

**BOROUGH OF WOODLAND PARK
BOARD OF ADJUSTMENT MINUTES
SPECIAL MEETING
NOVEMBER 29, 2010**

Meeting is called to order by Vice Chairwoman Kallert at 7:04 p.m.

OPEN PUBLIC MEETING LAW: THIS MEETING IS CALLED TO ORDER PURSUANT TO THE NEW JERSEY PUBLIC MEETING LAW: ADEQUATE NOTICE OF THIS MEETING HAS BEEN PROVIDED IN THE FOLLOWING MANNER: AT LEAST 48 HOURS NOTICE OF THE TIME, DATE, LOCATION AND TO THE EXTENT KNOWN, THE AGENDA OF THE MEETING, AND WHETHER ACTION WILL BE TAKEN, HAS BEEN PROMINENTLY POSTED IN A PUBLIC PLACE WITHIN MUNICIPAL BUILDING, FAXED TO TWO NEWSPAPERS, INCLUDING THE RECORD AND THE HERALD, AND PUBLISHED IN THE HERALD, THE OFFICIALLY DESIGNATED NEWSPAPER OF THE MUNICIPALITY, AND FILED WITH THE CLERK OF THE BOROUGH OF WOODLAND PARK.

PROPER AND ADEQUATE NOTICE HAVING BEEN GIVEN, THIS MEETING IS CALLED TO ORDER AND THE CLERK IS DIRECTED TO INCLUDE THIS STATEMENT IN THE MINUTES OF THE MEETING.

MEMBERS PRESENT: RUSSEL JUZDAN, TRACY KALLERT, JAMES IANNIELLO, PHILIP DICRISTINA, TONY ORLANDO, VINNIE DECESARE & RUTH PATTERSON

ALSO PRESENT: JOHN FIORELLO, BOARD ATTORNEY
TOM SOLFARO, BOARD ENGINEER
BOB PERRY, BOARD PLANNER

FLAG SALUTE

A motion to approve the minutes of the November 22, 2010 meeting was made by Ms. Patterson, second by Mr. Decesare and approved.

ORDER OF BUSINESS

DOCKET # 10-03 – QUICK CHEK CORP. – BROWERTOWN RD. – BLOCK 122
LOT 10 & 10.02 – PRELIMINARY & FINAL SITE PLAN – USE VARIANCE –
BULK VARIANCES

Mr. Azrak, attorney for Quick Chek, asked that all the exhibits be entered into evidence. The exhibits were A-1 through A-17. The applicant will leave the exhibits with the Board.

Mr. Corradino called his first witness. Jeffery Reeves, engineer for objector, was sworn in. Mr. Reeves stated his qualifications and experience and was accepted as an expert. Mr. Reeves curriculum vitae was marked O-5. Mr. Reeves noted he has worked on projects in Woodland Park. Mr. Azrak asked if he was licensed in NJ in 1997. Mr. Reeves said it is thirteen years.

Mr. Reeves was retained by Levco in order to review the engineering data that was submitted to the Board in support of the application. He reviewed the storm water management report, all the drawings and the details. He also reviewed the comment letters from the Board Engineer and responses from the applicant's engineer.

Mr. Reeves agreed the volume of storm water runoff was not increased into Browertown Rd. The information also shows there was an increase in volume of storm water runoff to the westerly direction and area of the site. The increase for the water quality storm was 4 times what it is now. There are two areas an engineer looks at in regard to storm water management, one is rate and one is volume. The applicant chose the rate as being reduced for each storm and not the volume. They addressed the volume going in to the county facility. So the water discharging to the county roadway is discharged in volume and rate. The water discharging to the shopping center to the west is reduced in rate but not reduced in volume and flooding is a combination of both. You look at both when you are doing a design and when you have a proposed design that drastically increases the amount of impervious cover that you have on the property it is virtually impossible to reduce the volume unless you use infiltration. The concern is the volume going to the west of the property. The applicant's engineer had no choice but to use the rate. When you do a proposed design and increase the impervious you have more runoff. The DEP gives you 3 guidelines when doing storm water management you look to see if you can reduce the volume on the site and have the post development equal the predevelopment in volume and in rate. The only way you can do that is either by infiltration or reducing the amount of impervious. Second check that DEP allows you to do is that you prove the existing system. They can design a drainage system and discharge it at the property line and prove that all of the increased runoff, in rate and in volume, has no detrimental impact to the downstream properties. This is very hard to do, that is why you put in a detention system that detains the runoff and does not retain it on the property it only slows it down. A retention basin is an infiltration system where you retain the runoff on the site. Infiltration is where you can reduce the volume. DEP does not look favorably at putting underground infiltration on sites that have a high possibility of contamination which would be a gas station. The applicant's engineer raised the oil water separator up to 3,000 gallons because of the concern of contamination downstream. You cannot introduce any more runoff into the ground. They took the roof and put all the roof into the storm block system and discharged the runoff going into Browertown Rd. because Passaic County requires that. In other application that he has done they have made them

reduce the volume because they don't want to see additional volume going in to their roadways. He reviewed the manual and the rate varied from the water quality storm which was the most severe which was around 4 to 1 difference in increase volume down to about 8% for a 100 year storm. Each year storm the volume increased compared to existing.

Mr. Reeves submitted a board with the FEMA map which was marked O-6. The exhibit showed the shopping center area in the 100 year storm. The shopping center experiences many floods. He stated that the engineer did meet NJDEP requirements but in this case you are in a flooding condition and when the DEP comes out with those regulations in his opinion it is not for areas in a flooding condition. When this parking lot is flooded the detention basin will be discharging. In this case in his opinion it is where infiltration is most important and where you take as much impervious coverage and leave it pervious. They had islands they wanted hardscape because of trash. He suggested putting in a trash can and leaving it grass or a landscaped area. They have more parking than the zoning actually requires and because this is a sensitive site they should just put in the parking that is required. When the basin fills up it slowly discharges through control structures and it is sized for the 100 year storm. If you have two storms next to each other and if it did not discharge it would overflow but you do not design for a catastrophic event you design for a normal event which is the 100 year storm.

Mr. Corradino showed Mr. Reeves photographs that were marked O-7, O-8 and O-9. The photos were of the shopping center in a flooded condition. Mr. Azrak objected and asked who took the photos. Mr. Fiorello said it doesn't matter who took the photographs. Mr. Azrak asked how he could identify the conditions if he did not take the photos. Mr. Reeves said O-7 dated 12/9/09 was taken by Mr. Frantzman's staff. It shows the parking lot in a flooded condition. Mr. Azrak objected. He said they don't know who Frantzman is and felt Mr. Reeves could not testify to the photo. Mr. Corradino said the rules of evidence do not completely apply to this tribunal. The photo is admissible before a body like this one. Mr. Reeves will testify he was told the pictures were taken by a staff member and he was told about the flooding condition. Mr. Azrak felt he can't ask Mr. Reeves questions that he would ask Mr. Frantzman. He felt the rules of evidence apply to allow him to cross examine. He felt the person who took the picture should be cross examined and felt Mr. Corradino was slipping this in about the flooding. Mr. Fiorello said it is common knowledge and if you live in this area you know the property floods. You don't need when you are introducing photos to have the person who took the pictures present. All you need to say is it accurately depicts the condition that it shows. Mr. Azrak said Mr. Reeves cannot testify to that. Mr. Corradino said he resented the characterization that he was slipping something in. If the witness can testify that the pictures accurately depict the conditions because he was told then it is admissible. The rules of evidence are very much relaxed before a Board and that is why they are admissible. Mr. Azrak objected again and felt you need a proper foundation. Mr. Fiorello said this is more than hearsay and there is no one here to comment on the pictures. Mr. Corradino said he is going to ask Mr. Reeves to comment. Mr. Azrak felt

this was absurd and he had never seen a Board hear something like this. Mr. Corradino asked to continue with his questions and would represent to the Board that he will bring in the person who took the photos. If he doesn't Mr. Azrak could make a motion to strike. Mr. Azrak felt he should not continue until the person was brought here because it is prejudicial. Mr. Fiorello said if he brings someone they can say the photos accurately depict the condition and if he can't bring someone in the Board would be directed to disregard the testimony. Mr. Azrak said the testimony is there and that is prejudicial. Mr. Corradino said it happens every day when a judge tells a jury to disregard. Mr. Azrak said it could be cured easily by waiting. Mr. Fiorello said he could continue but if he did not bring someone in they would strike the testimony. Mr. Corradino said he would join in the motion to strike.

Mr. Fiorello said the photos will be marked for identification but not marked as evidence until someone is brought in to testify they took the photos. Mr. Azrak asked that the pictures not be shown to the Board because they are not evidence. Mr. Fiorello said the Board can look at them and they have looked at everything that was marked as an exhibit before it was marked as evidence.

Mr. Corradino asked Mr. Reeves if he was familiar with the flooding in this area. Mr. Reeves said he was. He has seen the flooding conditions because he drives past the site everyday when he is going to work. The downstream condition of the parking lot as shown in these pictures happens within several hours after a storm event. That is typically when a detention basin is discharging. Nowhere in the storm water management report did it discuss the timing of the flooding downstream to when the proposed detention basin was discharging. He believes this is a special case that overrides the ability just to accommodate a rate and volume should be considered. The infiltration and best management practices allow a lot of opportunity to reduce volume.

Mr. Corradino called his attention to the permitted uses and in particular a convenience store on its own. If you put that on this site the flooding and draining concerns would be cured. Mr. Reeves said they would stand a lot better chance to be cured but he could not answer that without doing soil analysis. You have to make sure the ground water can accommodate the increased infiltration. Typically you have to be 2' above the high water elevation of an existing site to put your infiltration. Looking at the terrain it is up on a hill and reviewing the soil tests that have already been performed on this property the likelihood of it working would be very high. You should be able to infiltrate the entire increase in runoff on the site if you could. The reason it can't be done with a service station is it is not permitted by DEP because it has a high likelihood of contamination.

Mr. Reeves said in his opinion based on the drainage approach by the applicant using the storm water management criteria it does not adequately address the flooding conditions but it has adequately addressed the rate. Mr. Corradino said he is not concerned with the regulations but he is concerned about the affect it will have in this area. Mr. Reeves said

it would increase the runoff volume. Mr. Corradino said the applicant was testifying that they were reluctant to put in plantings by the islands and along the retaining wall he asked his opinion on what affect the planting would have on the flooding and drainage issue. Mr. Reeves said everything should be done to mitigate flooding and whenever you have an island that is striped you should question why it can't be pervious. He did not believe trash coming out of a doorway is an adequate response to not putting in a landscaped island. You have a 25' high retaining wall in various places around the site that he believes has around 5' between the wall and the edge of curbing that you could put plants. Plants absorb runoff and restrict runoff. They act to absorb runoff from a storm and whenever you can put in plants and greenery it is a benefit to the project. In this case there were several areas that during testimony it was brought up that the islands will be hardscaped and certain areas along the wall would not have vegetation. He believes that could be done better. Mr. Reeves said in his opinion the proofs by this applicant do not adequately address the flooding conditions.

Mr. Azrak asked if Mr. Reeves testified to what he reviewed. Mr. Reeves said that was correct. Mr. Azrak asked if other than what he reviewed he did not do any of his own examinations or reports. Mr. Reeves said that was correct. He did not render a report that would analyze for instance the underground water and infiltration issues. He reviewed the storm water management report and did not do his own. He has not done any of his own reports.

Mr. Azrak asked what Levco told him to do when he was retained. He asked if Mr. Corradino hired him. Mr. Reeves said he did. Mr. Azrak said that Levco did not come to him and hire him. Mr. Reeves said he met Mr. Perry Frantzman at Mr. Corradino's office. Mr. Azrak asked if he was a partner in Levco. Mr. Reeves said he believes so. Mr. Azrak asked if he is on the site. Mr. Reeves said he owns the property but he is not sure where is office is. Mr. Azrak asked if he was a 100% owner of Levco. Mr. Reeves said he did not know and he did not represent he was 100% owner of the property. Mr. Azrak asked what represented himself to be in relation to the property. Mr. Reeves said he represented that he was one of the owners of the shopping center. He did not know if Levco was a corporation. Mr. Azrak asked if he had any idea if the person he was talking to had any authority to speak to him and hire him. Mr. Corradino objected. Mr. Azrak said his proffer is they are foundation questions to ask him other questions about his objectors and what he testifying to. It is very important to know whether he even has the authority to be here on behalf of Levco. Mr. Fiorello said he has been retained to be here on behalf of Levco. Mr. Azrak said he was retained by Mr. Corradino. Mr. Reeves said that Mr. Frantzman office signed his contract and he was retained by Mr. Corradino's office. He met Mr. Frantzman, he sent him the proposal and he signed it as an agent of Levco.

Mr. Azrak said Mr. Frantzman hired him through Mr. Corradino and he tells him his goals and objectives. Mr. Reeves said he was told to review the drawings and the engineer's report because he was concerned of increased flooding on his property and

concerned about the amount of development on that small piece of property. He asked for his professional opinion based on his review of the documentation presented and that is what he did. Mr. Azrak asked if he ever represented a use such as this with a gas component and convenience store. Mr. Reeves said he has not. Mr. Azrak asked if he has ever represented a competitor of Quick Chek. Mr. Reeves said he has not. Normally he does shopping centers.

Mr. Azrak asked since he has not done a written report this is the first time his client is hearing his testimony. Mr. Reeves said they have discussed the case and gone over his notes and opinions and discussed it with the design team but this is the first time he is making a presentation before the Board. Mr. Azrak asked if he was familiar with the site entrance being on Route 46. Mr. Reeves said he was. Quick Chek's application has no impact on the entrance to the shopping center. The lighting appears to be adequate and saw no issues. The utilities are underground and he did not see any issues. He really concentrated on grading, drainage and some landscaping issues. He believes there is a grading issue on the level spreader. It is a minor detail that the applicant's engineer can address. Mr. Azrak asked if he was aware of the Board engineer's reports and that they have been responded to. Mr. Reeves said he was. Mr. Azrak asked if he did not agree with the Board Engineer because he is bringing up flooding and impact of drainage that was not raised by the Board Engineer. Mr. Corradino objected. Mr. Fiorello asked if he understood the question. Mr. Reeves said he did and said he reviewed the comments from the Board engineer and the applicant's engineer. He did not think the last letter was adequately responded to but the majority of the comments were addressed. It is his opinion of flooding as he testified, NJ DEP allows them to utilize the rates when you are doing development and they don't look at downstream flooding. They give it to you as an option and there are 3 options that you can choose to design a storm water management system. One of those is rate and that is what the applicant's engineer did. In his opinion looking at the flooding condition it is a severe case that you should also be looking at volume. Mr. Azrak said the Board Engineer is not concerned with the flooding condition and never addressed it at all and therefore his testimony is he disagrees and he should have been concerned. Mr. Corradino objected. He asked if it was the applicant's opinion that the Board and its engineer were not concerned about flooding and drainage. Mr. Fiorello thought the question was because the Board Engineer did not address this issue he is disagreeing with the Board engineer. Mr. Azrak said that was correct. Mr. Corradino said it did not make sense. Mr. Fiorello asked if someone doesn't address something that means he disagrees. Mr. Azrak said it was not part of the recommendations of the Board engineer. Mr. Fiorello thought he should rephrase. Mr. Azrak asked if he was aware the county approved this site. Mr. Reeves said he is. Mr. Azrak asked if he was aware the county had their own engineering staff as well. Mr. Reeves said that was correct. He was not at the hearing because he had a conflict that night but there was a representative from his office there. He did not testify in front of the county Planning Board and did not submit reports. Mr. Azrak asked if the county board missed this big area as well. Mr. Corradino objected. He felt the question was improper. Mr. Fiorello asked he state his objection and Mr. Azrak can answer. Mr.

Corradino said he had no objection. Mr. Reeves said he cannot speak for the Board or County engineers and he can just say they did not bring it up. He knows why they didn't bring it up because as he also testified the DEP allows them to use rate. He is questioning and bringing up an alternative approach to a property such as this that discharges to a flooded area. The county approved it because the county infrastructure is not impacted. The volume is reduced toward the county road and the only increase is to the west which doesn't impact the county. Mr. Azrak said the property of his client that is in Woodland Park to the west is part of Passaic County. Mr. Reeves said that was correct. Mr. Azrak said the Planning Board knew that as well and did not comment as to the flooding. Mr. Reeves said he agreed. He also agreed that Mr. Martell designed this criteria under state law and regulations. Mr. Azrak asked if he would agree as an engineer that there are no regulations that require any engineer to design based on volume and it is only based on rate. Mr. Reeves said that is not correct. There are 3 options you can design from and it is the engineer's choice which one he can use. You can use volume, you can use rate or you can prove there is less impervious ground cover. Mr. Azrak said as a result of using an option that is permitted the state allows that to be used. Mr. Reeves said that was correct. Mr. Azrak said the regulations that were passed in 2004 are the most stringent regulations ever passed in the state regarding storm water management. Mr. Reeves agreed they were stringent. Mr. Azrak said the purpose of the regulations was to make sure when a site is developed that it retains the rate on either the same as predevelopment or you do it better. Mr. Reeves said they actually reduced the rate. It would not have been acceptable to have it the same. The only way it can be kept the same is if you prove that all downstream infrastructure is not impacted by the development and that is very hard to do. Typically engineers take the rate to design a retention basin to adequately comply. Mr. Azrak said they exceeded that. Mr. Reeves said they met it and complied in rate but not in volume. Mr. Azrak said DEP doesn't say you also have to do the reduction of the volume. Mr. Reeves said that was correct.

Mr. Azrak asked if he was aware the Soil Conservation approved this site as well. Mr. Reeves said yes. Mr. Azrak said having knowledge of Woodland Park is he aware of any other piece of property in town that borders a county road, borders a state highway, has a highway ramp adjacent to it, bordered by an HC zone, is the last piece in town so it borders another town, has major regional shopping center adjacent to it, has a non-conforming large storage facility adjacent to it and has a slope in the rear of the property that requires in order to develop the property a retaining wall. Mr. Corradino objected and said it was irrelevant. Mr. Azrak said he is asking a factual question. Mr. Fiorello said he could answer. Mr. Reeves said no. Mr. Azrak asked if this was a unique piece of property. Mr. Reeves said yes.

Mr. Azrak asked if he was familiar with a certain case. Mr. Reeves said no. He said he testifies to C variances and very rarely testifies to use variances. Mr. Azrak asked if he would agree that the site meets with the county and state regulations for water quality and not just water discharge. Mr. Reeves said he reviewed the water quality and believed

there was an issue where the volume is not adequate from the last Board Engineer's review letter. Water quality issue is designed properly.

Mr. Reeves said he believes another use for this property you could accommodate the runoff with infiltration and it is this particular use that is not allowing more infiltration to be done. He thought if it was just a Quick Chek or a simple strip mall you could introduce more infiltration. The only solution to a flooded condition in this case is infiltration. You can have all the detention in the world and your volume is still going to be discharged. They chose to put all of the roofs into a storm block system which are an infiltration system which is a good system but you need clean water to do that. Mr. Azrak said he differentiates because the DEP says if there is a gas component then that should not be infiltrated. Mr. Reeves said he believes that the way it is described it is any potential site that has a possibility of a contaminate should not be infiltrated. It could be a multiple of different sites and not just gasoline. Mr. Azrak said going back to a permitted use that does not have gas. He said he has not done an independent study as to the ability to infiltrate because of the water table in this area. Mr. Reeves said he did not do that study but the applicant's engineer has and it is in the drainage report. He has not done an independent study. Mr. Azrak said if there was a permitted use with no gas he still was not sure that it could accommodate an infiltration system because he has not studied the ground water issue. Mr. Reeves said additional soil borings would need to be done. There is a slim possibility a permitted use could not be infiltrated. Mr. Azrak said there is a possibility that there could be more surface volume going down than what Quick Chek is proposing. Mr. Reeves disagreed and said looking at the terrain and soil data it is very unlikely the site could not accommodate more infiltration. He did not study it but looking at the soil borings and the ground water elevation that was documented and the amount of volume already obtained by the storm block system you could accommodate more. He can't say with 100% certainty but to say a different use would create more runoff than what is currently proposed he would agree. There would be a very slim possibility. He did not do an analysis of the parking but believed the requirement for parking was on the site plan. He believes 33 spaces are proposed and 31 are required which is 2 in excess. He thought everything they could do including proposing only 31 spaces would help out. Mr. Azrak asked if he did an independent study and could testify tonight what the volume of water would be for 1 parking space. Mr. Reeves said no. Mr. Azrak asked if he could not tell them how much water would be lessened by planting a tree. Mr. Reeves said he did not say a tree, he said vegetation including shrubs. There are a lot of opportunities to increase the amount of absorption downstream. He thought they could also look in green roofs that absorb a lot of run off. There are many options that have come out in the last 10 years. This particular application has dealt with water qualities by a structure but not with a natural structure. Mr. Azrak said other than what the Board engineer has identified and discussed with their engineer about vegetation and other things like that if they complied with those then he would not have any objections or would he still object. Mr. Reeves said it would need to be studied to see if the volume of runoff was decreased down to the existing condition. Mr. Reeves said it is the Board Engineer's choice to disagree with what he was

recommending. Mr. Azrak said the county and the soil conservation did not require what he was recommending. Mr. Reeves said that was correct. Mr. Azrak asked if could tell the Board what the flooding stages were at the Peckman River and at the ditch where it discharges from the ditch into the Peckman River. Mr. Reeves said he did not know the elevation off the top of his head but it would be in the DEP study for that stream. He does not know the flooding stages at the Peckman River and the Passaic River. He did not study it or look at the issue for his presentation. Mr. Azrak asked if he had done a study to say that the volume of water coming off the site is going to affect the flood issue downstream by certain cubic feet of water. Mr. Reeves said he has looked at the report prepared by the applicant's engineer and they gave volumes for each storm and showed the increase in volume for each storm. He only looked at that particular aspect of the project and whenever you add volume to flooding you worsen the condition. He did not think you need to study the elevation at the two rivers downstream. Mr. Azrak said they are in compliance with the rate of discharge.

Mr. Fiorello said that the Board has heard many times that they are complying with the rate of discharge by the DEP. He asked Mr. Azrak to move on. Mr. Azrak said it is important for the Board to understand that when he is asking a question about volume and Mr. Reeves testifies about volume that it is a separate issue that the regulations do not require. Mr. Fiorello felt the Board understood it. Mr. Azrak said he is now asking questions about the flooding in the lot that Mr. Corradino brought up. Mr. Fiorello said he has asked the question about 20 times. He asked him to move on.

Mr. Azrak said his question is that Mr. Reeves does not know how it is going to affect the site in terms of cubic feet or gallonage. Mr. Reeves said the applicant's engineer studied it and he reviewed his report. He knows how to read a storm water management report and did not need to do an independent study. Mr. Azrak said his question is with regard to the photos he has testified that there is flooding at the site. He asked as an engineer if he has testimony to say what affect it will have. Mr. Corradino objected. Mr. Fiorello said the question was if he had made a study. Mr. Reeves said he has only reviewed the report by the applicant's engineer. He said based on the documentation presented for this applicant it is very obvious that when you are adding a lot of volume it has an impact on something that is flooding. Mr. Azrak said not having done a report is he able to testify that slowing down the rate of water being discharged will not negatively impact on the parking lot. Mr. Reeves said the parking lot to the west is in a flooding condition over a lengthy period of time. When you have a detention basin that slows down the runoff and you discharge it many hours after the storm event that is when the parking lot is flooded. He did not know if that was looked at and he did not study that. He thought that was a fair question to ask the applicant's engineer. He did not know if it was asked by the Board engineer or the County staff.

BREAK 8:30 p.m. – Call to order 8:40 p.m. Roll call. All present.

Mr. Azrak asked where the DEP distinguish storm water requirements in a flood area or not in a flood area. Mr. Reeves said it doesn't. Mr. Azrak asked what engineering standard or what did he base his opinion that the volume should be reduced. Mr. Reeves said looking at the FEMA map, realizing it is in a flooded condition, again in his opinion any volume increase on discharge would have a negative impact to the property to the west. It is not based on any criteria but based on the 3 options the DEP has, one of them is volume, one is rate and one is proven downstream and he believes volume should have been used in this case. Mr. Azrak said although DEP allows you to use one of the 3 options. Mr. Reeves said that was correct. Mr. Azrak said he would like to use 2 of the standards that the DEP does not require. Mr. Corradino said he did not say that. Mr. Azrak said he agrees they have complied with the rate. Mr. Fiorello said he has said at least a dozen times he agrees they have complied with DEP on the rate. Mr. Azrak said he keeps referring to 3 options and he is trying to distinguish that you do not need 3 options to comply with the DEP. Mr. Fiorello said he has said it a dozen times. Mr. Azrak said his question was if he is requiring two options now. Mr. Fiorello said he can ask him if he thinks there should be 2 options complied to. Mr. Corradino said he has testified all evening there are 3 options and the applicant used one of those options and he is recommending another option because of the flooding conditions. He did not pick two out of three. Mr. Fiorello said the question is if he thinks there should be 2 options used. Mr. Reeves said he does not.

Mr. Azrak asked if he knew the size of the Peckman River water shed. Mr. Reeves said he did not. Mr. Azrak asked if in his drainage experience what impact does a one acre site have on the Peckman water shed area or the one depicted he is now talking about from FEMA. Mr. Reeves said he believes it has a minimal impact compared to the overall drainage area of the Peckman River but when he is in a flooded condition he believes infiltration should be used more than what was used in this case. Mr. Azrak said he believes the Board understands that he as an engineer would like to see infiltration used more often. Mr. Azrak said what he keeps trying to ask is that engineering principals don't just talk about impact and in order to get to the impact you have to quantify is a millimeter difference in the water shed area because of the one acre an impact. He asked if that was what he was testifying to because anything is an impact. If the state allows the impact to occur then it is not significant. Mr. Corradino asked if Mr. Azrak was testifying. Mr. Azrak said it was a question. Mr. Reeves said he did not study it so he can't answer the question. Mr. Azrak said an engineer has to quantify the impact. He felt it would be important for the Board to know the impact.

Mr. Azrak asked if he knew the shopping center was over 26 acres. Mr. Reeves said he did. Mr. Azrak asked if he was aware that the regional shopping center owned by his client does not meet the stringent state standards of the 2004 storm water drainage management practice. Mr. Reeves said it pre-dates that. Mr. Azrak asked if it met the standards. Mr. Reeves said it pre-dates it and doesn't have to meet it. Mr. Azrak said he understands that but he is saying for the Board to understand that his 26 acres does not comply with what their one acre will comply with. Mr. Reeves said the shopping center

pre-dates the requirements and therefore it does not have to comply because it is grandfathered. Mr. Azrak said that was not his question and his question was that it does not comply. If you were to look at the standards today the 26 acres with all the parking and buildings doesn't comply with the 2004 requirement. Mr. Corradino objected stating it was irrelevant. Mr. Azrak said it is relevant and he opened the door on the flooding issue. Mr. Fiorello requested another 5 minute recess. He felt they have done this before. He felt when there was an objection they talk and argue with one another. Mr. Fiorello asked what the objection was and felt the question was simple. The question was in the event this was being built today would it comply today. Mr. Corradino said he objected to that because it is irrelevant. Mr. Azrak said he is not saying he has to comply with the requirements but he opened the door with the flooding issue and he has every right to test the fact that this property is not mitigating that flooding issue and they are requiring the one acre site to mitigate what they should be mitigating for 26 acres. He would like this witness to answer the question as a civil engineer. He would like to know if there is anything on their site that complies with what they are being required to do. Mr. Fiorello felt it was irrelevant because it is there and it exists. Mr. Fiorello said the question is overruled because it can't be answered because it is argumentative. The objection is overruled because it is the wrong objection. He asked them to move on. The Board understands where they going with the questions and answers. A discussion followed and Vice Chairman asked them to move on.

Mr. Azrak asked if there was no infiltration at the shopping center property. Mr. Reeves said he was sure there were grass strips and landscaping but he has not studied it. Mr. Reeves thought the property was in a stable condition with little erosion and sediments coming off that site. When he walked it and looked at it, it was in a very stable condition. He does not agree that the proposed design would be better than existing.

Mr. Corradino asked if Mr. Reeves testified he has not had any experience in engineering sites involving a convenience store and a gas station. Mr. Reeves said that was correct. It does not change his opinion because he has designed many retail stores, shopping centers and residential units and has mainly dealt with drainage, grading and storm runoff. He has testified there are 3 options for approval by 2004 DEP regulations on allowing proposed developments to comply with storm water management rules. Prior to 2004 he believed every municipality or county had their own and this was a way to centralized it and pick from 3 different options. Those are 3 options that are available to utilize to a solution of a problem. In this case the engineer's on behalf of the applicant chose the rate of runoff and their position was in compliance with the regulations. It is his opinion that it was not the better choice because of the flooding conditions to the west of this site. In his opinion because of the increase of 4 times of what it is today the option that should have been utilized as a solution to avoid increase flooding would have been the rate of volume. They are not saying they made a mistake or done something improper but they are saying that the solution does not solve the problem of increased flooding to the west of the property. He has not done any calculations to quantify the amount of gallonage that increased flooding would cause. The fact he did not do any calculations does not

change his opinion concerning the affect their drainage proposal has on the flooding because he utilized their engineer's report and reviewed the data and the results. All of this information has been submitted to the Board and has been relied upon by the Board Engineer.

Mr. Azrak asked if he has done a couple of sites in Woodland Park. Mr. Reeves said he has. Mr. Azrak asked if he controlled the volume or did he do a rate reduction for these sites. Mr. Reeves said one site they reduced the amount of impervious which would be one of the options so the proposed runoff was less than the existing. The second one they did a combination of infiltration by using archways with stone bottoms and pavers around the edge of the parking lot so it was a combination of both. They used rate reduction along with infiltration. On one site the property was divided in 3 separate areas and on one they used rate and the other 2 they used infiltration. Mr. Azrak asked if DEP gives guidance on which one of the 3 options they are to use. Mr. Reeves said he was not aware they do give guidance. Mr. Azrak asked when he stated the volume should be utilized but he did not study the water shed in the time of concentration and the peak flood time how did he conclude that option #1 was the best option. Mr. Corradino objected that it was not responsive to the cross examination. Mr. Azrak said he redirected on the options and the flooding so it is proper for him to recross in those areas. Mr. Corradino said that is not a proper reason. The question was read back. Mr. Fiorello felt that was answered several times. He sustained the objection and asked to move on.

PUBLIC OPEN – Questions for witness – PUBLIC CLOSED

Mr. Dicristina asked for clarification on Mr. Reeves testimony that it would add to the volume of flooding. There will be a major rain storm tomorrow and he asked if he was saying if this project was already built would there be a cascade of water into the parking lot. Mr. Reeves said he would not use those words but he said the volume would be increased compared to the way it is today. Mr. Dicristina asked if the map indicated it was a 100 year occurrence. Mr. Reeves said that particular line shows the FEMA 100 year line but the parking lot floods through many of the other design storms. Mr. Dicristina asked if you can construct for a 100 year storm. Mr. Reeves said he doesn't understand the question. Mr. Dicristina said basically every property in town contributes to the flooding of the river and the Peckman River which contributes to the flooding of that parking lot. Mr. Reeves said he would agree that every property within the drainage catch area contributes. Mr. Dicristina asked if he was saying they should build for a 100 year storm. Mr. Reeves said he is not saying they should build for a 100 year storm but they should equal the existing runoff when you are discharging into a floor area. There are 3 options that you can choose and in his opinion choosing the volume would be a better choice for this piece of property in place of rate. They both are adequate and are both within DEP guidelines. Mr. Dicristina said this property is about the size of an Olympic pool and if it empty all at once would it submerge the shopping center. Mr. Reeves said it would not. Mr. Dicristina asked how significant this would be on a scale of 1 to 10. Mr. Reeves said he looked at it as every piece of property adds to that flooding condition and the way the particular property was proposed to be designed there

could be alternate options to mitigate more flooding. It could be done by islands, more vegetation and infiltration and again they addressed the rate and he believes the property discharges a lot more volume than it has to. Mr. Dicristina said he understands the concern but if this property is developed in any commercial way there will be a parking lot. He asked him to clarify if he is saying because this is a gas source they can't put all the water into the drainage and it will be discharge slowly. Mr. Reeves said he would agree it is a small part of the overall drainage area.

Ms. Kallert asked if he was saying that the decrease of rate is insufficient to off set the additional volume that is going to be added to the flooding area. Mr. Reeves said it is two different things. Ms. Kallert said she gets it but asked if he was saying because they decreased the rate and with the additional volume they don't off set each other. Mr. Reeves said they do not. Ms. Kallert asked if they come close. Mr. Reeves said they come close but it depends on the time of concentration when the detention basin is discharging and the parking lot is flooding and that particular study was not done by the applicant's engineer. Ms. Kallert said this is the FEMA map for the 100 year flood but it seems to her the floods are happening more frequently. Mr. Reeves agreed with that. Ms. Kallert asked if FEMA was looking at redoing the map since it is happening more frequently. Mr. Reeves said he knows based on the last 20 years of reviewing state maps that they constantly being updated and are always reviewing them and restudying streams. He does not know if this particular stream is being looked at. He knows NJDEP and FEMA do look at studies they did just recently issue a lot of new maps for the state and in several areas the flood elevation did increase. Mr. Kallert asked if he believed this area floods more often than every 100 years. Mr. Reeves said definitely.

Mr. Dicristina said Mr. Reeves raised the question of volume and asked what he would suggest to mitigate the volume. Mr. Reeves said DEP has what they call best management practices which promote infiltration, green space, plantings and no direct connection with the drainage where it goes into grass swales or into the ground. The whole idea of DEP is to promote infiltration and not have as much hardscape as was proposed. He suggested putting in the planted islands and more vegetation and also looking for a different use for this property.

Mr. Juzdan asked what portion of the property is going to be impervious. Mr. Reeves said he does not know the exact number but it is around 60%. Mr. Juzdan asked if he believed that is going to have more than a slight impact. Mr. Reeves said any increase in volume would have an impact on flooding.

Ms. Kallert asked if he made the comment that he felt if the study was done by volume leading out to Browertown Rd. that Passaic County would not have approved that site. She asked why he believed that. Mr. Reeves believed he said the county typically requires that they do not impact their infrastructure and one of the ways they look at that is with volume. They are not interested in real estate to the west because it does not impact the county facility. The county facilities that are impacted are the county roads

going out to the east. He has done several projects in the county where they did indeed ask that the volume be reduced going out to their infrastructure.

Henry Ney, traffic engineer, was sworn in. Mr. Ney's curriculum vitae was marked O-10. Mr. Ney stated his qualifications and was accepted as an expert. He was hired by Levco, objectors to this application.

Mr. Corradino asked if he was present during the applicant's engineer and traffic engineer testimony. Mr. Ney said he has been present at all meetings. In preparation for his testimony in support of his opinion he reviewed the site plan prepared by Bohler, the original traffic study prepared by Bohler, the revised traffic study that Mr. Olivo presented to the Board, the municipal planner and engineer review reports and made a site visitation. He also had someone in attendance at the County Planning Board meeting. He said based on his review of the reports and hearing the testimony it is his opinion that this is an unsafe access condition that is being presented to the Board which will result in confusion to motorists and potential safety issues. He thinks the Board Engineer and the police department have similar comments to what he will be making tonight. Mr. Ney submitted to boards and some hand outs to the Board. The boards were marked O-11 A & B.

Mr. Ney said he looked at the driveway design from a circulation and traffic viewpoint. The Board marked O-11 A shows the truck turning design flaw going into the site. If a truck is waiting to turn into the site the rear of the truck occupies approximately 2/3 of the northbound lane and this is a design flaw. When you design a left turn lane you design it to accommodate the vehicles you anticipate. The applicant anticipates semi-trailers. The truck must wait in the north bound lane if there is any traffic on Browertown Rd. and that is a design flaw and an unsafe condition to create within the highway. The Board marked O-11 B shows that vehicle leaving hugging the curb making the tightest turn it can actually turns into the left turn lane. So if there is a car waiting in the left turn lane to enter the site the truck can't leave the site. But when the truck leaves the red portion of the plan shows it must turn into the northbound lane on Browertown Rd. which is an unacceptable design condition. It is not a solvable condition because the DOT restricts the driveway location from the Browertown Rd. interchange so a larger radius cannot be put on the curve to eliminate the condition. It is a feature of the property but it is a self induced hardship because of the nature of the development which requires semi-trailer use. He considers it unsafe design flaws.

Mr. Ney had two drawings marked O-12 A & B. A was a WB 50 Truck Loading Plan and B was WB 50 Truck Fueling Plan. Mr. Ney described the plan. The applicant has shown vehicles exiting and entering at the same time and the paths overlap. A truck entering making a left turn in must actually enter on the right side of the island and then swings below the gas pumps. In order to make the second half of the turn the truck must fully stop and turn his wheels to the maximum to the right. If it made a full sweep you would be through the parked cars. So you have stop turn at this point, loop around and

back into the service area. The interesting part is when the truck leaves it will leave the same way it came in. It leaves by driving on the left side of the driveway which is the inbound side, makes a turn around the island, swings again through the left turn lane and exits. He has never seen a plan where you exit on the inbound side of the driveway and it is the only way you can exit. This is a design flaw and a safety issue. Similarly with the second plan, O-12B, shows the truck loading. It makes the same left turn in but now must travel down parallel to the storage building and make a left turn between the building and the pump canopy, swing around and pull up to the red line and then back up to get over the drop plate points. One of the golden rules he has heard from his clients is that you do not design a site where a truck backs up. It is a liability and safety issue. The driver has to know he has to stop and turn his wheels and comes out the wrong side of the driveway again. If there is a vehicle in the left turn lane that vehicle has to go in the outbound side or go somewhere else to buy gas. The restriction placed on the driveway by the DOT is not a curable thing. It is an issue that goes to the use of the property. The use of the property is not feasible in his opinion if you have large delivery trucks. He is familiar with the area and thought this property was affected significantly by the DOT condemnation and appropriately the owner should be compensated for the damage to the property. The damage is it has restricted usability because of the limited frontage of access and he believes it is an unsafe condition.

Mr. Ney said historically the way a traffic engineer develops their estimate of traffic is using a traffic count from a supermarket and applying it to your next supermarket. The Institute of Transportation Engineers acts as a clearing house for traffic counts that firms do. They submit them to the ITE and on a regular basis they put out a book entitled trip generation where they take these different land uses, they average them and they give the traffic engineer some perspective of how many vehicles will be generated by different types of uses. Service stations were counted by one, two or three bays and there were no convenience stores. Then the next generation of service stations were gas and go with no building or no C store. The next generation was a C store. He said through the description of the use from testimony this C store has eating facilities both inside and outside. This is the first time he has dealt with a C store that has specific dining facilities. He doesn't know if that will make a significant difference in the traffic volume but what surprises him is that the applicant has been using the same group of professionals and he doesn't know why they are not providing data from existing facilities because that is better than picking a number from a book. He also noted in the traffic report as part of the analysis measured the stacking from the stop line back. By his analysis 44% of the time during the peak hour the right turn out will be blocked so you have to wait on site until the queue clears. Mr. Azrak objected. He said he asked for the data and was told there were no reports by Mr. Corradino. Mr. Ney referred to his analysis and Mr. Azrak said he did not have that data. He objected to the testimony because it was prejudicial. Mr. Fiorello said it was overruled. Mr. Azrak said he has turning movements and an analysis. Mr. Corradino asked to respond. Mr. Fiorello stated he overruled the objection and asked them to move on. Mr. Ney said the queues were recorded by the applicant and he merely took lengths and the number that occurred in the hour and divided one by the

other and that is how he came up with the percentage. Four vehicles block the right turn out and 5 or more block the left turn in. He stated based on the data in the traffic report 44% of the time the queue extended 4 vehicles, 38% of the time it extended 5 vehicles or more. A traffic engineer normally takes growth rates to adjust the traffic, these percentages were done in 2009 and are in the applicant's traffic engineer report. O-11 A & B was prepared by him prior to the applicant submitting the templates. While the applicant presented them he felt he did not adequately describe where the truck was.

Mr. Ney commented on the police department report. The county has recommended and the applicant has agreed to no left turn out. That is being accomplished by putting in a small raised island. The island is raised between 2 & 3 inches so it is not a big raised island because the trucks have to turn right across it to get in and out. It will have very little affect on people who wants to turn left out of the site and he thought people will turn left out of the site. He based that on experience. He has voiced objections on other developments. He felt if someone comes in at ten o'clock at night to get something they are going to make the left on the way out. Another factor is there is a hill that restricts sight distance for a vehicle making a left turn out. He has photos that he will leave with the board if there is no objection.

Mr. Corradino asked if the left turn lane is approximately 25'. Mr. Ney said yes. It will cause a truck to back up which is an unsafe driving condition. If the vehicle tries to exit properly they will end up in the northbound lane so the applicant is suggesting exiting from the wrong lane. The law requires you to keep right when driving. The highest point of the island is 2 to 3 inches and would not prevent most vehicles from making the left turn out. The island will not stop someone from making the left. The plans show tractor trailers going over the island when making a turn in and out. The mound near the storage facility and the bend in the road restricts the sight distance out of the site.

Mr. Ney said the pattern for vehicles making deliveries to the C store and making gas deliveries are extremely inefficient and as they relate to using the driveway they are unsafe and as they relate to on site some of the maneuvers could not be made as shown on the plan because of the tightness of the site. He has done many gas stations and shopping centers. Mr. Corradino asked what his experience is with the concept of limiting deliveries to certain hours. Mr. Ney said from the design standpoint the flaw here is the design and the remedy is they are not going to send trucks there at certain hours. That is not how you design a site but does not believe the applicant is misrepresenting anything to the Board but his experience is that the intention may be to limit deliveries to certain hours the reality is that business is business. He has seen many deliveries being made when they are not supposed to be. The intention may be there but the in reality it is not. He also stated that local deliveries are made in single unit trucks and they also will not be able to maneuver the site. He felt the reality is there will be trucks entering and exiting the site during regular business hours. He said with service stations the reality is you will get some larger trucks using diesel fuel. If he was representing the Board he will be saying the same thing because it is a reality that he has

seen. He felt the proposal was an unsafe circulation plan and is an inefficient plan. He cited a case where an application was denied because the ingress and egress proposed by the plan creates an unsafe or inefficient vehicular circulation for a permitted use. What you have here is an application for a use variance and in his opinion what they are proposing is unsafe and inefficient.

Mr. Azrak said he would be taking a long time with Mr. Ney and asked they start fresh at the next meeting. He would like the ability to look at exhibits before he questions Mr. Ney. Vice Chairwoman Kallert asked that they continue until 10:30.

Mr. Corradino asked to pick another date for a special meeting. Vice Chairman Kallert stated that December 13th is a regular scheduled meeting. The next date for a special meeting is December 27th. Mr. Ney said he will be away through December 16th. He is available on December 27th. Mr. Fiorello said they could bring in another witness in on December 13th. They would like to get it done by the end of the year. They would meet on December 13th and hold a special meeting on December 27th. Mr. Corradino said he would bring in his planner on the 13th. Mr. Azrak said Mr. Ney will not be coming back until the 27th so he would like to stop now. The regular meeting on the 13th will begin at 7:30 pm and the special meeting will be held at 7:00 p.m.

Vice Chairman Kallert stated that this application is very important to the Board and they are giving it due diligence. She asked the attorneys not to belabor their points and repeat things many times.

A motion to adjourn was made by Ms. Patterson, second by Mr. Orlando. All in favor. Meeting adjourned.