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ALLIED RECYCLING, INC. AND
LAST CHANCE SALVAGE, INC.

Plaintiffs,

vs.

TOWNSHIP OF SOUTHAMPTON
ZONING BOARD OF ADJUSTMENT
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BURLINGTON COUNTY

DOCKET NO.: L-2448-13

CIVIL ACTION

**TRIAL BRIEF ON BEHALF OF PLAINTIFFS ALLIED RECYCLING, INC. AND
LAST CHANCE SALVAGE, INC.**

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PROCEDURAL HISTORY

On December 20, 2011, Plaintiff, Allied Recycling, Inc. ("Allied") as operator and Plaintiff, Last Chance Salvage, Inc. ("Salvage") as owner (collectively, "Applicant" or "Applicants") filed an application ("Application") with the Township of Southampton ("Township") Zoning Board ("Board") seeking (1) Minor Site Plan Approval and (2) a Use Variance to permit the expansion of a pre-existing non-conforming use (a junkyard) for the installation of a weight scale, a sign and the refurbishing of two existing buildings at the junkyard located at 440 New Road, Southampton, New Jersey, known on the Southampton Township Official Tax Map as Plate 24, Block 2401, Lot 36.02 ("Site").

The Board held a public hearing in connection with the Application on March 14, 2013. Subsequent to the March 14, 2013 public hearing, counsel for the Board strongly urged the Applicants to apply for a Certificate of Non-Conforming Use pursuant to N.J.S.A. 40:55D-68. By letter to the Board secretary, the Applicants amended their application for a Certificate of Non-Conforming Use pursuant to N.J.S.A. 40:55D-68.

The Applicants also made application to the Burlington County Planning Board and the New Jersey Pinelands Commission.

One day prior to the August 8, 2013 hearing date, attorney for Plaintiffs advised both the Board attorney and the Board secretary that, due to an illness (eventually requiring hospitalization) the Applicant would not be in attendance at the August 8, 2013 hearing. On the August 8, 2013 hearing date, the Application was denied without prejudice and a discussion was held between Board members, its professional staff, and residents objecting to the Application.

On August 19, 2013, counsel for the Township filed a Complaint and Order to Show Cause requesting, among other things, that the Applicant's junkyard be closed until a new application was submitted and approval was granted for the relief requested by the Plaintiffs (Superior Court of New Jersey, Law Division, Burlington County, Docket No. L-2037-13). The relief requested by the Township was denied without prejudice and the matter was remanded to the Board.

The Board held a public hearing on September 19, 2013. The Board denied the Certificate of Non-Conforming Use Application at the conclusion of that meeting and memorialized its decision in a resolution dated October 10, 2013, attached hereto as Exhibit "A."

On October 7, 2013, the Applicants filed a Complaint in Lieu of Prerogative Writs challenging the Board's denial of the Application.

RELEVANT FACTUAL BACKGROUND

1. Applicants required a certificate of filing from the New Jersey Pinelands Commission.

The site is located in the Rural Development Zone ("RDZ") in Southampton Township. The Site is subject to the jurisdiction of the New Jersey Pinelands Commission and therefore must satisfy the regulations of the Pinelands Commission and the Pinelands Comprehensive Management Plan ("CMP"). See N.J.S.A. 13:18A-1 et seq. and N.J.A.C. 7:50-5.1 et seq. In accordance with the CMP, any party filing an application for development in a Pinelands Area must first apply for and receive a Certificate of Filing from the Executive Director of the Pinelands Commission. N.J.A.C. 7:50-4.33 to - 4.34. Applicants received a Certificate of Filing in connection with the facility, attached hereto as Exhibit "B".

2. Applicants required an Approval or an Exemption letter from the Burlington County Planning Board.

Because the Site does not abut a County road and because the proposed improvement included less than one (1) of additional impervious surface, it was exempt from County site plan review. A copy of said exemption letter, dated January 17, 2012, is attached hereto as Exhibit "C".

3. Historical Use of the Site

The Site was purchased by the grandfather of Daniel Giberson ("Giberson") in 1947. 3T 54: 7-8.¹ The site has been owned by the Giberson family since that time. The site was part of much larger 34.411 acre parcel owned by the Giberson family. On a portion of that larger parcel now known as the Site, Giberson's parents first operated a junkyard which has been in continuous use through Giberson's parents, Eddie Fuller, Shenny Pointsett and Freeman Pointsett. 3T 55:15-21.

The Township first began defining and regulating junkyards by Ordinance on September 7, 1965. In Ordinance 12:2-1 it defined junkyard as follows "a junkyard within the meeting of this Ordinance is a place, location, yard, covered or uncovered, or placed in the Township of Southampton, kept, maintained, or used for the purpose of buying and selling, exchanging or storing, rags, old metals, old bottles, old glassware, old plumbing fixtures, old lumber, unregistered motor vehicles unfit for reconditioning, dismantled old

¹ IT designates transcript of hearing before Board dated March 14, 2013, attached hereto as Exhibit "D".
2T designates transcript of the postponed hearing dated August 8, 2013, attached hereto as Exhibit "E".
3T designates transcript of hearing before Board dated September 19, 2013. attached hereto as Exhibit "F".

motor vehicles or parts thereof, used motor vehicles or parts thereof, used motor vehicle parts, motor vehicle junk or anything other old material commonly called junk.”

In 1993, the Site was the subject of a minor subdivision application before the Southampton Township Planning Board. The sole purpose of the Planning Board application was to subdivide the Site, consisting of 12.666 acres, from the overall parcel of 34.411 acres. The Planning Board adopted Resolution 93.8 on October 7, 1993 granting a minor subdivision which created the separate lot that comprises the Site.

Currently, the Township defines a junkyard similarly, and the definition of junkyard is found in two places in the Township Ordinances. First, in Chapter 12, the Land Development Ordinance, the Township defines junkyard as follows: “any area of land, with or without buildings, devoted to the storage, keeping, or abandonment of junk or debris whether or not it is in connection with the dismantling, processing, salvage, sale or other use or disposition thereof or of any material whatsoever”. It is further defined in Ordinance Section 4-4.1a. “junkyard” shall mean a place, location, yard, covered or uncovered, or place in the Township kept, maintained, or used for the purpose of buying and selling, exchanging or storing, rags, old metals, old bottles, old glassware, old plumbing fixtures, old lumber, unregistered motor vehicles unfit for reconditioning, dismantled old vehicles or parts thereof, used motor vehicles or parts thereof, used motor vehicle junk, or any other old material commonly called junk.”

Since the licensing ordinance went into effect, the Giberson family (or its corporate entity) has secured a license from the Township to operate a junkyard each and every year. 1T 27:7-11. None of the licenses issued any limitations on the use, except for the Site’s use as a junkyard as defined in the Ordinance.

4. Testimony at the March 14, 2013 Hearing

At the March 14, 2013 Board hearing, Mr. Gary Civalier (“Civalier”) a New Jersey licensed civil engineer, testified regarding the location and the improvements on the Site. 1T 13- 15. He testified that the closest point of the junkyard to the nearest property line was approximately 85 feet and to the closest residential building between 160 to 185 feet. 1T 15 - 16. Civalier prepared engineering plans dated November 16, 2011, revised to November 30, 2012 (submitted as a color rendering) which was submitted in connection with the application (A-1) 1T 17. Civalier also submitted four colored aerial photographs of the property, the first (A-2) from 1963 showing the junkyard in its current location IT 18. Exhibit A-3 is a 1965 aerial photograph with the junkyard in its current location and Exhibit A-4 is a 1970 aerial showing the junkyard in full use. Exhibit A-5 was submitted, a 1995 aerial, confirming that the adjacent residential street, Falcon Drive, was built some time between 1970 and 1995, 1T 18-20.

Giberson next testified on behalf of the Applicant. Giberson testified that he secured the minor subdivision that created the Site of approximately 12.6 in 1993. 1T 24-26. A copy of the 1993 Township Planning Board Resolution was entered into evidence (A-6) 1T 26. Giberson testified that he secured junkyard licenses each and every year that the junkyard

was in existence 1T 27: 7-11. Exhibit A-7 was introduced by Giberson, a plan prepared by Lord, Anderson, Worrell & Barnett drawn on April 26, 1993 (1T 28-29) Giberson testified, that, consistent with the note on the minor subdivision plan submitted as (A-7), the limits of the existing junkyard have not increased nor have any trees been removed. 1T 29:17-25. Giberson testified that business at the junkyard would start around 5:00 in the morning and that the junkyard operator would haul cars, aluminum, trucks, metal, junk, whatever 1T 31: 7-15. Further he testified that the junkyard was open to the public and people would bring stuff to the junkyard 1T 31:16-23.

Mr. Gabrysiak ("Gabrysiak"), the President of both Applicant Allied and Applicant Salvage, testified that upon first operating the site, it was filled with material that was piled everywhere and that significant time was spent cleaning out the property, making it more presentable and safe 1T 33:1-25, 1T 34:1-3. Gabrysiak further testified that, as a junkyard, it currently buys, sells, and exchanges all matters of junk as a junkyard is defined by the Township Ordinance 1T 34:20-25, 1T 35: 1-8. Mr. Gabrysiak described for the Board the automobile dismantling process 1T 54:19-25, 1T 55:1-22.

James Miller ("Miller") then testified for the Plaintiff. Miller is a New Jersey licensed and certified professional planner 1T 59:1-11. Miller stated that there is no planned physical expansion of the junkyard as a result of the Pineland's constraints 1T 62:9-24. He further stated that the junkyard has been in existence in excess of 50 years and, at one time, the junkyard was the only active improvement in this area of the Township 1T 64:14-24.

Finally, at the conclusion of the March 14, 2013 hearing several residents gave their opinion as follows: That the Applicant has taken out trees and installed lights that shine into her bedroom. 1T 76:13-20; that some of what the applicant has done has been very good because there was a lot of junk there and it is clear now 1T 81:1-3. Gabrysiak denied that there were any trees taken out of the site and what the resident is referring to was a twelve (12) foot high pile of tires 1T 81:13-25. Gabrysiak testified that the Applicant did add a fenced screen of approximately 500 feet 1T 82:8-12. Another resident expressed concern about fluids on the site 1T 85: 17-24 and signage 1T 87: 3-23. Several other residents expressed concerns regarding site plan issues such as traffic, lighting, noise, etc.

5. The events surrounding the August 8, 2013 postponed hearing

As stated in the Procedural History, counsel for the Applicant advised both the Board Attorney and Board Secretary that he had taken ill (resulting in a hospitalization) and would not be able to attend the August 8, 2013 hearing. After a brief discussion, a vote was taken by the Board to dismiss the Application without prejudice. After voting on the Motion to Dismiss the Application without prejudice, the Board then heard significant testimony by objecting residents that was unable to be refuted by the Applicants in their absence 2T 10:11-22; 2T 17:6-21; 2T 19: 7-25; 2T 20: 1-22; 2T 22: 6-25; 2T 23: 1-4; 2T 30: 6-25; 2T 30: 1-13; 2T 35: 5-25; 2T 36: 1-8; 2T 37: 9-25 2T 38: 1-2; 2T 44: 18-23 2T 45:1-10. Further, testimony was given by the Board Engineer 2T 11:5, 2T 12:1-7 2T 13:8-14 2T 13:19-23 and the Board Planner 2T 38:3-25, 2T 39:1-9, 2T 42:15-22.²

² Referred to in the transcript as "UNIDENTIFIED SPEAKER."

6. Testimony at the September 19, 2013 Hearing

At the board hearing on September 19, 2013, once again, Applicants testimony satisfied the criteria required for the issuance of a Non-Conforming Use of Certificate. Exhibit A-8 was submitted, which was correspondence from the Board's Attorney dated April 4, 2013. Exhibit A-9 was submitted, A-9 being correspondence from the Attorney from the Applicants dated April 16, 2013 with several attachments. The two Exhibits outlined the Board and Applicants legal position with respect to the use on the Site.

Further, there was a recap by the Attorney for the Applicants as to the history of this application confirming, among other things, an Amendment to the Application requesting a pre-existing non-conforming use certification, the impending litigation with the Township, the Applicants' attempt to meet with residents with respect to the application, etc. 3T 8-16.

As evidence that the historical use of the site was not limited to auto storage, Gabrysiak testified that other than the driveway and the buildings on the site, every square inch was covered with some type of material 3T 21: 1-11. Gabrysiak submitted Exhibit A-10, which was a representative sampling of purchase receipts between Allied and the prior operator of the site, said receipts describing numerous and significant tonnage of non-automobile materials including, but not limited to: light iron (not automobile steel and not copper or brass); aluminum, which can be aluminum siding, doors and windows, aluminum cans; over 31,000 lbs of wood and other debris; over 13,000 lbs of aluminum copper, brass, electrical wiring, etc. 3T 21-28. Gabrysiak testified that no new materials have been brought to the Site that weren't already being used on the Site 3T 30:2-10. Gabrysiak testified that they still have approximately 160 cars on the Site 3T 40:7-10.

Michael Ivins ("Ivins") testified that he was familiar with the Site 3T 34:19-24 and had on occasion be at the Site subsequent to Allied 3T 34:25; 3T 35:1-4. Ivins testified about the operation of the site prior to Allied and post Allied 3T 35:5-24 that the prior operation took in lawn mowers, any kind of metal 3T 36: 3-11 that he never brought an automobile to the junkyard but piled any kind of metal available into his car 3T 36:12-23. Ivins testified that he would take any kind of "stuff" prior to Allied operating the site, including parts of machinery, washing machines, fencing, etc. 3T 41:16-25; 3T 42:1-6; 3T 42: 9-10.

Giberson testified as to the prior business operation based upon his discussion with the prior operator. 3T 43:11-25. Again, Giberson testified that his parents first opened and operated the junkyard, then Eddie Fuller, then Shenny Pointsett, and finally Freeman Pointsett. 3T 55:17-21. Giberson further testified that he used to visit the site with his parents and grandparents and took junk there including trash, cars, aluminum, refrigerators 3T 56:10-15 that his dad started the junkyard with soup cans to get the metal and expanded to cars, tvs, house refuge, countertops, boats, wooden boats, and that the junkyard was never limited to automobiles 3T 58:5-25; 3T 59:1-16. Giberson, responding to a question from the Board chairman as to how all the tires ended up on the Site, testified that starting with Eddie Fuller

the Site took in thousands of tires and had a machine on site to split the tires. He had tractor-trailer loads of tires coming in and out 3T.63:1-21. He further testified that there were tanks, tank transmissions and whole truck loads of washing machines 3T 64:1-23.

Miller then gave an expansive explanation of the junk yard ordinances as defined in the Township codes stating that the language contained in the definition of junkyard could not be more expansive. He stated that recycling is one of the activities that occur at junkyard and is identified in the ordinance by the terms processing contained in the junkyard definition. He finally opined that the uses of site by Allied from a zoning perspective is identical in every respect from the historical uses on that site, even if there is some variation in the operation. Miller stated that it is common for any business or any operation to have some variation in its operational character over a period of time 3T 70, 71, 72, 73, 74, 75, 76, 77.

Finally, the Applicants' planner, Miller, testified as to what a pre-existing non-conforming use was and the Southampton Township's Ordinances regarding said use. 3T 71:5-25. He read into the record the definition of a junkyard in the Land Development Ordinance and the junkyard definition found in the licensing section of the Ordinance. 3T 72-74. Miller opined that the language is extremely expansive and it involves both the storage and potential and eventual reuse of several types of materials all as defined in the Ordinance. 3T 74:6-16. Mr. Miller further gave his professional opinion that recycling is one of the activities, but not the only activity, that is part of a junkyard and the term recycling comes within the current Southampton Township definition of junkyard 3T.73:5-23. Miller opined that Allied's current use of the premises, from a zoning perspective, is identical with the historical use of the property and within the definition of junkyard. 3T76-77. Miller further gave his expert planner's opinion that, based on the evidence submitted, a Certificate of Non-Conforming use should be granted. 3T 80-81.

7. Public Testimony

As stated previously, residents spoke at both the March 14, 2013 hearing and the August 8, 2013 postponed hearing against the application. At the September 19, 2013 hearing the Board Chairman advised the public that the application that was being voted on that evening was solely for a Certificate of Non-Conforming Use and that testimony should be limited to that. Testimony should not be about light, noise, trucks, but should be limited to what any individual might know about goes on at that site and what is going on there today. 3T 135:15-25, 3T 136:1-2. Numerous residents testified as to their opinion that the junkyard has changed 3T 137-168

8. The Board's Denial of the Certificate of Non Conforming Use Request for the Site

At the conclusion of the September 19, 2013 hearing, with minimal discussion and no questions asked of the Applicants or their experts, the Board voted against the Non-Conforming Use Application by a vote of 2 in favor, 4 against and 1 abstention.

None of the Board members gave reasons for their votes.

In the Resolution, it is apparent that Board members were confused and that they included the previous request for the weight scale, sign and the refurbishing of the existing buildings as part of the Certificate of Non-Conforming Use Application deliberations (Paragraph 3 and 4, Page 3 of the Resolution). The Application had previously been amended for a request for a Certificate of Non-Conforming Use, exclusive of the weight scale, sign and the refurbishing of two existing buildings.

The standard used by the Board in determining whether or not to grant a Certificate of Non-Conforming Use was improper. The Board required sufficient information by the Applicants to demonstrate that the current use is identical to the prior use of the site (Paragraph 1, Page 6 of the Resolution) and requiring that the Applicant identify, with specificity, the exact amount and the exact types of items taken in at the Site by the prior owners/operators (over a 50 plus year time period) in comparison to the current junkyard use (Paragraph 2, Page 6 of the Resolution). Both of those requirements are not only arbitrary, capricious and unreasonable, they are legally incorrect. The Board also defined the site as a recycling center and viewed said use as one not included in the definition of junkyard as defined in the Township Ordinance (Paragraph 3, page 6 of the Resolution) contrary to the professional opinion of the Applicants' planner 3T 73:5-23.

It is apparent that, rather than answering the question as to whether or not the Applicants' current use of the Site is or is not within the definition of a junkyard as defined in the Township Ordinances, the Board made an erroneous legal judgment that the Applicant's current use must be identical to a subset of junkyard use (automobiles) for the Board to issue the Certificate of Non-Conformance. The Board made a factually incorrect determination that, because there were thousands of tires on the Site at one time, automotive salvage was the predominant prior subset of a junkyard use, (Paragraph 4, Page 6 of the Resolution), ignoring the testimony of Giberson that the tires were hauled in on tractor-trailer loads and not related to any automobiles on the Site. 3T 63:1-21.

Legal Argument

1. The Board's Denial of the Application for a Certificate of Non-Conforming Use is Arbitrary, Capricious, and Unreasonable.

The Applicant amended its Application before the Board to request a Certificate of Non-Conforming Use pursuant to N.J.S.A. 40:55D-68. A non-conforming use means a use or activity which was lawful prior to the adoption, revision, or amendment of a zoning ordinance, but that which fails to conform with the requirements of the zoning district in which its located by reason of such adoption, revision, or amendment. N.J.S.A. 40:55D-5 It is well settled that non-conforming uses or structures existing at the time of passage of an ordinance may be continued. Kessler v. Bowker, 174 N. J. Super. 478 (App. Div. 1979). A party seeking to continue the non-conforming use bears the burden of proving the nature of the uses character at the time the ordinance was adopted making it non-conforming. N.J.S.A. 40:55D-68.

(a) Standard of Review.

Generally, judicial review of a Zoning Board's Decision is limited and will not be overturned unless arbitrary, capricious, or unreasonable and the burden of proof that the action of the Board arbitrary, capricious, and unreasonable is upon the Plaintiff. Toll v. Bd. Of Chosen Freeholders, 194 N.J. 223, 256 (2008). The arbitrary and capricious is analogous to the substantial evidence standard. Rowatti v. Gonchar, 101 N.J. at 50-51. Cell v. Zoning Bd. Of Adjustment, 172 N.J. at 88. The substantial evidence standard is more appropriate for reviewing a Board's decision involving individualized fact finding PADNA v. City Council of Jersey City, 413 N.J. Super. 322, 332 (App. Div. 210), certif. den. 205 N.J. 79 (2011). A Board's decision is deemed presumptively valid and Courts will defer to a Board's decision if it is supported by substantial evidence on the record and "is not so arbitrary, capricious, or unreasonable as to amount to an abuse of discretion". Ocean County Cellular Tel. Co. v. Township of Lakewood Board of Adjust. 352 N. J. Super. 514, 521-22 (App. Div.), certif. denied, 175 N. J. 75 (2002). Decisions by Zoning Boards must be supported by substantial evidence on the record Kramer v. Board of Adjustment., Sea Girt, 45 N. J. 268, 296 (1965). While a Board may reject expert testimony it may not do so unreasonably, based only upon bare allegations or unsubstantiated beliefs. New York SMSA v. Board of Adjust., Weehawken, 370 N.J. Super. 319 (App. Div. 2004). The conclusion of the Applicants' experts are subject to challenge only if said challenge has a rational and factually grounded basis. Ocean County Cellular Tel. Co., Supra, 352 N.J. Super at 529.

(b) Applicants Satisfied the Certificate of Non-Conforming Use Criteria

1. The question before the Court is whether or not the **current** use at the Site (a junkyard) is substantially similar to the **historic** use at the Site (a junkyard), as the term "junkyard" is defined in the Township Ordinances.

If the use is substantially similar, it will be permitted. Arkam Machine & Tool Co. v. Lyndhurst Tp., 73 N.J. 528 (App. Div. 1962). If there has been an illegal expansion of the use, it will not be permitted, absent a variance. Weber v. Pieretti, 77 N.J. Super. 423 (App. Div. 1962). Note that the “substantially similar” standard was not the standard used by the Board in deciding the Application. Rather the Board used an “identical” use standard.

2. There are a numerous reported cases regarding both permissible and non-permissible expansions of non-conforming uses. Examples of cases that have decided that the expanded use was non-permissible are as follows: Bar to disco. Belleville v. Parillo's, Inc. 83 N.J. 309 (1980); summer bungalows to year-round occupancy. Hantman v. Randolph Twp., 58 N.J. Super 127 (App. Div. 1959), certif. den. 31 N.J.550 (1960); Auto repair shop to rug cleaning business. Barbarisi v. Bd. Of Adjustment, etc., City of Patterson, 30 N.J. Super. 11, (App. Div.). Examples of cases that have decided that the expanded use was permissible are as follows: Increase in number of tenants. State v. Wagner, 81 N.J. Super. 206 (Cty. Ct. 1963) and Institute v. Board of Adjustment, 270 N.J. Super. 396 (Law Div. 1993); changing a business from dairy farming to raising horses. Stout v. Mitschele, 135 N.J.L. 406 (Sup. Ct. 1947;

The one overarching difference in the present case as opposed to all of the cases cited, whether denying or approving an expansion of a pre-existing non-conforming use, is that the Township has both an Ordinance specifically describing the junkyard use in question and a licensing Ordinance that also defines that use. As the testimony submitted by the Applicants, its witnesses and professional clearly shows, the present use of the junkyard not only is clearly within both Ordinance definitions, the activities are also substantially similar to the historic use of the junkyard.

There is, however, as secondary authority, an unpublished New Jersey Appellate Division case that ruled on a non-conforming use application for a junk use(s) that were licensed by the Township. Marlboro Auto Wreckers, Morganville Auto Wreckers and Schechter Enterprises v. The Zoning Board of Adjustment of the Township of Marlboro, County of Monmouth Appellate Division Docket no. A-6137-o8T26137-o8T2. The three Plaintiffs appealed from a judgment entered in favor of the Zoning Board (Board) which determined that the Plaintiffs' non-automotive scrap metal operations were not a permitted use nor were they a pre-existing and non-conforming use.

Plaintiff Schechter owned and operated two properties in Marlboro since 1955 and 1962. A third property was owned and operated by Schechter since 1980. Junkyards are not permitted in the zones where the properties were located without a variance.

In 1982, Marlboro adopted an Ordinance requiring a license to operate a motor vehicle junkyard and a separate license to operate as a wholesale or retail junkyard. (Contrary to Marlboro, Southampton Township has one basic definition of junkyard and one licensing

provision for junkyard, said definition and license seemingly covering both motor vehicle, wholesale and retail junkyards).

In 2007, Schechter wanted to add a scrap metal machine to one of the properties , eventually applying to the Board to determine if the Schechter's activities were either a permitted use or a pre-existing non-conforming use.

During the three hearings before the Board, Schechter testified that, since inception, the properties collected both kinds of junk metal: automotive and non-automotive scrap; that they were never "heavy into scrap" and that it never generated significant revenue; scrap metal amounted to only 25% of the business, the percentages varied from year to year. She was unable to produce receipts of non-automotive scrap prior to 1982. Three witnesses provided testimony on Schechter's behalf, none providing testimony of the continuing non-automotive scrap business before 1982.

Although the 1982 Ordinance required the license application to state the purpose for which the junkyard is to be used, neither the license forms nor the license specified whether a license was issued under Article I as an automotive facility or Article II as a non-automotive facility.

The Board found that Schechter failed to establish the pre-existing nonconforming use for the non-automotive materials from 1982 and that said use was minimal and sporadic in nature and that she could not identify specifically the quantity of non-automotive metal processed.

On appeal of the Board's decision to the Superior Court, the Court affirmed the Board's decision. Most tellingly, the Court noted that the two license provisions in the Ordinance are separated by an "or" provision, meaning that an applicant must seek licensure as an automotive junkyard under Article I or seek licensure as a non-automotive facility under Article II. The Court held that Schechter's scrapping operations were never licensed under Article II. The Appellate Court affirmed the lower Court's decision.

The differences between the Marlboro case and the matter currently before the Court, (even though both involve a non-conforming use application, a junkyard use and licensure) are critical.

First, Southampton Township's definition of a junkyard, in both the land use and the licensing section of the Ordinance, is much more expansive than the Marlboro definition, including all aspects of a junkyard use. Further, the Township issues only one type of junkyard license, a license that allows a licensee to perform any of the activities that are defined in the Ordinance.

Moreover, although there should not have been any need for this Applicant to testify as to the type of junkyard use at the Site (so long as the varied activities were within the Township's definition of junkyard) the Applicant did provide significant testimony and

exhibits as to the many varied non-automotive junkyard activities on the Site since the junkyard's inception in 1947.

(c) The Board misapplied the non-conforming use standard

The Board the used the wrong standard in determining whether or not a non-conforming use certificate should be issued. As noted in the Resolution, the Board held that the Applicant must submit proof that the current use as a junkyard is identical to the prior use of a junkyard and required that the Applicant identify with sufficient specificity both the amount and the type of items taken in at the Site by its predecessors in comparison to the Applicant's current operation of their business to prove that the prior and current uses are identical. As noted above, the proper standard is whether or not the former use is substantially similar to the current use, not identical. Further, the Board required the Applicant to specify the exact amount and types of junk historically at the Site and compare them with the types of junk currently at the site. Again, an improper standard, so long as the uses were consistent with the junkyard Ordinance.

Again, the definitions of a junkyard as defined in both sections of the Township Code are extremely expansive. The land development section of the Ordinance, Chapter 12, defines junkyard as, "Junkyard: Any area of land, with or without buildings, devoted to the storage, keeping or abandonment of junk or debris, whether or not it is in connection with the dismantling, processing, salvage, sale or other use or disposition thereof or of any material whatsoever". Further, in the licensing section of the Ordinance, Chapter 4, "junk yard" shall mean a place, location, yard, covered or uncovered, or place in the township kept, maintained, or used for the purpose of buying and selling, exchanging or storing, rags, old metals, old bottles, old glassware, old plumbing fixtures, old lumber, unregistered motor vehicles unfit for reconditioning, dismantled old motor vehicles or parts thereof, used motor vehicles or parts thereof, used motor vehicle parts, motor vehicle junk or any other old material commonly called junk".

As defined in the Township Ordinances, there is just one use, a junkyard use. Within that junkyard use there are numerous activities that are described, any single one or combination of activities are all defined as a junkyard under the land development ordinance and under the licensing Ordinance. The Township has taken the position, seemingly, that if a predecessor used 40% of the junkyard as an auto salvage yard, 30% of the junkyard as wood processing and recycling and 30% of the junkyard as metal processing and recycling, then a subsequent owner, if it deviates one percentage from any of the subset of activities all as defined in the junkyard ordinance from the previous owner, then it is not entitled to a certificate of non-conforming use. This standard imposed by the Township, that the use must be identical, is an improper standard. If the current use is substantially similar to the prior use it should be permitted.

The Board had no basis for denying the Application for a Certificate of Non-Conforming Use. As discussed above, the Board's resolution ignored uncontroverted testimony from Applicant, Applicant's witnesses, and Applicant's experts in support of the Application, substituting instead reasons not supported by the record as a rationalization for

denial. Moreover, the Board accepted much of the Applicant's expert testimony as probative and credible and still denied the application. Despite the Boards incorrect findings to the contrary, Applicant provided more than sufficient unrefuted evidence that the junkyard use at the site in question satisfied the criteria for the issuance of a Certificate of Non-Conformance. Therefore, the Court must overturn the decision of the Board as arbitrary, capricious, and without a factual basis and grant the Application for a Certificate of Non-Conforming Use.

It must be stated that the Board's decision was heavily influenced by the testimony of the adjoining residents and the Boards own concerns regarding signage, lighting, future traffic and noise, etc. The record shows that there was no finding that the current use is more intense, generates more noise, generates more traffic or is different than the prior use. If there are legitimate issues regarding current noise, traffic, lighting, etc. at the Site, they are to be addressed under the nuisance Ordinances of the Township

Further, those issues, and others, may be a legitimate concern but are matters to be addressed when the Applicant applies for a D-2 variance to expand the pre-existing non-conforming use for the installation of the weight scale, the refurbishing of two existing buildings on the site and the installation of a business sign. However, those potential issues and concerns should not have been matters that concerned the Board with respect to the issuance of a Certificate of Non-Conformance as there were no findings of any change in the use other than the alleged lack of proof of an identical junkyard use.

CONCLUSION

For the above reasons, Applicant's request for a Certificate of Non-Conforming Use should be granted.

**Respectfully Submitted,
RIDGWAY AND STAYTON, LLC**

BY: 

MICHAEL S. RIDGWAY
Attorney for the Plaintiffs

Dated: November 14, 2013

ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF SOUTHAMPTON

RESOLUTION NO. 2013- 10

**CONCERNING THE APPLICATION OF
ALLIED RECYCLING, INC.
CERTIFICATE OF NON –CONFORMING USE DENIAL**

WHEREAS, Allied Recycling, Inc. applied to the Zoning Board of Adjustment of the Township of Southampton for Minor Site Plan Approval and Variance Approval {N.J.S.A. 40:55D-70(d)} for property located at 440 New Road, known as Block 2401, Lot 36.02 (the "Property") on the Official Tax Map of the Township of Southampton, for the purpose of installing a weight scale and refurbishing existing buildings at the existing junk yard; and

WHEREAS, the Property is located in the Rural Development Zone; and

WHEREAS, junk yards are not listed as a permitted use in the Rural Development Zone;
and

WHEREAS, a Certificate of Filing from the New Jersey Pinelands Commission, dated January 2, 2013, was submitted by the Applicant; and

WHEREAS, by e-mail letter dated May 15, 2013, the Applicant's attorney amended the previously filed application requesting that in addition to the previously submitted application requests for relief, the application is further amended to request, in the alternative, a Certificate of Non-Conforming Use pursuant N.J.S.A. 40:55D-68 as well as, alternatively, a (D)(1) Use Variance; and

WHEREAS, the application for a (D) variance and minor site plan approval was deemed complete by the Board on March 14, 2013; and

WHEREAS, public hearings to consider the application were held by the Zoning Board of Adjustment on March 14, 2013 and September 19, 2013, after appropriate public and personal notice was provided to all property owners within 200 feet of the Property and published in the Official Newspaper of the Township, as required by the land development regulations of the Township of Southampton and the statutes of the State of New Jersey¹; and

¹ The March 14, 2013 Public Hearing was adjourned at 11:00 p.m. and continued to April 11, 2013. The Applicant's attorney waived all time requirements for Board action. At the April 11, 2013 Board meeting, the Allied Application was continued to the May 9, 2013 meeting date at which time the Applicant's attorney represented that the Applicant would amend its application and apply for a certificate of non-conforming use and a (d)(1) variance. The Application was then carried to June 13, 2013. With only four (4) members in attendance at

WHEREAS, the Applicant presented evidence to the Board through testimony, plans and other evidence; and

WHEREAS, the following exhibits were introduced by the Applicant at the March 14, 2013 and September 19, 2013 Public Hearings:

- A-1 - Color rendering of site plan;
- A-2 - 1963 aerial photograph of Property, without Falcon Drive;
- A-3 - 1965 aerial photograph of Property, without Falcon Drive;
- A-4 - 1970 aerial photograph of Property, without Falcon Drive;
- A-5 - 1995 aerial photograph of Property, with Falcon Drive;
- A-6 - 1993 Resolution of the Southampton Planning Board approving minor subdivision of Block 2401, Lot 36.01, into Lot 36.01 (21.751 acres) and the Property (Lot 36.02 -12.666 acres);
- A-7 - 1993 Minor Subdivision Plan prepared by Lord, Anderson and Worrell;
- A-8 - Photograph of screening taken on March 8, 2013;
- A-8 - April 4, 2013 Letter of Thomas J. Coleman, III, Board Solicitor to Michael Ridgway, Applicant's Attorney (misidentified as a second Exhibit A-8);
- A-9 - April 16, 2013 Letter from Michael Ridgway to Thomas J. Coleman in response to April 4th letter;
- A-10 - Sampling of receipts for materials taken off the Property;
- A-11 - 2007 aerial photograph;
- A-12 - 2000 aerial photograph from the Delaware Valley Regional Planning Commission; and

WHEREAS, the following exhibits were introduced by the Public at the September 19, 2013 Public Hearing:

- B-1 - Photograph of large purple truck taken on August 14, 2013;
- B-2 - Photograph of truck;
- B-3 - Photograph of loaded truck;
- B-4 - Photograph of same truck taken at 1:30;

the June 13th meeting, the Applicant's attorney requested that the Application be rescheduled to the August 8, 2013 meeting, as the Applicant's professionals were not available for the July meeting date. The Board dismissed the Application, without prejudice, at its August 8, 2013 meeting because the Applicant was not present do to its attorney being ill. Pursuant to a September 17, 2013 Court Order, the matter was remanded back to the Zoning Board for further consideration.

B-5 - Photograph of Pennsylvania truck;

B-6 - Photograph of debris piles; and

WHEREAS, the Board after carefully considering the evidence presented by the Applicant in support of its application, as amended, and after the meeting was opened to the public for their questions, comments and input, has made the following findings of fact:

1. The Applicant is the owner of the Property located at 440 New Road in the Rural Development Zoning District of the Township of Southampton. The Property is 12.666 acres +/- in area. A junk business has operated from the property for a considerable number of years and the Township has issued licenses for a junk yard since 1967. The Applicant identifies the current use of the Property as a junk/salvage/recycling yard.

2. The Applicant is proposing to install a weight scale and refurbish existing buildings. The weight scale was installed without the Applicant first obtaining the required approvals or permits.

3. The existing junk business is a non-conforming use in the Rural Development Zone and the Applicant filed an Application for minor site plan approval and a (D) variance for its proposal. After the March 14, 2013 public hearing, the Applicant amended its application to also request in the alternative a certificate of non-conforming use and a (D)(1) variance.

4. Proper notice of the application, as amended, has been given, based upon the certified list from the Office of the Southampton Tax Assessor.

5. Michael Ridgway, Esquire, represented the Applicant from the filing of the Application, including the March 14, 2013 and September 19, 2013 Public Hearings. Dan Giberson, Thomas Gabrysiak, James Miller and Michael Ivins testified on behalf of the Applicant at the September 19, 2013 Public Hearing in which the Board conducted a Special Meeting on the Applicant's request for a Certificate of Non-Conforming Use.

6. At the September 19, 2013 public hearing, Mr. Ridgway read into the record the definitions of junk yard and junk, as provided in Section 4-4.1 and Chapter 12, respectively, of the Township Ordinances. Mr. Ridgway then reviewed the standards for the issuance of a Certificate of Non-Conforming Use.

7. Mr. Giberson testified at the September 19, 2013 Public Hearing as follows:

- a. The Property has been in his family since 1947 with the history of owners including his parents, Mr. Eddie Fuller, Shinn Pointset and then Freeman Pointset;
- b. Over the years, tomato cans, automobiles, tv's and wooden boats were taken to the site;
- c. The Applicant still has not paid me;
- d. Tires started when Mr. Fuller operated the junk yard;
- e. The junk yard can only cover 3.5 acres.

8. Mr. Gabrysiak provided the following testimony at the September 19, 2013 Public Hearing:

- a. The Applicant purchased all of the stock of Last Chance Salvage from Mr. Pointset on July 27, 2012;
- b. The Applicant had rented the Property since 2010 prior to its purchase;
- c. When the stock was acquired from Mr. Pointset, the Property was a mess and the Applicant has been cleaning up the Property ever since;
- d. A review of receipt of materials from prior to the Applicant's leasehold occupancy of the Property indicates that tires, light iron, cars, No. 1 steel, aluminum, wood and other debris, copper, brass wiring and plumbing parts were removed from the Property;
- e. Significant pounds were taken off site;
- f. The NJDEP classified us as a junk yard and is making us more environmentally friendly;
- g. We are a scrap metal and recycling center.

9. Mr. Miller testified at the September 19, 2013 Public Hearing as follows:

- a. A certificate of non-conformity should be granted because the use as a junk yard has continued since 1963, the definition of junk yard includes a reference to any other material considered junk and a reference to selling or exchanging;
- b. Recycling is one of the activities that goes on at a junk yard;

- c. The use proposed by the Applicant is the same as was used by prior owners and is consistent with the definition of junk yard in the Township Ordinances;
- d. The only change is the change in ownership of the use;
- e. The scale modernizes the use, it does not change it;
- f. The site is particularly suited for a recycling center.

10. Mr. Ivins provided the following testimony at the September 19, 2013 Public Hearing:

- a. When Mr. Pointset had the Property, it looked like Sanford and Sons and now the Property has been cleaned up;
- b. He personally took items to the junk yard, including, old washing machines, transmissions, wife fencing and old metal.

11. The following testimony was provided during the public portion of the September 19, 2013 Hearing:

- a. Bruce Gsell who testified that the prior operation was very small and it was locals dropping off stuff;
- b. John Wishart, Falcon Drive, who testified that it was previously a small junk yard and more heavily wooded than it is now;
- c. Ben Lerner, Falcon Drive, who testified that he moved to Falcon Drive 34 years ago and he is concerned that the site is now an industrial site and a fire hazard to the community;
- d. Kathleen Wishart, Falcon Drive, who asked questions regarding the 1993 subdivision and the differences regarding the Planning Board and the Zoning Board;
- e. Patricia Topham, New Road, who presented a series of truck photographs, and testified that the trucks now coming to the site are oversized and create a safety concern for school bus drop offs as these oversized trucks take up the entire street;
- f. Lawrence Burke who testified that there is now debris where there was none five years ago;

- g. Nancy King who testified that there are now out of state trucks coming to the site to drop off materials and in the past she never saw the refrigerators, microwave ovens, and other household appliances that she now sees at the site;
- h. Steven Jenkins, New Road, who testified that the Applicant has cleared out brush and trees that previously existed on the site;
- i. Penny Sundstram, who testified that there are now piles of debris at the site that did not previously exist;
- j. J. P. Price, who testified that there is more going on at the site now in comparison to the prior operations.

12. Thomas J. Scangarello, the Board's Professional Planner, opined that this is a (D)(2) Expansion of a Non-Conforming Use Variance.

AND WHEREAS, based upon the above factual findings, the testimony provided by the Applicant's witnesses and the testimony of the public, the Zoning Board of Adjustment has come to the following conclusions regarding the Applicant's request for a Certificate of Non-Conforming Use:

- 1. The Applicant has not provided sufficient information demonstrating that its current use is identical to the prior use of the Property, warranting the issuance of a Certificate of Non-Conforming Use.
- 2. The Applicant has not identified with sufficient specificity the amount and type of items taken in at the Property by its predecessors in comparison to the Applicant's operations of the business.
- 3. The Applicant has not provided sufficient information as to the prior operations of the business as including a recycling center as the Applicant now conducts on the Property.
- 4. With the amount of tires that the Applicant testified was removed from the Property, it is apparent that a substantial amount of the prior business was related to automobiles and the Applicant has not provided testimony demonstrating that its business is equally reliant upon automobiles.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Southampton, on the 19th day of September, 2013, that this Board hereby denies

the issuance of a Certificate of Non-Conforming Use, as requested by the Applicant pursuant to N.J.S.A. 40:55D-68.

ROLL CALL VOTE

Those in Favor of Issuing the Requested Certificate:	2
Those Opposed to Issuing the Requested Certificate:	4
Those Abstaining:	1

CERTIFICATION

I hereby certify that this foregoing Resolution is a true memorializing resolution, as adopted by the Zoning Board of Adjustment of the Township of Southampton in accordance with its decision at its special meeting on September 19, 2013.

**THE ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF SOUTHAMPTON**

Attested:


STEPHEN ZOLTOWSKI, CHAIRMAN


SHERI HANNAH, SECRETARY

Dated: 10/10/13
Date of Approval: 9/19/13
Date of Memorialization: 10/10/13



Chris Christie
Governor

Kim Guadagno
Lt. Governor

State of New Jersey
THE PINELANDS COMMISSION
PO Box 359
NEW LISBON, NJ 08064
(609) 894 7300
www.nj.gov/pinelands



Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

General Information: Info@njpinelands.state.nj.us
Application Specific Information: ApplInfo@njpinelands.state.nj.us

CERTIFICATE OF FILING

January 2, 2013

Allied Recycling, Inc.
2658 Route 206
Mt. Holly, NJ 08060

Re: Application # 1993-0489.004
Block 2401, Lot 36.02
Southampton Township

Dear Applicant:

This application for the development of a weigh station with associated concrete pad (2,570 square feet) and the surfacing of approximately 2,357 square feet of an existing dirt driveway with crushed concrete, accessory to an existing commercial use (salvage yard), on the above referenced 12.67 acre lot is complete. The lot is located in a Pinelands Rural Development Area.

The completion of this application has resulted in the issuance of this Certificate of Filing. This Certificate of Filing is required before any other agency can deem an application complete and take action on your proposed development. The agency may proceed to review and take action on the proposed development. The applicant must give notice to the Pinelands Commission of any modification of the proposed development and of any approval received for the proposed development within five days of receiving any approval.

The site plan submitted to the Pinelands Commission was prepared by Civalier Engineering and Surveying, dated November 16, 2011 and revised November 30, 2012.

The development subject of this application, as well as additional development proposed to be removed, occurred on the lot without the completion of an application to the Commission in violation of the application requirements of the Township land use ordinance and the Pinelands Comprehensive Management Plan (CMP). A total of approximately 11,200 square feet of an existing dirt driveway was surfaced with crushed concrete. The applicant proposes to remove approximately 8,843 square feet of crushed concrete from the driveway and leave the remaining approximately 2,357 square feet of the driveway that was surfaced with crushed concrete. This application is intended to resolve this violation of the Township land use ordinance and the CMP.

An application for a two lot subdivision of original 34.42 acre Block 2401, Lot 36A in Southampton Township and no further development was previously approved pursuant to the provisions of the CMP



(App. No. 1993-0489.001). Block 2401, Lot 36.02 subject of the current application was created as a result of that approval.

There are wetlands on and within 300 feet of the above referenced lot. To meet the wetlands protection standards of the Township land use ordinance and the CMP, all development, including clearing and land disturbance, must be located no closer to wetlands than the 1981 limits of the pre-existing salvage yard. The above referenced plan indicates that this requirement is being met.

The applicant's Pinelands application indicates that the existing development is served by an onsite septic system.

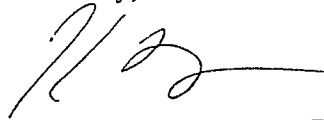
A copy of any municipal or county approval or permit issued for the proposed development must be submitted to the Pinelands Commission. Prior to Commission issuance of a letter advising that any final municipal site plan approval, or municipal construction permit if no site plan approval is required, for the proposed development may take effect, documentation confirming the removal and lawful disposal of crushed concrete from approximately 8,843 square feet of the existing driveway must be submitted to the Commission.

THIS CERTIFICATE OF FILING IS NOT AN APPROVAL. It is the letter necessary for other agencies to review and act on your application. If either a municipal or county agency grants an approval or permit for the proposed development, that approval is subject to review by the Pinelands Commission. No local approval shall take effect and no construction or development shall occur unless written notice from the Pinelands Commission has been received, indicating either that the Commission will not review the local approval or that the Commission has approved the local approval.

This Certificate of Filing is transferable to future owners of this lot.

If you have any questions, please contact April Fijalkowski of our staff.

Sincerely,



for Charles M. Horner, P.P.

Director of Regulatory Programs

enc: Local Agency Approval Submission Checklist

c: Secretary, Southampton Township Planning Board
 Southampton Township Construction Code Official
 Southampton Township Zoning Officer
 Southampton Township Environmental Commission
 Secretary, Burlington County Planning Board
 Burlington County Health Department
 Michael S. Ridgeway, Esq.

312

Board of Chosen Freeholders
County of Burlington
New Jersey



OFFICE OF:
COUNTY ENGINEER
Land Development Section

Telephone # (856) 642-3800
Fax # (856) 642-3810

Mailing Address
P.O. Box 6000
Mount Holly, NJ 08060

Physical Location
1900 Briggs Road
Mount Laurel, NJ 08054

January 17, 2012

B.C.P.B. #S12-33-001

Mr. Jody Mazeall
Southampton Twp. Construction Official
5 Retreat Road
Vincentown, NJ 08088

RE: ALLIED RECYCLING, INC.
Lot 36.02. Block 2401. Sheet 24. 12.6657 Acres.
Drawing No. Sheet 1 of 1 dated 11/16/11.
Located on New Road (MUNICIPAL).

Dear Mr. Mazeall:

As this site plan for land development is not along a County road and includes less than one (1) acre of additional impervious surface, it is exempt from County site plan review. This is in accordance with Public Law 1981, Chapter 50, adopted February 25, 1981.

If further development is proposed, a site plan must be submitted to the Burlington County Planning Board.

By copy of this letter, we are notifying Allied Recycling, Inc. that no application fee is necessary for an exempt site plan. Therefore, we are enclosing a County voucher form to be signed in the lower, left-hand corner and returned to this office in the envelope provided for the processing of the refund of \$100.00.

COUNTY PLANNING BOARD EXEMPTION IN NO WAY AFFECTS OR NEGATES ANY APPROVAL REQUIRED BY THE MUNICIPALITY.

Very truly yours,

BURLINGTON COUNTY PLANNING BOARD

Mia C. Baker, Secretarial Assistant
Secretary to the Planning Board

cc: Burlington County Land Use Office
Burlington County Economic Development Department
Betty Conley, Secretary, Southampton Twp. Planning Board
Allied Recycling, Inc. (w/enc. County Voucher & Return Envelope)
Last Chance Salvage, Inc.
Civalier Engineering & Surveying, Inc., Atten: Gary R. Civalier
Michael S. Ridgway, Esq.

SOUTHAMPTON TOWNSHIP ZONING BOARD
OF ADJUSTMENT
BURLINGTON COUNTY, NEW JERSEY

IN THE MATTER OF) TRANSCRIPT
)
) OF
ALLIED RECYCLING,)
) ZONING BOARD MEETING

Place: 5 Retreat Road
Southampton, NJ 08088

Date: March 14, 2013

ZONING BOARD MEMBERS PRESENT:

STEPHEN ZOLTOWSKI, Chairperson
PATRICK KENNEDY, Vice Chairperson
RODNEY GOETTLEMANN
EVELYN M. DOHERTY
WILLIAM ROBBINS
TIMOTHY Q. MURPHY
JODY MAZEALL
R. J. HAAS

PROFESSIONALS AND SUPPORT STAFF:

SHERI HANNAH, Secretary
JODY MAZEALL, Zoning Officer
THOMAS COLEMAN, ESQ. (Raymond Coleman Heinold & Norman)
RAKESH DARJI, Engineer (Environmental Revolutions, Inc.)
THOMAS SCANGARELLO, Planner

APPEARANCES:

MICHAEL S. RIDGWAY, ESQ. (Ridgway & Stayton)
Attorney for Applicant

Transcribers, Andrea Foy and
Wendy Antosiewicz

J&J COURT TRANSCRIBERS, INC.
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Hamilton, NJ 08619

(609) 586-2311

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E-mail: jjcourt@jjcourt.com

Website: www.jjcourt.com

Audio Recorded

A D D E N D U M

Individuals identified within the text of the following transcript do not represent necessarily all of the individuals in attendance at this meeting. Their presence, speaker identification and other information regarding title page and appearance, along with various words, proper nouns and other spellings found within this transcript were able to have been extrapolated from minutes of the meeting and discussions with the Board Secretary and, of course, that which is evident and that which can be concluded by way of the tape recording itself, which is of fair quality.

Areas of the tape which were unable to be discerned were identified by placing the word (indiscernible) or (inaudible) followed by a short explanation.

* * * * *

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1 THE CHAIRPERSON: The Zoning Board is back in
2 order. Call the application for Allied Recycling,
3 Block 2401, Lot 36.02, 2658 Route 206, for a minor site
4 plan.

5 UNIDENTIFIED SPEAKER: Mr. Chairman, can we
6 take care of the housekeeping issue with respect to
7 notice?

8 THE CHAIRPERSON: Yes, please.

9 UNIDENTIFIED SPEAKER: Mr. Chairman, I did
10 have an opportunity to review the notice that was
11 prepared by Mr. Ridgway's office and find the same
12 acceptable.

13 Sheri, did you have an opportunity to review
14 the mailings, as well?

15 MS. HANNAH: Yes, I did.

16 UNIDENTIFIED SPEAKER: The application, from
17 a notice standpoint is complete, Mr. Chairman.

18 THE CHAIRPERSON: Counsel, do you have anyone
19 else who's coming up to testify?

20 MR. RIDGWAY: Yes, Mr. Chairman. There's
21 going to be at least four people testifying this
22 evening.

23 THE CHAIRPERSON: Do you want to bring them
24 all up now and have them all sworn in?

25 T H O M A S G A B R Y S I A K, WITNESS, SWORN

1 D A N I E L G I B E R S O N, WITNESS, SWORN

2 J A M E S M I L L E R, WITNESS, SWORN

3 G A R Y R. C I V A L I E R, WITNESS, SWORN

4 MR. RIDGWAY: Maybe we'll just introduce them
5 separately.

6 UNIDENTIFIED SPEAKER: Yes.

7 MR. RIDGWAY: Mr. Gabrysiak, could you please
8 give your name, address and your connection to this
9 application.

10 MR. GABRYSIK: Thomas Gabrysiak, 109 Paddock
11 Drive, Springfield Township, New Jersey. I am the
12 owner of Allied Recycling.

13 MR. RIDGWAY: Can you just spell your last
14 name, please?

15 MR. GABRYSIK: G-a-b --

16 MR. RIDGWAY: G-a-b --

17 MR. GABRYSIK: -- r-y-s-i-a-k.

18 MR. RIDGWAY: -- r-y-s-k --

19 MR. GABRYSIK: -- i-a-k.

20 MR. RIDGWAY: -- i -- okay, I'm sorry, thank
21 you. Mr. Giberson, could you please give your name and
22 address?

23 MR. GIBERSON: My name is Daniel Giberson, my
24 address is 310 Issac Budd Road. I was the former owner
25 of the junk yard and I also own 100 more acres over

1 there.
2 MR. RIDGWAY: Mr. Miller?
3 MR. MILLER: Yes, my name is James Miller,
4 I'm a professional planner and I'm here to testify on
5 the application.
6 MR. RIDGWAY: Your address please?
7 MR. MILLER: 222 Nicholson Drive, Moorestown,
8 New Jersey.
9 MR. RIDGWAY: Gary?
10 MR. CIVALIER: My name is Gary R. Civalier,
11 I'm a licensed engineer and land surveyor. I'm here to
12 testify on behalf of the application. My address is 12
13 West Mantua Avenue, Wenonah, New Jersey.
14 THE CHAIRPERSON: Can I just have one thing
15 clarified?
16 MR. GABRYSIK: Yes.
17 THE CHAIRPERSON: You own Allied, do you own
18 the property?
19 MR. GABRYSIK: We do own -- we own the
20 property, the property's owned by Last Chance Salvage,
21 and we also own that, yes.
22 MR. RIDGWAY: The corporation, you own the
23 real estate and the business --
24 MR. GABRYSIK: We own the real estate and we
25 own the corporation that owns the real estate and we

1 own the company that's (indiscernible) off out of the
2 property.
3 UNIDENTIFIED SPEAKER: Tom, you're authorized
4 to appear on behalf of the corporation here this
5 evening?
6 MR. GABRYSIK: Yes.
7 MR. RIDGWAY: Both corporations.
8 MR. GABRYSIK: I am the president of both
9 corporations.
10 UNIDENTIFIED SPEAKER: Okay.
11 THE CHAIRPERSON: Just to -- the application
12 was made by the -- what I'll say tenant versus the land
13 owner, Mr. Coleman?
14 MR. COLEMAN: That's fine, as long as the
15 owner consents to the application being made, that's
16 fine.
17 THE CHAIRPERSON: Okay.
18 UNIDENTIFIED SPEAKER: You can be seated.
19 THE CHAIRPERSON: And, I'm sorry, your name
20 again?
21 MR. RIDGWAY: Mike Ridgway.
22 THE CHAIRPERSON: Okay.
23 MR. RIDGWAY: Appearing on behalf of the
24 applicant.
25 THE CHAIRPERSON: Okay, Mr. Ridgway?

1 MR. RIDGWAY: Thank you, Mr. Chairman.

2 This application is for property located at
3 440 New Road, Block 36.01, Block 2401, known as the
4 Last Chance Salvage Yard and Junk Yard. The
5 application is for a D variance for the expansion of
6 the non-conforming -- preexisting, non-confirming use
7 and a minor site plan. And before we begin testimony,
8 everybody hears the word junk yard and hears expansion
9 and the hair on everybody's neck starts to rise.

10 THE CHAIRPERSON: Now, I have to stop you,
11 I'm sorry, I apologize.

12 MR. RIDGWAY: Yes.

13 THE CHAIRPERSON: It was called as Route 206,
14 but we're talking about New Road.

15 MR. RIDGWAY: Yes.

16 THE CHAIRPERSON: What is the correlation
17 between 206 and New Road here, what is --

18 MR. RIDGWAY: I'm sorry, I may have misspoke.
19 It's 440 -- 440 New Road in Southampton, it's not on
20 206.

21 THE CHAIRPERSON: No, you didn't.

22 MR. RIDGWAY: Oh --

23 THE CHAIRPERSON: The agenda says Route 206.

24 MR. RIDGWAY: Oh.

25 THE CHAIRPERSON: But -- so, Allied Recycling

1 is on Route 206 and they have --

2 MR. RIDGWAY: Allied Recycling has another
3 junk yard on Route 206 in Springfield Township, but
4 this application is for 440 New Road in Southampton.

5 THE CHAIRPERSON: Okay. The agenda's just
6 wrong. The agenda says Route 206, but it's actually
7 440 New Road.

8 MR. RIDGWAY: Yes.

9 THE CHAIRPERSON: Okay. Thank you, I'm
10 sorry, proceed.

11 MR. RIDGWAY: That's okay. As I was saying,
12 when you hear, as part of an application, that there's
13 a D variance for extending a preexisting, non-
14 conforming use, specifically a junkyard, it
15 understandably makes people nervous. And as you'll
16 hear through the testimony this evening, the expansion
17 is -- I guess the easiest way of putting it is
18 (indiscernible).

19 When this parcel was subdivided off of the
20 mother (indiscernible), if you will, back in 1993
21 before this Board, the Pinelands gave an approval
22 (indiscernible) filing for this junkyard in the
23 dimensions that currently exist now. And part of that
24 approval was that there could be no expansion of that.

25 And we are not expanding the dimensions of

1 this junkyard in any way, shape or form. In fact, as
2 you'll hear from testimony by the applicant, the
3 junkyard has been significantly cleaned up since Allied
4 purchased this property from the prior owner, Mr.
5 Giberson, a couple of years ago.

6 The only expansion that's occurring -- and
7 again, you can call it whatever you want, but the
8 (indiscernible) law says to call it expansion -- is
9 there was the installation of a weight scale in the
10 middle of the property, probably around 500 feet from
11 any property boundary line. And that was placed in the
12 middle of the property about maybe a year ago, and
13 that's the expansion that we're talking about.

14 There's no expansion of ours, there's no
15 expansion of people, there's no expansion of anything
16 of the sort with respect to the activity, no trees
17 being cut down, nothing of that sort. And as a result
18 of that weight scale there's a site plan component of
19 this preexisting use, as well, because the installation
20 of any improvement, namely the weight scale, is the
21 requirement of the site plan.

22 And that weight scale is, as you'll see from
23 the plans, it's basically something that sits on the
24 ground, it doesn't have any big high buildings around
25 it or anything along those lines. And the truck just

1 drives in, gets weighed and drives off and that's the
2 extent of the improvement that we have this evening
3 before this Board.

4 I should correct myself, there are two other
5 minor things. And there is existing -- some existing
6 buildings on the site, again in the very center portion
7 of the site. Two of those buildings were in
8 significant disrepair and we're looking to essentially
9 reconstruct those buildings again, not expanding the
10 size, not expanding the height, not doing anything
11 other than refurbishing those buildings that are in
12 significant disrepair.

13 With those preliminary comments, I'd like to
14 start by giving our engineering testimony by Mr.
15 Civalier. Gary, if you could come up please.
16 EXAMINATION BY MR. RIDGWAY

17 Q Mr. Civalier, you were retained by the
18 applicant to prepare plans and drawings and studies for
19 this application, is that correct?

20 A Yes.

21 Q Before you start giving testimony, could you
22 please give a brief description of your educational
23 background as your experience as a licensed engineer
24 and your history of appearances before boards, whether
25 planning or zoning, in the State of New Jersey?

1 A Yes. I've been a licensed professional engineer
2 in the State of New Jersey since 1984, as well a
3 licensed land surveyor in the State of New Jersey since
4 1987. I have been before probably over 1,000 boards in
5 that time frame, probably closer to 2,000, presenting
6 both site plans, major subdivisions, minor
7 subdivisions, that type of improvement.

8 I have been before this Board, it's been a
9 number of years ago, but I've been here before. I've
10 been to pretty much every board in Burlington, Camden,
11 Gloucester County, Salem County, Cumberland County.
12 And have been on both sides of the table, I've also
13 acted as an engineer for townships in the past, also.

14 MR. RIDGWAY: With that, Mr. Civalier if we
15 could submit Mr. Civalier's testimony as an expert
16 witness with respect to civil engineering?

17 THE CHAIRPERSON: The Board accepts his
18 credentials.

19 Q Gary, let me have you run with the ball.

20 A Okay.

21 Q If you could describe the existing
22 conditions, the previous approval from the Pinelands
23 from '93. What was constructed on that site that is
24 requiring this use variance and site plan application
25 this evening?

1 A If you don't mind I'll go over to the Board. What
2 we have done is covered up the site plan that was
3 submitted to the Board and just to differentiate and to
4 make it easier for the Board to see and the members of
5 the public to see what we're describing.

6 The impetus for this application again is the
7 installation of the scale which is in this location.
8 It has -- it's mounted onto a concrete (indiscernible)
9 type of arrangement, and the concrete is shown in the
10 grey area and the actual scale is the lighter brown
11 colored area.

12 And on top of that there's a trailer that we
13 moved from another location over here next to the scale
14 as the office for that scale operation. On top of that
15 there was -- there are the existing buildings that were
16 discussed previously which are in this location. One
17 of these buildings acts as the restroom and break room
18 for the site.

19 There's an existing septic system that's in
20 this location right here, right behind the trailers,
21 which has been there at least since 1970 or '63 and
22 maybe before that. The area that is cleared is shown
23 in the lighter tan color, that's the area of the yard
24 that is presently being used.

25 The lighter green outline is the present tree

1 line at the site. The darker green line is the actual
2 line from the 1993 plans that were approved by both the
3 Pinelands and this Board which, as you can see, is
4 slightly past the limits of where the tree line is now.

5 The -- I mean the site is serviced by an on
6 site well and septic system, as I said. We are
7 proposing no changes to that, there's not going to be
8 any changes to the restroom trailer that is used at the
9 site. And it -- just to let you know the site is
10 approximately 12.67 acres and presently, in its
11 existing condition, the clearing limit is approximately
12 30 percent.

13 Q Mr. Civalier, the improvements that are shown
14 on that site now would have been there since
15 (indiscernible) and the new improvement which is the
16 weight scale. With respect to any impact on a
17 (indiscernible) makes, without skimming things off,
18 would you say that these improvements would probably be
19 in the most advantageous location in that entire site
20 with respect to side yard boundaries, or rear yard
21 boundaries or front yard boundaries for that surface?

22 A Yes. They're pretty much centralized on the site
23 so it's at its furthest distance from all side property
24 lines.

25 Q Okay. And beside the cleared area, all this

1 dark green area, that's all -- obviously in the winter
2 time it's probably deciduous with maybe some scrub
3 pines, but that's all wooded vegetation, not formal
4 landscaping, but wooded vegetation, as well, is that
5 correct?

6 A That is correct.

7 Q Is there a fence that borders the 1993 limit
8 of use -- I guess is the better way of putting it -- on
9 that site that exists now?

10 A There is an existing fence that runs within the
11 trees in some areas and pretty much encloses the whole
12 the area. It does enclose the whole area for security
13 purposes. I believe that was installed so that
14 obviously (indiscernible) off the site.

15 Q Okay. And what's the closest point of that
16 fence to any property boundary line, as clear as you
17 can guess based on the plan?

18 A Based on the plan and scaling that off, because I
19 did not calculate that, but it would be in the north
20 west location of the site, and it would be
21 approximately 85 feet from the closest corner of the
22 fence to the adjacent property line.

23 Q And that 85-foot dimension is pretty much in
24 one spot and it pretty much veers further and further
25 away whether you go up or down that fence line, is that

1 correct?

2 A That is correct.

3 Q And that is an area that is bounded by
4 residences on -- is that the north west corner if my
5 eyes are correct?

6 A Yes.

7 Q Okay. And those lots are residential lots,
8 is that correct?

9 A Yes, they are.

10 Q And that dimension you gave us is to the lot
11 line, so that the houses -- because they're pretty
12 large lots -- they're probably another serious bit of
13 distance, is that correct?

14 A Yes. It would probably be another 75 to 100 feet
15 at least to the homes.

16 Q All right. As we've made this application,
17 Mr. Civalier, we said that this is an expansion of a
18 preexisting use. Have you done any studies or done any
19 aeriels or some research with respect to when its use
20 -- at least approximately, when its use occurred?

21 A Yes. I went back and utilizing historical
22 aeriels, I downloaded -- and I can present these to the
23 Board -- four different photographs --

24 Q One second, Gary, I'm sorry.

25 UNIDENTIFIED SPEAKER: Why don't we do this?

1 Let's -- before we get out of order.

2 A Okay.

3 UNIDENTIFIED SPEAKER: Gary, why don't you go
4 and mark that as Exhibit A-1.

5 A A-1.

6 UNIDENTIFIED SPEAKER: And we're going to
7 call this colored version of site plan previously
8 submitted. Mr. Ridgway has Exhibit 2.

9 Q This Exhibit 2 or A-2, I'm sorry, which
10 depicts four colored aerial photos of the property.

11 A Yes.

12 Q And, Gary, if you could, could you run
13 through each of these four, identifying them by date
14 based upon your downloading those pictures and describe
15 what was -- what's shown by each of those pictures.

16 A Sure. The first one is a 1963 aerial which,
17 although it does not show any of the homes along Falcon
18 Drive because they were not --

19 THE CHAIRPERSON: One second. Tom, is this
20 one --

21 MR. GABRYSIK: Just one copy.

22 UNIDENTIFIED SPEAKER: Are they all the same,
23 Mike, or --

24 UNIDENTIFIED SPEAKER: No, it's --

25 THE CHAIRPERSON: There's a time frame?

1 MR. RIDGWAY: Yes, time frame --
2 THE CHAIRPERSON: Because each one of these
3 have been marked as a time and a date. I think --
4 MR. RIDGWAY: Let's -- yes.
5 THE CHAIRPERSON: -- I think the applicant
6 should write the date on here.
7 MR. RIDGWAY: They are on. Each one of them
8 has it right in the center.
9 THE CHAIRPERSON: Yes, it's -- okay. And do
10 you want to call them A-2 through 5?
11 MR. RIDGWAY: Yes, let's call them A-2, 3, 4
12 and 5.
13 Q So, Gary, why don't we go back and do A-2.
14 What would A-2 be?
15 A A-2 --
16 THE CHAIRPERSON: A-2 is '63.
17 Q Yes, 1963.
18 A 1963.
19 Q Okay.
20 A Which shows the junkyard in its present location,
21 it's pretty much the same exact clearing limits,
22 probably more in order with the 1993, but -- we -- on
23 this plan we outlined the track boundary in red, the
24 yellow lines are the roadways. Falcon Drive was not
25 there at that time, but the location of it is shown so

1 that you could get an idea of where it would have been.
2 The next one is A-3 then and that would be a
3 1965 aerial which again, shows the junkyard being used
4 in the same location. And again, showing in red the
5 outbound and the yellow line showing the roadways and
6 again, Falcon Drive is not there yet, but the location
7 is shown.
8 So, A-4 would be a 1970 aerial which again,
9 shows the junkyard in its present location. And again,
10 shows Falcon Drive, but Falcon Drive was not
11 constructed yet. And then the last one that's attached
12 to the back which mysteriously has the worst
13 resolution, but it is a 1995 aerial which does show,
14 again, the junkyard with many vehicles in it as well as
15 Falcon Drive which, at that point, had been constructed
16 as well as showing the location of homes on Falcon
17 Drive.
18 Q So, it appears that those homes on Falcon
19 Drive were built some time between 1970 and 1995, is
20 that correct?
21 A That is correct.
22 Q Thank you, Mr. Civalier.
23 A You're welcome.
24 Q Do you have any more testimony with respect
25 to the site plan, the colored rendering and Exhibits

1 A-1 through A-5 that you had submitted before the
2 Board?

3 A No. The only thing I would mention is that from a
4 storm water runoff and water quality issue standpoint,
5 as I said before the septic system is going to remain
6 the way it is, there's no changes to the septic or the
7 bathroom facilities or to the well. The well will
8 remain and still service the same building that it
9 services now.

10 As far as storm water runoff, the slight
11 increase in impervious that is resulting from the
12 placement of the scale and concrete around the scale as
13 well as the small amount of crushed concrete that is to
14 remain leading into the scale area. It is less than
15 5,000 square feet, so it therefore does not need
16 certification by the Sewer Conservation District. It
17 also is exempt under the New Jersey Pineland Conviction
18 Rules because of its size and that's about it.

19 Q Thank you, Mr. Civalier.

20 A You're welcome.

21 THE CHAIRPERSON: I have question. Is the
22 scale in place or is it to be placed?

23 MR. CIVALIER: The scale, regrettably, is in
24 place. Mr. Gabrysiak, when he purchased this property
25 and put the scale on, was not aware that you would --

1 needed a permit for such a use and Jody promptly
2 advised him of the fact that he did need a permit and
3 appropriate approvals for that. And that's the purpose
4 for this application this evening.

5 THE CHAIRPERSON: When was it put in place?

6 MR. CIVALIER: I'm guessing about a year ago,
7 maybe even longer than that.

8 THE CHAIRPERSON: Do any of the Board members
9 have any questions for the engineer?

10 UNIDENTIFIED SPEAKER: I have one. So, all
11 of this is existing now, so that concrete is existing?

12 MR. CIVALIER: Yes. The concrete is existing
13 and --

14 UNIDENTIFIED SPEAKER: The hand scale is
15 there?

16 MR. CIVALIER: Yes, this --

17 UNIDENTIFIED SPEAKER: The canopy?

18 MR. CIVALIER: Yes. This piece of concrete
19 is there, also.

20 UNIDENTIFIED SPEAKER: What was used prior to
21 that scale, or there just wasn't one?

22 MR. RIDGWAY: There was no scale there at the
23 time, one was purchased by the applicant from the prior
24 owner.

25 UNIDENTIFIED SPEAKER: When did you purchase

1 the property or the business?

2 MR. GABRYSIAK: It was -- well officially, it
3 was about a year and a half ago. We --

4 UNIDENTIFIED SPEAKER: So, when you -- you
5 purchased it and then you put the scale in after you
6 purchased, okay. All right.

7 UNIDENTIFIED SPEAKER: Mr. Chairman?

8 THE CHAIRPERSON: Mr. Doherty?

9 MS. DOHERTY: The purpose of the scale, is
10 that for moving and storage companies to come in and
11 weigh their trucks?

12 MR. CIVALIER: I think the applicant can
13 probably better answer that than me, so --

14 THE CHAIRPERSON: Let's try and restrict
15 these question specifically to the engineer, to his
16 testimony.

17 MS. DOHERTY: Well, I thought maybe he would
18 know what the use of the scale was, excuse me.

19 THE CHAIRPERSON: All right. Yes, I know, I
20 know. I think they have more to come.

21 MR. CIVALIER: I can venture a guess, but I
22 might not be exactly right, so I'd rather let the
23 applicant.

24 MS. DOHERTY: Okay.

25 THE CHAIRPERSON: Mr. Kennedy?

1 MR. KENNEDY: What other improvements were
2 done without permits that need to be rectified?

3 MR. CIVALIER: To the best of my knowledge,
4 it's the scale and the placement of some crushed
5 concrete and that was the limits of it.

6 MR. KENNEDY: No improvements to the existing
7 structures?

8 MR. CIVALIER: No. There's proposed
9 improvements to -- as Mr. Ridgway said, to straighten
10 them back up to par, but no, they have not been worked
11 on.

12 MR. KENNEDY: Okay --

13 THE CHAIRPERSON: Mr. Murphy?

14 MR. MURPHY: The -- I guess the removal of
15 the crushed concrete is to keep you underneath that
16 5,000 square feet?

17 MR. CIVALIER: Yes.

18 MR. MURPHY: Is that why you were doing it?

19 MR. CIVALIER: We went -- one of the reasons
20 why I guess we weren't here earlier was obviously we
21 needed a certificate of filing from the Pinelands.

22 MR. MURPHY: Okay.

23 MR. CIVALIER: And so, we've been working
24 with the Pinelands towards that, we did receive it and
25 that was one of the conditions --

1 MR. MURPHY: Okay. Because I was just
2 wondering why you were removing it off the roadway --

3 MR. CIVALIER: Yeah, that's why.

4 MR. MURPHY: -- which kind of makes sense.

5 MR. CIVALIER: Yeah. Going to back to what
6 it was before, it was just sort of (indiscernible).

7 MR. MURPHY: Okay.

8 THE CHAIRPERSON: Mr. Ridgway?

9 MR. RIDGWAY: If I could bring my next
10 witness, Mr. Giberson.

11 EXAMINATION BY MR. GIBERSON:

12 Q Mr. Giberson, you were the owner of this
13 property for a number of years, is that correct?

14 A That is correct. It has been in my family.

15 Q Okay. Could go over to Exhibit A-1 and
16 describe any other areas surrounding this property that
17 you currently own.

18 A I own all this around here, all the way around up
19 to -- there's somebody else that owns the little block
20 in here, but there's 95 acres right here, I own
21 everything this way.

22 Q Okay.

23 A This is all open, I own the house right here at
24 the beginning of the driveway. At one time they used
25 to have a junkyard cleared out here and here. They had

1 the car crusher out here, Freeman (indiscernible) did,
2 I don't know if you guys all know Freeman, but -- and
3 like I said, I'm a blueberry farmer, I'm not a junkyard
4 person, so --

5 Q Okay.

6 A -- I decided to get rid of it.

7 Q Understood. So --

8 A I still got the blueberry patch and I intend --
9 blueberries off this past year and everything else is
10 coming back with all new -- brand new, up-to-date
11 blueberries.

12 Q Okay. All right. Now, back in I believe it
13 was 1993, you appeared before either this Board or --

14 A This Board.

15 Q -- before the Southampton Township Planning
16 Board, I don't know if it was the Planning or Zoning
17 Board.

18 A It might have been both I went to, I'm not really
19 sure.

20 Q Okay. But, you did receive approval to
21 subdivide this parcel off --

22 A I went to the Pinelands and got their approval
23 first, and then I had Worrell, Anderson, Lord & Barnett
24 (sic) I guess it was, they did the surveying, because
25 this used to be -- instead of 12.6 acres, I don't know

1 where you come up with 12.7, my records say 12.6.

2 Q It's six --

3 A Yeah, yeah, yeah.

4 Q I rounded it off.

5 A Okay. They're the ones that surveyed it and took
6 it away from this other block of ground.

7 Q Okay. All right. And you received a
8 resolution from whether it was the Planning Board or
9 the Zoning Board to grant that subdivision, the
10 (indiscernible) acreage off from the mother line if you
11 will, that 90 some --

12 A Exactly.

13 Q -- is that correct? Okay. I have before me
14 a photocopy of a resolution from the Southampton
15 Township Planning Board it was, granting that
16 subdivision resolution --

17 MR. RIDGWAY: Tom, do you want to do this?
18 It's up to A-6 I believe now.

19 MR. GABRYSIK: A-6, yes.

20 MR. RIDGWAY: Okay.

21 Q This is resolution of memorialization 93.8 in
22 the matter of the application of Last Chance Auto
23 Salvage Inc. That was your company, Mr. Giberson?

24 A I named that company, yes.

25 Q Okay. And that showed that the existing lot,

1 36.01, was approximately 34.401 acres located along New
2 Road and a certificate of filing was received from the
3 Pinelands of June 4 -- on June 4, 1993. And the
4 applicant's proposal is to carve this new lot out and
5 it was granted by the Planning Board memorialized on
6 August -- I'm sorry -- October 7, 1993.

7 Now, Mr. Giberson, your -- that name implies
8 that there was a junkyard there. Did you maintain your
9 junkyard licenses all those years and get approvals and
10 renewals every year from the Southampton Township
11 building inspector?

12 A Yes.

13 Q Okay. Were you ever cited as a result of
14 that junkyard license, at all?

15 A No. Everything's the same since back in the 60s
16 whatever. I mean, the same lot's been there. I rented
17 it out to Freeman Pointsett (phonetic). I just went
18 over there and picked up my money and that was it. You
19 know, I didn't have anything to do with running the
20 junkyard.

21 Q All right, that begs my next question. To
22 the best of your recollection, do you know when that
23 junkyard was started?

24 A Before my time.

25 Q Before your time.

1 A Yup.

2 Q And define your time.

3 A I'm 55 years old.

4 Q Okay. So, it was -- it's been existing since
5 at least the 60s as far as you know?

6 A Yes. Yes.

7 Q Okay. Now, in that resolution that we
8 determined was A-6 and in the prior subdivision that
9 was submitted to the Planning Board that gave rise to
10 the resolution, there were -- there was a depiction of
11 the junkyard.

12 A Correct.

13 Q And, Mr. Giberson, I have in front of me here
14 a plan that you had referred to earlier that was a
15 minor subdivision by Lord, Anderson, Worrell & Barnett
16 that's drawn on April 26th, 1993 that shows the Block
17 2401, Lot 36.01 with a proposed Lot 36.02. To your --
18 to the best of your recollection -- and we're going
19 back close to 20 years -- is that the subdivided lot
20 that is the lot that was sold to Mr. Gabrysiak --

21 A Yes.

22 Q -- about a year and a half ago?

23 A He don't own -- I own all this up in here.

24 Q Right.

25 A That wasn't on there, so that's why I got

1 confused. And I own all the way down -- I own this
2 too, all the way down.

3 Q Okay. So, you own a contiguous lot to the
4 mother lot?

5 A Yes.

6 Q But this subdivision from 1993 shows the
7 original mother lot of that 21.751 acres and the carved
8 out parcel here which is now down to be 12.666. --

9 A Six, six, six.

10 Q -- is that correct?

11 A Yup.

12 Q Okay. And this is A-7. And again, the only
13 purpose I'm bringing this testimony out is to confirm
14 that this parcel --

15 A Everything on this map is still the same, except
16 for the scale.

17 Q And this map, this A-7 that we're talking
18 about shows above the graphic scale, a note on there
19 that says limits of existing junkyard shall not
20 increase, no trees are to be removed, junk vehicles on
21 Lot 36.01, which is an adjacent parcel, are to be
22 removed. And a couple of questions. Since this
23 approval in 1993, there has been no junkyard on the
24 remaining Lot 36.01.

25 A No.

1 Q That has been cleared, there has been junk on
2 there.

3 A No.

4 Q No vehicles, no nothing.

5 A No.

6 Q And since that time in 1993 -- and you owned
7 the property up until the last couple years, the
8 existence of that -- of the dimensions of that clearing
9 and limited junkyard, they have not been increased
10 since that time, is that correct?

11 A True.

12 Q Thank you.

13 MR. RIDGWAY: I have no further questions of
14 Mr. Giberson.

15 THE CHAIRPERSON: Mr. Giberson --

16 MR. GIBERSON: Oh. Oh, sorry.

17 THE CHAIRPERSON: Do any of the Board
18 members have any questions of this witness?

19 UNIDENTIFIED SPEAKER: I do.

20 THE CHAIRPERSON: Okay.

21 MR. RIDGWAY: Okay.

22 EXAMINATION BY THE CHAIRPERSON:

23 Q Can you describe for the Board the operations
24 as you know them to be from when you took ownership of
25 this 'til when you sold it?

1 A The operation --

2 Q What went on through the years, was it always
3 automobiles, was it scrap metal, what were the hours of
4 operation, what went on through the years --

5 A Okay, this --

6 Q -- up until (indiscernible).

7 A It started around five o'clock in the morning,
8 most of the time when he would get back from hauling
9 cars. He hauled cars, he hauled aluminum, you name it,
10 metal-wise, junk-wise, it went out of there and he
11 would take that to Camden or Trenton. And he would
12 come back every day five, six o'clock in the morning,
13 load up the trucks again and bring them back to
14 Vincentown and haul them again -- or trucks, cars,
15 metal, junk, whatever.

16 Q So, the public did not come to him, he was
17 out delivering this stuff?

18 A Oh, people brought stuff to him, constantly.

19 Q Okay.

20 A They brought stuff in there and they come got
21 parts off for their cars and everything else out of
22 there because he had most of the older stuff that
23 people wanted.

24 Q And it's been that way from as far as you've
25 owned it, 'til just the sale of it?

1 A Yeah, there's nothing changed.

2 THE CHAIRPERSON: Okay, thank you. Mr.
3 Ridgway?

4 MR. RIDGWAY: Thank you, Mr. Chairman. If I
5 could, I'd like to bring up the current owner -- a
6 representative of the current owner, Tom Gabrysiak.

7 MR. GABRYSIAK: Good evening.
8 EXAMINATION BY MR. RIDGWAY:

9 Q Mr. Gabrysiak, a few questions. You
10 purchased this property from Mr. Giberson I think it
11 was about a year and a half ago, is that correct?

12 A Yes.

13 Q Now, while the operations, as Mr. Giberson
14 testified, it is always been used as what they call
15 junkyard which is all the definitions that are included
16 or all uses that are included in the junkyard
17 ordinance. That fact notwithstanding -- and I want to
18 phrase this correctly because you didn't modernize the
19 yard, but you utilized this yard in a much different
20 fashion than what Mr. Giberson did with respect to your
21 operations, not what comes in or goes out, but how you
22 run the yard. Could you describe what you did in the
23 past year and a half in terms of cleaning up the
24 junkyard and removing things and making it a more
25 efficient operation?

1 A I believe what you're saying exactly is the
2 difference between current modern management and you
3 know, maybe the way things used to be done. But, one
4 of the first things we did, we spent close to a year
5 cleaning the property. There was large large amounts
6 of materials that had been there.

7 Some of them -- I believe the actual date
8 we're looking for is in the 40s, probably more like
9 1947. And there was so much material in there just
10 piled and it was everywhere. And there was hundreds of
11 vehicles, there were very large piles of materials of
12 all different sorts and it took us close to a year.

13 There was -- I think there was about 140,000 tires
14 on the site which we've removed all of but about four
15 or 5,000 at this point, but it's a constant process.
16 So, we spent quite a bit of time cleaning the property,
17 making it more presentable, making it not such a safety
18 hazard that I think it was originally.

19 Q Have you hauled -- do you have any -- I know
20 you gave me the number of tires, but do you determine
21 these by truckloads when you pull stuff out there? How
22 many truckloads of stuff did you pull out of there?

23 A We took out -- I think it was about 450 yard
24 trucks full of material initially and then probably
25 another 200 moving forward after we started actually

1 operating. We -- originally, it was just a cleanup
2 process and then we, you know, went back to an
3 operations.

4 Q Okay. Mr. Gabrysiak, we saw on a couple of
5 these earlier exhibits -- I guess we can look at A-3
6 and A-5 which shows these vast number of automobiles on
7 the property besides all this other stuff that you've
8 discussed. Do you have that many automobiles on there
9 now or how does the place operate at this time?

10 A We do have small automobiles. We -- currently,
11 most of the ones we have are classic cars we do sell
12 parts off of and it's about (indiscernible) of those.
13 We do have -- we do buy and sell vehicles out of there.

14 We're also a New Jersey State licensed
15 automobile dealer which is not for retail type sense,
16 but it's part of the State requirement for junkyards,
17 so we have that. So, we do purchase cars in there and
18 basically, they're for scrap, we're not buying you
19 know, reusable vehicles at this point.

20 Q Okay. And as Mr. Giberson testified to
21 earlier, they defined in the Southampton Township
22 ordinance, junkyard means a place, location, yard,
23 covered or uncovered or place in the Township kept,
24 maintained or used for the purpose of buying selling,
25 exchanging or storing rags, old metals, old bottles,

1 old glassware, old plumbing fixtures, old lumber,
2 unregistered motor vehicles unfit for reconditioning,
3 dismantled motor vehicles or parts thereof, used motor
4 vehicles or parts thereof, used motor vehicle parts,
5 motor vehicle junk or any other old material commonly
6 called junk. So, if I ask you, do you do all this, the
7 easy answer is --

8 A -- yes.

9 Q Okay. All right. I believe you answered
10 this question earlier, but I want to make sure that
11 it's heard from you directly. The question was posed
12 with respect to -- in terms of improvements and I don't
13 mean making it better, but physical improvements. The
14 only thing you did to that property was put in the
15 weight scale, put in the gravel that leads up to the
16 weight scale and put in additional gravel, but the
17 Pinelands made you take the gravel out.

18 A Well, it one of the requirements, we have not done
19 it yet, but we will do it. You know, I believe we need
20 building permits before we get to that point. The
21 scale -- in my mind, yes, there is concrete, it's a
22 piece of equipment. To me, that wasn't really
23 something that I needed approval for.

24 Q And you found that was incorrect.

25 A Absolutely and I apologize for that, but it's

1 essentially a piece of equipment.

2 THE CHAIRPERSON: Was there an existing scale
3 there prior?

4 MR. GABRYSIK: There was not.

5 THE CHAIRPERSON: Okay.

6 Q Okay. Besides those improvements that we're
7 talking about, you also wish to construct a sign on the
8 property that's part of this application as well?

9 A Correct.

10 Q All right. And there are a couple of older
11 buildings on the property that are in significant
12 disrepair that you're looking to repair and refurbish
13 as well, but you're not going to change the size of
14 those structures, they're going to be made exactly as
15 they are size wise, is that correct?

16 A Exactly correct. The one main -- we can call it a
17 garage, is in terrible condition and it needs be
18 repaired. The office trailer that's there next to the
19 scale, that actually was there. We put a good coat of
20 paint on it and cleaned it up, that was it's location,
21 so we utilized that. Basically, nothing's going to
22 change with the exception of replacing that one
23 building that was -- is in terrible -- I mean, it's in
24 terrible repair.

25 Q Okay.

1 A But for -- with the exact same size building.

2 Q All right. Junkyard ordinance has a
3 requirement that the hours are dawn to dusk. You are
4 in keeping with those requirements --

5 A Yes.

6 Q -- for your business hours?

7 A Yes.

8 Q Okay. Number of employees. It can vary
9 seasonally of course, but what are the number of
10 employees that you have -- well, let me take a step
11 back. No one resides on the premises, is that correct?

12 A No.

13 Q What other general number of employees do you
14 have that are at that business? They might not be all
15 on site at the same time, maybe on trucks and stuff
16 like that, but 15 to 20, what --

17 A Fifteen would probably be a safe number.

18 Q Okay. Somewhere along the road, any of them
19 weighing, picking up cars and so on?

20 A We have drivers and that sort of thing.

21 Q They're not all on site at the same time?

22 A No.

23 Q Okay. Materials stored I understand we've
24 talked about a little bit, but in terms of materials
25 stored, it's essentially everything that's in the

1 junkyard ordinance you have there?

2 A Yes.

3 Q And as opposed to the previous use of this
4 junkyard, stuff doesn't sit there for years and years
5 and years at a time.

6 A Correct.

7 Q Things move.

8 A We bring it in, we process it as necessary and we
9 get rid of it. It's -- we do have some vehicles as you
10 know, I stated earlier, that we're holding onto that we
11 do sell parts off of. But, those aren't permanent
12 either, they come and you know, when they're
13 dismantled, then they leave.

14 Q Okay. With respect to waste generated -- and
15 a lot of times when you have businesses, an office
16 park, whatever, there's a dumpster for waste. You're a
17 junkyard, you don't have waste --

18 A No.

19 Q -- that's your business.

20 A Right.

21 Q Do you see a need for a dumpster on your
22 property for any waste generated? I mean, it's --

23 A No, no.

24 Q I mean, you may have employees that eat lunch
25 and there's maybe a bag of waste that you'll take home,

1 but there's nothing of any significance from the
2 standpoint of waste generation, is that correct?

3 A No, that's -- that would be it.

4 Q Okay. A couple more questions and it's
5 difficult to grasp my hands around it because I've been
6 before these boards, actually before this Board quite
7 recently. I think the last time I was here
8 (indiscernible) application about a year ago if I'm not
9 mistaken.

10 But, when you -- most applications that come
11 before a Board, you're looking at an office complex or
12 a residential complex and there's side yard setbacks or
13 front yard setbacks and parking areas and green open
14 space areas and kiddie parks and these kinds of things.
15 One of the reasons it would appear that the Pinelands,
16 back in 1992 or 3 -- and they're also making this a
17 requirement -- there's a limit of disturbance that you
18 are holding to and was held to for the past 20 years
19 now.

20 Within that open area, this -- the quote,
21 unquote, disturbed area, it would be impossible to
22 locate on the site plan a junk car area, a junk bus
23 area, a wood waste area, an appliance area. Because if
24 I understand from your business model, one day it could
25 be a 40 percent junk car area and you break them down

1 and get rid of them and the next day it could be a 30
2 percent appliance area. Is that essentially -- am I
3 describing it correctly as to how the business runs in
4 layman's terms?

5 A What we do is whatever's easiest at the time.
6 Obviously, we're not going to expand outside of the
7 limits that have been allowed by both the Pinelands and
8 the Planning Board in 1993, but we use the entire
9 property that we're allowed to use.

10 Q And their --

11 A For whatever particular use --

12 Q Right.

13 A -- is best that day.

14 Q At one location you may be breaking down
15 cars, but then you may be breaking down cars in a
16 different location three weeks from now.

17 A It's possible.

18 Q Okay. Traffic. Mr. Giberson testified
19 earlier that people come in and have come in for years.
20 I'm assuming that's the same that you have now?

21 A Yeah. We have employees, we have our own drivers
22 and we also have customers that (indiscernible).

23 Q Again, weather-dependent, season-dependent,
24 time-of-day dependent? What kind of trips get
25 generated in the course of a day?

upwards of
100 trucks a day

1 A It could be upwards of 100 I would think.

2 Q Okay. Excuse me, do you have your trucks on
3 site?

4 A Yes, we do have vehicles on site.

5 Q Excuse me, and typically they will leave in
6 the morning -- thank you, Mr. Goettlemann.

7 MR. GOETTLEMAN: You're welcome.

8 MR. RIDGWAY: I don't want to get the Board
9 nervous, but I'm suffering from the flu, so --

10 Q The trucks are on sight, they'll leave in the
11 morning normally and do their rounds and then come back
12 with the material?

13 A We have vehicles on sight that will leave empty
14 and come back with materials and some that will leave
15 full with materials and come back empty, that's a
16 regular process.

17 Q Okay. I have -- well, one more step. The
18 weight scale, what does -- how does that function?

19 A Ultimately, this business maybe has evolved over
20 the years. All the materials are bought and sold,
21 whether it be a motor vehicle or a pile of scrap metal
22 or whatever it may be, by weight. It's very difficult
23 to guess what a truck weighs so, you know, to be able
24 to do -- you know, to be in this business you have to
25 be able to weigh vehicles.

1 Q And you're not using that scale for any
2 purpose other than your own, nobody comes in and uses
3 your weight scale?

4 A No. And it was hard for me to hear your question.
5 I believe what you're asking is, do we allow people to
6 come in and like, say, get weights, like a public type
7 scale.

8 UNIDENTIFIED SPEAKER: I was wondering if it
9 was like an Allied Van Line could come in and weigh its
10 contents?

11 MR. GABRYSIK: No. No. Ultimately, we --
12 it is -- the scale is inspected by the weights and
13 measures and that's a regular process for them. They
14 do it every year. And we are certified Weighmaster.
15 All our employees are. But we don't typically have
16 customers come in for weights. That's -- that's not
17 something --

18 UNIDENTIFIED SPEAKER: And you don't intend
19 to?

20 MR. GABRYSIK: No, absolutely not. No
21 intention for that.

22 UNIDENTIFIED SPEAKER: Okay.

23 Q And if that were a condition placed on the
24 approval you'd have no objection to it?

25 A Yeah -- no, it's not something we do. The only --

Colloquy

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1 up at our yard in Springfield, the only people that
2 weigh on their scale are the local farmers but that's
3 not something that we charge for. We do that as a
4 courtesy. Down here we have no intention on doing any
5 type of public weighing, which I believe is like what
6 you think like at the truck stop type of thing.

7 MR. RIDGWAY: Okay. I have no further
8 questions of Mr. Giberson (sic).

9 THE CHAIRPERSON: Do any of the Board members
10 have any questions of this witness?

11 UNIDENTIFIED SPEAKER: Yes.

12 THE CHAIRPERSON: Mr. Robbins?

13 MR. ROBBINS: So the photograph that you
14 provided on Page 7 -- well, that appears on Page 7 of
15 Mr. Scangarello's report there, and it's the
16 (indiscernible). I'm looking and that's just an amount
17 of just what happens to be there. Some of these are
18 classic cars, like we're saying, that are there for
19 parts and they're just sort of scattered around in
20 there. Some of them are vehicles that have been
21 brought in which I'm assuming you're going to breakdown
22 and recycle almost immediately and some of them aren't
23 even vehicles. Some of that's just any type of metal
24 which is being brought on to the site.

25 MR. GABRYSIK: This is not a current

1 picture.

2 MR. ROBBINS: It's not?

3 MR. GABRYSIK: I don't know at what point
4 that picture was taken. There's no date on it. The --
5 it's not currently as crowded as that. That's not a
6 current picture. This is a picture of previous
7 -- before I owned the property.

8 MR. ROBBINS: Where did you get that picture
9 of Mr. Scangarello's?

10 MR. GABRYSIK: I got it online.

11 MR. ROBBINS: So it's some kind of an
12 archived picture of like Geo Earth or Google Earth or
13 --

14 UNIDENTIFIED SPEAKER: Yeah, but I don't know

15 --

16 MR. ROBBINS: It's not me. It's the
17 (indiscernible).

18 UNIDENTIFIED SPEAKER: I mean, I don't -- I
19 don't know how relevant -- I don't know how relevant
20 that testimony is because the site could have looked
21 like that. Could have looked like it yesterday and had
22 potential to look like that again. So those are the
23 limits of the service, so-to-speak.

24 MR. ROBBINS: So in other words, there's
25 nothing in your testimony, Tom, that -- or Mr.

1 Gabrysiak, that -- there's nothing which it may not
2 look like that now, but there's nothing that would
3 exclude it from looking at -- like that at any time?

4 MR. GABRYSIK: Well --

5 MR. ROBBINS: The way you manage it -- or are
6 you suggesting that the way you manage a modern metal
7 recycling facility would tend not to look like this?

8 MR. GABRYSIK: Exactly correct. Originally,
9 when I first started speaking, this is the clean up
10 that we did. That's what it looked like previous to us
11 getting there. Ultimately -- and I hate to put it this
12 way -- but ultimately you can't make money like this
13 and, you know, we are in business to make money.

14 UNIDENTIFIED SPEAKER: Can -- could it look
15 like that?

16 MR. GABRYSIK: I guess. I'd have to say
17 yes. It's a possibility, not while I'm --

18 MR. ROBBINS: What do you -- what do you mean
19 by you can't make money when it looks like this if --

20 MR. GABRYSIK: Because this is -- this is --
21 you know, --

22 UNIDENTIFIED SPEAKER: All cumulation of
23 stuff, not --

24 MR. GABRYSIK: Yeah. This is just a
25 cumulation. If the materials don't come and go there's

1 no --

2 MR. ROBBINS: So you're set up -- your modern
3 recycling operations management is you --

4 MR. GABRYSIK: We prefer the work junkyard.

5 MR. ROBBINS: Really?

6 MR. GABRYSIK: Absolutely.

7 MR. ROBBINS: Okay. Your junkyard, you bring
8 it in, you break it down into some -- I guess, it's a
9 type of metal?

10 MR. GABRYSIK: Right. Ultimately, most of
11 the materials that have value need to be sorted and
12 separated. Processed is what we call it. But
13 ultimately it's really just, you know, it's separating
14 different things and then --

15 MR. ROBBINS: And then whatever you can sell,
16 you sell, and what's considered junk --

17 MR. GABRYSIK: Yeah, whatever we can sell,
18 we sell, whatever else we get rid of.

19 MR. ROBBINS: You can fill it, I mean you
20 take it to the landfill or what do you do with it in
21 that case --

22 MR. GABRYSIK: No. Most everything's
23 recycled in some way. Yeah -- no, we don't take it to
24 landfill.

25 MR. ROBBINS: The -- I'm (indiscernible) that

1 you put that crushed stone in there, for a reason?

2 MR. GABRYSIK: To make the driveway easier
3 to drive on. Remember, you want to firm the -- yeah,
4 that would be. Yeah.

5 MR. ROBBINS: And if you take that crushed
6 stone away, what's the quality of the drive going to be
7 like after that? How are you going to maintain a drive
8 that --

9 MR. GABRYSIK: It's -- it's still private.
10 I mean, it was -- it was used for 80 years the way it
11 was. I can -- you know, putting some crushed stone in
12 the driveway just didn't seem like a big deal to me.
13 Ultimately, I believe we probably are filling up a
14 couple holes, but, you know, we can just maintain it.
15 We'll have to just maintain it, you know.

16 MR. ROBBINS: Like a gravel road?

17 UNIDENTIFIED SPEAKER: You have on site the
18 front end loaders and things like and filling holes --

19 MR. GABRYSIK: It's just needs to be
20 maintained.

21 MR. ROBBINS: I mean, what are they are
22 asking to make it like a sand road or can you have any
23 kind of paving at all on it? By paving I mean --

24 MR. GABRYSIK: No. They don't want any
25 paving. You know, the whole property is kind of --

1 there's crushed stone. There's sand. There's crushed
2 concrete. There's all -- you know, it's not all the
3 same. It's been used in a junkyard for 80 years. So,
4 you know, you got different materials there. The area
5 that I added, which is just in that main drive, they're
6 not making us take it all out. You could see this part
7 in here. We're going to leave the rest of it they're
8 going to make us take out. We'll just maintain it the
9 best we can and keep moving as it's been, you know,
10 historically.

11 MR. ROBBINS: All right, I guess my concern
12 is that, as you indicate, the modern junkyard
13 management is you don't just accumulate stuff. You're
14 bringing it in. You're taking it out. You're
15 processing it, which I would think implies -- perhaps
16 I'm misconstruing -- but at least it implies that
17 there's a lot -- that there might be a larger number of
18 vehicles coming in and out of there just hauling the --
19 your end product.

20 MR. GABRYSIK: Ultimately, if this
21 application is approved, if you would like go to the
22 Pinelands and ask them to let me have pavement, I would
23 be happy to pave that road. I would do it immediately.
24 I don't have control over, you know, what they -- we're
25 just doing what they've told us we have to do.

1 MR. ROBBINS: Right. And whether or not it's
2 going to meet the requirements of the traffic which you
3 anticipate would be using that road?

4 MR. GABRYSIK: In my mind, with regular
5 maintenance, it will be okay.

6 MR. ROBBINS: Are you -- are you testifying
7 that the amount of trucks going in and out of that
8 property is the same or similar to what the historic
9 use was? Do you see that increasing? What's your
10 testimony about the amount of haul that's coming in and
11 out of there?

12 MR. GABRYSIK: From what I know, the site
13 always had traffic. There was always people in and out
14 looking to purchase different things, looking to drop
15 off different things, along with the operators of the
16 yard, which from the best of what I can tell speaking
17 to the previous operator -- not Mr. Giberson -- but the
18 gentleman who had rented it -- he had upwards of 10 or
19 12 employees, here and there. Sometimes more.
20 Sometimes less. I don't know exactly what his traffic
21 was like. I do know that I hear that he had, you know,
22 a lot things going on. I believe -- if I can answer
23 your question, I believe the quality that the drive
24 will be in -- the condition it will be in -- will be
25 enough to handle whatever traffic comes and goes.

1 MR. ROBBINS: But you're not tonight prepared
2 to quantify the amount of traffic which is coming in
3 and out of there so --

4 MR. GABRYSIK: I think I would need that
5 defined for me exactly what you said.

6 UNIDENTIFIED SPEAKER: You testified that
7 approximately, depending on season, there were an
8 average of a hundred vehicles, total.

9 MR. GABRYSIK: Okay.

10 UNIDENTIFIED SPEAKER: That's --

11 MR. GABRYSIK: That's probably a fair
12 assessment.

13 MR. ROBBINS: And so a high end would be a
14 hundred vehicles per day coming in and out?

15 MR. GABRYSIK: I guess it would be hard to
16 place a number on it exactly. I would say a hundred
17 would be a good number.

18 MR. ROBBINS: And do they range in size from
19 pickup trucks to tractor trailers, or is there an
20 upside --

21 MR. GABRYSIK: Yeah -- no. Right, exactly.
22 Light-duty trucks being a pickup truck up to a
23 heavy-duty vehicle.

24 MR. ROBBINS: A tractor trailer?

25 MR. GABRYSIK: Yes.

What is Robbins
trying to get him
to say

1 MR. ROBBINS: Thank you.

2 THE CHAIRPERSON: Ms. Doherty?

3 MS. DOHERTY: You indicated you had 15 people
4 approximately working for you. Do you have a
5 designated area where your employees park their cars
6 and do you have a designated area where you park your
7 trucks?

8 MR. GABRYSIK: Ultimately, we park wherever
9 -- wherever there's a free spot. But we try to keep
10 the employees parking behind the buildings. Does that
11 happen every time? I don't believe so, but --
12 ultimately, the site's used for whatever's best that
13 day, so we'll park wherever.

14 MS. DOHERTY: Do you have a sign on your
15 property now?

16 MR. GABRYSIK: We currently have a sign
17 which is bolted to the fence that's out front. This
18 sign that we're proposing is going to be an actual --
19 you know, a real sign that's mounted to the ground --

20 MS. DOHERTY: And --

21 MR. GABRYSIK: -- so you can see it at the
22 road. Right now, you know, you could drive by all day
23 and never notice it's there.

24 MS. DOHERTY: And I assume it needs to meet
25 standard for the Township versus something

1 (indiscernible)?

2 UNIDENTIFIED SPEAKER: I believe it does.

3 MR. GABRYSIK: Yes. We're not asking for a
4 sign variance.

5 MS. DOHERTY: Okay. Thank you.

6 MR. CHAIRPERSON: Any other Board members
7 have questions for this witness?

8 MR. HAAS: I do.

9 MR. CHAIRPERSON: Mr. Haas?

10 MR. HAAS: Thank you, Mr. Chairman, you
11 testified that you would do nothing to harm the -- I
12 forgot the exact words -- but nothing to go against the
13 Pinelands I think you said?

14 MR. GABRYSIK: Right.

15 MR. HAAS: You brought your vehicle in and
16 you drop it on the ground, how do you know you're not
17 into the buffer zone?

18 MR. GABRYSIK: Well, we have a fence.

19 MR. HAAS: Isn't the fence within the buffer
20 and the buffer is way before the --

21 MR. GABRYSIK: The fence is not --

22 MR. HAAS: -- fence in some locations?

23 MR. GABRYSIK: -- into the allowed limited,
24 I believe is what it is. This is what the allowed
25 limits of the junkyard are, this -- this tree line

1 here, and that's close to where the fence is with the
2 exception of this area here. It does meander in and
3 out, but ultimately we would -- if we stay inside of
4 that fence line then we're staying inside of their
5 limits. I -- we're familiar with where the limits are.

6 MR. HAAS: I have the survey -- for our
7 purposes presented to us -- with the fence line way
8 into the buffer zone.

9 MR. GABRYSIK: On that one side.

10 MR. HAAS: And way over onto another
11 property, the back property, 34 -- twenty-four oh one,
12 thirty-six oh one.

13 MR. GABRYSIK: Yeah, in this one corner it's
14 over the property, but it's --

15 MR. HAAS: So it's over the property line?

16 MR. GABRYSIK: For a very small distance and
17 a little bit in, yes. But if you look at the legal --

18 MR. HAAS: So if you --

19 MR. GABRYSIK: -- the allowed limits are
20 very far from that fence.

21 MR. HAAS: So the fence line, in your mind,
22 you're allowed limits?

23 MR. GABRYSIK: No. My fence line is -- my
24 allowed limit is the allowed limit. I mean, we're way
25 with inside of it. We're not -- we are not encroaching

1 into the Pinelands area, nor do we intend to.

2 MR. HAAS: Would it be an undue hardship if
3 you moved the fence beyond the buffer zone out of the
4 buffer zones?

5 MR. GABRYSIK: I believe it would be an
6 extreme hardship, yeah, a financial hardship.

7 MR. HAAS: What -- if you ever sold the
8 property -- my concern is if you ever sold the property
9 you're testifying now that you would not approach the
10 buffer zones for the wetlands, however a future owner
11 --

12 MR. GABRYSIK: Pinelands -- I'm not aware of
13 wetlands, but -- yeah, I mean, as far -- as far as I'm
14 concerned with future owners that they would be
15 required to follow what, you know, the allowed limits
16 are.

17 MR. HAAS: All right, thank you. No more
18 questions.

19 THE CHAIRPERSON: I have two questions. When
20 an automobile come onto your scrap, I mean, I find it
21 hard to believe that you don't have some waste, but can
22 you describe what goes on with that vehicle?

23 MR. GABRYSIK: To dismantle a vehicle,
24 typically the vehicle would come in and would be broken
25 down. The fluids would be drained. The engine would

1 be removed. The vehicle would be crushed. The tires
2 would come off, that kind of stuff, radiator, you know,
3 certain parts that are worth more -- battery -- and
4 then the car would be crushed and be shipped out and
5 shredded.

6 THE CHAIRPERSON: Which -- interior like
7 still intact?

8 MR. GABRYSIK: Sometimes. But most of the
9 time if you're crushing a car, yeah, the interior is
10 intact, unless of course you've sold that interior
11 previously.

12 THE CHAIRPERSON: How about the glass?

13 MR. GABRYSIK: It -- yeah, it stays in the
14 car.

15 THE CHAIRPERSON: It just gets crushed --

16 MR. GABRYSIK: Yeah.

17 THE CHAIRPERSON: -- and then when they melt
18 it they just pull the slag (indiscernible) --

19 MR. GABRYSIK: Well, it's not melted that
20 way. They -- it goes to a -- it would go to an auto
21 shredder at a different location and that -- it would
22 be ground down into little pieces and separated.

23 THE CHAIRPERSON: And did you have an
24 environmental study done when you bought the property?

25 MR. GABRYSIK: I did not. We have DEP

1 permitting and they inspect us -- it's supposed to be
2 every six months, but it's usually twice a year. I
3 don't know -- whatever their schedule allows. So we
4 abide by all their regulations and they're pretty
5 tough.

6 THE CHAIRPERSON: And do you ever use the
7 property for trash? Do you ever accept trash?

8 MR. GABRYSIK: Household trash?

9 THE CHAIRPERSON: Yes.

10 MR. GABRYSIK: No.

11 THE CHAIRPERSON: No one's ever bringing a
12 dumpster full of trash onto the property to dump it?

13 MR. GABRYSIK: Trash -- when you say trash,
14 you mean like what, household garbage, no. We don't
15 handle that.

16 THE CHAIRPERSON: Anything, construction
17 debris?

18 MR. GABRYSIK: There's -- there are -- I
19 mean, there's a lot of different limits of construction
20 debris. Yeah, I mean, there -- part of all the
21 dismantling processes handle different types of
22 materials.

23 UNIDENTIFIED SPEAKER: Do you limit the
24 construction debris to a particular type or can anybody
25 just bring anything in?

1 MR. GABRYSIK: It's not a trash facility.

2 THE CHAIRPERSON: That's what I'm trying to
3 get at. It's not --

4 UNIDENTIFIED SPEAKER: It's a dumpster of old
5 construction debris, a couple two by fours and
6 Sheetrock and stuff like that there.

7 UNIDENTIFIED SPEAKER: Right, that's --

8 MR. GABRYSIK: Ultimately, no. That's not
9 exactly what we do, I mean, but there's -- what you
10 have to understand is that when you handle these types
11 of materials there's always wood. There's always
12 different types of debris. You know, it's not
13 typically just metal. There's all kinds of different
14 stuff and that's why we have a junkyard description, I
15 guess.

16 THE CHAIRPERSON: But your operation -- let's
17 just say someone brought in construction debris that
18 was lumber, you do not have the intention to dump it
19 and store it, you would process it and get rid of it?

20 MR. GABRYSIK: Correct.

21 THE CHAIRPERSON: Okay.

22 MR. GABRYSIK: There's very little storage
23 in what we do other than part of the processing system.
24 I don't -- I don't think I can actually put a time
25 frame on it, but ultimately everything is processed and

1 removed. It comes in. It goes out. You know, there's
2 no reason to store anything for any long period of
3 time.

4 THE CHAIRPERSON: I'm just trying to define
5 between what you do and a landfill, you know.

6 MR. GABRYSIK: Oh, no. We're not anything
7 like a landfill.

8 THE CHAIRPERSON: And you're not accepting
9 stuff like that.

10 MR. GABRYSIK: You know, ultimately, a lot
11 of these materials are recyclable. You know, a
12 landfill handles things that are not recyclable. They
13 go in the ground and they get covered over with dirt.
14 You know, that's -- you know, as long as -- as long as
15 we stick to things that -- that was one of the original
16 questions. We don't really send anything to the
17 landfill because everything is recyclable.

18 THE CHAIRPERSON: Okay, thank you. Mr.
19 Ridgway?

20 MR. RIDGWAY: I have no further questions of
21 Mr. Gabrysiak. The last witness Mr. Miller.
22 EXAMINATION BY MR. RIDGWAY:

23 Q Mr. Miller, if you could, as Mr. Civalier did
24 earlier, could you briefly give your education,
25 experience and background to present yourself as an

1 expert witness as a planner before this Board?

2 A Yes. I'm a licensed professional planner in the
3 State of New Jersey certified by the American Institute
4 of Certified Planners as a certified planner. I have a
5 masters in city and regional planning from Rutgers
6 University and I've been a practicing planner since
7 1971. I've represented both private and public clients
8 over that time. I have also been qualified as an
9 expert witness for the state and federal courts and
10 I've been previous qualified as an expert by this
11 Board.

12 MR. RIDGWAY: I submit Mr. Miller as an
13 expert witness to his expertise in planning.

14 THE CHAIRPERSON: The Board accepts his
15 credentials.

16 MR. RIDGWAY: Thank you, Mr. Chairman.

17 MR. MILLER: Thank you.

18 Q Jim, as I did with Gary, I will let you run
19 with the ball. There are some proofs that have to be
20 met with respect to the expansion of the existing
21 junkyard, the expansion being essentially the
22 installation of the weight scale, asking if I can have
23 criteria, et cetera?

24 A Yes. For the record, this is a property which is
25 a zoned rural development. And the existing use is the

1 junkyard. The proposed use is a junkyard.. And there's
2 actually two types of relief we're seeking to seek and
3 the first relief is the D2 variance and in addition to
4 that there's also a C variance with involves the fence,
5 and that's a relatively minor variance, but I will also
6 provide the proofs for that one, as well. I'm going to
7 begin with the D2 variance and then do the C variance
8 after that.

9 In terms of the planning testimony for -- due
10 to variance, we have to address the positive and
11 negative criteria. Under the positive criteria we have
12 to show that the application would advance the purposes
13 of the Municipal Land Use Law. I believe that at least
14 two purposes would be advanced. Purpose (a), to
15 encourage municipal action to guide the appropriate use
16 or development of all lands in this state in a manner
17 that will promote the public health, safety, and rules
18 of general welfare. And Purpose (g), to provide
19 sufficient space and appropriate locations for a
20 variety of agricultural, residential, recreational,
21 commercial, and industrial uses in open space for the
22 public and private according to their respective
23 environmental requirements in order to meet the needs
24 of all New Jersey citizens.

25 To justify this type of variance we have to

1 show that special reasons exist, but with a preexisting
2 nonconforming use those pieces are treated more
3 liberally because they already exist and the Courts
4 have recognized that from an equitable standpoint you
5 have to be more lenient with something that's already
6 existing, the community has already become accommodated
7 to it to some extent. And the case law basically finds
8 that these nonconforming uses should be permitted to
9 continue in many cases and also to expand in some cases
10 if they meet the appropriate criteria.

11 Here we have a very minor modification of
12 preexisting nonconforming use. The modification is
13 basically limited to the scale. If the applicant has
14 chosen to operate the use exactly as it had been
15 operated in the past and not install the scale. It
16 wouldn't be before the Board this evening. You would
17 just be able to go on and continue the business. So
18 basically, the only thing that's at issue with the D2
19 variance is the scale. And there's any number of cases
20 which support the idea that a nonconforming use is
21 allowed to adapt to changing conditions and change in
22 operating procedures that govern that use, and that's
23 basically what's happening here.

24 The use needs to be able to adapt as the
25 times change. And basically, the only physical change

1 is the installation of the scale and also there's some
2 fencing that's been discussed briefly earlier in the
3 hearing and above and beyond that there's just a little
4 bit of the cleanup which has occurred and the enhanced
5 operation of the establishment. Basically, this
6 operator just does things in a more modern, and
7 up-to-date, and efficient way than the previous
8 operator had.

9 These are very minor changes. There's no
10 physical expansion. In fact, there's no ability to
11 expand it physically because the Pinelands is
12 constrained that the Township has constrained it. They
13 have to stay within the historic limits of the junkyard
14 that has been there since the yard was started. And
15 the modifications we're talking about are the normal
16 kinds of modifications that occur with issues. I've
17 represented other junkyards. They usually have scales.
18 They usually have fences. These are improvements that
19 are typical of these uses and are normal and ancillary
20 in every respect to the use. They're normal accessory
21 uses, and for those reasons I believe it meets those
22 criteria as minor modifications to this preexisting use
23 that are justified, and the applicant should be
24 entitled to.

25 The second set of criteria for justifying the

1 expansion of preexisting nonconforming uses that I feel
2 are applicable here are the criteria under the
3 Burbridge case which basically says that if you make
4 the use -- if you enhance the use in some manner that
5 that also offsets any impact that the expansion might
6 have and justifies the continuation of the preexisting
7 nonconforming use for its modification. And here you
8 have a very minor and insignificant improvement. It
9 doesn't have any impact on the intents of the use. It
10 doesn't have any impact of the character of the use.
11 And it's been accompanied by some modifications which
12 further mitigate any impacts the use could have, and
13 those are in the form of the fencing and also to the
14 general clean up of the property.

15 So basically, you've got a lot of
16 improvements and very little -- or actually no
17 intensification of use whatsoever. And under the
18 Burbridge case, again, those modifications would also
19 justify the -- an expansion of the -- or the
20 modification, rather, of this preexisting nonconforming
21 use. So I believe there's no question that this use
22 satisfies the positive criteria for this type of
23 variance.

24 Under the negative criteria we have to show
25 that there's not going to be any -- apparently the

1 entire purpose of the zone plan and that the public
2 welfare would be advanced by this use. And basically,
3 again, there's not much going on here. There's not
4 much of an intensification. In terms of the proper
5 welfare, recycling does provide a use which is
6 beneficial to the public. Obviously, our society
7 generates a lot of waste products. People like this
8 are the ones who deal with those waste products and
9 recycle them so that will be used again and that's a
10 benefit to the general public.

11 In terms of the balance of the negative
12 criteria, there's no apparent interim purpose of the
13 zone plan because basically the neighborhood has long
14 been accommodated to this use. It's existed for an
15 excess of 50 years. At one time it was the only active
16 improvement in this entire vicinity of the Township.
17 Most of the other uses that are now in the area post
18 date this use by a significant amount of time and they
19 were located there with the knowledge that this use was
20 here and basically the area has fully accommodated this
21 use in every respect. There's no intensification of
22 the use. There's no change in the character. So
23 basically you've got a status quo situation in terms of
24 the negative criteria. There's no further
25 (indiscernible) purpose of the zone plan as a result of

1 this application, and it's my opinion it also satisfies
2 the negative criteria and that the use variance would
3 merit the approval of the Board.

4 In terms of the C variance, I would argue
5 that one as a flexible C. Again, we have to show that
6 it would advance the purposes of the Municipal Land Use
7 Law. I would cite purpose (a) again and also purpose
8 (c), which is the purpose which calls for the provision
9 of adequate, light, air, and open space, and is
10 basically the provision that any bulk variance has to
11 satisfy.

12 The relief in question is a little bit hard
13 to quantify because some of the fencing is preexisting.
14 It predates the fence controls. Some of it was added
15 later. Some of it was a requirement of a prior
16 approval. For example, there's a nonconforming
17 stockade fence on the eastern property line. That
18 fence was put there as part of a condition in the 1993
19 approval, but it is a nonconforming fence. The
20 applicant is also proposing to locate barbed wire on
21 the fence and the barbed wire is ordinarily not a
22 permitted feature of the fence.

23 In terms of the justification for these
24 modifications, the fence is clearly needed for security
25 purposes to keep people from intruding into the

1 property. It's also there to keep -- control
2 pilferage. And basically, junkyards need to have
3 fences. It's a needed security element. The barbed
4 wire enhances that protection and again is an
5 appropriate feature for a fence for a junkyard.

6 Also, this is a site that can absorb any
7 impact of the nonconforming fence because what you have
8 around its perimeters is the woods. Basically the
9 fence gets lost in the woods. It's not physical from
10 the outline area surrounding the property and therefore
11 it doesn't have any significant impact on the
12 surrounding area and what impact it has is a positive
13 impact. The benefits of the fence are far greater than
14 any -- there's no detriment really from the fence. The
15 fence is something that's a needed accessory to the
16 use.

17 So again, I see no apparent (indiscernible)
18 purpose of the zone plan as a result of the fence. The
19 fence is something which enhances the operations of the
20 property. It protects the public and is basically a
21 benefit to the community. So I believe that satisfies
22 all the appropriate criteria as well and would also
23 merit the approval of the Board.

24 Q Mr. Miller, when question if I could. Going
25 back to the D variance and the negative criteria.

1 Although this improvement, the weight scale, is
2 insignificant from the standpoint of height, size,
3 noise, lights, all that other nonsense, is it also
4 insignificant from the fact that it's located virtually
5 in the very center of the property. It's not sitting
6 against the corner or against a property line. Does
7 that also mitigate any negative effect?

8 A Yes. There's absolutely no impact on the
9 surrounding community as the result of having this
10 scale there, whatsoever. It could actually be located
11 almost anywhere within the confines of the area where
12 the activities are admitted do occur, because it's --
13 basically, it's low to the ground. It can't be seen
14 from outside the perimeter of the property. It doesn't
15 have a lot of moving parts, if you will, so there's
16 just absolutely no impact whatsoever. And it benefits
17 the use and overall, you know, contributes to the
18 benefits of the use because it makes the use more
19 efficient. It's something the use needs to operate
20 property, but it has no detrimental impact or -- on the
21 community, whatsoever.

22 MR. RIDGWAY: Thank you. I have nothing
23 further Mr. Miller.

24 THE CHAIRPERSON: Do any of the Board members
25 have any questions of this witness.

1 MR. ROBBINS: Just one.

2 THE CHAIRPERSON: Mr. Robbins?

3 MR. ROBBINS: Now, are the limits of the
4 junkyard defined by the clearing?

5 MR. MILLER: Not exactly. I think they're
6 more accurately defined by the fence, but the clearing
7 is -- there's some growth within the area that is
8 designated to the junkyard activity.

9 MR. ROBBINS: Okay.

10 MR. MILLER: There has been some plant growth
11 within the area where the junkyard activities are
12 otherwise submitted.

13 MR. ROBBINS: So you're suggesting that any
14 growth which has occurred there could be still utilized
15 as part of the junkyard? I mean, is there any historic
16 clearing that Pinelands doesn't want this to expand
17 beyond or, you know, it's -- does the clearing has some
18 relevance to the size of the junkyard?

19 MR. CIVALIER: The -- I guess I can answer
20 that.

21 MR. MILLER: I'm going to yield to Mr.
22 Civalier.

23 MR. CIVALIER: Having dealt with Pinelands on
24 this issue, they were the ones that asked us to
25 (indiscernible) and to label the limits as per the 1993

1 preapproval because that is the limits of the allowable
2 use area and also the limits of wetlands or limits of
3 development, as they call it, which we label also in
4 the plan (indiscernible). So that's the line that
5 governs any use within the property.

6 UNIDENTIFIED SPEAKER: Is that the squiggly
7 line that's kind of dark on the --

8 UNIDENTIFIED SPEAKER: Yeah. It's the
9 lighter of the squiggly lines. The darker one is the
10 present edge of tree line --

11 UNIDENTIFIED SPEAKER: Tree line.

12 UNIDENTIFIED SPEAKER: -- that we located
13 physically in the field.

14 UNIDENTIFIED SPEAKER: So there's been some
15 growths, overhangs, so --

16 MR. ROBBINS: So the limits of the junkyard
17 are not the growth which is there now, it's the growth
18 that -- it's the clearing that was approved in 1993?

19 UNIDENTIFIED SPEAKER: That is correct.
20 That's the Pinelands, yes.

21 UNIDENTIFIED SPEAKER: If you look at the
22 plan that was submitted with the application, in the
23 very top center of the plan it states limits of
24 clearing from Lord Anderson Worrell & Barnett minor
25 subdivision plan dated 4/26/93 revised to 9/3/93. And

1 that's -- that the line that shows on the approved
2 subdivision from 1993. If you look at the Pinelands
3 approval letter for this specific allegation -- their
4 certificate of filing -- they refer to this line and in
5 fact they made Mr. Civalier show this line on the plan
6 to show that that is the outside boundary of the
7 approved site plan use.

8 Now, they also wanted Mr. Civalier to show
9 this other plan that's of this other line to sum up
10 within that because Mr. Civalier said, well, let me
11 just take that out because there's not -- it's almost
12 like an overhead shot. It can be a canopy. It could
13 be small trees. There's not much large growth in here
14 at all. But they wanted them to show both lines, but
15 specifically let everyone know that the limit of a
16 junkyard is what was approved by the Pinelands and this
17 Board back in 1993.

18 UNIDENTIFIED SPEAKER: So there's no
19 stipulation to preserve any of the area which has
20 reforested itself even though it's only stuff that
21 could have grown since '93 that that could be removed
22 at any time?

23 UNIDENTIFIED SPEAKER: Correct.

24 MR. HAAS: Yes, thank you.

25 THE CHAIRPERSON: Mr. Haas?

1 MR. HAAS: Thanks, Mr. Chairman. I'm hearing
2 testimony that's just confusing. The planner says the
3 limits of the operation will be to the fence line. Is
4 that what was said?

5 UNIDENTIFIED SPEAKER: No. I -- if what I
6 said sounded that way, that's not what I intended it --
7 it's the limits that are established by the prior
8 permit.

9 UNIDENTIFIED SPEAKER: Actually, the tree
10 line would be a safer bet by the open area safe line.
11 The major tree line, is that the operational limits?

12 UNIDENTIFIED SPEAKER: The 1993 tree line --

13 UNIDENTIFIED SPEAKER: Yes?

14 UNIDENTIFIED SPEAKER: Yes.

15 UNIDENTIFIED SPEAKER: And is it -- okay.

16 (Multiple speakers)

17 UNIDENTIFIED SPEAKER: It's the outer line in
18 this case. The darker green line.

19 UNIDENTIFIED SPEAKER: Yeah. The dark line
20 is way within the buffer zone and that's --

21 UNIDENTIFIED SPEAKER: The --

22 UNIDENTIFIED SPEAKER: The buffer zone.

23 UNIDENTIFIED SPEAKER: -- dark line?

24 UNIDENTIFIED SPEAKER: The wetlands buffer.

25 The tree line is way within the --

1 UNIDENTIFIED SPEAKER: They -- the Pinelands
2 commission says that that line that I'm pointing to is
3 the limits of development and the wetlands buffer line.

4 UNIDENTIFIED SPEAKER: Yeah.

5 UNIDENTIFIED SPEAKER: That is the line.
6 That is the buffer line. It's not in it. It -- that's
7 the limits. That's -- so in other words, anything from
8 here out is in the buffer. Anything from here out is
9 in the buffer. Anything from here down is in the
10 buffer. But anything within this area is the limits of
11 development. You can't go past that line with any
12 development.

13 UNIDENTIFIED SPEAKER: Okay. Thank you.

14 UNIDENTIFIED SPEAKER: You're welcome.

15 UNIDENTIFIED SPEAKER: Thanks, Mr. Chairman.

16 THE CHAIRMAN: Ms. Doherty?

17 MS. DOHERTY: Fine. I pulled out a
18 certificate of filing dated January 2nd, 2013 and on
19 the last page it says -- excuse me, I'm losing my voice
20 -- there are wetlands on and within 300 feet of the
21 above referenced lot. To meet the wetlands protection
22 standards of the Township land use ordinance and the ,
23 all developments including clearing land disturbance
24 must be located no closer to the wetlands than 1981
25 limits, a preexisting salvage yard. The above

1 referenced plan indicates that this requirement is
2 being met. So I'm confused with all these fences and
3 300 feet and the 1993 documents that are being
4 referenced and the time that is says 1981.

5 MR. MILLER: If I can direct you to that same
6 letter you're looking at --

7 MS. DOHERTY: Yeah.

8 MR. MILLER: If you go to Page 2 and at the
9 top paragraph. Am I correct, Gary?

10 MR. CIVALIER: She's reading this -- it could
11 be in the file.

12 MS. DOHERTY: Yeah.

13 MR. CIVALIER: I think you're talking about
14 the previous letter that we received from
15 (indiscernible) where they directed us to label the
16 line. That one there was --

17 UNIDENTIFIED SPEAKER: Okay.

18 UNIDENTIFIED SPEAKER: That's part of this
19 process when we were going before Pinelands and
20 submitting to Pinelands, they generated the September
21 4th, 2012 review letter on the application and on the
22 second page of that letter they said that they were
23 looking for the revised site plans and they asked that
24 based on their site inspection, the car and material
25 storage area depicted on the submitted plan do not

1 appear to accurately depict the existing limits of the
2 area used for salvage storage. Please remove the boxes
3 on the plan depicting car and material storage areas.
4 Instead please draw a line depicting the 1981 limits of
5 the existing salvage yard made for the agreements of
6 development that are buffered.

7 Now, they also say the note must be placed on
8 the plan stating that no development including clearing
9 and land disturbance is permitted in wetlands and
10 wetland parks. Now, subsequent to that I had a
11 telephone conversation with an individual from the
12 Pinelands Commission who wrote this letter because she
13 was initially using 1981 because that's when the
14 Pinelands regulation came into effect comprehensive
15 management plan. But once we discovered that there was
16 an approved plan from 1993 and that there was a
17 certificate of filing from that that year, that was
18 what she asked us to label and to depict on the plan,
19 which we did, and that's what they subsequently
20 approved a separate filing.

21 UNIDENTIFIED SPEAKER: We can go over it when
22 we go through (indiscernible).

23 THE CHAIRPERSON: Mr. Kennedy? Can we have a
24 five minute recess please.

25 (Recess)

1 THE CHAIRPERSON: We're back in session. Mr.
2 Ridgway.

3 MR. RIDGWAY: There weren't any other
4 questions of Mr. Miller, we're done with him.

5 THE CHAIRPERSON: At this time we're going to
6 open it to the public if anyone from the public would
7 like to come up and give testimony, ask question. I am
8 going to ask you when you come up to be productive.
9 Don't come up and say you don't like this junkyard.
10 That's not being productive. If there's a question
11 you'd like to ask of the Board or any of the witnesses,
12 if there's something they're doing that they're not
13 supposed to be doing, or something you'd like to see
14 done, be productive with your comments. That's all I
15 can say.

16 MS. WISHART: Hi. I'm Catherine Wishart. I
17 live at 1 Falcon Drive, South Hampton, New Jersey.

18 UNIDENTIFIED SPEAKER: One more time, your
19 name?

20 MS. WISHART: Catherine Wishart. I live at 1
21 Falcon Drive, Southampton, New Jersey.

22 UNIDENTIFIED SPEAKER: W-i-s-h --

23 MS. WISHART: W-i-s-h-a-r-t.

24 UNIDENTIFIED SPEAKER: Catherine, right?

25 MS. WISHART: Yes, with a C.