Atty. Lott's appeal or would they want to hear all arguments and vote. Mr. Scott told Atty. Gross they would hear his argument so the Hearing would be concluded. Mr. Gross said there are two aspects of the application; the appeal of the Zoning Officer's refusal to certify that there was a Pre-Existing Non-Conforming Use of the site. Mr. Poggi testified that as of March, 2006 and prior to that and immediately after March, 2006, the use was exactly the same. Mr. Scott said he understood that Atty. Gross was addressing all of the uses. Mr. Gross said that was correct. The uses were there prior to March, 2006 and continued after 2006. Atty. Gross said all he had to demonstrate was that the use was a Conforming use prior to March 2006 and became a Non-Conforming use when the Zoning Ordinance changed.

Atty. Sutphen asked Mr. Gross if he was relying on Mr. Poggi's testimony or testimony given with the whole application. Atty. Gross said all testimony presented would be incorporated. He emphasized the importance of Mr. Poggi's testimony. Atty. Sutphen said his concern had been brought up with Mr. Gross's partner, Atty. Schneider about relying on filed transcripts. Mr. Sutphen said it was determined that would not be appropriate unless transcripts were reviewed for specifics. Atty. Sutphen said he was inquiring about reliance upon Mr. Poggi's testimony or testimony that was given for the expansion of the non-conforming use. Mr. Sutphen said if there was an appeal of the Board's decision, the record should reflect what was being relied upon. Atty. Gross responded. He said the proofs for expansion were not the same as those for the existing non-conforming use.

Atty. Gross said the second application was for both a Use Variance and Preliminary and Final Site Plan approval. He said the application began with Pilot as the Contract Purchaser and they now own the site. Mr. Mulligan said Pilot is here to stay. They will make improvements permitted by the Board. Does the Board want to leave the site as it exists or do they want Pilot to make improvements under the Board's direction?

Atty. Gross said Case Law says applicant has to show positive reasons for expansion and that there are no negative impacts for the expansion. Mr. Gross said the expansion consists of adding diesel fuel islands and demolition of the existing building and construction of a new building that is smaller than the one existing. Mr. Mulligan testified the purpose of the additional islands was to increase efficiency. If the application is not approved, Pilot doesn't have the right to make on-site adjustments and many of the off-site improvements. The Board is entitled to impose conditions that integrate the use with surrounding improvements. The Courts have said the Board has no choice but to grant the proposed type of expansion of a Nonconforming Use Variance application. Mr. Gross said the site is dilapidated. Improvements would make the site nicer. Applicant is entitled to a D-1 Variance because the site is suited for the use. Mr. Mulligan testified that cleanup has been accelerated. New septic and Stormwater management systems are proposed. Spill containment is proposed. There is no measurable impact with respect to noise. New fencing and increased landscaping are proposed. Parking has been removed from the front yard. The roof sign will be eliminated. Pilot wants to be a good citizen.

Atty. Gross referenced negative criteria. He said Mr. Staigar projected mitigation of existing traffic conditions. Environmental impact and lighting would be better with the proposal. Mr. Gross said there are no life safety issues with this development. If the Board denies the application it would lose all control over the operations. He did not think denial would be positive type of thing for the Township.

Atty. Gross said if the Use Variance was granted, applicant would request only Preliminary Site Plan approval and would revise Final Site Plan to reflect changes requested by Township Professionals. Pilot would try to comply with Mr. Kirkpatrick's suggestions about cutting down on left turns. Mr. Gross asked that the Board approve both the Use Variance and Preliminary Site Plan. Mr. Scott said the Final Site Plan application was deemed incomplete. He also said the Board's policy is to bifurcate Preliminary and Final Site Plan applications. Atty. Gross said applicant was not asking for Final approval.

Nancy Lottinville approached the Chairman. She is an attorney with a firm representing INO Therapeutics, an objector. She reiterated INO's position that application is a D-1 Variance. She cited two Cases; Cole vs. Bayonne Board of Adjustment and Hague vs. Fort Lee Board of Adjustment. Ms. Lottinville said the application is not a D-2 Variance. She cited the magnitude of the increase in use. The compelling argument was the solution to congestion at Exit 12. The suggested solution was to utilize Exit 13, which is in front of INO. Use of Exit 13 would expand truck use into nearly the entirety of the frontage of the PO District. Does that solution make the site suitable for a D-1 Variance? Atty. Lottinville said that was the question before the Board.

Mr. Scott said that was the end of factual testimony. The Board must deliberate, discuss and vote. He sought recommendation from Counsel as to what was being addressed, the Variance and Site Plan application and/or the Notice of Violation or the Zoning Official's refusal to certify the Prior-Existing Non-Conforming Use. Atty. Sutphen said the summations given by Atty. Gross were appropriate and adequately listed issues before the Board. Mr. Sutphen said the Board should consider the Variance issue and make a decision. Once that decision is made, it would take care of the appeal on the Issuance of a Certificate of Non-Conforming Use and Atty. Lott's Violation Notice. Depending on the Board's vote, the Site Plan may or may not be considered. Atty. Sutphen said there is a long list of bulk variances and most of those are existing. The Board needs to decide if the Variance is a D-1 or D-2. If the Board determines it is not a valid Non-Conforming Use that would eliminate an appeal from the Certificate, eliminate the Violation and eliminate it being a D-2 Variance. The Board would have to decide whether applicant presented sufficient proof for the application to be a Use Variance.

Mr. Scott asked for questions from the Board. Mr. Kirkpatrick asked to discuss whether the uses existed prior to the application. Atty. Sutphen said the issue was whether or not the uses existed from the date the zoning ordinance was changed. The Board should address uses testified to by Mr. Poggi. Were they valid uses on the property at the time the Ordinance changed? Mr. Taibi asked the definition of a valid use. Atty. Sutphen said it would be a legal zoning use at the time the Ordinance changed. Mr. Kirkpatrick referenced the 1993 decision. His interpretation was that gas and fueling stations were there, also a home-heating oil facility, sit-down restaurant, truck repair facility, chapel and trucker's lounge. He didn't believe there was a convenience store on the site.

Mr. Scott said he had a similar view as Mr. Kirkpatrick about the pre-existing uses prior to the Zoning change. He said the change from a sit-down restaurant to a fast-food restaurant is an entirely different use. Mr. Kirkpatrick referenced the vending machines. He did not feel they were the equivalent of a convenience store. Mr. Kirkpatrick said he could make a connection between T-shirts, air gauges, etc. as part of a convenience store. Mr. Scott said the proposal appears to be a different intensity of use. Mr. Walchuk asked if there was any significance regarding ownership of the vending machines. Mr. Scott did not see any significance as to ownership. Mr. Walchuk asked if there was any implication to not having a license to sell over the counter cigarettes versus from a vending machine. Mr. Lukasik said you need a license to sell cigarettes over the counter.

Mr. Brandt noted the application was unusual. He asked Atty. Sutphen if a decision on the valid non-conforming use would preclude the Board going to the next item. Mr. Sutphen said you would go to the next decision on a separate item. He emphasized the importance of taking items in some sequence. Mr. Brandt asked if a resolution on the first would affect the resolution on the second one. Mr. Kirkpatrick said it would affect the type of variance. Atty. Sutphen said it is a different level of consideration as far as the proof that was submitted. Mr. Brandt noted the difficulty of the decision when you look at the totality of what was presented. Atty. Sutphen said the Board should consider Atty. Gross's argument about Pilot being here and its advantage to the community. Mr. Sutphen said to look at the factual determination as to whether or not a half dozen vending machines would progress to a convenience store.

Mr. Scott said whether it is the expansion of a non-conforming use or a variance, applicant has the same obligation to satisfy the same positive and negative criteria as a D Variance. He cited the Cole decision which said the mere existence of a non-conforming use does not entitle applicant to enlargement. Mr. Scott mentioned the sensitivity of the area and said development should be controlled by Ordinance, not by a variance. He said there would be a different motion whether granting or denying the existing non-conforming use or granting or denying the use variance. The issues and impact are the same. Mr. Brandt had a different view. He didn't feel the way food was prepared would make a difference in a Court of Law. Mr. Brandt mentioned the bigger discussion, including cleanup of the site, since Pilot is there. Mr. Scott referenced the proposed Subway. He considered that to be a destination and would attract different people than a sit down restaurant. That is an accessory use for people who are fueling vehicles. Mr. Scott said Subway would increase car traffic and would be an intensification of the use.

Mr. Brandt mentioned the convenience store versus what was being sold at the site previously. It seemed to him that there was a full range of products for sale. It may have been more of a store than it is now. Mr. Brandt said he was wrestling with that issue. It was more than the food issue. Mr. Scott said the Board could take the Violation of the Expansion of a Non-Conforming Use and decide whether the truckers' lounge was a convenience store or not. Mr. Lukasik thought that should be done.

Mr. Scott said a motion or discussion would be required. Mr. Kirkpatrick asked how a motion to dismiss the Notice of Violation (NOV) would work to resolve the matter. Mr. Scott said if the NOV were dismissed, it would be found that a convenience store existed in the lounge. Messrs. Kirkpatrick and Scott said that would answer the question.

Mr. Kirkpatrick made a motion to dismiss the NOV. Mr. Brandt seconded the motion.

Vote: Ayes: Mr. Brandt

Nayes: Mr. Kirkpatrick, Mr. Martin, Mr. Lukasik, Mr. Walchuk, Mr. Taibi,  
Mr. Scott

Atty. Gross said there was confusion among the Board on the legal standard for the appeal from the Zoning Officer's decision. Mr. Gross said the standard is whether the uses that existed in March of 2006 were legally on the site at that time. Atty. Sutphen asked if the issue pertained to the existence of a valid convenience store in March 2006. Mr. Gross said it is whether the uses on the site in March of 2006 were valid prior Existing non-conforming uses. The 1993 Resolution says they were. He had asked the Zoning Officer to certify that as of the date when the zone changed, Pilot was a legally existing non-conforming use. Mr. Kirkpatrick said he understood that. The convenience store was mentioned in the 1993 Resolution. Atty. Gross said the recitation of existing uses did not include a convenience store. The application was to add that store. Mr. Gross said if the Board didn't think a lounge/convenience store was there, they can say they will not permit it as a continuing use.

Mr. Scott referenced Exhibit A-27, the 1993 Resolution, which talks about what is located on the site. No reference was made to a convenience store. He said any sale of convenience items in the truckers' lounge would be an expansion of a use. That was the reason for his decision. Mr. Lukasik agreed. Atty. Sutphen said the Board should make a determination to the issuance of a Certificate of Non-Conforming Use. Guidance should be given to the Zoning Officer. Mr. Walchuk said it was clear that the convenience store was not a valid use. Mr. Lukasik added "Valid Non-Conforming". Mr. Scott listed the uses for which certification was sought. They were the home heating oil business, dispensing of diesel fuel and gasoline, the restaurant, scales and a service bay. The bay was to be abandoned with this application. Mr. Taibi asked the definition for a restaurant. Mr. Scott said he didn't think the term restaurant was used. He thought the Ordinance listed eat-in facility.

Mr. Kirkpatrick made a motion to allow the Zoning Officer to issue a Certificate that Hilltop Fuel's dispensing business, the diesel and gas dispensing, restaurant in its current configuration, the scale, and the service bays can, in fact, be certified as pre-existing uses. Mr. Lukasik seconded the motion.

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

Mr. Scott said that leaves the Use Variance. Atty. Sutphen said the Board has to determine that the proposed site plan and uses are not valid non-conforming uses. Mr. Scott thought Atty. Gross had considered the diesel canopy and tanks to be expansion of a non-conforming use. Mr. Scott said the Board found that was non-conforming. They had to determine that the proposed site plan and uses were not a valid non-conforming use. The Board must look at the uses in their totality. Mr. Scott thought Atty. Gross said the expansion was related to the diesel canopy and tanks. The Board found they were non-conforming uses.

Mr. Roseberry thought there were multiple variances. Atty. Sutphen said the Board could not proceed with a determination on the site plan on that basis. He said all uses included in the Site Plan application must be satisfied either by being determined to be non-conforming uses or have met qualifications for a Use Variance. Mr. Hintz said the gasoline fueling is a use, however, applicant has asked for three more fueling positions. The matter of truck stop versus travel center was mentioned. Atty. Sutphen said the Board should look at the specific use rather than the title. Twenty years ago there were no such things as travel centers. Mr. Lukasik agreed. Mr. Scott didn't see a reason to expand the diesel fueling stations. He said the home-heating oil use could be removed to allow better circulation at the site. Mr. Kirkpatrick felt the addition of the three diesel fueling stations was a negative impact. Mr. Lukasik agreed.

Mr. Hintz brought up the matter of whether the home-heating oil facility, although it is a pre-existing non-conforming use is a second principal use. He also said the type of restaurant was an issue. Mr. Scott referenced the convenience store. He said applicant proposed that the 717 square foot store existed and would be expanded to a total of 6,610 feet. Mr. Brandt asked if the best way to handle the vote on the approval would be piece by piece. Atty. Sutphen said the problem with that was the opportunity to move onto the next issued might be removed. He said a motion could be to vote on the application in its entirety, with conditions. Mr. Sutphen also said the Board could ask him to review transcripts and come back to the next meeting to discuss conditions. Mr. Brandt said he would like a discussion by the Board. Mr. Kirkpatrick said he would rather take it as a whole. Mr. Brandt said he felt the same way. He expounded on his experience as a seven-year member of the Board. Mr. Brandt stated his belief that it was possible to work with the applicant to improve conditions at the site. Mr. Kirkpatrick said he thought the decision of the Board is whether the proposed improvements are the right thing. Mr. Brandt reemphasized that the Board should look at the entire application.

Mr. Kirkpatrick asked if that would limit any option in the future. Atty. Sutphen said he saw nothing wrong with that. Mr. Sutphen reiterated that a motion could be made which would allow his office, Board Professionals and Atty. Gross's input to spell out conditions and work on those at the next meeting. If that motion passed, the Board could move ahead. Mr. Kirkpatrick recognized the travel center would be here for a long time. He isn't convinced the layout is the best thing for the Township.

Mr. Kirkpatrick didn't think he could list the number of conditions that need to be addressed. Atty. Sutphen said if consideration was given to the motion, there might be some leeway on what conditions might or might not be acceptable to applicant. Mr. Scott thought the Board was going in the wrong direction. He thought the central issue was whether the uses were allowed. Mr. Lukasik thought the Board should deal with whether the uses are either permitted or granted by variance. Mr. Brandt said Atty. Sutphen was trying to explain what the Board could make a decision on. Mr. Scott said a motion to grant approval in whole, in part and with or without conditions could be made. Mr. Brandt asked about voting on the uses. Atty. Sutphen said the problem with that would be that the Board would not get to the Site Plan. Mr. Scott explained his position on the matter. Mr. Walchuk asked, acknowledging that Pilot is not going away, what the goal of the Township might be. He thought environmental improvements and addressing of traffic issues would be important. Mr. Brandt mentioned improvements to roads and lighting.

Atty. Sutphen said that nothing could be done to limit the amount of gallons of fuel Pilot could sell or the amount of truck traffic. Mr. Brandt said the role of the Board is to decide what is best for the community. Mr. Walchuk said "Well, if we all can define that here". Mr. Brandt said he thought the Board had been trying to do that. He feels that applicant would do what is needed because they have the money and resources. If the application is turned down, there would not be a chance to deal with something really important, except maybe in Court. Mr. Brandt said that would burn up taxpayers' money. Mr. Kirkpatrick said there should be a discussion on a motion to approve the use and bulk variances along with Preliminary Site Plan approval, conditioned upon incorporating all of the Professionals' comments. Mr. Walchuk asked if that would include three more diesel stations. Mr. Kirkpatrick said if you vote yes, you would be voting for the project as a whole. If you vote no on the motion, the application would be denied. Mr. Walchuk asked if the application was denied would applicant have an opportunity to not necessarily go to a court. They could resubmit a plan. Atty. Sutphen said that would always be available. However, because of the duration of the Hearings, he didn't think that would be a likely conclusion. Mr. Sutphen said the application is much different than it was in the beginning.

Atty. Sutphen recited a motion. He said the motion would grant approval of the application, as it stands, except for the expansion of the diesel facility and the canopy. Mr. Kirkpatrick said approval would be granted for all uses and bulk variances, as well as Preliminary Site plan, conditioned upon incorporating Board Professionals' comments into the Final Site Plan. The conditions would be incorporated to the Board's satisfaction. Atty. Sutphen explained the procedures involved in preparing the Resolution that would be adopted by the Board. Mr. Brandt asked if there would be an opportunity for the Board to look into the willingness of applicant to move toward a point that would be acceptable toward the Board. Atty. Sutphen said "Yes".

Mr. Sutphen wanted to make sure it was clear that the motion, if it involves an amendment, would specifically say instead of it being a motion to approve, it would be a motion directing him to prepare a Resolution of approval. Mr. Kirkpatrick said that was a great way to phrase it. Atty. Sutphen said the Resolution would come back to the Board for them to make their decision. Mr. Lukasik voiced a concern about the convenience store use. Mr. Scott had a different perspective. He said the Township Committee didn't put the Board here to shove the matter off on Professionals. Mr. Scott did not want Board Professionals' to be a scapegoat.

Mr. Kirkpatrick made a motion to direct Mr. Sutphen to prepare a Resolution of approval for the Bulk and Use Variances, along with Preliminary Site Plan approval, incorporating Board Professionals' comments into the site plan to the satisfaction of the Board. Mr. Brandt seconded the motion.

Vote: Ayes: Mr. Brandt, Mr. Martin, Mr. Walchuk, Mr. Taibi

Nayes: Mr. Kirkpatrick, Mr. Lukasik, Mr. Scott (Absolutely Not)

Mr. Taibi asked about making another motion. Mr. Walchuk asked if it would change Mr. Scott's mind if the Board gave more direction, rather than leaving it to the Professionals. Mr. Scott said that would be a different grant.

Mr. Scott asked Atty. Gross if he wanted the Board to consider anything else. Mr. Gross said he was entitled to a vote on the D-2 Variance.

Board members discussed various issues. Mr. Taibi made a motion to deny the expansion of the diesel dispensing station and to deny the request for a Subway. Mr. Kirkpatrick seconded the motion.

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

Naye: Mr. Lukasik

Mr. Taibi made a motion to grant the use variance for a convenience store, in its configuration as proposed. Mr. Kirkpatrick seconded the motion.

Vote: Ayes: Mr. Taibi, Mr. Martin, Mr. Brandt, Mr. Scott

Nayes: Mr. Kirkpatrick, Mr. Lukasik, Mr. Walchuk

Mr. Mulligan said the Board voted a lawsuit. Atty. Lott asked to have the decision of the Zoning Officer's Notice of Violation stayed allowing him to appeal. Mr. Scott asked Mr. Lott is there was a legal authority that gave him the authority to stay it. Atty. Sutphen suggested that the Board amend the Resolution. Mr. Scott asked for a motion to stay enforcement. Mr. Kirkpatrick said he had no desire to do that. Mr. Lukasik said there was no permit for it. Mr. Scott said the Board considered the stay. However, since no one wanted to make a motion, he did not think he had the authority to do it.

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Atty. Gross asked again for a vote on the D-2 Variance. Mr. Kirkpatrick thought everything had been covered in his original motion. Mr. Gross said he didn't understand because the Board had already determined that the convenience store was not a prior existing non-conforming use. Mr. Kirkpatrick said his motion was to grant all requested use variances. Atty. Gross said "Okay".

Mr. Scott asked if there were any other motions that applicant wanted to have entertained or that the Board wanted to make. Atty. Gross indicated in the negative. Mr. Brandt said no.

Mr. Scott asked for a motion to adjourn. Mr. Kirkpatrick made the motion. Mr. Lukasik seconded it. (12:50 a.m.)

Vote: All Ayes

Grace A. Kocher, Secretary