

**BOARD OF ADJUSTMENT MINUTES  
SPECIAL MEETING  
OCTOBER 14, 2010**

Meeting is called to order by Chairman Holloway at 7:20 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, GARY HOLLOWAY, VINNIE DECESARE & RUTH PATTERSON

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

FLAG SALUTE

A motion to approve the minutes of the Special Meeting of 9/23/10 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

Chairman Holloway stated the Board received a letter from Mr. Fiorello regarding Mr. Corradino's objections.

Mr. Fiorello said there was a motion made by Mr. Corradino to strike a portion of the testimony of Mr. Martell the civil engineer for the applicant. He received a copy of the transcript which he reviewed and his opinion is that Mr. Corradino's motion should be denied with regard to the highlighted portion of the transcript. He recommends it be denied with the exception of a small portion on page 33 & 34. A motion to approve Mr. Fiorello's recommendation was made by Ms. Patterson, second by Ms. Kallert, all in favor, motion approved.

Chairman Holloway asked if they would be addressing the 4/19/10 letter from the police department. Mr. Azrak felt Mr. Martell already addressed that letter and Mr. Olivo also indicated it was addressed by Mr. Martell and had no further comments. They would review the letter if the Board would like them to. Mr. Azrak said there was an updated letter dated 9/29/10. Mr. Fiorello said no one at this point had gone through the letter point by point as it is usually done. Mr. Azrak felt they were addressed. Mr. Fiorello stated the Title 39 matter was not addressed.

Mr. Azrak, attorney for applicant, stated the fire official submitted a letter dated 9/29/10 which states he reviewed the updated plans and found all his concerns satisfactorily addressed. The letter was marked A-10.

Mr. Azrak asked that Mr. Olivo's and Mr. Martell's curriculum vitae be marked A-11 & A-12.

Mr. Fiorello said a matter has been brought to his attention and it should be brought to the applicant's attention. The Board received a letter in June from a Mr. Albert Weite, who owns the property on which the Capital One bank is located and he advised the Board he is presently in final negotiations for a Walgreen's store on the property adjacent to the Capitol One bank on Browertown Rd. and because the Department of Transportation won't allow him access on Route 46 the access would go through the bank driveway. The Board also got a recent letter from Jerry Vogel, Esq. who is representing the applicant for that Walgreen's store before the Little Falls Board of Adjustment. There is a joint access for the lot and as a result he talked to Mr. Esposito and since the lot is in Little Falls and they will be using a joint property in Woodland Park they must file an application here for use of the driveway and putting more traffic through that driveway. He did not know if this was brought to Mr. Olivo's attention or not but he does recall him saying he determined there was no other traffic in the area that would impact his remarks and testimony. He did not know if the applicant would like them to subpoena Mr. Weite to testify to what we just heard or Mr. Vogel to be here but apparently the plan is since the Walgreen's property is adjacent to the bank property the state won't allow them access to any other roadway the access is going to be on Browertown Rd. They have gone to the County of Passaic Planning Board and the Board has made certain recommendations concerning this new traffic pattern coming through the bank driveway. It just seems to the Board that with this information that perhaps Mr. Olivo should consider it because if Walgreen's is allowed to build in Little Falls and exit in Woodland

Park through the bank property with these restrictions and recommendations it is something that might impact upon his testimony as to traffic in that general area with regard to the proposed Quick Chek. He brought it to the applicant's attention because the County of Passaic's 10/6/10 letter was just received two days ago.

Mr. Azrak said they have only received the 10/6/10 letter from the County of Passaic. The letter is saying they are not going to do anything with the application until they submit what they requested. They do not know of any application being filed and even if one had been filed the fact is if they were to anticipate every potential site that may be developed they would never be able to generate a traffic report. Mr. Olivo will testify tonight he has built in to his report future traffic generation and that covers some of the projects that may be built in the future. The fact of the matter is they are not subject to their traffic pattern and they are subject to theirs and the Board can control that at any time. They have to talk about that joint application and driveway coming into Browertown Rd. and the Board will have the ability at that time to test them to see if they fit into the scheme of what has been proposed and if they can't it is their problem. It should not be in reverse that they have to anticipate that. They also know that Walgreen's historically has pulled a lot of their applications they have filed. They have abandoned a lot of sites along the way and this could be one. If they anticipate and try to solve their problem and this Board considers that as part of their deliberations that would be improper because they could then pull the application after the Board has ruled and they have been affected adversely. They would like to move forward with Mr. Olivo testifying to the future build so the Board is assured that part of the analysis he has done has taken in to consideration future things that may be happening.

Mr. Corradino stated he has checked on that application that has been filed in Little Falls. He has reviewed some of the drawings and as far as he is concerned it has an impact in the area. One of the Board engineer's requirements was for the applicant to advise the Board of any situations in the area that have been filed which smacks right into this specific issue. He would think the Board would want to know from a traffic point of view when those drawings are submitted and applied to this area.

Chairman Holloway stated the secretary has advised them that application will be going to the Planning Board and not this Board. Mr. Fiorello thought the only thing this Board would be interested in is if the hypothetical question can be asked if this property is developed in this way what impact the anticipated traffic generated through the same driveway and the impact upon what he testified. Mr. Azrak said they recognize the Board can ask those questions but Mr. Corradino has stated it will have an impact but no one has seen that. They don't know if the application has been approved and Mr. Corradino is not an expert and he would object to that. Mr. Fiorello said he did not testify to it and the Board and Mr. Corradino can ask questions. Mr. Corradino said there was an allegation that no one knows what is going on but Atlantic is the traffic expert on that project. The engineering firm is the same for that application and this application. Mr. Azrak said Mr. Olivo is not with Atlantic anymore. Mr. Corradino said Atlantic was

the traffic expert here and they submitted a report. He is aware that Mr. Olivo is now with another firm. The same engineering firm is on both these applications. Mr. Azrak said he did not want to belabor the point. Mr. Fiorello said not to belabor the point. The Board can't force him to do anything with regard to his witness and if they don't want him to go through the points the county has brought up they don't have to. Mr. Corradino can cross examine him if he would like and if the Board wants to ask questions hypothetically they can. He is a qualified expert and would be able to answer questions in that vein. He asked that they proceed.

Mr. Azrak said if they are talking about a hypothetically that Walgreen's may be coming in and they should adjust their traffic volumes then how about Pathmark closing and maybe they should have a hypothetical about dropping traffic volumes. Mr. Fiorello told him to ask whatever questions he wants to ask. Mr. Fiorello asked them again to proceed. Mr. Azrak said he wanted the Pathmark closing on the record. Mr. Fiorello told him to get on with the questioning.

Mr. Olivo was previously sworn in. Mr. Corradino said it was left at the last meeting that he would cross examine Mr. Olivo. Mr. Fiorello said they have brought up new matters.

Mr. Olivo reviewed the police report dated 4/19/10. He stated in direct testimony that signage and striping is proposed and Sgt. O'Brien is agreeing with that statement. Mr. Olivo said there are two elements to the striping, one specifically to the do not block intersection which is a combination of signage and striping. They are proposing to install an auxiliary left turn bay striping and signage. They will be requesting an ordinance for the left turn prohibition, blocking the intersection and parking in fire zones and handicapped parking.

Mr. Olivo said in regard to the queue length of two vehicles for the left turn lane heading north on Browertown Rd. he spoke with Sgt. O'Brien and tried to set up a meeting but he believed the comments were rather self explanatory. Mr. Olivo said he attempted to explain that there were a number of measures they were attempting to implement that would help to assist and alleviate his concerns. Sgt. O'Brien said he would come to the hearing and address the concerns if necessary. Sgt. O'Brien believed the queue length of about 2 vehicles was insufficient given the fact that tractor trailers would potentially be using the left turn bay into the site. Mr. Olivo said they are proposing deliveries between 8:00 p.m. and 6:00 a.m. which would essentially limit the possibility that both a truck and a vehicle would be utilizing the left turn bay. He felt this concern would be addressed by the delivery time restrictions. The trucks would be in the lane when traffic into the site is at a minimum. Mr. Olivo said the county has reviewed the circulation plans and traffic impact study and has found it to be acceptable.

Sgt. O'Brien was concerned with the design to accommodate passenger vehicles and felt the site should be designed for all vehicular traffic accessing the site. Mr. Olivo said it was his opinion that it does. Under typical design parameters you look to the 85<sup>th</sup>

percentile condition so in this case if you had approximately one tractor trailer a day for the store and one tractor trailer a day for fuel delivery that would make up a very small percentage of the traffic traveling to the site in a typical day. The site was designed for the design vehicle which in this case would be a passenger vehicle and slightly larger vehicles such as pick up trucks and SUV's since they would be the most common vehicles entering the site.

Sgt. O'Brien had a concern that there was not adequate space for emergency vehicles to maneuver the site. Mr. Olivo said they have received a report from the Fire Official who has found it adequate.

Mr. Olivo stated in regard to the proposed Walgreen's that they typically do not address every hypothetical development or redevelopment scenario within a traffic impact study. Many times you work off a conditional approval or a full approval as they did with the Capitol One bank. The Walgreen's at this point has a lot of work to do to achieve even a conditional approval from the county. He is not aware there is an application in Little Falls or Woodland Park at this time. He thought it would be improper to add it as a no-build condition at this point. What they do as part of industry standards guidelines is add in a background growth rate at 2% a year to provide a general growth rate along Browertown Rd. & Route 46. Based on the access plan for the Walgreen's it would be tying in directly with a cross access point to the bank. So the impact on the intersection is really the obligation of the Walgreen's applicant and traffic engineer as part of the traffic study to show what the impact would be. Technically speaking the Quick Chek is not located at the intersection. There would have to be a number of steps in his opinion in order for the Walgreen's to be included in this traffic impact study.

Mr. Corradino asked Mr. Olivo to get out sheet # 16 that was marked A-9 which is the vehicle turning exhibit. Mr. Corradino asked if he agreed that the width of the driveway is insufficient to safely accommodate a right turn exit. Mr. Olivo said he does not agree. He agreed that a tractor trailer will traverse the mountable curb aisle when exiting. Mr. Corradino asked if when a tractor trailer exits the site and is making a right turn to go south on Browertown isn't a fact it would encroach in the northbound lane. Mr. Olivo said it would cross over the double yellow line and encroach through the northbound left turn bay. In his opinion as a traffic expert he does not feel that is an unsafe condition. Mr. Corradino said the left turn into the site is approximately 25'. Mr. Olivo said the striped area of the left turn bay is approximately 25' but essentially what a vehicle would use would be more than that 25'. As striped it is 25'. A tractor trailer is slightly larger than 50'. Mr. Corradino said if a tractor trailer was attempting to make the turn and had to stop half of his truck would be in the road. Mr. Olivo said that is why they have limited the delivery hours to the off peak hours and traffic on the roadway would be at a minimum. Mr. Corradino said if they were making an emergency delivery during the day when making the turn they would be sticking out into the roadway. Mr. Olivo said that is not how Quick Chek operates to simply have gas trucks come on a whim. They can control deliveries and there is no benefit of having trucks traversing the site at peak

hours. Mr. Olivo agreed that trucks would be slightly in the lane. Mr. Corradino asked if a delivery vehicle exiting the site would come in conflict with the western pump island. Mr. Olivo asked what he meant. Mr. Corradino said the path of travel shows it going over the island. Mr. Olivo said it shows it going over the concrete area and under the canopy but not encroaching on the fueling island. The reason for the restriction in his opinion is so it will not create an unsafe condition on site. Mr. Corradino said it was Mr. Olivo's testimony that there were 2 safety features in their plan, one is the sign you can't make a left turn out of the site and the other device is the island. Mr. Olivo agreed it would be up to someone's interpretation as to whether they want to obey the no left turn sign or not. The idea of the island is to prevent a left turn. Mr. Corradino asked if at the highest the island is 2 ½" high. Mr. Olivo said that sounded generally correct. He said in his opinion that island would prevent vehicles from making the left turn. It has been shown an affective way of channeling vehicles out of the site. He felt they should be taking into consideration the third piece of traffic safety and restrictions which is enforcement. Mr. Olivo agreed that one of the conditions of safety for a left hand turn is the island. He felt a vehicle traversing the island is not a common occurrence. Mr. Corradino asked if he agreed that a car would have no problem going over that 3" island and would do no damage to the car. Mr. Olivo felt they would have difficulty traversing the island without doing damage to the car. Mr. Corradino asked about a delivery truck traversing the island. Mr. Olivo said it would be the same condition for a box truck but a tractor trailer would have no problem traversing a mountable curb. He has been involved in other mountable curbs sites and the DOT has asked for the removal of those curbs because of the damage they cause and have asked for just the signage. He said the curbs are constructed to prevent vehicles from traveling over them and that is why they are utilized. He stated that Passaic County has found this device to be acceptable at this driveway. He would provide the information to the Board as far as the height of the curb but generally 3" is reasonable. It may be worthwhile to provide that detail to the Board and felt there would be a portion that would be higher. He would provide a detail if requested.

Mr. Corradino asked if the sight distance was impeded by the mound on the adjacent property. Mr. Olivo said not any more. There was a rock formation near the storage facility that was required to be cut back to provide acceptable sight distance to the area. After that was cut back the county found the sight distance appropriate and in accordance with standards in this area. He has seen the area in the recent past and the mound has been cut back and sight distance is not impeded.

Mr. Olivo said the no access line is somewhat of a restriction in changing the dimensions of the driveway. However, the driveway dimension does not have to be changed to provide affective and efficient operation of the driveway as shown. Mr. Corradino said he did not ask him that question. He said his question was that the radius of the driveway can't be enlarged because of the no access zone. Mr. Olivo said the width and the radius are two different things. Mr. Corradino pointed out the driveway and said it cannot be enlarged because of the no access zone. Mr. Olivo said the driveway typically would not

be enlarged past the no access line. Mr. Olivo said it could not be because it would be in violation of the DOT restriction. He stated he has reviewed the engineer's report and Sgt. O'Brien's report. Mr. Corradino stated Sgt. O'Brien is a 10 year veteran of the force. He states in his report the queue length of approximately two vehicles used for the left turn lane heading north is insufficient. Mr. Azrak asked the date of the report. Mr. Corradino said it was dated 4/19/10. He repeated the question. Mr. Olivo said he did not agree with Sgt. O'Brien. Mr. Corradino read from the report that tractor trailers used for deliveries will obstruct the remaining north bound lane of Browertown Rd. Mr. Olivo said they did speak about that and he said it was slightly obstructing the northbound lane. Mr. Corradino said his question was whether or not he agreed with the statement. Mr. Olivo said it is difficult to know what the remaining north bound lane means in this statement but he would say the northbound through lane would be slightly obstructed by a tractor trailer if it were to wait in that area. He has not met with Sgt. O'Brien but he did ask for a meeting a number of times but they did not meet. Sgt. O'Brien states this site's entrance and exit is inadequate to accommodate the trucks supplying the site with goods. He also states that trucks are forced into the oncoming lanes of traffic both within the site and when entering the roadway. Mr. Olivo said he agrees with that. Sgt. O'Brien also states the engineering standards employed create a deficiency for larger vehicles and increase the risk of accident and interruption of traffic flow. Mr. Olivo said he does not agree with that.

Mr. Olivo also reviewed the letter from the town's engineer. The letter was dated 6/2/10 prepared by Neglia Engineering. Mr. Corradino referred to the portion of the letter headed traffic. The letter states based on the configuration of this intersection the left turn movement into Briarwood Ct. and the site driveway would potentially conflict. Mr. Olivo said he does not agree with that. The letter also states that the issue is not whether the left turn movements can be performed without conflict but whether vehicles turning left into the site would creep forward while waiting for opposing traffic to pass thereby blocking vehicles turning left into Briarwood Ct. Mr. Olivo said he doesn't agree with that and for the record he stated he had conversation with Mr. Stimmel, the Board's traffic expert, regarding the fact that a turning analysis was prepared as part of Exhibit A-9, Sheet 16, which shows two vehicles completing left turns without encroachment. Mr. Olivo said he does not agree with the engineer's statement. Based on the queuing data provided there is insufficient stacking space provided for the left turn movements in to the site from Browertown Rd. Mr. Olivo said he would assume he is referring to the 25' lane but would ask the engineer to clarify. He does not agree that the 25' lane is insufficient. It also says queues from the southbound through lane would interfere with egress movements at the site driveway when a queue length of 5 vehicles occurred. Mr. Olivo said should they not follow the do not block the intersection and striping that they propose he would agree with that. However, that is why they proposed it. It also says they would interfere with left turn ingress movements when a queue length of 7 vehicles occurred. Mr. Olivo said again, if they do not obey the do not block intersection he would agree. The engineer also states they recommend that this driveway be limited to right turn for ingress and egress movements. Mr. Olivo did not agree with that and for

the record neither does Passaic County. Mr. Corradino asked if he agreed that Woodland Park has an interest in the safety of their road. Mr. Olivo said they absolutely do. The engineer's letter states that the applicant should contact the Borough of Woodland Park and the Township of Little Falls to determine any other areas of development are proposed. He said it does not say already proposed or approved which would impact operations at the study intersections. Mr. Olivo said at the time this letter was prepared it was absolutely done. Mr. Corradino asked if he was saying that when this letter was prepared on June 2<sup>nd</sup> the applicant had no knowledge of the Walgreen's application. Mr. Olivo said not to his knowledge but he does not know whether the applicant knew. He agreed the applicant in the Walgreen's application is the same engineering firm that is in this application. Mr. Olivo said it is his understanding it is Bohler Engineering. Mr. Corradino said it is a fact. Mr. Olivo said he has a letter from Passaic County regarding the Walgreen's application and that would be the only knowledge he would have any site plan submitted. Mr. Olivo said he does not know the workings of Bohler Engineering on how they prepare plans. The plan may have been something basic that would not require a lot of preparation time. Mr. Azrak objected. Mr. Corradino asked if the plans were prepared and filed on August 18<sup>th</sup> they would have had to be in some sort of thought process well before that date. Mr. Azrak objected. Mr. Fiorello sustained the objection, it was conjecture.

Mr. Corradino referred to # 7 in the engineer's report. It stated as currently proposed the angle of egress driveway island would not be sufficient to prevent left turns out of the site. Mr. Olivo said he disagrees with that. Mr. Corradino asked if the drawings show the trucks going over the island when they are leaving and coming in. Mr. Olivo said it shows the tractor trailers going over it. There are areas of that island that are rather tall and would prevent a passenger car from going over it but not a tractor trailer. Mr. Corradino said he is referring to it as a little island and there is not a 6" figure on that island anywhere. Mr. Olivo said a truck would be able to traverse the island. Mr. Corradino asked if he was aware of the required sight distance the county requires. Mr. Olivo stated it depends on the movement you are making. If you are making a left turn you need sight distance in both directions. Since they restricted the left turn out you need sight distance in only one direction which is essentially toward the storage facility.

Mr. Azrak referred to the Neglia report in the traffic area. He asked Mr. Olivo to read # 1 which states the site access is ultimately subject to the review and approval of the county. The applicant has received conditional approval from the county. He said it is his expert opinion that this roadway is controlled by Passaic County. He appeared at the county for approval and they had the turning movement plates and his testimony regarding them including the mountable curb, the radius of the driveway and the left turn bay into the site and there were slight modification made at that time. The county dictates the roadway and also the driveway. There were no traffic experts at the county for Levco. There was minor discussion that was quickly ended that referred to truck circulation. There was no traffic expert representing Levco at the county and no one opposed the design that was shown and approved at the county. Mr. Corradino said they were not a party to that

meeting. The site plan package was provided to the county. There was no one from the Borough of Woodland Park at the county hearing. Mr. Azrak asked since the county has already approved the plan they cannot make changes. Mr. Corradino objected and felt it called for a legal opinion. Mr. Fiorello agreed and Mr. Olivo is not a lawyer. Mr. Olivo noted the statement already read from Neglia's letter. The conditional approval from the county has been granted. Mr. Azrak said although the objector's appeared at the county level they presented no testimony with regard to opposing what was proposed. Mr. Olivo said that was correct. Mr. Azrak referred to the mountable curb and asked what he referred to as the third element. Mr. Olivo said the 3<sup>rd</sup> element is enforcement. There are 3 mechanisms where you can attempt to restrict a movement, engineering, education and enforcement. When the county gave their approval they were aware and commented on the striping and the left turn bay. There is nothing in the approval that talks about sight distance. Part of the approval is an ordinance for no left turn.

Mr. Azrak asked if Quick Chek was not proposing the store and gas component and someone else wanted to develop the site would they also be restricted with the driveway. Mr. Corradino objected. Mr. Azrak said it is not speculative to talk about the driveway length. He said given the fact there is a restriction by the DOT that they do not want the driveway any closer toward the Rte 46 intersection that any other development on the site would still be restricted. Mr. Olivo said that was correct. Mr. Azrak asked in regard to the questions asked by Mr. Corradino if all of those have already been seen and approved by the county. Mr. Olivo said that was correct. He referred to the Neglia letter that the comment regarding proposed development and contacting the surrounding towns had been addressed.

Mr. Corradino asked how many county meetings he attended. Mr. Olivo thought it was 3 or 4 meetings. Mr. Corradino asked if he knew if notices were sent out to all the adjacent property owners before the county meeting. Mr. Azrak objected and stated there would not have been a meeting unless the county had all of the jurisdictional requirements met to hold a meeting. He felt Mr. Corradino was attacking the county and saying they did something improper. Mr. Corradino said he was not saying that and that was not his question. He asked if Mr. Olivo was aware of any notices sent out. Mr. Azrak objected. Mr. Olivo is not a lawyer or testifying to the MLUL. Mr. Corradino said Mr. Olivo brought up the issue that no one appeared. Mr. Azrak said meaning Mr. Corradino who did appear but brought up no objections. Mr. Corradino asked if Mr. Azrak was there that night. Mr. Fiorello said Mr. Olivo does not know whether or not notices were sent out. Mr. Olivo agreed that he did not know. Mr. Corradino asked if on any of those dates that he appeared if any objectors appeared. Mr. Olivo said Mr. Corradino appeared. Mr. Corradino said that was on the last date. Mr. Olivo agreed. Mr. Corradino asked if he recalled when he stood up to cross examine him he was cut off by the Board and he sat down. Mr. Olivo said he doesn't recall that. Mr. Azrak objected and felt it was testimony by Mr. Corradino. Mr. Fiorello said he asked Mr. Olivo a question. Mr. Azrak said he would represent as a lawyer in the state of New Jersey that Mr. Corradino said he would withdraw any question he had and handle it at the town. Mr. Azrak stated that

Mr. Corradino had every opportunity at the county to make any objection or bring any testimony and do anything he is trying to do at the town level. Mr. Fiorello said they should both stop testifying and move on. He asked Mr. Olivo if he knew what happened when Mr. Corradino was there. Mr. Olivo said I saw what happened but he believed his question was that he cross examined him and that is not correct. He said he saw Mr. Corradino state his objection to the application and saw some of what is happening now which a lot of discourse between the board and the attorneys. Then later he recalled that there was no further testimony from Mr. Corradino or were there any experts who appeared to present testimony. Mr. Corradino agreed with that.

Mr. Corradino asked if the approval from the county was conditional. Mr. Olivo said that was correct. Mr. Corradino asked if he would agree that if this board denies the application that approval is mute. Mr. Olivo deferred to the attorneys. Mr. Corradino asked if he agreed the board has jurisdiction. Mr. Olivo said that is why they are here. Mr. Corradino asked if he agreed the board has jurisdiction to order changes in the traffic pattern. Mr. Olivo said he would leave it to the Board attorney but it is his understanding from the traffic safety perspective the Board has the ability to review the application and that is why they submitted the traffic impact study and that is why the plans were submitted.

Mr. Azrak asked with regard to the conditional approval they received from the county there were 4 conditions that were put in the approval dated 3/9/10. Mr. Olivo said he would have to look at the letter which he has reviewed. All the conditions have been completed except for the ordinance from Woodland Park. Mr. Azrak asked once this is met the approval is final. Mr. Olivo said if all conditions are met then yes. Mr. Fiorello said it is a legal question. Mr. Azrak asked if there is anything further he or the applicant has to do in order to get final approval from the county. Mr. Olivo said no it is his understanding that his obligation would be fulfilled as a traffic consultant if all conditions are met. Mr. Corradino objected. Mr. Fiorello asked from a traffic engineer's point of view has he complied with the conditions imposed. Mr. Olivo said they have met all conditions as far as traffic with the exception of the ordinance from the town.

Mr. Orlando asked if all traffic exiting the site would be right turn only. Mr. Olivo said yes. Mr. Orlando asked if that meant they have to go on Route 46. Mr. Olivo said no, they make a right turn onto Browertown Rd. and travel in a southerly direction and go wherever they like but they don't have to make the right onto Route 46. Mr. Olivo said where you are making the right turn exiting movement is just where the right turn lane transitions and becomes full width so you would have the ability to travel through all 3 lanes. Mr. Orlando read from Sgt. O'Brien's report which states all cars go into a dedicated right turn only. Mr. Olivo did not agree with that statement. They are directed into the southerly flow of traffic and at that point you can pull into the right turn lane, through lane and left turn lane.

Ms. Kallert asked if he said the island they are proposing would deter people from making a left turn but yet he thinks it is okay for a tractor trailer full of gasoline to traverse another island when turning. Mr. Olivo said it is two different movements and the tractor trailer would not make the left turn out of the site. They would travel over it going into the site and go over the mountable curb island. Ms. Kallert asked if he doesn't feel that is a safety issue in bad weather. Mr. Olivo said he did not and they would clear the driveway of course. Tractor trailers are an important element of having food and the store and gas in the dispensers so it would be part of the maintenance to make sure the area is kept clean and deiced. There are areas set for snow storage and snow removal. Ms. Kallert asked if he felt it was safe if a tractor trailer coming in has to go over an island. Mr. Olivo said yes and he has seen it at other sites where it works safely and effectively. Passaic County also feels that way in that they conditionally approved the driveway. Ms. Kallert asked if when they were looking into the area if they noticed the tractor trailers and construction equipment on the lot across the street where they are proposing the Walgreens. She asked if they went to Little Falls to inquire about that lot. Mr. Olivo said they called Little Falls and he thought they spoke to the Building Department and they could provide the name of the person they spoke to regarding any applications. At that time there was no statement regarding a Walgreen's application. He is familiar with the intersection and he has seen activity but it is difficult to say that activity is due to a Walgreen's application. They provided that information because Neglia Engineering required them to do so. Ms. Kallert asked when that was. Mr. Olivo said it was shortly after the letter was prepared by Neglia so would imagine it was late June or early July.

Ms. Patterson asked about the Title 39 and if Quick Chek is amenable to them coming on to the property and police the handicapped parking spaces. Mr. Olivo said it appears that they are. Ms. Patterson said that would be another ordinance.

Mr. Ianniello asked about restricting deliveries to the evening and what type of deliveries they were talking about. Mr. Olivo said the fuel tractor trailers and the convenience store tractor trailers. Mr. Ianniello said there is a Quick Chek on Valley Rd. in Clifton and he suggested Mr. Olivo go there in the morning about 8:00 a.m. and tell him what he sees. He asked if he was saying they were going to have the Coca Cola, Entemanns, Pepsi Cola and milk tractor trailer make their deliveries after 8:00 in the evening. He asked if they are going to make that arrangement with the union. Mr. Olivo said it is his understanding they will but the question may be better suited to the Quick Chek real estate agent that is present. Quick Chek does have the ability to control deliveries to the site. The WB 50 tractor trailers will be restricted to the hours of 8:00 p.m. to 6:00 a.m. to carry the goods to the site and exit the site. That is on the record and it is his understanding that is enforceable as well. He doesn't know if the site Mr. Ianniello referenced has similar conditions. Mr. Ianniello did not think the deliveries will be made after 8:00 p.m. because those people are probably not working at that time.

Mr. Azrak addressed Mr. Ianniello. Mr. Fiorello stopped him and told him it was the Board's turn to ask questions. Mr. Azrak said he would address it at another time.

Mr. Juzdan asked Mr. Olivo to point out where the tractor trailer would do the filling of the tanks. Mr. Olivo said it would be in the area south of the fueling canopy. The truck makes the turn in and travels around and drops off the fuel. Mr. Juzdan asked how the cars maneuver when the truck is at the spot. Mr. Olivo said parking in that area would be blocked by the tractor trailer being there. Mr. Juzdan asked how a car coming in the same time would fill up and leave. Mr. Olivo said a car could make the left turn in and fuel, then back up in to the circulation aisle or go around the tractor trailer.

#### PUBLIC OPEN – CLOSED

Mr. Stimmel, Board Engineer, stated the first comment was just a reminder that the applicant must seek county approval for the driveway. The second comment which he spoke to Mr. Olivo about some months ago and he thought there was a communication break down but the plan, Exhibit A-9 shows that a northbound car turning left into the driveway and a southbound car turning left into Briarwood Ct. can make those turning movements at the same time which was not his question. The question was if a northbound car were to ignore the don't block the box striping and creep up another 20' to 25' his professional opinion would be they would still be able to make the left into the site but they would potentially block the maneuver into Briarwood Ct. He asked if that was accurate based on the information before Mr. Olivo. Mr. Olivo said he thought he understood the concern a little better and thanked him for the clarification. He said there is about 10' between the turning path of these 2 vehicles and they have used a larger passenger vehicle. If the vehicle was to pull up into that 10' then those paths would potentially conflict. He thought it was extremely important to note that the volume traveling into Briarwood Ct. is extremely minimal to the point that during the peak hours it is in the range of 7 – 10 vehicles in an hour. While that conflict may occur under these hypothetical situations if the vehicle pulls forward too far given the minimal amount of traffic there it is not a point of concern.

Mr. Stimmel referred to comment # 3 relating to queuing information that was presented in the traffic study prepared by Atlantic Traffic & Design Engineers in October of 2009. Mr. Olivo said he was with Atlantic Traffic at that point. Mr. Stimmel said the comment states that queuing at the southbound approach to the Browertown Rd. traffic signal would interfere with traffic movements at the driveway when a queue length of 5 vehicles was observed and would interfere with left turn ingress when a queue length of 7 vehicles appeared if the striping was ignored. Based on the data collected it appears that during the 88 cycles of the traffic signal the queuing of 7 or more vehicles was noted 20 or more times. Mr. Stimmel asked if he has performed any follow up observations of queuing at that location. Mr. Olivo believed that the supplemental analysis included additional queuing analysis at the intersection while the bank was in operation and the results were generally similar. They did provide all the information to the county and they were

aware of the queuing that occurred and that was one of the reasons they provided the do not block the intersection. They have heard from a number of sources including Sgt. O'Brien and the county in the conditional approval that they feel it would be adequate.

Mr. Stimmel asked if he had any discussions with the DOT who controls the traffic signal regarding retiming the signal to decrease queuing on Browertown Rd. Mr. Olivo said he spoke with the head of the traffic signal and safety engineering unit that controls this area of NJDOT and they spoke about the proposed access plan here. He provided an E-mail of correspondence that stated they had reviewed the plan in its entirety and what they would asked would be if the project was approved that the traffic signal plan for the intersection be modified to show the left turn bay into the site. That was the end of the comments from Vincent Burns of the NJDOT. Mr. Stimmel asked if there was no direct discussion as to whether or not the signal could be retimed and only a comment about a modification to add a left turn bay. Mr. Olivo said they did discuss the retiming and Mr. Burns also mentioned that they have considered changing the nature of the lead phases if need be as part of the bank project should the volumes pick up. He believes the DOT will go out to the field and see if it warrants a change in the signal.

Mr. Stimmel referred to comment # 7. Based on the turning exhibit which pictures a van turning into the site he asked if that same van was stopped at the stop bar would it be able to make a left turn onto northbound Browertown Rd. without striking the island. Mr. Olivo said no but they could provide more information to show how far it would go onto the island. Mr. Stimmel asked if there were no access restriction at that location would that island have been designed differently (larger or at a different angle). Mr. Olivo said the radius they believe to be outside the limit of no access. They have designed the driveway so it does not encroach on the no access line on their property. They have designed it in accordance with NJDOT standards and also to the satisfaction of Passaic County who has jurisdiction over it. There is a possibility that it could be modified slightly but it is his opinion, Passaic County's opinion and also utilizing the design standards of NJDOT they have designed it appropriately here.

**BREAK**

Call to order 9:08 p.m. Roll call. All present.

Chairman Holloway stated the Board received the updated letter of 10/11/10 and drainage report from the applicant's engineer this evening. They will proceed with the applicant's planner's presentation and adjourn so that the Board professional's have time to review the new information. Mr. Azrak said the submission they made was by a recommendation made by the Board engineer. They could have done it at a later time as a condition of approval but they wanted to submit it ahead of time to show the holes in the recharge area were done and did pass and it was also redesigned to what the Board engineer required. Chairman Holloway asked they try to wrap up by 10:30 in order to leave the building by 11:00.

Jill Hartmann, planner, was sworn in. She has been previously qualified before the Board and accepted as a planner. Ms. Hartmann's curriculum vitae was marked A-13.

Ms. Hartmann stated the property is a disturbed vacant 47,297 sq. ft. lot. It is located adjacent to the ramp of US Route 46. The site has experienced some disturbance in the front half of the site. It is presently devoid of general vegetation. The rear half of the site slopes down from east to west. It is overgrown with vegetation and some sporadic trees. It is unique in both its location in the municipality as well as its configuration. It is located in the Neighborhood Commercial district. The application proposes to develop the site with a fully integrated retail sales operation that consists of a 4,543 sq.ft. Quick Chek food store as well as a gasoline retail sales operation that will have 12 fueling positions and 33 off street parking spaces. Perimeter fencing is proposed, landscaping and signage is proposed. The Borough has determined that a significant portion of the development which is the gasoline sales requires a use variance. It is not consistent with the permitted uses in the NC zone. However, the convenience food store is a permitted use. The NC district is primarily but not exclusively intended to consist of commercial, retail and service establishments that serve the residents of Woodland Park. Generally the uses permitted in the NC zone are grocery food stuffs, packaged liquor, drugs and pharmacy uses, dry goods, hardware stores, antique stores, sales of newspapers, tailors and dry cleaners, uses similar to banks, institutions, offices, restaurants and funeral homes. There are several things that are not permitted and specifically prohibited and among those are warehouses and similar storage facilities as well as motor vehicle service stations. As you can see from the map she prepared for surrounding land uses directly adjacent and north of the subject site is a storage facility and warehouse facility. So already there are uses in the neighborhood that are conflicting with what the ordinance actually permits. The board titled surrounding land uses was marked A-14.

Ms. Hartmann said clearly the convenience grocery is in fact a permitted use in the NC district. It will sell things that are specifically listed in the NC zone and they include drugs and pharmacy items, periodicals and newspapers, confectionary, dry goods and retail bakery items. The retail sale of gasoline in her opinion does not qualify as a gasoline service station. The retail sale of gasoline does not come with all the negative baggage that an auto repair facility that is consistent with a service station historically has been defined in a sense as a service station. However, the zoning officer/construction official has determined that a use variance for this portion of the proposed development is required so she will be proceeding in that vain. The existing pattern of development as you can see by the map on exhibit A-14 with the subject site in the center right shows the entrance to the site and actually the driveway that leads into the project site. Directly adjacent to the site is a Public Storage building and further down is a commercial retail use that is further north on the same side which includes auto repair, retail uses with offices or apartments above it. Further down the road toward the north on the same side is an office building. As you go to the west of the site there is a Modell's, the storage facility and the shopping center. There are homes on Briarwood Ct. that is across the street. There is a dry cleaners, a bar/grill and the bank directly across the street from the

site. There is a two story strip mall further down across the street with retail on the first floor and what appears to be offices and residential on the second floor. There is an eclectic mix of uses in the area. What you can see from these uses is you have an area and a site that was once zoned Highway Commercial as well as a storage facility. At one time the storage facility was permitted but now you have an existing non-conforming use. There is a variety of uses that are not necessarily consistent with the NC district that it is located in.

Ms. Hartmann stated in regard to use variance proofs the MLUL does set forth the positive and negative criteria that are required for variance relief. In this case they are seeking a D-1 variance for the retail sales of gasoline. They have to satisfy both the positive and negative criteria. The positive criteria are special reasons for the granting of the variance. These things include showing that by granting the variance it will effectuate the intent and purpose of the MLUL and will advance the purposes and goals of the Master Plan. The negative criteria establishes that the variances can be granted without substantial detriment to the public good and that the benefits of granting the variance will outweigh any detriment and there will be no substantial impact on the Master Plan or zoning ordinance. Additionally they have an enhanced proof requirement under the Medici case which requires that the proposed use promotes the general welfare and the site itself is particularly suited for the proposed use. A recent decision notes that in a use variance application the bulk regulations established for that use cannot be applicable to the proposed use. Thus a zoning board when considering a use variance has to consider the overall design of the site and in essence the C-variances and area variances are subsumed into the D-variance. There are a number of C-variances that are being requested by the applicant, specifically a side yard setback and several sign variances. She will be presenting those proofs as well to demonstrate that those variances can be granted regardless whether they are subsumed into the application or not and what is being proposed is a reasonable development and meets the general development criteria. With regards to the special reasons the proposed development of the subject site for this convenience food store and gasoline retail sales will in fact promote the general welfare in that it is well suited for the proposed use for a number of reasons. The subject site is unique in terms of its location in the Borough, its physical suitability for the proposed convenience store and retail sales of gas. It is adjacent to a regional highway but localized on a county right of way. It is physically located on the very edge of the NC district and adjacent to a storage use that is expressly prohibited in the district. It is adjacent to the Highway Commercial district and surrounded by more regional type uses including the storage use and the shopping center that is on approximately 27 acres. It is topographically separated substantially from the shopping center and physically unique in its elongated shape which is impacted by the curvature of ramp C associated with Route 46. This site is proximate to Little Falls and the entire state highway route 46 interchange making it unique within the entire Borough. It is relatively narrow and flat along the eastern boundary with Browertown Rd. and as you continue west it widens at its western boundary with the shopping center. Mr. Azrak asked in regard to the topography are there any slopes on the property. Ms. Hartmann said it slopes down substantially to the

west. This property borders the Highway Commercial district to its west and south which permits gasoline sales. Recently the Borough re-examined the Master Plan and with regards to that there are a few goals and policies she thought are relevant to the proposed development. One of them is to design support neighborhood commercial development that emphasises local business, office and commercial needs. The policy of the Borough is to encourage the continued development of the business district for retail and commercial uses that serve the daily needs of the resident population. The proposed Quick Chek convenience food store and retail gas sales operation will provide a service for the area residents that is presently lacking in this area. There are 5 gasoline stations that she would consider local, one on Squirrelwood Rd., two on Rifle Camp Rd., one on McBride near the intersection of Route 46 and another one on McBride near the intersection of Browertown Rd. The various sectors of the town are serviced by local gasoline service stations and/or sales and some of them have minor mini-marts associated with them. So they are providing this service and if the mini-mart is not part of the station itself then it is adjacent. There is a 7-11 on Rifle Camp Rd. that is adjacent to a gas station. So this is an area of town that is not serviced by a local convenience store with gasoline sales. It does provide a localized commercial/retail use for the residents. Another purpose of the 2009 Master Plan re-examination report which is reiteration of the 1994 Master Plan and 2003 Re-examination report is to encourage the development of appropriate commercial, industrial, employment and recreational facilities to serve the needs of the Borough residents and to help maintain the Borough's stable tax rate. The policy of the Borough is to continue to encourage the development of appropriate facilities to serve the daily needs of its residents while preserving a stable tax base. Ms. Hartmann felt the proposed convenience store and retail gasoline sales are an appropriate facility that will serve the daily needs of the residents, not only in this area but also for the residents of the municipality. Historically such uses developed in different sections of the municipality as noted but presently this area is not served by the type of gasoline sales available throughout the municipality. In addition the site has remained an unsightly vacant parcel that provides limited tax benefits to the Borough. The proposed development will improve this gateway section to the Borough and support the goal of a stable tax base. With regards to the purposes of the MLUL it is her opinion that the granting of the use variance will advance several purposes of the MLUL. One is purpose A which is to encourage municipal action to guide appropriate use or development of all lands in the state in a manner which will promote the public health, morals and general welfare. Permitted uses in the NC district in fact do include retail business activities. The proposed convenience store is a permitted use and it provides a local retail use that does not exist in this area of town. The gasoline sales facility is a retail business for the sale of gasoline only and is appropriate for this subject site. It will provide the residents the opportunity to purchase food items as well as gasoline without leaving the neighborhood or accessing a major highway. This application promotes the health, safety and general welfare. In addition the gasoline tank design that is being proposed and the design of site is in excess of the state requirements to insure public health and safety. Another aspect of the proposed development which will meet the MLUL purposes is to provide adequate light, air and open space. This particular site is set against an adjacent

massive storage building. The physical layout and design of the site fosters a sense of openness by providing light and open space to the neighborhood. It meets purpose D to insure that the development of individual municipalities do not conflict with the general welfare of neighboring municipalities, the county and the state as a whole. A very small portion of the site in the southeastern corner is located in Little Falls. The proposed use will not impact any land use in the town of Little Falls. Purpose G is to provide sufficient space in appropriate locations for a variety of agriculture, residential, recreational, commercial and industrial uses and open space, both public and private. The borough does contain 5 gas stations and they are located in the south, the central, north and northeastern portion of the borough. They do not completely provide the classic convenience store service for the surrounding neighborhoods and they are located out of this neighborhood's general sphere of influence. The proposed development will provide a local service to the surrounding neighborhoods that is presently not available. Purpose H encourages the location and design of transportation routes which will promote the free flow of traffic while discouraging the locations of such facility or routes which result in congestion. The traffic expert has testified to the design and adequacy of the site plan to provide the free flow of traffic. Passaic County has given the applicant conditional approval for their site access design. In that regard it means they have met the test as to whether or not this is an appropriate location given the traffic aspects of the site and the surrounding neighborhoods and the street patterns. Purpose I is to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The proposed development of the subject site will remove an unsightly state that is on the site and replace it with a development whose physical layout and design fosters a sense of openness both visually and actually by providing not only necessary light, air and open space to the parcel but the surrounding neighborhood but also it promotes a desirable visual environment. The Quick Chek convenience store and gasoline sales facility itself incorporates a variety of material and textures into its building façade and gasoline service area that are compatible with the surrounding land uses and neighborhood. Its landscape plan will add a live vegetative element to the overall site design which is consistent with the character of the neighborhood. The use of the canopy and design of the site really does in fact keep the site very open and non-claustrophobic as a building might very well result in. Mr. Azrak referred to the site engineer's testimony regarding compliance with adding recharge. Ms. Hartmann said that would be part of her negative criteria section.

Ms. Hartmann said as to the negative criteria the variance relief requested to develop the subject site with the proposed Quick Chek and retail sale of gasoline in her opinion can be granted without substantial detriment to the public good and will not have a substantial impact on the zone plan or Master Plan. She would suggest that the proposed development would have a positive impact on the surrounding area and the borough because the site itself will be brought into full compliance with all state standards and requirements in regard to drainage, storm water recharge, water quality, rate of water runoff and a variety of things that are right now not checked. It promotes the goals and objectives of the Borough's Master Plan and it is consistent and compatible with the

surrounding neighborhood, the Highway Commercial uses and provides a service that is not available to the residents.

Ms. Hartmann stated even as she has said there is case law that really says the C variances are subsumed into a use variance but she thinks it is important that a town is comfortable with the design and the deviation from the zone requirements with regard to setbacks and other zoning regulations. She stated with the C variances you either show a hardship or the variance requested benefits the community in that they represent a better zoning alternative. Of course there is the negative criteria with that as well that there is no detriment to the public good and there is no substantial impairment to intent and purpose of the Master Plan. There are a few variances that are being requested, a fence height variance, setback variance and some variances related to the proposed signage with regard to size and number. The town permits a maximum height of a fence to be 3' and they are proposing 6' fence that will run along the southern property line and generally follow the development to the northern property line. The applicant's engineer testified that they could reduce the height to 4' but would not like to go any less. They would still need a 1' variance but given the safety aspects of the site and the need to protect the general public she believed a variance for 1' represents a better zoning alternative for the property and it would benefit the community. It is an open chain link fence and it protects and secures the site. It will continue to retain the visual integrity of the site and the surrounding land uses so the aesthetic aspect of the site is retained. It will not have any detriment to the public good and will not impair the intent or purpose of the Master Plan or zoning ordinance because of the site development design and the unique location of the site and its topography. There is also a canopy setback variance. The proposed canopy will violate the required setback where 20' is required and 17.2' is proposed. In this regard the site has a permanent easement with the adjacent parcel. The subject site has a 15' easement on its piece and there is a 15' easement on the other side for a total of 30'. The easement itself cannot be built on and it acts in part as a setback. In addition the proposed canopy is not a traditional building, it's not solid and open on all four sides. It provides visual relief that is traditionally provided by a required setback. The requested variance is for 2.8' which is relatively small and she believes it could be granted in that it represents a better zoning alternative for the site and it will not have an adverse impact on the Master Plan or zoning ordinance. Then they have the sign variances. They did discuss the variances with the engineer specifically. She stated the site is on a corner location and the development dictates a comprehensive signage plan that includes a free standing sign, a series of attached wall signs associated with the convenience store and with the gasoline sales. The submitted plans propose the Quick Chek store has one principal wall sign, 2 secondary wall signs and each sign will be 4'6" X 23'2" and all signs will exceed the permitted area of 31.3 sq. ft. and sign height of 2'. The Quick Chek gasoline sales canopy will have one principal sign and one secondary sign each with an area of 20.3 sq. ft. There is a freestanding sign proposed which will be 9'9" X 8'2" and that equals 79.6 sq. ft. with a height of 17'. Variance relief from the zoning ordinance is requested for a number of signs based on the sites size, configuration and location as well as the topography. The requested site variances related to the Quick

Chek store are total number of permitted wall signs, two secondary wall signs are permitted and 3 are proposed. The total gross area of signs shall not exceed 5% of the front façade of the building which is 31.3 sq. ft. and they have 3 proposed attached signs which will be 104.3 sq. ft. The secondary signs are to be a maximum of 2' and not exceed 30% of the principal sign and these are proposed at 4'6". The variance related to the gasoline sales facility canopy where the total gross area of the sign will not exceed 5% of the front façade. This is not really a building but she needed to find something to figure out what size would be permitted and that would be 4.1 sq. ft. for the secondary signs and they are proposed at 20.3 sq. ft. The total freestanding sign area is permitted to be 24 sq. ft. per side and what is proposed is 79.6 sq. ft. The maximum height permitted is 10' and it is proposed at 17'. As an overall design pattern and comprehensive package these signs are extensive and larger than what is permitted but it is generally because of the unique location of the site. The size benefits the community because it allows and promotes the timely and appropriate site recognition so you can get into the site so it promotes the general welfare and it has safety aspects related to it. The signs have to be readable from a distance and that is the reason for the height and size.

Ms. Hartmann stated the decision of the case she referred to earlier actually said that if you have a use that is not permitted in the district then the requirements of the district itself really are not applicable to what is being proposed. She felt they would be comparing apples and oranges. What it said was if you are reviewing and going to grant a use variance then in fact all of those variance that would have been related to the zoning of that district gets subsumed into the actual approval and plan. The idea being that the design of the site should govern the approval and not the underlying variances that would be related to a use that is not permitted and not have anything to do with what is being proposed. The zone can't contain the use that they are proposing now. Some of the requirements of the zone have no relation to the underlying zone they are in. She has also addressed the traditional C variance prior to that case for the Board and testified to the positive and negative criteria.

Ms. Hartmann said in conclusion she would say that the development of the subject site with the proposed Quick Chek convenient store and gasoline sales is a positive advancement of the purposes of the NC district, it is complimentary to the established commercial district that surrounds it and proposes a use that is consistent with the district as well as providing a local service that is not presently available to the residents in this area of town. It also promotes the goals and objectives of the Master Plan and MLUL. It is her opinion there is a large trend of gasoline stations just as an accessory use having convenience stores. In many locations throughout the country there is a trend to have gasoline associated with convenience stores. Similar to day care facilities that you now find in churches which 10 years ago was not considered an acceptable use. It is becoming a much more consistent and normal development to have both a convenience store with gas sales. In her opinion the variances do not substantially impact on the surrounding community and the use does not substantially impact the zoning code or Master Plan and the site is particularly well suited for the intended use. This is a better

zoning alternative and a very good site for what is being proposed. The site accommodates the use. Mr. Azrak referred to the zoning map attached to the zoning code entitled Zoning Map for Borough of West Paterson dated May 1979. There is writing on the map as to the various zone districts that have changed over the years. The map was marked exhibit A-15. She is not aware of this map being incorporated into the zoning code. Mr. Corradino said he did not understand the proffer. Mr. Azrak said the proffer is this is the zoning map that is attached to the zoning code give out by Woodland Park. Mr. Fiorello asked if that was the zoning map. Ms. Hartmann said that was what she received. Mr. Corradino said he does not know that is a fact. Mr. Fiorello said Ms. Hartmann has testified that is what she received. Mr. Fiorello asked if there are handwritten marks on the map. Ms. Hartmann said that was what she received. The Board Secretary told Mr. Fiorello that the zoning office has handwritten the new zones on the map. Mr. Corradino said if that is what it is he has no objections. The Board Secretary confirmed that it is the same map that is in her office.

Mr. Azrak asked Ms. Hartmann to identify photos she took of the site. Ms. Hartmann said they represent the northeastern retaining walls. The photos were marked A-16 – A, B, C & D. The pictures show the retaining wall between the shopping center and the Public Storage building. A-16 A is the retaining wall on the east. A—16 B shows the wall further south on the east side of the adjacent property. The photos are looking from the parking lots of Modell’s. A-16C shows a small wooden retaining wall as well as the rock retaining wall. A-16 D is the same picture from further away.

Mr. Azrak asked to mark the rendering of the proposed retaining wall. It was already marked as A-5. The purpose of the pictures Ms. Hartmann took was to show the conditions of the retaining walls and type of construction. She noted the proposed retaining wall is a more contemporary design.

Mr. Corradino asked if Ms. Hartmann prepared a report. She did prepare a report for Quick Chek, Mr. Corradino asked when her relationship with Quick Chek started. She said it seemed like many years ago. She would have to check her calendar but felt it was in the summer of this year. Mr. Corradino asked what she was asked to do. Ms. Hartmann said she was asked to provide planning testimony for the proposed use. Mr. Corradino asked if they explained the use they were seeking. Ms. Hartmann said yes. Mr. Corradino asked if she was asked to prepare a report to support their position. She said yes. Mr. Corradino asked if the purpose of the report was to persuade the Board this application should be granted. Ms. Hartmann said yes. Mr. Corradino said the report indicates uses that are prohibited. Ms. Hartmann agreed. Mr. Corradino stated she did not setforth gas stations as a prohibited use as setforth in the ordinance. Ms. Hartmann said she has included motor vehicle service stations which is listed as the second to last one on the list. Mr. Corradino showed her the report and asked her to point it out on his copy. Ms. Hartmann said it was not in there. Mr. Corradino asked to see the report the Board has. Mr. Azrak objected. Mr. Fiorello said there was no question and wanted to compare the two reports. Mr. Corradino said it is obvious his report and the Board’s

report are identical but Ms. Hartmann's is different. Mr. Azrak said she has testified that the gas is not permitted. Mr. Corradino said it is a question of credibility. Mr. Azrak objected again and wanted Mr. Corradino to respect him. Mr. Corradino said his report he has does not show the true copy of the ordinance. Ms. Hartmann said it is the second to last use in the ordinance and she missed it when she prepared her report. She apologized to the Board. Chairman Holloway asked Mr. Corradino to read what was missing. Mr. Corradino said the ordinance sets forth prohibited uses and in the report it states a list of prohibited uses and there is an absence of # 28 which states motor vehicle service stations that was not included in the report. The ordinance is numbered 1-29.

Mr. Corradino asked if the purpose of her testimony was to show the Board that this use variance should be granted. Ms. Hartmann said that was correct. Mr. Corradino said there are two elements that are required in proving a use variance, one is special reasons and two is positive and negative criteria. Mr. Corradino referred to Page 4 of Ms. Hartmann's report where she sets forth a section entitled Special Reasons. Ms. Hartmann said that was correct. Mr. Corradino asked if the special reasons she gave in support of why a use variance should be granted are these special reasons are particular for this application. Ms. Hartmann said yes. Mr. Corradino asked if she would agree that if the special reasons that apply to this application also apply to the permitted uses there should be no need for a variance. Ms. Hartmann disagreed. She testified that the site is uniquely suited for the proposed use given the variety of reasons she mentioned and supported by the MLUL and purposes of the Master Plan.

Mr. Corradino referred to Page 4 of Ms. Hartmann's report where she states the subject site is unique in terms of its location within the Borough and its physical suitability for the proposed convenience store and gasoline sales. He asked if she agreed that the permitted uses set forth on Page 1 of her report would also satisfy that requirement. Ms. Hartmann said yes but is well suited for everything that is proposed. She said when you look to provide special reasons for a use variance you look to see if the site is particularly well suited for the proposed use. That doesn't mean that other things couldn't potentially go there but means this site is particularly well suited for what you are proposing. Mr. Corradino said a food store facility would also fit in on the site which is a permitted use. Ms. Hartmann said what she looked for was how the site was situated in the municipality, what surrounds it and the physical characteristics of the site itself. Mr. Corradino asked which one of the list of permitted uses would not fit on the site. Mr. Azrak objected and asked if they were talking uses or a certain type building. Mr. Corradino said he is talking about uses. Ms. Hartmann said the design, use and openness of the site and that type of design with the sales of gas and not completely developing the site with a building and resulting in the physical and visual aspect of a building on that site is difficult and not appropriate given the huge Public Storage building next door. Mr. Corradino asked what was not appropriate. Ms. Hartmann said she was talking about a huge building with parking. This site was particularly well suited for what is being proposed because it maintains open space and visual through the municipality. It provides a use for the residents of the neighborhood. Mr. Corradino asked if she agreed

that any of these uses in a small building similar to the one that is equal to the convenience store would work on that site. Ms. Hartmann said you could put a two by four up but that is not the issue, the issue is developing the site appropriately with contemporary design standards. Mr. Azrak objected, he felt the witness should be able to finish answering the question. Mr. Fiorello asked Mr. Corradino to let her finish. Mr. Corradino asked if he interrupted her and she said no it was fine. Mr. Azrak asked the court reporter to read back the question. Mr. Fiorello stated Ms. Hartmann said she was finished but if Mr. Azrak wanted it read back they would read it back. He asked Mr. Azrak the point, because Ms. Hartmann said she was finished. Mr. Azrak said he would like her to finish her answer. Mr. Fiorello again stated she said she was finished. Mr. Azrak did not hear that statement. Ms. Hartmann said she did say she was finished. Mr. Fiorello asked the court reporter to read it back. The court reporter read it back. Ms. Hartmann said let's just say she is finished. Mr. Corradino asked from a use point of view if all the permitted uses could be maintained on the site. Ms. Hartmann said one of the things she mentioned was this site and the development is unique in that one aspect of this site is actually a permitted use. Contemporary development on many of these convenience stores today go hand and hand with retail sales of gasoline. She did talk about the fact that it is a retail sales operation and not a motor vehicle service station which has all the noxious uses that they associate with the repair and maintenance of cars. The fact is that the site itself for that particular aspect of this use is very unique. Mr. Corradino asked again if the site as it presently exists today would permit an establishment of uses that are permitted in the ordinance. Ms. Hartmann said yes. Mr. Corradino said in other words the topography of the land is not unique that the only thing they can put there is this gas station. Ms. Hartmann said there are a variety of things that would go into determining whether or not this site could be built for what he is talking about given the size of a building to be viable. You cannot just say yes any thing can go there. As she said a very tiny building on any piece that has unique characteristics can be built anywhere. Mr. Corradino asked if she agreed that the topography of the land is not such that it only permits a gas station. Ms. Hartmann said this is not a gas station, it is a convenience store with retail sales of gas. Mr. Corradino said he is referring to the gas station operation and that is why they need a use variance. Ms. Hartmann agreed. Mr. Corradino asked again if she agreed that the topography of the land is not such that it can only support the use they are presenting. Ms. Hartmann said that was correct.

Mr. Corradino referred to page 5 of her report regarding the Master Plan. The second paragraph notes they encourage development of appropriate commercial, industrial, employment and recreational facilities and to serve the needs of the borough residents and help maintain the borough's stable tax base. He asked if she would agree that any one of the permitted uses would also help maintain the borough's stable tax rate. Ms. Hartmann said this one does as well. Mr. Corradino said that was not what he asked and asked the question be read back. The court reporter read it back. Ms. Hartmann said any development of the site appropriately would maintain it or at lease create taxes for the municipality. Mr. Corradino asked if that meant yes. Ms. Hartmann said that's possible but said one would be better than others. Mr. Corradino said he did not ask that. Ms.

Hartmann said that was her answer. Mr. Corradino moved to strike as unresponsive. Mr. Fiorello asked her to answer yes or no to the question of whether any building that is permitted would maintain a stable tax rate. Ms. Hartmann said yes.

Mr. Corradino said on the same page she indicates that the use will serve the local population providing the residents with the option to purchase typical convenience store goods. The court reporter stated he was going too fast. Mr. Corradino apologized. He referred to Paragraph A, Page 5 that read the gasoline service facility is a retail business for the sale of gasoline only. The convenience store and gasoline uses are generally defined as retail business uses and are appropriate for the subject site. It also says it will serve the local population providing services as well as gasoline without leaving the neighborhood and without accessing major highway Route 46. Mr. Corradino asked if she was aware of the fact they can buy food stuff right down the street at the ShopRite. Ms. Hartmann said yes. Mr. Corradino asked if you make a right and go onto Route 46 west there is a gas station with a complete convenience store. Ms. Hartmann said she was aware of that. Mr. Corradino asked if she was aware there are gas stations with convenience stores along McBride Ave. Ms. Hartmann said she mentioned that, yes. Mr. Corradino asked if it was right that there are this type of use in the area. Ms. Hartmann said yes, there are those types of uses within a distance of this site but not in the area. Ms. Hartmann said it has been her testimony throughout that this sector of the municipality is not serviced by a local convenience store or gasoline sales facility. In fact there are 5 gas stations in the town, 2 on McBride Ave., 2 on Rifle Camp Rd., 1 on Squirrelwood Rd. and 2 on Route 46. The Pathmark is closing and you have the ShopRite but these are large food stores that are not convenience based and do not help someone who is on their way home or on their way somewhere that just wants to get some gas or food and get out without going into a large food store and then go to a gas station on the highway. This site provides this section of town with a site that provides uses that are not provided in the immediate and general vicinity. Mr. Corradino asked if she was familiar with the gas station on Route 46 West that is less than a quarter mile from Browertown Rd that has a convenience store. Ms. Hartmann said yes. He asked if she was familiar with the convenience stores that are located with the gas stations on McBride Ave. Ms. Hartmann said yes. She is not familiar with the one down further on McBride Ave. Mr. Corradino said there is a Shell Station located across from the car wash, there is a Gulf Station on McBride Ave. across from Ernesto's Restaurant and a gas station on McBride Ave. next to the cemetery with a food mart. Ms. Hartmann asked if it was in Woodland Park. She is not familiar with that one. She is familiar with the LukOil with the Dunkin Donuts. Mr. Corradino said there is a Valero on Route 46 East with a convenience store. Mr. Corradino said there are gas stations with stores in this municipality. Ms. Hartmann agreed. Mr. Corradino asked if she said they needed one on this site. Ms. Hartmann said yes. Mr. Corradino asked if it was her opinion that the people in Woodland Park or even this area find it a hardship to go to other gas stations or convenience stores. Mr. Azrak objected and asked what he meant by hardship. Mr. Corradino asked if the witness understood the question. Ms. Hartmann said she actually doesn't know if it's a question she feels comfortable answering with the way it was

worded. Mr. Corradino apologized if she wasn't comfortable but asked if she could answer it. Ms. Hartmann said there are a variety of types of hardship. Mr. Corradino asked if it would be inconvenient. Ms. Hartmann said yes. She said her testimony was that this sector of town is devoid of something that is provided throughout the municipality to other sectors and neighborhood. There is no convenience store use throughout this area of town. Mr. Corradino asked what that area is. Ms. Hartmann said the closest local gas station is the Gulf station on McBride. Mr. Corradino asked what about the station on Route 46. Ms. Hartmann said she is talking about local gas stations and is not talking about regional or highway. Mr. Corradino asked if she thought because it is in a different town it is not local. Ms. Hartmann said she does not consider those local. There are people who are on the road and do not want to get on Route 46 for gas or other items. That is what makes this site so unique and useful.

Mr. Corradino stated he would like to get into the negative criteria. He asked if they should go on this evening he would not be done in 15 minutes. They would go into the negative criteria at the next meeting.

Chairman Holloway stated they should discuss meeting dates. Mr. Corradino and Ms. Hartmann were not available on October 25, 2010 for the regular meeting. Mr. Fiorello asked the reasons why they can't make it. Ms. Hartmann said she has a prior engagement in Passaic on 10/25/10. Chairman Holloway said they are looking at Wednesday, November 10<sup>th</sup>, the regular meeting is November 22<sup>nd</sup>. Mr. Corradino said Tuesdays and Wednesdays are not good. They all would be available for the regular meeting of November 22<sup>nd</sup>. That meeting would start at 7:30 p.m. Mr. Azrak said they are willing to have special meetings and pay for them. It was agreed they would attend the regular meeting and a special meeting will be held on November 29<sup>th</sup> at 7:00 p.m.

A motion to adjourn was made by Mr. Ianniello, second by Mr. Decesare. All in favor. Meeting adjourned.