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August 16, 2012

Mr. Tony Singh  
c/o Fine  
1160 Route 22 West  
Mountainside, NJ 07092

**Re: Inder, LLC  
Clinton Township Approvals**

Dear Tony:

Per our conversation, I reviewed the final site plan approval, memorialized by Resolution No. 2009-21, adopted on February 22, 2010. Essentially, at the time that the Zoning Board granted final site plan approval, the Zoning Board also granted Inder, LLC a four year extension of time. This means that you have until **February 22, 2014** (four years from the date of the adoption of the Final Resolution of Approval) to obtain construction permits for the retail building and the self-storage building and commence construction of the proposed development. To be clear, you must obtain the construction permits *and* commence construction work by February 22, 2014. If you obtain the construction permits and commence work on time, you will then have *18 months* from the issuance of the construction permits to complete construction and obtain a permanent Certificate of Occupancy.

I recommend that you move forward on satisfying the conditions of approval as soon as possible. You must start the process long before the February 22, 2014 deadline in order for you to pull permits and start construction by that date. There are a number of conditions precedent to obtaining the construction permits. These items are outlined in paragraphs 22 and 23 of the Final Resolution of Approval. Some of these items could take a few months to work through, such as the Developer's Agreement (which is a document negotiated and executed by the Township Governing Body) and the performance bonds (which requires the Township Engineer to review and approve the cost estimates outlined by your engineer). As you know, all of the conditions must be met, including the payments and applicable fees, in order for the construction permits to issue.

One other item that you should be aware of is that you may request an additional one year extension under the Municipal Land Use Law. This is a discretionary extension and the Zoning Board does not have to grant it. In the event that it was applied for and approved, you would then have until February, 2015 to pull permits and start construction.

Jonathan I. Epstein,  
Partner responsible for  
Princeton Office


Established 1849

Mr. Tony Singh  
August 16, 2012  
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With regard to your other inquiry, the Resolution of Approval does specifically prohibit the use of a bank in the retail building. This condition all appeared in the preliminary site plan approval. In order to obtain permission to construct a bank, you would need to appear before the Zoning Board on an application requesting an amendment to the conditions of approval. If you decide to take this route, I would recommend that you request the potential one year extension at the same time.

Feel free to contact me if you have any further questions or require help on satisfying the conditions of approval.

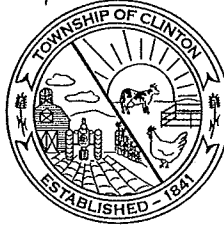
Very truly yours,



Christopher H. DeGreza

CHD

**TOWNSHIP OF CLINTON  
HUNTERDON COUNTY**



Thomas Mc Caffrey  
Chairman

Rebecca D'Alleinne  
Administrator

February 23, 2010

Mr. Christopher De Grezia, Esq.  
Drinker, Biddle, & Reath, LLP  
105 College Road East, Suite 300, P.O. Box 627  
Princeton, NJ 08542

Re: Inder, LLC  
Final Site Plan Approval with Extensions of the Final Site Plan Protection period &  
the Time within which Applicant has to Obtain Construction Permits  
Block 68, Lot 9.02

Dear Mr. De Grezia:

Enclosed is a copy of the resolution adopted by the Board in the above matter on  
February 22, 2010.

Very truly yours,

Rebecca D'Alleinne  
Secretary to the Board  
Enclosure

Cc: Clerk  
Building Dept.  
Finance  
Zoning Officer  
Assessor  
Twp. Engineer  
Board of Health  
Sewer Dept.  
Board Attorney  
Applicant  
File

**BOARD OF ADJUSTMENT**

1225 Route 31S Bldg D, Annandale, NJ 08801 (908) 735-5610 - Fax: (908) 735-0759  
website: [www.township.clinton.nj.us](http://www.township.clinton.nj.us) - email: [bdalleinne@clintontwpnj.com](mailto:bdalleinne@clintontwpnj.com)

Date: 2010-02-22

**CLINTON TOWNSHIP BOARD OF ADJUSTMENT**

INDER, LLC  
1755 ROUTE 31 SOUTH  
BLOCK 68, LOT 9.02

APPLICATION NO. 2007-10

FINAL SITE PLAN APPROVAL WITH EXTENSIONS OF THE FINAL SITE PLAN  
PROTECTION PERIOD AND THE TIME WITHIN WHICH THE APPLICANT HAS TO  
OBTAIN CONSTRUCTION PERMITS

**RESOLUTION NO. 2009-21**

**WHEREAS**, Inder, LLC (the “applicant”) owns property designated on the Township tax maps as Block 68, Lot 9.02 (the “property”), which property is situated in the C-1 commercial zoning district, and obtained from the Board “d(1)”, “d(6)”, “c(1)” and “c(2)” variances, exceptions and preliminary site plan approval (the “preliminary approvals”) to construct a permitted retail shopping building (the “retail building”) at a non-permitted height on the front portion of the property and a non-permitted self storage building (the “self storage building”) on the rear portion of the property (both buildings together, along with related site improvements, being referred to as the “proposed development”), which preliminary approvals are memorialized in Resolution No. 2006-17 adopted on April 23, 2007;

**WHEREAS**, the applicant submitted to the Board an application for final site plan approval (the “application”) on December 3, 2007, and thereafter requested during the course of the hearing held on the application the following additional relief in the event that the final site application was granted: three (3) one-year extensions of the two-year final protection period pursuant to N.J.S.A. 40:55D-52a and c to provide a final site plan protection period of five (5) years; and four (4) one-year extensions of the one-year time period within which the applicant has to obtain construction permits pursuant to Board Rule 2:4-9.8.b to provide a five (5) year period within which the applicant has to obtain construction permits, to match the five (5) year final protection period (the “extension requests”);

**WHEREAS**, the Board has subject matter jurisdiction over the application and the extension requests pursuant to N.J.S.A. 40:55D-70d, 76b, and 20 by reason of the preliminary approval involving “d” variances;

**WHEREAS**, a number of documents were submitted with regard to the application by the applicant and various Board and Township experts, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents submitted by the applicant for approval by the Board (the Board and Township experts’ reports which contain comments / suggestions that were not incorporated into the final version of the final site plan subject to review and approval are referenced in the conditions section of the within resolution):

Date: 2010-02-22

1. Application form dated December 4, 2007,
2. "Final site plan (Phase 1 and 2)" (the "final site plan") last revised July 2, 2009, prepared by E. Mitchel Ardman, PE (of The Reynolds Group, Inc.), consisting of 21 sheets, as well as the three (3) architectural drawings referenced below,
3. Architectural drawings, last revised July 6, 2009, prepared by Salvatore Corvino, AIA (of CSR Group), consisting of the following drawings: A-1 (Retail Building Floor Plans and Elevations), A-2 (Self Storage Building Floor Plans and Elevations), and AS-1 (Signage Coordination Drawing, Elevations and Details) (the "sign coordination plan"),
4. "Evaluation of Ground-Water Supply" dated August 1, 2006, prepared by Penelope Althoff, Ph.D., PG,
5. Addendum to the Stormwater Impact Report (which had been submitted during the hearing related to the preliminary approvals) dated October, 2007, prepared by Richard R. Beitle, PE (of The Reynolds Group, Inc.),
6. Site improvement cost estimates for Phase 1 and 2 of the proposed development for bonding purposes undated, prepared by F. Mitchel Ardman, PE (of The Reynolds Group, Inc.), consisting of 3 sheets, and
7. Hydro-geologic evaluation update letter dated July 7, 2009 addressed to the Board from Penelope Althoff, Ph.D.;

**WHEREAS**, the Board held a public hearing on the application, which hearing commenced on August 25, 2008, continued on February 23, 2009, and concluded on July 27, 2009, with the Board hearing the extension requests during the July 27, 2009 hearing session, with the applicant represented by Christopher DeGrezia, Esq. and the Board represented by Jonathan E. Drill, Esq.;

**WHEREAS**, the following individuals testified during the hearing and were subject to cross examination, which testimony is part of the record in this matter:

1. Salvatore Corvino, AIA (applicant's architectural expert),
2. F. Mitchel Ardman, PE (applicant's engineering expert),
3. Elizabeth McManus, AICP, PP (Board planning expert),
4. Michael F. Sullivan, ASLA, AICP, PP (Board planning expert),
5. Larry Plevier, PE (Board engineering expert),

6. Cathleen Marcelli, PE, CME (Board engineering expert),
7. David Banisch, PP (Board planning expert),
8. Nicholas Tropeano, CLA (Board landscape architectural expert),
9. Debbie Newcomb (Township Environmental Commission Chair), and
10. Martin J. Peverley (Township Fire Chief);

**WHEREAS**, the following exhibits were entered into evidence during the hearing, are on file in the Board's office, and are part of the record in this matter:

A-1 Color rendered "Dimension Plan," last revised August 1, 2008, sheet – of 21 of the final site plan,

A-2 Display board containing photos of the property and the adjacent lots in the Water's Edge major subdivision (which had been submitted as exhibit A-1 during the hearing related to the preliminary approvals, see Resolution No. 2006-17),

A-3 Color rendered "Dimension Plan," last revised January 18, 2009, sheet – of 21 of the final site plan, and

A-4 Color rendered "Utilities Plan," last revised July 2, 2009, sheet – of 21 of the final site plan;

**WHEREAS**, the Board, after considering the application, documents, testimony and exhibits referenced above, and the previously adopted resolutions, and giving appropriate weight to same, makes the following factual findings:

**A. FACTUAL FINDINGS**

**1. The Property, Zoning and Adjacent Residentially Zoned Lots.**

a. The property is a 5.43 acre lot, roughly shaped like a figure "8", located on the southbound side of State Route 31 (the "highway"), approximately 550-feet south of the intersection of the highway with County Route 513. The property is situated in the C-1 commercial zoning district as well as the Route 31 North Highway Corridor District of the Township. The bottom or eastern half of the "8" fronts on the southbound side of the highway, with 426.27-feet of frontage on the highway. The front or bottom or eastern half of the "8" abuts to its north and south sides other C-1 zoned lots. A lawn mower sales and repair store sharing a lot with a single family home abuts the bottom half of the "8" to the north and an antiques and gift store called "Art's Resale" abuts the bottom half of the "8" to the south. The rear or top or western half of the "8" abuts to its north and west the Water's Edge major subdivision ("Water's Edge" or the "Water's Edge subdivision") which is situated in the AH-3 residential zone and

abuts to its south the Spruce Run Reservoir (the "reservoir") which is in the R-1 residential zone. To the east, across the highway from the property, are an "Acura" dealership and a vacant commercial building on a lot to the south of the dealership.

b. Retail sales and service establishments, limited to those establishments listed in ordinance section 165-156.A, are permitted principal uses in the C-1 zone pursuant to ordinance section 165-156.A. (1) and (2). Banks, offices for business, executive, professional and administrative purposes, and restaurants, cafes and taverns in which patrons, seated at tables or counters, are served food and drink by waiters or waitresses for consumption on premises are also permitted principal uses in the C-1 zone pursuant to ordinance section 165-156.A (3), (4) and (5). Off-street parking in accordance with ordinance section 165-71.A. (10), signs in accordance with ordinance section 165-109, and other uses customarily incident to a principal permitted use are permitted as accessory uses in the C-1 zone pursuant to ordinance section 165-157. A, B and E. Any uses not included on the lists of permitted uses in the C-1 zone are prohibited by virtue of ordinance section 165-93, which provides: "Where a use is not specifically permitted in a zone district, it is prohibited." Further, ordinance section 165-96 applies to the application and provides: "Only one principal building may be erected on a lot, except for related buildings forming one principal use in the same ownership" but limited to certain specific uses listed in the ordinance, which includes "retail shopping complexes."

c. The schedule of zoning requirements, consisting of "bulk" requirements for development, which schedule is incorporated by reference via ordinance section 165-86, must be complied with by all uses and developments in the C-1 zone pursuant to ordinance section 165-159. Also, as the property is located in the Route 31 North Highway Corridor District, the Township's design standards for non-residential development also apply to development on the property pursuant to ordinance section 165-75. Further, the property is located within the Critical Geological Formation Zone (a limestone zone), which requires that appropriate engineering solutions be provided as necessary to minimize any adverse environmental impact caused by development of the property pursuant to ordinance section 165-72.C. (3) (n), section 165-72.C (7) and section 165-72.E (2). Finally, the property is not served by municipal water or sewer so the aquifer testing and analysis requirements contained in ordinance section 165-72.C (8) also apply to the any development of the property.

## 2. The Proposed Development and Preliminary Approvals.

a. The proposed development consists of a one (1) story 14,000 square foot retail building with decorative towers (the "retail building") with two (2) drive-through lanes in the front or bottom half of the property, as well as (after a series of plan revisions) a two (2) story 16,900 square foot (8,450 square feet net per story) self storage building with a mansard roof (the "self storage building") to the rear or top half of the property. The proposed development also includes a number of site improvements related to the retail building and self storage building, including a stormwater detention basin and stormwater management system as well as parking areas for each of the buildings. 70 parking spaces have been proposed for the retail building and 22 parking spaces have been proposed for the self storage building. Substantial landscaping screening has also been proposed.

b. The retail building is a principally permitted use in the C-1 zone pursuant to ordinance section 165-156.A (1) and (2) and the drive-through lanes are permitted accessory uses pursuant to ordinance section 165-157 as they are customarily incident to a use which is principally permitted and the applicant has represented that the drive through use will be related to a principally permitted use located in the principally permitted retail building, such as a pharmacy. The self storage building is not included on the list of permitted uses set forth in ordinance section 165-156 so is prohibited by virtue of ordinance section 165-93, which provides: "Where a use is not specifically permitted in a zone district, it is prohibited." The applicant obtained from the Board "d(1)", "d(6)", "c(1)" and "c(2)" variances, exceptions and preliminary site plan approval (the "preliminary approvals") to construct the permitted retail shopping building at a non-permitted height on the front portion of the property and the non-permitted self storage building on the rear portion of the property (both buildings together, along with related site improvements, being referred to as the "proposed development"), which preliminary approvals are memorialized in Resolution No. 2006-17 adopted on April 23, 2007.

3. **The Application.** The application currently before the Board is for final site plan approval and there are also extension requests before the Board, seeking: three (3) one-year extensions of the two-year final protection period pursuant to N.J.S.A. 40:55D-52a and c; and four (4) one-year extensions of the one-year time period within which the applicant has to obtain construction permits pursuant to Board Rule 2:4-9.8.b. If the Board grants the application and the extension requests, the final site plan approval will provide a five (5) year period within which the applicant has to obtain construction permits and will protect the proposed development from zoning ordinance changes for the same five (5) year period.

4. **Findings as to Conformance of the Final Site Plan with the Preliminary Site Plan.** The Board finds that the final site plan includes the following three (3) changes in the layout of the improvements from that reflected on the preliminary site plan, but that the changes are minor and insubstantial changes and, provided that the conditions set forth below are imposed and complied with, the final site plan will be substantially similar to the preliminary site plan:

a. The first change is that six (6) parking spaces shown on the preliminary site plan as being constructed next to the self storage building are proposed on the final site plan to be banked in accordance with ordinance section 165-71.A(10)(d), which allows the Board to permit the banking of parking spaces but if and only if "the entire required parking area shall be shown on the site plan so that it will be available in the event future conditions should so require." The Board finds that the banking of these six spaces is a minor and insubstantial change and should be approved but if and only if a condition is imposed and complied with requiring that the applicant revise the final site plan to add a note stating that the applicant shall be required to construct the six (6) banked spaces in accordance with the requirements of the Township ordinance if and when the Township Planner, Township Engineer and/or Township Zoning Officer determines in writing that they are necessary.

b. The second change is that the stormwater recharge system shown



on the preliminary site plan as being constructed to the south of the self storage building has been eliminated from the final site plan and, as mitigation, the applicant has proposed a monetary contribution for inlet labeling and local public education literature, both of which are listed in the Township's Stormwater Management Ordinance as acceptable mitigation measures where stormwater recharge cannot be achieved on a property due to physical constraints of the property. The Board finds on the basis of its geotechnical expert's review of the application, that the stormwater recharge system should be eliminated due to the presence of carbonate rock (limestone) underlying the property. The Board finds and notes that the Township Environmental Commission recommended that a monetary contribution be made as a mitigation measure in light of the fact that on-site recharge could not safely be provided and that the money be earmarked for inlet labeling and local education literature for continued annual compliance with the Tier A Municipal Stormwater General Permit requirements. The applicant proposed that the monetary contribution for mitigation be \$21,365, based on the estimated cost savings of not constructing the stormwater recharge system, and the Board notes and finds that its engineering expert agreed with this figure. The Board finds that the elimination of the stormwater recharge system is a minor and insubstantial change that should be permitted but if and only if a condition is imposed and complied with requiring that the applicant make a \$21,365 mitigation contribution payment to the Township.

c. The third change is that the final site plan reflects a two-phase project where the preliminary site plan did not include any phasing. Phase 1 is shown as construction of all site improvements for the property as well as the construction of the retail building. Phase 2 is shown as construction of the storage building. The Board finds that provided that all of the site improvements are included in Phase 1 of the proposed development, the addition of the phasing is a minor and insubstantial change. The Board recognizes that N.J.S.A. 40:55D-49b, the MLUL provision governing the effect of preliminary approval, provides that an "applicant may submit for final approval on or before the expiration date of the preliminary approval the whole or a section of sections of the preliminary subdivision plat or site plan, as the case may be." Thus, the Board recognizes that the MLUL contemplates that phasing which is not included in a preliminarily approved site plan may be included in a proposed final site plan without said phasing being considered a "substantial amendment" of the preliminary site plan and thereby not requiring an amended application for preliminary site plan approval under N.J.S.A. 40:55D-46b. However, the Board notes it's finding here that the addition of the phasing is a minor and insubstantial change in this particular application because all of the site improvements will be included in Phase 1 of the proposed development. Had the site improvements been broken up between the phases, it is possible that the Board would have found the phasing to be a substantial change, thereby warranting denial of final site plan approval without an application being made and approved for amended preliminary site plan approval.

d. While no other changes were ultimately made to the final site plan from that reflected on the preliminary site plan, the Board believes it should comment on a change that was initially proposed but subsequently withdrawn just to make the record complete. The preliminary site plan included a connection to the Town of Clinton water system for fire suppression purposes with domestic water proposed to be supplied by a private on-site well. Resolution No. 2006-17 contained a condition, however, that permitted the applicant to provide

underground water storage tanks for providing water for firefighting purposes in the event that the applicant was unable to obtain a connection to the public water system from the Town of Clinton. See, condition #8 of Resolution No. 2006-17. When the applicant initially submitted the final site plan application, the connection to the Town of Clinton water system had been eliminated. While the applicant proposed two (2) underground water storage tanks (one for each building) to feed its proposed sprinkler systems, the Board wanted additional tanks so that there would be separate tanks for the Fire Department's use and connection. The Board took the position that same was required by ordinance section 165-61.L. The applicant did not want to provide any extra tanks due to the additional costs that would be incurred for each additional tank. During the course of the hearing, the Board requested that the applicant formally apply to the Town of Clinton for connection to its public water system for all firefighting and fire suppression purposes. While this issue delayed the processing of the final site plan application for almost one year, it was well worth the wait. The applicant obtained approval from the Town of Clinton to connect to its public water system for both fire hydrants and sprinkler systems for both buildings. As a result, the final site plan does not deviate from the preliminary site plan regarding water for firefighting purposes.

5. **Findings as to Conformance of the Application with Zoning and Site Plan Ordinance Requirements.** The Board finds that the final site plan complies with all applicable Township ordinance provisions except for those zoning ordinance and site plan ordinance provisions from which relief was previously granted with the preliminary approvals as memorialized in Resolution No. 2006-17, and except for the following zoning ordinance provisions (which will be discussed separately below): the front yard setback requirement contained in zoning ordinance section 165-98 as to the stormwater detention basin located adjacent to Route 31; and the signage requirements contained in zoning ordinance section 165-109 as the seven (7) wall signs proposed on the northerly side of the retail building facing the parking lot. Provided that relief is granted to permit these two zoning ordinance deviations or that these two zoning ordinance provisions do not apply to the application, the Board finds that the application and the final site plan will conform to all applicable zoning and site plan ordinance provisions.

6. **Stormwater Detention Basin Conformance with Front Yard Setback Requirements.** At the time of the preliminary approvals in 2007, and as reflected on the preliminary site plan, the stormwater detention basin located adjacent to Route 31 was located entirely within the 75-foot front yard setback area and as close as 12-feet to the property's front property line. At the time of the preliminary approvals, detention basins were not considered to be "structures" and, as such, were permitted to be located in yard setback areas. Subsequent to the preliminary approvals, Township Ordinance 969-08 was adopted on August 20, 2008, amending ordinance sections 165-4 (definitions) and 165-98 (yard requirements) to broaden the definition of "structure" and to expressly permit certain structures in setback areas while expressly prohibiting all other structures in setback areas. By reason of the ordinance amendment, detention basins are considered to be structures and are prohibited in yard setback areas. The Board finds, however, that the location of the detention basin in this application is a term and/or condition of the preliminary site plan approval that is protected from the ordinance change by reason of the preliminary protection period provided by N.J.S.A. 40:55D-49. The

Board thus finds that the final site plan complies with all applicable ordinance requirements governing setbacks of the proposed development, the Board specifically finding that the front yard setback requirement does not apply to the stormwater detention basin in this particular application by reason of the preliminary protection period.

7. **Wall Signage Conformance with Sign Ordinance Requirements.** The preliminary site plan that was approved in 2007 included wall signage on the northerly side of retail building above each of the maximum of seven (7) retail store entrances facing the parking lot. Further, the preliminary site plan included no wall signage on the easterly side of the retail building facing Route 31 and no wall signage on the storage building at all. In fact, condition #4 in Resolution No. 2006-17 prohibits store entrances and wall signage on the easterly side of the retail building facing Route 31 and prohibits wall signage on the storage building. At the time of the preliminary approvals, the seven (7) wall signs on the northerly side of the retail building facing the parking lot were permitted. Subsequent to the preliminary approvals, Township Ordinance 963-08 was adopted on May 14, 2008, amending ordinance section 165-109 governing signage. As a result of the amendment, sign ordinance section 165-109.O(2), which governs wall signage in non-residential zones, permits a maximum of two (2) wall signs per building and only on the building façade that faces a street. As such, the final site plan, which includes a sign coordination plan that reflects seven (7) wall signs on the northerly façade of the retail building facing the parking lot, does not comply with ordinance section 165-109.O(2). The Board finds, however, that the number of wall signs on the retail building, as well as the location of the wall signage on the northerly side of the retail building facing the parking lot, are terms and/or conditions of the preliminary site plan approval that are protected from the ordinance change by reason of the preliminary protection period provided by N.J.S.A. 40:55D-49. The Board thus finds that the final site plan complies with all applicable ordinance requirements governing signage, the Board specifically finding that the changes in the ordinance requirement as to the number and location of wall signs on the retail building do not apply in this particular application. The Board notes and finds, however, that the remaining changes to the Township sign ordinance do apply to the application, which includes but is not limited to the requirements set forth in ordinance section 165-109.O(2) as to the size of each wall sign and the maximum area of all wall signage on the façade of the building, because the preliminary site plan did not specify the wall signage sizes and condition #4 of Resolution No. 2006-17 required the submission of a sign coordination plan that would comply with the Township's sign ordinance provisions at the time of its submission.

8. **Findings as to Conformance of the Application to Prior Approval Conditions.** Resolution No. 2006-17 includes a number of conditions and the Board finds that the application will conform to all of those conditions provided that the conditions set forth below are imposed and complied with. The conditions set forth below include all of the conditions contained in Resolution No. 2006-17, with the exception of the conditions relating to revisions of the preliminary site plan because the preliminary site plan was previously revised in accordance with that condition.

9. **Satisfaction of the Negative Criteria.** The Board finds that final site plan approval can be granted without substantial detriment to the public good and without

substantially impairing the intent and purpose of the zone plan and zoning ordinance but if and only if the conditions set forth below are imposed and complied with. The conditions at issue here include all of the conditions contained in Resolution No. 2006-17, with a few modifications and additions, as set forth below.

10. **Findings as to the Extension Requests.** Finally, the Board's findings as to the applicant's extension requests are as follows.

a. The applicant bases its extension requests on the continuing economic recession. As the applicant's attorney explained to the Board during the July 27, 2009 hearing session, "the economic realities of today are a lot different than when the application was first filed and preliminary approval granted and market conditions have gotten even worse over the last months." While the economics of a proposed development are not appropriate for the Board to consider in deciding whether the requirements for approval of the application have been met, they are appropriate to consider when deciding whether to extend the protection periods provided in the MLUL. In fact, as a result of the current economic recession, the Permit Extension Act of 2008, N.J.S.A. 40:55D-136.1 et seq. (the "Act") was adopted on September 6, 2008. The Act "tolls" the preliminary and final protection periods on the basis of our Legislature's findings that "there exists a state of national recession," that "as a result of the continued downturn of the economy, there will be continued expiration of approvals which were granted by State and local governments," and that "it is the purpose of this Act to prevent the wholesale abandonment of approved projects and activities due to the present unfavorable conditions by tolling the term of these approvals for a period of time." See, N.J.S.A. 40:55D-136.2: Unfortunately for the applicant, however, the Act contains some exceptions to the tolling, including an exception for approvals of projects on environmentally sensitive lands. See, N.J.S.A. 40:55D-136.4b, which provides: "Nothing in this act shall be deemed to extend or purport to extend: . . . (3) any permit or approval issued within an environmentally sensitive area." See also, N.J.S.A. 40:55D-136.3, which provides that an "approval" subject to tolling under the Act excludes any approval referenced in N.J.S.A. 40:55D-136.4. Thus, no approvals issued in the Highland Region of State are subject to tolling under the Act as the lands encompassed within the Highlands Region of the State are environmentally sensitive areas. See, Notice published by the Highlands Council in the October 6, 2008 New Jersey Register, which provides that "no approvals in the entire Highlands Region, including all lands both in the Preservation Area and the Planning Area, are subject to the Permit Extension Act of 2008." See, 40 N.J.R. 5853. The Board thus finds that the final protection period for the proposed development cannot be extended or tolled by virtue of the Act. However, the Board nonetheless finds that the current economic recession is a factor that weighs in favor of extending the final protection period under N.J.S.A. 40:55D-52a and c as the fact that the Act provides no relief to the applicant in no way bars an extension for economic reasons under N.J.S.A. 40:55D-52a. The Board unanimously finds that the current economic recession is a factor that militates in favor of extending the final protection period in this application as it is not only in the applicant's interest to have extended protection during this time period but, as the Board remains in favor of the proposed development, it is in the Board's interest to extend the approval so as not to force the applicant to return to the Board to apply for preliminary and final site plan approval anew, along with all of the variance and exception relief previously granted as memorialized in Resolution

No. 2006-17. The issue that remains, however, is the appropriate time or duration of any such extensions that may be granted.

b. The applicant requested three (3) one-year extensions of the two-year final protection period pursuant to N.J.S.A. 40:55D-52a and c to provide a final site plan protection period of five (5) years; and four (4) one-year extensions of the one-year time period within which the applicant has to obtain construction permits pursuant to Board Rule 2:4-9.8.b to provide a five (5) year period within which the applicant has to obtain construction permits, to match the five (5) year final protection period. The applicant's request is the maximum extension that the Board is authorized to grant under N.J.S.A. 40:55D-52a and c. After considerable discussion among Board members, with the principal focus of the discussion being on the downside of a long extension on any future ordinance changes (since the Township has made frequent adjustments and amendments to its land use ordinances in the past few years and it is reasonable to assume that it will continue to do so in the future), the Board "straw-poll" itself on the issue and the "straw" vote revealed the following deadlock: two (2) members were in favor of granting a one (1) one-year extension of the two-year final protection period to provide a total final protection period of three (3) years; two (2) members were in favor of granting the full three (3) one-year extensions of the two-year final protection period to provide a total final protection period of five (5) years; and one (1) member was in favor of granting two (2) extensions of the two-year final protection period to provide a total final protection period of four (4) years. After further discussion, the two (2) members who were in favor of granting the maximum three (3) one-year extensions of the two-year final protection period agreed to vote in favor of granting two (2) one-year extensions of the two-year final protection period. A formal vote on motion duly made and seconded was then taken and a majority of the Board finds (on a vote of three (3) in favor and two (2) opposed) that the appropriate duration of the final protection period is a total of four (4) years. The same majority of the Board finds for the same reasons that the time period within which the applicant has to obtain construction permits pursuant to Board Rule 2:4-9.8.b should be extended for three (3) years as the Board majority finds that the economic recession constitutes unique circumstances warranting an extension and it is appropriate that the total time the applicant has to obtain construction permits should be the same four (4) year period as applies to the final protection period.

WHEREAS, the Board, based on the application, documents, testimony and exhibits referenced above, the previously adopted resolutions, and the factual findings set forth above, having given appropriate weight to same, and based on its understanding of the applicable law, makes the following legal conclusions:

## B. LEGAL CONCLUSIONS

1. Final Site Plan Review and Approval. The Board's legal conclusions as to final site plan review and approval are as follows:

a. Standard for Considering a Final Site Plan Application.  
N.J.S.A. 40:55D-50a is the focal point for consideration of the final site plan application.  
N.J.S.A. 40:55D-50a provides that the Board "shall grant final approval if the detailed drawings .

. . . of the application . . . conform to the standards established by ordinance for final approval . . . [and] the conditions of preliminary approval.” This is the so-called positive criteria of final site plan review. Because site plan approval in this case is connected to a “d” variance, however, the so-called negative criteria must also be satisfied. See, Allocco & Luccarelli v. Holmdel, 299 N.J. Super. 491 (Law Div. 1997). Approval of a site plan which would otherwise be warranted based on satisfaction of the positive criteria thus cannot be granted unless the negative criteria is also satisfied, namely, “unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance.” See, N.J.S.A. 40:55D-76b. In the case of changes in a final site plan from that preliminarily approved and/or required by conditions of the preliminary approval, N.J.S.A. 40:55D-50a permits “minimal deviations from the conditions of preliminary approval necessitated by change of conditions beyond the control of the developer since the date of preliminary approval without the developer being required to submit another application for development for preliminary approval” but this “minimal deviation” exception applies only in cases of planned unit development; the exception does not apply to a conventional site plan application. N.J.S.A. 40:55D-48b, however, applies to conventional site plans and situations involving changes in a final site plan from that preliminarily approved. N.J.S.A. 40:55D-48b provides that if there is a “substantial amendment in the layout of the improvements proposed by the developer that has been subject of a hearing, an amended application [for preliminary approval] shall be submitted and proceeded upon, as in the case of the original approval for development.” The Board concludes that the reverse is also true, namely, that the Board can grant final approval to a site plan which contains differences in the layout of improvements from that approved in the preliminary site plan but if and only if those differences constitute insubstantial changes in the plan; substantial changes would require amended preliminary approval. See, Davis v. Somners Point Planning Board, 327 N.J. Super. 535, 540-42 (App. Div. 2000).

b. **Conclusions as to the Positive and Negative Criteria of Final Site Plan Review.** As set forth in the factual findings above, provided that the conditions set forth below are imposed and complied with, the Board found that the final site plan complies with all applicable Township ordinance provisions except for those zoning ordinance and site plan ordinance provisions from which relief has been previously granted as memorialized in Resolution No. 2006-17 and except for those zoning ordinance provisions which do not apply to the application because of the protections afforded by the preliminary protection period in accordance with N.J.S.A. 40:55D-49. As set forth in the factual findings above, the Board also found that the final site plan will conform to the preliminary site plan as well as all prior approval conditions provided, again, that the conditions set forth below are imposed and complied with. Finally, as to the negative criteria, the Board found that final site plan approval could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance but if and only if the conditions set forth below are imposed and complied with. For the reasons set forth above, the Board thus concludes that final site plan approval can and should be granted subject to the conditions set forth below.

2. **Extensions of the Final Protection Period and the Time within Which the Applicant must Obtain Construction Permits.**

a. **Standard for Determining Whether to Grant the Extension Requests.** Our courts have held that a board determining whether or not to grant extension requests must engage in a balancing test in which it must consider factors that weigh in favor of the extension and factors that weigh against the extension and then balance the factors to determine whether or not to grant the extension. Jordan Developers v. Brigantine Planning Board, 256 N.J. Super. 676, 679-680 (App. Div. 1992) (while upholding the Board's denial of an extension request, the court held that an intervening zone change did not require denial of the extension but was a factor the board should weigh as against an extension when it balanced the positive and negative factors in determining whether or not to grant the extension). The Jordan court specifically held that the board must weigh "the public interest in the implementation of [any ordinance] change, the applicant's interest in extended protection, and the circumstances in which the need for the extension arose. Id. at 680. The Board concludes that the required balancing test is not an "all or nothing" proposition. The Board concludes that certain factors may weigh against granting an extension except that, if conditions are imposed on the extension, the balance may then be tipped in the direction of granting the extension. Further, the Board concludes that conditions may have to be imposed in the event the Board finds that same are necessary in order to strike the proper balance.

b. **Conclusions as to the Extension Requests.** As set forth in the factual findings above, the Board found that the current economic recession is a factor that militates in favor of extending the final protection period in this application as well as constituting a unique circumstance warranting an extension of the time within which to obtain construction permits, but the Board found that the appropriate duration of the extensions was not that requested by the applicant but, rather, the following. The Board found that the appropriate total duration of the final protection period and the appropriate total duration of the time within which the applicant has to obtain construction permits are four (4) years. The Board thus concludes that it should grant two (2) one-year extensions of the two-year final protection period pursuant to N.J.S.A. 40:55D-52a and c and three (3) one-year extensions of the one-year period within which the applicant has to obtain construction permits pursuant to Board Rule 2:4-9.8.b so that both the total duration of the final site plan protection period and the total time within which the applicant has to obtain construction permits will be four (4) years from the date the within resolution is adopted.

3. **Authority to Impose Conditions.** Conditions may be imposed on a development approval where they are required in order for a board to find that the requirements necessary for approval of the application have been met. Conditions may also be imposed to insure that the positive and/or negative criteria of the requested relief will be satisfied. Boards also have inherent authority to impose conditions on an approval it grants. Further, the MLUL authorizes boards to impose conditions even in the case of fully conforming site plans and subdivisions. Finally, municipal ordinances and the Board's rules and regulations also provide a source of authority for a board to impose conditions upon a developmental approval. In this application, the Board concludes that it must impose the conditions set forth below on all of the above bases.

NOW, THEREFORE, BE IT RESOLVED, by the Board, by motion duly made and seconded on July 27, 2009, as follows:

B. RELIEF GRANTED

1. Final Site Plan Approval. Subject to the conditions set forth below, final site plan approval is hereby granted to the final site plan referenced above, including the architectural drawings referenced above which are part of the final site plan and include the sign coordination plan.

2. First and Second One (1) Year Extension of the Two-Year Final Site Plan Protection Period for the Proposed Development. Subject to the conditions set forth below, a first and second one (1) year extension of the two-year final site plan protection period for the proposed development is granted, hereby extending the final protection period from February 22, 2012 to February 22, 2014.

3. Three (3) One-Year Extensions of the One-Year Period Within Which to Obtain Construction Permits for the Proposed Development. Subject to the conditions set forth below, a three (3) year extension of the one-year time period within which the applicant has to obtain construction permits for the proposed development is granted, hereby extending the time period within which to obtain construction permits from February 22, 2011 to February 22, 2014.

C. CONDITIONS

1. Prohibition and Limitations on Use.

a. No Outdoor Storage on the Property. There shall be no outdoor storage anywhere on the property, including overnight vehicular parking.

b. Prohibition and Limitations on Storage at Self Storage Facility. The size of the self storage building shall not exceed the two (2) stories, 16,900 square foot building (8,450 square feet per floor) reflected on the final site plan and the architectural drawings referenced above. The size of the individual storage units in the self storage building shall be limited to that reflected on the architectural drawing A-2 referenced above. Due to the fact that the self storage building abuts residential lots and the reservoir, the following goods, materials, things, activities, operations and/or uses shall be not be stored, conducted and/or permitted:

- (1) Warehousing;
- (2) Storage of perishable products and/or items;
- (3) Storage of livestock and/or animals;
- (4) Storage of fertilizer and/or other farm products and/or materials;



- (5) Storage of munitions and/or explosives including fireworks;
- (6) Storage of chemicals and/or petroleum products and/or materials;
- (7) Storage of hazardous and/or contaminated materials; and
- (8) Storage of waste and/or debris.

c. **No Change of Use of Self Storage Building Without Prior Approval.** The use of the self storage building shall not be changed to any other use, even if a permitted use, without the applicant first applying for and obtaining approval via a written resolution of the Planning Board or Board of Adjustment (as the case may be depending upon whether or not a "d" variance is necessary pursuant to N.J.S.A. 40:55D-70d). At the very minimum, the applicant must obtain site plan approval prior to a change in use in accordance with ordinance section 165-36.

2. **Prohibition and Limitations on Hours of Operation and Lighting.**

a. **Hours of Operation.** The hours of operation of both the retail building and self storage building shall be limited to the following:

- (1) Monday through Saturday – 6 am to 10 pm; and
- (2) Sunday – 6 am to 8 pm.

b. **Hours of Lighting.** Except for security lighting approved by the Township Engineer, all lighting for the retail facility shall remain off until at least 30 minutes prior to opening of the retail facility and shall be turned off no later than 30 minutes after the closing of the retail facility. Except for security lighting approved by the Township Engineer, all lighting for the self storage facility shall remain off until at least 30 minutes prior to opening of the self storage facility and shall be turned off no later than 30 minutes after the closing of the self storage facility.

3. **Prohibition and Limitations Relating to Traffic.**

a. **Self Storage Building.** There shall be no tractor trailers permitted to deliver to and/or pickup from the self storage building and no tractor trailers permitted at the self storage facility.

b. **Retail Building.** There shall be no banks in the retail building and no 24-hour businesses. All businesses in the retail building shall be limited to the hours of operation set forth above.

4. **Signage.**

a. **Self Storage Building.** There shall be no signage on and/or for the self storage building.

b. **Retail Building.** No individual tenant signs shall be installed on the retail building other than wall signage which has first been reviewed and approved by the Township Zoning Officer as being in compliance with the approved sign coordination plan which is part of the signed final site plan, as well as being in compliance with ordinance section 165-109 as to all requirements pertaining to signage other than the number and location of wall signs on the retail building (the within final site plan approval permits up to seven (7) wall signs to be located on the northerly side of the retail building facing the parking lot). The maximum number of signs permitted on the retail building shall be seven (7), no signs shall be installed on the retail building other than wall signs over store entrances, and the signs installed over store entrances shall identify the store over which entrance it is located. The freestanding monument sign is permitted in its proposed location as shown on final site plan sheet SP-2 but, before any and all signage is installed on the freestanding monument sign, it shall first be reviewed and approved by the Township Zoning Officer as being in compliance with the approved sign coordination plan which is part of the signed final site plan, as well as being in compliance with ordinance section 165-109.

5. **No Occupancy or Storage in the Towers in the Retail Building.** There shall be no use of the towers in the retail building for occupancy by people and/or for storage. The towers may be used to house mechanical equipment, including HVAC equipment and sprinkler water tanks.

6. **Strict Enforcement and Maintenance of Parking.** The applicant shall strictly monitor and enforce parking as permitted and reflected on the signed site plan. This means that parking shall be permitted only in those areas and in those spaces designated on the site plan for same. No parking shall be permitted on any roads adjacent to the property. The applicant shall identify on the site through pavement markings and signage (as approved by the Township Engineer) all parking spaces and fire lanes/zones. The applicant shall have a continuing obligation to maintain all parking areas, which shall include but not be limited to re-paving driveways and parking areas as well as re-painting all required parking spaces and fire lanes/zones. The applicant shall be required to pave the six (6) banked parking spaces adjacent to the storage building in accordance with the requirements of the Township ordinance if and when the Township Engineer and/or Township Planner determines in writing that they are necessary to meet the off-street parking needs generated by the proposed development.

7. **No Subsequent Subdivision and/or Separate Ownership.** The property shall not be subsequently subdivided and there shall be no separate ownership of the property and/or the retail building and the self storage building, i.e., a single entity shall own the property and all buildings on the property.

8. **Fire Protection.** The applicant shall provide fire protection sprinklers in both the retail building and the self storage building with water being supplied via the Town of Clinton. The self storage building shall be provided with a "Siamese" connection. The retail building shall be provided with a gravity sprinkler system.

9. **Stormwater Management Facilities, Manual and Incorporation into Deed.** The detention basin shall incorporate a liner so that stormwater does not infiltrate into the carbonate rock (limestone) below grade. The "Stormwater Facility Maintenance Plan" dated February 2006, last revised November 2006, which was prepared by The Reynolds Group, Inc. (the applicant's engineer), and which was submitted to and reviewed and approved by the Township Engineer, (which governs the operation and maintenance for all stormwater management facilities) shall be revised to include a requirement that the owner annually submit the maintenance log records to the Township Engineer and the Board Secretary and, if not already revised, shall also be revised to include the requirement of maintenance of the meadow pursuant to the notes on final site plan sheet 17. Additionally, the applicant shall incorporate into a restrictive covenant / deed restriction the requirements related to maintenance of the stormwater management facilities as established in the "Stormwater Facility Maintenance Plan." The revision of the "Stormwater Facility Maintenance Plan" and incorporation into a restrictive covenant / deed restriction shall be a condition precedent of obtaining construction permits.

10. **Stormwater Recharge.** In lieu of on-site stormwater recharge (due to the presence of carbonate rock (limestone) underlying the site, the applicant elected to provide a recharge mitigation plan with a cost commensurate to the cost of 100% recharge on site. Specifically, the applicant proposed to make a monetary contribution of \$21,365 to the Township for use in inlet labeling and local public education literature, both of which are listed in the Township's Stormwater Management Ordinance, as recharge mitigation measures. The Board approves this mitigation plan and the amount of the payment based on the estimated cost savings of not constructing an on-site stormwater recharge system. The applicant shall make the \$21,365 mitigation contribution payment to the Township as a condition precedent of obtaining construction permits.

11. **No Basements and Restrictions on Blasting.** There shall be no basements in either of the buildings on the property to minimize blasting in the carbonate rock (limestone). Further, the applicant shall comply with all federal, state and local laws, regulations and requirements relating to any and all blasting done on site, including all geotechnical requirements of the Board's geotechnical expert (currently Joseph A. Fischer of Geoscience Services).

12. **Maintenance Plan for Septic Tanks.** The applicant shall prepare and submit to the Township Engineer for review and approval a maintenance plan for the scheduled pumping of the proposed septic tanks with the schedule of pumping the tanks to be a minimum of once every three (3) years. The maintenance plan shall also provide that copies of all records of tank pump-out and waste hauling and disposal shall be provided to the Board Secretary and the Township Environmental Commission. Submission to and approval by the Township Engineer of the maintenance plan for the septic tanks shall be a condition precedent of obtaining construction permits.

13. **Landscaping.** All landscaping, as installed, shall be substantially similar to and in accordance with the landscaping plan approved as part of the final site plan. Prior to a permanent certificate of occupancy, completion or compliance (whichever is applicable), the

landscaping shall be installed and a two (2) year maintenance guarantee in a form acceptable to the Township Attorney and in an amount acceptable to the Township Engineer, shall be posted with the Township. If the applicant applies for a certificate of occupancy during a non-planting season, the applicant may obtain a temporary certificate of occupancy without installation of the landscaping but if and only if the applicant posts a performance guarantee in a form acceptable to the Township Attorney and in an amount acceptable to the Township Engineer guaranteeing installation of the landscaping during the next planting season and further guaranteeing the subsequent posting of a two (2) year maintenance guarantee. The applicant shall have a continuing obligation to maintain all landscaping for its intended purpose (i.e., for screening if planted for buffering purposes or for aesthetics if planted for enhancement purposes), which shall include but not be limited to repairing and/or replanting to the satisfaction of the Township Engineer and Board landscape architectural expert any and all landscaping that becomes damaged and/or dies. (This continuing maintenance obligation is in addition to, and notwithstanding, the fact that a maintenance guarantee has been required.)

14. **Design, Construction and Location of Improvements and As-Built Plan.** The applicant shall be required to design, construct and locate the proposed development to be substantially similar to that reflected on the final site plan, including the architectural drawings referenced above, signed by the Board Chairman and Secretary. As a condition precedent to the issuance of a certificate of occupancy and release of the performance guarantee, an "as-built" plan satisfactory to the Township Engineer shall have been submitted to the Board Secretary by the applicant. The as-built plan must include the retail building, the self storage building, all site improvements, final grading, septic system, all stormwater facilities, including the detention basin, and all water lines.

15. **Easements, Dedications, Conveyances and Restrictive Covenants / Deed Restrictions.** Any and all easements, dedications and/or conveyances running to and in favor of the Township which are proposed on the final site plan and/or required as a condition of the within resolution shall, in addition to being identified on the final site plan, be contained in a separate document to be prepared by the applicant and approved by both the Township Attorney after the metes and bounds description has been reviewed and approved by the Township Engineer. Any and all restrictive covenants / deed restrictions shall also be contained in a separate document to be prepared by the applicant and approved by both the Township Attorney after the metes and bounds description has been reviewed and approved by the Township Engineer. Said documents shall specifically outline the grant of the easement, dedication, conveyance and/or restrictive covenant / deed restriction and its purpose and shall contain a metes and bounds description of the physical areas involved. Said documents shall then be recorded and, upon completion of the recording process, be transmitted to the Township Clerk for maintenance with other title documents of the Township.

16. **Night-Light Test.** There shall be a night-light test conducted by the Township Engineer prior to the issuance of a certificate of occupancy, compliance or completion (whichever is applicable) and the applicant shall correct any lighting problems which are exposed as a result of the test prior to the issuance of said certificate. The purpose of the night-light test is to assure adequate lighting throughout the site for safety purposes while safeguarding

neighboring property owners and the traveling public from glare, unnecessary brightness and sky glow.

17. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of the within resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the final site plan, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable). Failure to abide by this condition shall result in the relief granted, as well as any and all underlying relief for the property, automatically terminating and becoming null and void.

18. **Revisions to Final Site Plan.** The final site plan shall be revised by drawings and/or notes to the satisfaction of the Township Engineer and the Board expert(s) who made the comment to incorporate the following comments contained in the following memos to the Board from the following Board experts and/or made by the Board during the hearing, as a condition precedent to formal approval of the final site plan and signing of the final site plan:

a. **Memo to the Board from Cathleen Marcelli, PE dated July 21, 2009:**

(1) The proposed wall as shown on the architectural drawings shall also be shown on the final site plan sheets.

(2) Add a detail of the proposed wall on the final site plan sheets.

(3) Correct the "Phase Notes" and the "Public Water" note on final site plan sheet 6 (page SP-4) to reflect that the fire water line to the self storage building will be from the Town of Clinton water department and to detail any applicable Town of Clinton water requirements.

b. **Letter to the Board from Joseph A. Fischer, PE (of Geoscience Services) dated August 5, 2008:**

(1) While final site plan sheet SP-14A contains the notes previously agreed upon between Melick-Tully & Associates (the applicant's geotechnical expert) and Geoscience Services (the Board's geotechnical expert), Note 14 on sheet SP-14A refers to a sinkhole remediation example allegedly shown as "Case II," but the "Case II" scenario has not been shown. The final site plan must be revised to either: show the "Case II" scenario as well as its location with the plans referenced on final site plan sheet SP-14A; or remove the last sentence of Note 14 which refers to the "Case II" scenario.

c. **Letter to the Board from Gary A. Garofalo (from Lighting Design Collaborative) dated November 17, 2008:**

(1) The wall sign panels shown on the sign coordination drawing as mounted on the retail building's northerly façades are proposed to be illuminated by gooseneck RLM type luminaries containing 50 watt metal halide lamps. However, no information has been provided regarding sign colors or finishes. The calculations that were submitted were based on a white sign panel having a 65% average reflectance. The calculated luminance values exceed those permitted by site plan ordinance section 165-74 by +/- 500%. Even with lower reflectances on the sign panels, the signs will still exceed the ordinance brightness limitations. The final site plan, specifically, the sign coordination plan, shall be revised to comply in all respects with all requirements contained in ordinance section 165-74. (As an example, but in no way intending to limit the applicant's options, if a gooseneck type fixture is to be used, perhaps a low wattage (18 watt to 28 watt) compact fluorescent lamp could be used to comply with the lighting ordinance requirements.) In any event, the final site plan revisions must include and/or be accompanied by updated signage fixture information and calculations to demonstrate compliance with all requirements contained in ordinance 165-74.

d. **Comments made by Board Members during the Hearing:**

(1) Revise the final site plan to add emergency generators for powering the pumps for all tanks on the property.

19. **Time Within Which to Revise the Plans and Documents and Obtain Board Officials Signatures on Plans.** The applicant shall have until August 22, 2010 (six months from the adoption of the within resolution) to revise the final site plan as required by the conditions above and obtain the signatures of the Board Chairman and Secretary on the final site plan. In the event that the applicant fails to revise the final site plan as required by the conditions above and obtain the signatures of the Board Chairman and Secretary on the final site plan within said time period, or extension thereof as granted by the Board, the within approvals shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would have declined to grant conditional final site plan approval and, instead, would have continued the hearing on the application for no more than a six month period to provide the applicant with the opportunity to revise the final site plan and, failure by the applicant to have resubmitted same to the Board within that period or submission within that period but failure of the applicant to have made all the required revisions, would have resulted in denial of the application.)

20. **COAH Scarce Resource Restraint.** The within final site plan approval is subject to COAH removing the scarce resource restraint on municipal actions associated with development approvals imposed on November 12, 2008 and/or the applicant obtaining from COAH a waiver or exemption from the scarce resource restraint. This condition is imposed pursuant to N.J.S.A. 40:55D-22 and in accordance with the guidance set forth in the December 17, 2008 memo forwarded to the Township by Lucy Vandenberg, PP, AICP, COAH's Executive Director.

21. **Time Within Which to Obtain Construction Permits and Commence and Complete Construction.** The applicant shall have until February 22, 2014 (four (4) years from the date of the adoption of the within resolution) to obtain construction permits for the retail building and the self storage building and commence construction of the proposed development. If during said time period, or extension thereof as granted by the Board, construction permits are not obtained or, if such permits are obtained but work not commenced or, if work is commenced but a permanent certificate of occupancy for both buildings is not issued within 18 months of the issuance of the construction permits for each building, the within approvals shall automatically expire and become null and void.

22. **Conditions Precedent to Zoning and Construction Permits.** No zoning and/or construction permits for the proposed development shall be issued until and unless the following condition precedent requirements have been satisfied:

- a. Submission and approval of the "Stormwater Facility Management Plan" in accordance with condition #9 above;
- b. Payment of the recharge mitigation contribution in accordance with condition #10 above;
- c. Submission and approval of the maintenance plan for the septic tanks in accordance with condition #12 above;
- d. Recording of easements, dedications, conveyances and/or restrictive covenants / deed restriction easements in accordance with condition #15 above;
- e. Payment of any and all escrow fees in accordance with condition #17 above;
- f. The final site plan has been signed by all required municipal officials in accordance with condition #18 above;
- g. Removal of the COAH scarce resource restraint on municipal actions associated with development approvals imposed on November 12, 2008 and/or the applicant obtaining from COAH a waiver or exemption from the scarce resource restraint in accordance with condition #20 above;
- h. Obtaining all other approvals and permits in accordance with condition #25 below;
- i. The affordable housing growth share fee or, if the ordinance on which such fee is based is not in operation at the time of permits, the development fee required by ordinance section 165-155, if any, shall have been paid;

j. A Developer's Agreement and/or Performance Agreement shall have been executed by the Township Council; and

k. Performance guarantee in an amount established by the Township Engineer shall have been submitted to the Township in a form satisfactory to the Township attorney.

23. **Pre-construction Conference and Cost Estimates.** A pre-construction conference with the Township Engineer, the Hunterdon County Soil Conservation District, the applicant, and the applicant's contractor, shall be held prior to commencement of construction. Prior to the conference, the applicant shall provide the Township Engineer with a construction cost estimate that shall include a breakdown as to the two buildings as well as all of the site work, including but not limited to landscaping.

24. **Conditions Precedent to Certificates of Occupancy.** No certificates of occupancy shall be issued for either building until and unless the following condition precedent requirements have been satisfied:

- a. Condition #4 above regarding signage;
- b. Condition #8 above regarding fire protection;
- c. Condition # 9 above regarding stormwater facility management plan;
- d. Condition #10 above regarding stormwater recharge mitigation contribution;
- e. Condition #11 above prohibiting basements;
- f. Condition #12 above regarding maintenance plan for septic tanks;
- g. Condition #13 above regarding landscaping;
- h. Condition #14 above regarding the design, construction and location of improvements and the requirement for submission and approval of an as-built plan;
- i. Condition #15 above regarding easements, dedications, conveyances and/or restrictive covenants / deed restriction easements;
- j. Condition #16 above regarding the night light test;
- k. Condition #17 above regarding payment of escrow fees;



- l. Condition #20 above regarding the COAH scarce resource restraint;
- m. Condition #25 below regarding obtaining all other approvals and permits; and
- n. The affordable housing growth share fee or, if the ordinance on which such fee is based is not in operation at the time of permits, the development fee required by ordinance section 165-155, shall have been paid.

25. **Specific Approvals and Permits.** The applicant shall obtain the following permits and/or approvals from the following municipal, county and/or state agencies and/or departments:

- a. (No requirement for additional approval by Township Fire Marshall and Annandale Hose Company as approval previously obtained and incorporated into the final site plan);
- b. Township Board of Health approval or letter of no exception,
- c. Hunterdon County Department of Health approval or letter of no exception,
- d. Hunterdon County Soil conservation Service certification of the soil erosion and sediment control,
- e. Hunterdon County Planning Board unconditional approval of site plan,
- f. NJDEP approval of any and all aspects of the proposed development within its jurisdiction, and
- g. NJDOT approval of proposed grading, installation of water line connection and access driveway within the State right-of-way on Route 31;
- h. NJDOT grant of a highway access permit;
- i. New Jersey Water Supply Authority ("NJWSA") approval for regrading and planting within the grouting easement after the applicant submits the latest revised dimension plan, grading plan, and-landscape plan portions of the site plan to NJWSA.

26. **Subject to Other Approvals and Laws.** The within approval and the use of the property are conditioned upon and made subject to any and all laws, ordinances, requirements and/or regulations of and/or by any and all municipal, county, State and/or Federal

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governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of the property are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. In the event of any inconsistency(ies) between the terms and conditions of the within approval and any approval(s) required above, the terms and/or conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

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**VOTE ON MOTION DULY MADE AND SECONDED ON JULY 27, 2009 FOR GRANT OF APPLICATION FOR FINAL SITE APPROVAL:**

**THOSE IN FAVOR: MATSEN, STEVENS, BREINES, FILUS & McCAFFREY.**

**THOSE OPPOSED: NONE.**

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**VOTE ON MOTION DULY MADE AND SECONDED ON JULY 27, 2009 FOR GRANT OF EXTENSIONS OF FINAL SITE PLAN PROTECTION PERIOD AND TIME WITHIN WHICH TO OBTAIN CONSTRUCTION PERMITS:**


**THOSE IN FAVOR: MATSEN, FILUS & McCAFFREY.**

**THOSE OPPOSED: STEVENS & BREINES.**

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The above memorializing resolution was adopted on February 22, 2010 by the following vote of eligible Board members:

<u>Member</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
MATSEN				X
FILUS	X			
McCAFFREY	X			

ATTEST:   
REBECCA D'ALLEINNE, Board Secretary, or  
BARBARA MARGOLESE, Asst. Board Secretary