

**NEW JERSEY MEADOWLANDS COMMISSION**  
**AGENDA**

DATE: July 22, 2009  
TIME: 10:00 a.m.  
PLACE: Lyndhurst, New Jersey  
RE: MONTHLY MEETING

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1. Pledge of Allegiance
2. Sunshine Law Statement
3. Roll Call
4. REVIEW OF MINUTES - June 24, 2009 - open public meeting Pg. 1  
June 24, 2009 - closed session
5. PUBLIC PARTICIPATION ON RESOLUTIONS
6. VARIANCES/SPECIAL EXCEPTIONS
  - Resolution No. 09-59 Consideration of a Resolution Regarding the Pg. 4  
Approval of One Bulk Variance and the  
Modified, Conditional Approval of Two  
Bulk Variances (File #09-235, IV Realty  
Corp./Technical Major Subdivision-Bulk  
Variances)
  - Resolution No. 09-60 Consideration of a Resolution Regarding the Pg. 35  
Approval of One Bulk Variance (File #08-663,  
Forsgate/Site Improvement/Variance)
  - Resolution No. 09-61 Consideration of a Resolution Regarding the Pg. 47  
Approval of One Special Exception (File  
#08-700, Town of Secaucus/Wireless  
Telecommunication Monopole)

NEW JERSEY MEADOWLANDS COMMISSION  
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MONTHLY MEETING

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7. PERMITTING PROCESS

Resolution No. 09-62    Consideration of a Resolution Authorizing    Pg. 60  
The Executive Director to Execute a  
Memorandum of Understanding with the  
New Jersey Department of Environmental  
Protection (NJDEP) Division of Land Use  
Regulation (DLUR)

8. EDUCATIONAL PROGRAMMING

Resolution No. 09-63    Consideration of a Resolution Authorizing    Pg. 62  
The Executive Director to Enter Into an  
Agreement with the Meadowlands  
Museum for Educational Programming

9. REORGANIZATION

Resolution No. 09-64

- A. Motion to Appoint Commission Vice-Chairman
- B. Motion to Appoint Commission Treasurer
- C. Designation of Commission Committees

10. LEASE AGREEMENT

Resolution No. 09-65    Consideration of a Resolution Authorizing    Pg. 65  
The Executive Director To Enter Into a  
Lease Agreement for Dredge Material.

NEW JERSEY MEADOWLANDS COMMISSION  
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MONTHLY MEETING

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11. REPORTS

- A. Commissioners
- B. Executive Director
- C. Directors
- D. HMMC Executive Director

12. NEW BUSINESS

13. PUBLIC PARTICIPATION

14. CLOSED SESSION

- A. Adopt Resolution No. 09-66 to hold Closed Session.
- B. Adjournment to Closed Session. The Commission Reserves the Right to Reconvene Into Public Session, if necessary, to take Action on Closed Session Items.

**PLEASE CONTACT THE NJMC OFFICE (201-460-1700) PRIOR TO MEETING IF SPECIAL REQUIREMENTS ARE NEEDED UNDER ADA**

NEW JERSEY MEADOWLANDS COMMISSION

DATE: June 24, 2009  
TIME: 10:00 a.m.  
PLACE: Lyndhurst, NJ  
RE: MONTHLY MEETING MINUTES

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COMMISSIONERS PRESENT:

Joseph V. Doria, Jr., Chairman  
Michael Gonnelli (via phone)  
Mia Macri (via phone)  
Eleanore S. Nissley  
Arleen Walther

STAFF PRESENT:

Robert R. Ceberio, Executive Director  
Sara Sundell, Director Land Use Management  
Thomas Marturano, Director of Natural Resources  
Christine A. Sanz, Director of Legal Affairs/Chief Counsel  
Francisco Artigas, Director of MERI  
Helene Chudzik, Deputy Attorney General  
Lilo Stainton, Director of Communications  
Dennis Elwell, HMMC  
Lynn Johnson, Executive Assistant

1. Pledge of Allegiance
2. Executive Director Ceberio read the Notice of Meeting required under the Sunshine Law.
3. Roll Call
4. REVIEW OF MINUTES

Minutes of May 27, 2009 open public meeting and minutes of the May 27, 2009 closed session meeting were moved by Commissioner Nissley, seconded by Commissioner Walther and carried with Commissioner Macri abstaining.

5. VARIANCES/SPECIAL EXCEPTIONS

Resolution No. 09-54 - Resolution issuing a decision on the special exception application submitted as part of file # 04-132, Secaucus Board of Education/Secaucus High School - Addition - Block 226, Lot 17.01 in Secaucus.

Motion to adopt the resolution was made by Commissioner Walther, seconded by Commissioner Nissley and carried with Commissioner Gonnelli abstaining.

6. TIDE GATE MONITORING SYSTEM

Resolution No. 09-55 - Resolution authorizing the Executive Director to enter into an agreement with Gotham Analytics as a sole source for the instrumentation of twelve district tide gates and its associated real-time monitoring system.

Motion to adopt the resolution was made by Commissioner Nissley, seconded by Commissioner Walther and unanimously carried.

7. REORGANIZATION

Resolution No. 09-56 - Resolution to Adopt the Annual Schedule of Meetings.

Motion to adopt the resolution was made by Commissioner Walther, seconded by Commissioner Nissley and unanimously carried.

8. SOLID WASTE

Resolution No. 09-57 - Resolution approving an amendment to the New Jersey Meadowlands Commission Solid Waste Management Plan.

Motion to adopt the resolution was made by Commissioner Nissley, seconded by Commissioner Walther and unanimously carried.

9. PUBLIC PARTICIPATION -

- Margaret Schak - Rutherford Taxpayers Association spoke on Resolution 09-55
- Sam Maffei, Secaucus resident spoke on Resolution 09-54
- Mayor Elwell, HMMC
- Lenny Nix, Hackensack resident.
- Lonnie Bedell, South Hackensack resident.

13. CLOSED SESSION

Resolution No. 09-58 - The following issues were taken into consideration:

- Methane Gas Collection System
- EnCap Phase 2
- Personnel

Motion to enter into closed session was made by Commissioner Walther, seconded by Commissioner Nissley and unanimously carried.

Meeting adjourned.

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ROBERT R. CEBERIO, SECRETARY

RESOLUTION#	09-54	09-55	09-56	09-57
Chairman Doria	Y	Y	Y	Y
Comm. Anzevino	--	--	--	--
Comm. Gonnelli	A	Y	Y	Y
Comm. Macri	Y	Y	Y	Y
Comm. Nissley	Y	Y	Y	Y
Comm. Walther	Y	Y	Y	Y

Y = Yes

R = Recuse

A = Abstain

N = No

**RESOLUTION ISSUING A DECISION ON THE VARIANCE APPLICATION  
SUBMITTED AS PART OF FILE NO. 09-235  
IV REALTY CORP./TECHNICAL MAJOR SUBDIVISION-  
BULK VARIANCES  
BLOCK 108.06, LOT 2, IN THE BOROUGH OF LITTLE FERRY**

**WHEREAS**, applications for three (3) bulk variances were filed with the New Jersey Meadowlands Commission (NJMC) by Thomas H. Bruinooge, Esq., of Bruinooge & Bowman, LLP, on behalf of IV Realty Corp., for the premises located on Industrial Avenue and identified as Block 108.06, Lot 2, in the Borough of Little Ferry, New Jersey; and

**WHEREAS**, the variances are sought in connection with the applicant's proposed technical major subdivision, which includes the creation of a total of two (2) lots, one of which does not meet the minimum lot area of one (1) acre. In addition, each lot will have a deficient side yard setback resulting from the proposed subdivision. The subject property is located in the Light Industrial B zone; and

**WHEREAS**, the applicant requested relief from N.J.A.C. 19:4-5.83(a)1, which requires a minimum lot area of one acre. The applicant is proposing a lot area of 0.379 acres for one proposed lot; and

**WHEREAS**, the applicant also requested relief from N.J.A.C. 19:4-5.84(a)3ii, which requires a minimum side yard setback of 20 feet. The applicant is proposing a side yard setback of 6.04 feet for one proposed lot; and

**WHEREAS**, the applicant also requested relief from N.J.A.C. 19:4-5.84(a)3ii, which requires a minimum side yard setback of 20 feet. The applicant is proposing a side yard setback of zero feet for one proposed lot; and

**WHEREAS**, notice of the requested variance relief was given to the public and all interested parties as required by law and was published in The Record newspaper; and

**WHEREAS**, a public hearing was held in the Office of the NJMC on March 31, 2009, before Nicholas Agnoli, P.E., P.P., Chief Engineer; Fawzia Shapiro, P.E., P.P., Senior Engineer; and Ron Seelogy, Engineer; and

**WHEREAS**, a comprehensive report dated July 7, 2009, has been prepared indicating the recommendations of the Director of Land Use Management and the Executive Director in this matter; and

**WHEREAS**, the report recommends approval of the bulk variance request to create one (1) undersized lot with a lot area of 0.379 acres on the subject premises; and

**WHEREAS**, the report also recommends the modified and conditional approval of the bulk variance request to create a side yard setback of 6.04 feet on a proposed undersized lot of 0.379 acres; and

**WHEREAS**, the report also recommends the modified and conditional approval of the bulk variance request to create a side yard setback of zero feet on a proposed lot of 3.462 acres; and

**WHEREAS**, the members of the NJMC have reviewed the full record including the transcripts of the public hearings, recommendations on the application by the Director of Land Use Management and by the Executive Director, and the submissions of the applicant; and

**WHEREAS**, the members of the NJMC concur with the recommendations of the Director of Land Use Management and the Executive Director; and

**WHEREAS**, the NJMC hereby determines that the requested variance to create one (1) undersized lot of 0.379 acres on the subject premises conforms with the standards for approving applications of variances as set forth in N.J.A.C. 19:4-4.14(e); and

**WHEREAS**, the NJMC hereby determines that the requested variance to create a side yard setback of 6.04 feet on an undersized lot of 0.379 acres on the subject premises, with modification and conditions, conforms with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e); and

**WHEREAS**, the NJMC hereby further determines that the requested variance to create a side yard setback of zero feet on a proposed lot of 3.462 acres on the subject premises, with modification and conditions, conforms with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e).

**NOW, THEREFORE, BE IT RESOLVED**, by the New Jersey Meadowlands Commission, that the IV Realty Corp./Technical Major Subdivision variance application for one bulk variance request to create one (1)

undersized 0.379 acre lot, as part of a two lot subdivision on the subject premises, is hereby **APPROVED** for the reasons set forth in the July 7, 2009 recommendation; and

**BE IT FURTHER RESOLVED**, by the New Jersey Meadowlands Commission, that the IV Realty Corp./Technical Major Subdivision variance application for one bulk variance request to create a side yard setback of 6.04 feet on a proposed 0.379 acre lot, as part of a proposed two lot subdivision on the subject premises, is hereby **APPROVED WITH THE FOLLOWING MODIFICATION AND CONDITIONS** for the reasons set forth in the July 7, 2009 recommendation:

1. Modification: The side yard setback shall be revised to be a minimum of four feet on the proposed 0.379 acre lot and the proposed minimum 0.379 acre lot area shall be maintained.
2. Condition: Certain design upgrades, conforming to the *New Jersey Uniform Construction Code*, shall be provided for the building on the proposed 0.379 acre lot. To that end, the existing structure's exterior wall along the north side yard setback line shall be fire rated as required by the *International Building Code, New Jersey Edition (2006)*. Construction plans and specifications for the wall upgrades shall be approved by the NJMC prior to the submission of the Subdivision Plat.
3. Condition: The boundary survey shall be updated to accurately depict current conditions for the subject premises, and particularly for the configuration of the structure connecting the two existing buildings.
4. Condition: A subdivision plat and site plans shall be submitted and shall incorporate the revised minimum side yard setback of four feet on the proposed 0.379 acre lot.
5. Condition: The applicant shall file an application for a Zoning Certificate to construct the improvements on the proposed 0.379 acre lot.

**BE IT FURTHER RESOLVED**, by the New Jersey Meadowlands Commission, that the IV Realty Corp./Technical Major Subdivision variance application for one bulk variance request to create a side yard setback of zero feet on a proposed 3.462 acre lot, as part of a proposed two lot subdivision on the subject premises, is hereby **APPROVED WITH THE FOLLOWING MODIFICATION AND CONDITIONS** for the reasons set forth in the July 7, 2009 recommendation:

1. Modification: The side yard setback shall be revised to be a minimum of four feet on the proposed 3.462 acre lot.

2. Condition: Design upgrades, conforming to the *New Jersey Uniform Construction Code*, shall be provided for the building on the proposed 3.462 acre lot. To that end, the existing building's exterior wall along the south side yard setback line shall be fire rated as required by the *International Building Code, New Jersey Edition (2006)*. Construction plans and specifications for the wall upgrades shall be approved by the NJMC prior to the submission of the Subdivision Plat.
3. Condition: The boundary survey shall be updated to accurately depict current conditions for the subject premises, and particularly for the configuration of the structure connecting the two existing buildings.
4. Condition: A subdivision plat and site plans shall be submitted and shall incorporate the revised minimum side yard setback of four feet on the proposed 3.462 acre lot.

The foregoing was adopted on Commission vote.

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Joseph V. Doria, Jr.  
Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of July 22, 2009.

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Robert R. Ceberio  
Secretary

Resolution No. 09-59

# Memorandum



## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio, Executive Director

From: Sara J. Sundell

Date: July 22, 2009

Subject: Variance Recommendation: IV Realty Corp./Technical Major Subdivision-  
Variances (File 09-235)

Applications for three (3) bulk variances were filed with the New Jersey Meadowlands Commission by Thomas H. Bruinooge, Esq., of Bruinooge & Bowman, LLP, on behalf of IV Realty Corp., for the premises located on Industrial Avenue and identified as Block 108.06, Lot 2, in the Borough of Little Ferry, New Jersey. Said premises are located in the Commission's Light Industrial B zone. The bulk variances are sought in connection with the applicant's proposed technical major subdivision, which includes the creation of a total of two (2) lots, one of which lot does not meet the minimum lot area of one (1) acre. In addition, each lot will have a deficient side yard setback resulting from the proposed subdivision.

The applicant requested variance relief from the following:

1. N.J.A.C. 19:4-5.83(a)1, which requires a minimum lot area of one acre. The applicant is proposing a lot area of 0.379 acres for one proposed lot.
2. N.J.A.C. 19:4-5.84(a)3ii, which requires a minimum side yard setback of 20 feet. The applicant is proposing a side yard setback of 6.04 feet for one proposed lot.
3. N.J.A.C. 19:4-5.84(a)3ii, which requires a minimum side yard setback of 20 feet. The applicant is proposing a side yard setback of zero feet for one proposed lot.

A public hearing on this matter was held in the Office of the NJMC on March 31, 2009.

In a comprehensive report dated July 7, 2009, the Director of Land Use Management and the Executive Director recommended the approval of the bulk variance requested in Item 1 above, and the modified and conditional approval of the bulk variances requested in Items 2 and 3 above.

At this time, the Commission is required to issue a decision on the variance applications described above. A resolution requesting the same is attached for your consideration.

RECOMMENDATION ON THE VARIANCE APPLICATION OF  
IV Realty Corp. / Technical Major Subdivision-Bulk Variances

FILE # 09-235

I. INTRODUCTION

An application for three bulk variances has been filed with the New Jersey Meadowlands Commission (NJMC) by Thomas H. Bruinooge, Esq., of Bruinooge & Bowman, LLP, on behalf of IV Realty Corp., for the premises located on Industrial Avenue and identified as Block 108.06, Lot 2, in the Borough of Little Ferry, New Jersey. The bulk variances are sought in connection with the applicant's proposed technical major subdivision. The applicant's proposal for a technical major subdivision includes the creation of a total of two (2) lots, of which one (1) lot does not meet the minimum lot size area of one (1) acre. In addition, each lot will have a deficient side yard setback resulting from the proposed subdivision. The two proposed lots shall contain existing industrial buildings. Since one (1) lot does not meet the required minimum lot size and both lots do not meet a required minimum side yard setback, three (3) bulk variances have been requested.

Specifically, the applicant is requesting relief from the following:

1. N.J.A.C. 19:4-5.83(a)1, which requires a minimum lot area of one acre. The applicant is proposing a lot area of 0.379 acres for one proposed lot. Therefore, a bulk variance from this regulation is required.
2. N.J.A.C. 19:4-5.84(a)3ii, which requires a minimum side yard setback of 20 feet. The applicant is proposing a side yard setback of 6.04 feet for one proposed lot. Therefore, a bulk variance from this regulation is required.

3. N.J.A.C. 19:4-5.84(a)3ii, which requires a minimum side yard setback of 20 feet. The applicant is proposing a side yard setback of zero feet for one proposed lot. Therefore, a bulk variance from this regulation is required.

A public hearing was held in the Office of the Commission on Tuesday, March 31, 2009. Notice was given to the public and all interested parties as required by law. The public notice was published in The Record. No written objections were submitted to the Division of Land Use Management. All information submitted to the Division of Land Use Management relative to this application is made part of the record of this recommendation.

## II. GENERAL INFORMATION

### A. Existing and Proposed Use

The property in question contains approximately 3.841 acres. It is a corner lot that is bounded to the north and east by Industrial Avenue. The parcel is an irregular, L-shaped lot that is improved with two partially-attached buildings, which were constructed in the 1950's, and associated parking and loading areas. The larger of the two buildings is approximately 46,000 square feet in area and is connected to a smaller building of approximately 5,000 square feet in area by a common roof, which creates an access corridor between the two buildings. As per the site plans submitted by the applicant, the buildings are a minimum of six feet apart. Based upon site inspections by the NJMC, there appears to be in excess of eight feet between the structures. The immediate surrounding area is similarly industrial in nature, containing light industrial, warehouse and distribution facilities.

The applicant is proposing to subdivide the subject property into two proposed lots. The physical connection between the two buildings is proposed to be removed. Each building is proposed to be located on a separate lot resulting from the subdivision. Parking area improvements are proposed for the smaller of the two lots.

**B. Response to the Public Notice**

No written comments or objections were submitted to this Office regarding this application prior to the public hearing.

**III. PUBLIC HEARING (March 31, 2009)**

A public hearing was held on Tuesday, March 31, 2009. NJMC staff in attendance were Nicholas Agnoli, P.E., P.P., Chief Engineer and Deputy Director of Land Use Management, Fawzia Shapiro, P.E., P.P., Senior Engineer, and Ron Seelogy, Engineer.

**A. Exhibits**

The following is a list of the exhibits submitted by the applicant at the public hearing and marked for identification as follows:

<u>Number</u>	<u>Description</u>
A-1	"Subdivision Plan," drawing SD-1, prepared by McNally Engineering, LLC, dated September 15, 2008, revised through February 2, 2009.
A-2	"Open Space Plan," drawing OS-1, prepared by McNally Engineering, LLC, dated December 4, 2008, revised through February 2, 2009.
A-3	"Landscaping & Lighting Plan," drawing LL-1, prepared by McNally Engineering, LLC, dated December 4, 2008, revised through February 2, 2009.
A-4	"Construction Details," drawing CD-1, prepared by McNally Engineering, LLC, dated December 4, 2008, revised through February 2, 2009.

A-5 Color Rendered "Subdivision Plan," drawing SD-1, prepared by McNally Engineering, LLC, dated September 15, 2008, revised through February 2, 2009.

**B. Testimony**

Thomas H. Bruinooge, Esq., of Bruinooge & Bowman, LLP, represented IV Realty Corp. at the hearing. The following witnesses testified in support of the application:

1. Frank Vecchiotti, IV Realty Corp.
2. Douglas Doolittle, P.E., P.P., P.L.S., Professional Engineer, McNally Engineering, LLC
3. Harry Gates, Real Estate Broker
4. Paul Phillips, P.P., Professional Planner

Staff findings and recommendations are based on the entire record. A transcript of the public hearing was prepared and transcribed by Mary Ann Adams, Certified Court Reporter and Notary Public of the State of New Jersey.

**C. Public Comment**

Members of the public were present at the public hearing. Robert Stiles, residing at 37 Hartwick Street in Little Ferry, provided oral comments regarding potential drainage impacts to residences on Hartwick Street, resulting from the proposed improvements on the subject property. These comments may be found in the corresponding transcript of the public hearing, dated March 31, 2009.

#### IV. RECOMMENDATION

**A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.83(a)1, which requires a minimum lot area of one acre.**

The NJMC Zoning Regulations at N.J.A.C. Section 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*

- i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The requested variance to create one undersized lot of 0.379 acres as part of a two lot technical major subdivision of an existing 3.841 acre parcel arises from conditions that are unique to the site. The property in question is an irregularly-shaped corner lot containing two partially-attached light industrial and warehouse buildings, each having separate loading and parking areas. Long after their original construction, the two buildings were attached with a common roof, creating an access corridor between them. Due to the small size of the lots in the Light Industrial B zone, typically multiple attached buildings are not prevalent unless one of the structures is accessory or subordinate in nature to the other. These are conditions that are unique to the site and not normally found in the zone.

- ii. *The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The granting of the requested variance to create one undersized lot of 0.379 acres, as part of a two lot technical major subdivision of an existing 3.841 acre parcel, will not adversely affect the rights of neighboring property owners or residents. The subject property is located within the Light Industrial B zone. The past and prospective industrial and/or warehouse uses on the subject premises are consistent with the zone regulations and similar to those of the neighboring industrial facilities and warehousing operations. Proposed drainage and parking area improvements will facilitate and enhance the future operations expected on the undersized lot. No further building additions or alterations, with the exception of the removal of the common roof area, are proposed on the premises that may affect the operations of the adjacent properties. As such, the rights of neighboring property owners and residents will not be impeded by the creation of the undersized lot as proposed.

- iii. *The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

The strict application of the regulations that would require a minimum lot size of one acre for one of the two subject lots would result in practical difficulties and undue hardship to the property owner. If the variance was not granted to permit a lot area of 0.379 acres, the applicant would not be able to maximize the efficiency

and uses of the two existing buildings as separate entities. Increasing the size of the smaller lot to a conforming area of one acre would result in an inability to efficiently operate on the larger of the two lots. The larger structure, at 46,000 square feet, requires significantly more area for operations, including truck loading and maneuvering, as well as parking for employees, than the 5,000 square foot structure.

The proposed undersized lot containing the smaller of the two buildings is proposed to be sufficiently upgraded to allow a self-supporting industrial facility on the premises. Although there are no significant improvements proposed for the remaining lot, the larger industrial structure shall also be able to operate independently. If the variance is not granted, the use of the property will continue to be problematic as the site layout is not functional for two industrial facilities. The current situation does not promote efficient and maximum use of the site, resulting in practical difficulties and undue hardship to the property owner.

- iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

The granting of the requested variance to create one undersized lot of 0.379 acres, to be utilized as a separate industrial parcel as part of a two lot technical major subdivision, will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

The past and prospective industrial and/or warehouse uses on the subject premises are consistent with the zone regulations and similar to those of the nearby industrial facilities and warehousing operations. The proposed undersized lot will not negatively impact the neighboring industrial properties, as planned improvements will provide safety and aesthetic enhancements such as improved on-site vehicular circulation and landscaping. In addition, it is expected that the vacant site will become fully occupied, thereby eliminating the potential for vagrancy on the premises. As such, the public health, safety, morals, order, convenience, prosperity, and general welfare will not be compromised, but rather improved.

- v. *The variance will not have a substantial adverse environmental impact.*

The granting of the requested variance to create one undersized lot of 0.379 acres, as part of a two lot technical major subdivision, will not have any adverse environmental impacts. Site improvements on the proposed undersized lot include the construction of a parking area and the installation of drainage, lighting, and landscaping upgrades. These improvements will help facilitate the orderly operation of the warehouse/industrial facility. Several existing parking spaces will be removed and replaced with open space, while a new parking area will be provided. On-site stormwater drainage will be improved, as the additional open space ensures a decrease in post development peak flow rates for the property. The NJMC environmental performance standards appear to be met for noise, vibration, glare, air emissions,

hazardous and radioactive materials. In addition, there will be no significant increase in traffic from the granting of the variance, as there has been no evidence or testimony provided to the contrary and the functional intensity of the lot will not be increased over previous operations.

- vi. *The variance represents the minimum deviation from the regulations that will afford relief.*

The regulations require a minimum lot size of one acre in the Light Industrial B zone. The applicant is proposing two lots with areas of 3.462 acres and 0.379 acres, and both will be utilized for conforming purposes. Due to building layout, on-site roadway configurations, and the placement of open space in various forms throughout the subject premises, the smaller lot cannot be significantly increased in size in order to meet the one acre minimum requirement without compromising the operational efficiency of the larger lot. However, the proposed undersized lot will adequately provide for sufficient site layout and vehicular maneuverability to meet the demands of a warehouse facility. Lot coverage will not be maximized and additional open space will be provided. Therefore, the requested variance represents the minimum deviation from the regulations that will afford relief as the proposed lot area of 0.379 acres is sufficient to support the existing warehouse facility.

*vii. Granting the variance will not substantially impair the intent and purpose of these regulations.*

The specific regulation from which the variance is requested is the requirement for a minimum lot size of one acre in the Light Industrial B zone. The intent of the Light Industrial B regulations is to accommodate a wide range of industrial, distribution, and commercial uses that generate a minimum of detrimental environmental effects. The purpose of a minimum lot size is to discourage development on small, substandard lots and to provide a lot size capable of accommodating all of the required elements for the operation of a permitted use, including parking, loading, and circulation.

The testimony provided stated that the proposed use of the undersized 0.379 acre subject lot is for a conforming warehouse facility. Although a minimum lot area of one acre is required regardless of use, the intent of the NJMC regulations is not compromised as the proposed functional intensity of the lot will not be increased over previous operations. The building footprint will not be expanded. Bulk requirements for lot width, depth, floor area ratio, coverage and open space will be met for the zone. The property is sufficient in size to accommodate the improvements necessary to support the operation of the warehouse facility while rehabilitating an under-utilized site. Therefore, granting the requested variance would not substantially impair the intent and purpose of the NJMC's zoning regulations.

**B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.84(a)3ii, which requires a minimum side yard setback of 20 feet.**

The NJMC Zoning Regulations at N.J.A.C. Section 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*

- i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The requested variance to create a side yard setback of 6.04 feet, where a minimum side yard setback of 20 feet is required, on a proposed undersized 0.379 acre lot arises from conditions that are unique to the site. The property in question is an irregularly-shaped 3.841 acre corner parcel that is proposed to be subdivided into two lots through a technical major subdivision. Presently, the site contains two partially-attached light industrial and warehouse buildings, each having separate loading and parking areas. Long after their original construction, the two buildings were attached with a common roof, creating an access corridor between them. Due to the small size of the lots in the Light Industrial B zone, typically multiple attached buildings are not prevalent unless one of the structures is accessory or subordinate in nature to the other. These are conditions that are unique to the site and not normally found in the zone

- ii. *The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The granting of the requested variance to create a side yard setback of 6.04 feet as part of a two lot technical major subdivision of an existing 3.841 acre parcel, while the zone regulations require a minimum side yard setback of 20 feet, will not adversely affect the rights of neighboring property owners or residents. The subject property is located within the Light Industrial B zone. The past and prospective industrial and/or warehouse uses on the subject premises are consistent with the zone regulations and similar to those of the neighboring industrial facilities and warehousing operations. Proposed drainage and parking area improvements will facilitate and enhance the future operations expected on the subject lot requesting the 6.04 foot side yard setback. No further building additions are proposed on the premises that may affect the operations of the adjacent properties. As such, the rights of neighboring property owners and residents will not be impeded by the proposed side yard setback of 6.04 feet. However, the resulting setback of zero feet for the larger parcel of the subdivision would have an adverse effect on the rights of the owner thereof, which will be discussed in the second setback variance.

- iii. *The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

The strict application of the regulation that requires a minimum side yard setback of 20 feet for the proposed 0.379 acre lot would

result in practical difficulties and undue hardship to the property owner. If the variance were not granted to permit a side yard setback of less than 20 feet, the applicant would not be able to maximize the efficiency and uses of the two existing buildings as separate entities. In addition, the proximity of the two buildings is a pre-existing condition that severely limits the applicant's ability to provide the required minimum side yard setback.

The proposed 0.379 acre lot containing the smaller of the two buildings is proposed to be sufficiently upgraded to allow a self-supporting industrial facility on the premises. If the variance were not granted, the use of the property will continue to be problematic as the current site layout is not operationally efficient for two separate industrial facilities. Strict compliance with the regulations would require removal of significant portions of the existing buildings, in addition to the removal of the roof connection, which would not be of any benefit to the applicant and would result in practical difficulties and undue hardship to the property owner.

- iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

In general, granting a variance to allow a side yard setback of less than the required 20 feet on the proposed undersized 0.379 acre lot, as part of a two lot technical major subdivision, will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare. However, the requested setback of

precisely 6.04 feet is potentially detrimental to the public good, health and safety.

Specifically, a setback of 6.04 feet on the subject lot will create a zero foot setback on the proposed adjacent 3.462 acre lot. This would eliminate any yard area for property and building maintenance purposes on the adjacent lot, thereby leading to potential health and safety hazards for both lots. In addition, based on the age of both structures, building codes have changed since their construction, requiring substantial upgrades to each if the buildings are separated. Sound planning principles dictate that a more modest side yard setback for the 0.379 acre lot be utilized, allowing for required property and building maintenance on both parcels.

- v. *The variance will not have a substantial adverse environmental impact.*

The granting of the requested variance to create a side yard setback of less than the required 20 feet on the proposed undersized 0.379 acre lot, as part of a two lot technical major subdivision will not have any adverse environmental impacts. Site improvements on the proposed undersized lot include the construction of a parking area and the installation of drainage, lighting, and landscaping upgrades. These improvements will help facilitate the orderly operation of the warehouse/industrial facility. Several existing parking spaces will be removed and replaced with open space, while a new parking area will be provided. On-site stormwater drainage will be improved, as the additional open space ensures a decrease in post development peak flow rates for the property. The

NJMC environmental performance standards appear to be met for noise, vibration, glare, air emissions, hazardous and radioactive materials. In addition, there will be no significant increase in traffic from the granting of the variance, as there has been no evidence or testimony provided to the contrary and the functional intensity of the lot will not be increased over previous operations.

*vi. The variance represents the minimum deviation from the regulations that will afford relief.*

The regulations require a minimum side yard setback of 20 feet in the Light Industrial B zone. The applicant is proposing to create a side yard setback of 6.04 feet on a proposed 0.379 acre undersized lot. Due to the proximity of the existing building to the proposed subdivision line, the required 20 foot side yard setback will not be met. In addition, a 6.04 foot side yard setback will create a zero foot side yard setback on the proposed adjacent 3.462 acre lot. A 6.04 foot setback will also eliminate sufficient area for property and building maintenance on both parcels.

Upon the removal of the roof area attaching both buildings, there will however, be sufficient space to create a more modest side yard setback for the proposed undersized 0.379 acre lot. This will allow enough side yard space for property and building upgrades and maintenance on both parcels. The extent to which the side yard should be decreased should be based upon reasonable planning principles that provide for orderly building maintenance on both lots and represent the minimum deviation from the regulations that will afford relief.

vii. *Granting the variance will not substantially impair the intent and purpose of these regulations.*

The specific regulation from which the variance is requested requires a minimum side yard setback of 20 feet in the Light Industrial B zone. The intent of the Light Industrial B regulations is to accommodate a wide range of industrial, distribution, and commercial uses that generate a minimum of detrimental environmental effects. One purpose of a minimum side yard setback is to ensure that certain areas of a lot remain unoccupied and unobstructed for safety, maintenance and aesthetic reasons.

The testimony provided stated that the proposed use of the subject lot is for a conforming warehouse facility. Although a minimum side yard setback of 20 feet is required regardless of use, the intent of the NJMC regulations is not compromised as the proposed functional intensity of the lot will not be increased over previous operations. The building footprint on the 0.379 acre lot will not be expanded. Bulk requirements for lot width, depth, floor area ratio, coverage and open space will be met for the zone. Site improvements are proposed to support the operation of the warehouse facility and will provide safety and aesthetic enhancements, such as improved on-site vehicular circulation and landscaping. These proposed improvements will also provide for the rehabilitation of an underutilized site. However, a more modest setback rather than the requested 6.04 foot side yard setback would allow for building maintenance on both proposed lots. In addition, building design upgrades to meet current *New Jersey Uniform Construction Code* requirements may be necessary

and could decrease the risk of potential health and safety hazards. Therefore, a modified approval of this variance to permit a more modest setback on the proposed undersized 0.379 acre lot would not substantially impair the intent and purpose of the NJMC's zoning regulations.

**C. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.84(a)3ii, which requires a minimum side yard setback of 20 feet.**

The NJMC Zoning Regulations at N.J.A.C. Section 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*
  - i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The requested variance to create a side yard setback of zero feet, where a minimum side yard setback of 20 feet is required, on a proposed 3.462 acre lot arises from conditions that are unique to the site. The property in question is an irregularly-shaped 3.841 acre corner parcel that is proposed to be subdivided into two lots through a technical major subdivision. Presently, the site contains two partially-attached light industrial and warehouse buildings, each having separate loading and parking areas. Long after their original construction, the two buildings were attached with a common roof, creating an access corridor between them. Due to the small size of the lots in the Light Industrial B zone, typically multiple attached buildings are not prevalent unless one of the structures is accessory

or subordinate in nature to the other. These are conditions that are unique to the site and not normally found in the zone.

- ii. *The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The granting of the requested variance to create a side yard setback of zero feet as part of a two lot technical major subdivision of an existing 3.841 acre parcel, while the zone regulations require a minimum side yard setback of 20 feet, may adversely affect the rights of neighboring property owners. Specifically, a side yard setback of zero feet would eliminate any area for property and building maintenance purposes on the subject lot, thereby encumbering the adjacent 0.379 acre lot during routine building maintenance operations. This encumbrance may adversely affect the rights of the smaller adjacent lot by impeding normal operations on that lot. Sound planning principles dictate that a greater side yard setback for the 3.462 acre lot be required to allow for property and building maintenance on both lots.

- iii. *The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

The strict application of the regulation that requires a minimum side yard setback of 20 feet for the proposed 3.462 acre lot would result in practical difficulties and undue hardship to the property owner. If the variance were not granted to permit a side yard setback of less than 20 feet, the applicant would not be able to

maximize the efficiency and uses of the two existing buildings as separate entities. In addition, the proximity of the two buildings is a pre-existing condition that severely limits the applicant's ability to provide the required minimum side yard setback.

The proposed 3.462 acre lot containing the larger of the two buildings does not require site upgrades, as it presently contains the necessary improvements to allow a self-supporting industrial facility on the premises. If the variance were not granted, the use of the property will continue to be problematic as the site layout is not functional for two industrial facilities. Strict compliance with the regulations would require removal of significant portions of the existing buildings, in addition to the removal of the roof connection, which would not be of any benefit to the applicant and would result in practical difficulties and undue hardship to the property owner.

*iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

In general, granting a variance to allow a side yard setback of less than the required 20 feet on the proposed 3.462 acre lot, as part of a two lot technical major subdivision, will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare. However, the requested setback of precisely zero feet is potentially detrimental to the public good, health and safety.

Specifically, a setback of zero feet on the subject lot would eliminate any yard area for property and building maintenance purposes, thereby leading to potential health and safety hazards for both proposed lots. In addition, based on the age of both structures, building codes have changed since their construction, requiring substantial upgrades to each if the roof was removed. Sound planning principals dictate that a greater side yard setback for the 3.462 acre lot be required to allow for property and building maintenance on both proposed parcels.

- v. *The variance will not have a substantial adverse environmental impact.*

The granting of the requested variance to create a side yard setback of less than the required 20 feet on the proposed 3.462 acre lot, as part of a two lot technical major subdivision, will not have any adverse environmental impacts. The building footprint on the subject lot will not be expanded, and no substantial site improvements are necessary to support the operation of the facility. The NJMC environmental performance standards appear to be met for noise, vibration, glare, air emissions, hazardous and radioactive materials. In addition, there will be no significant increase in traffic from the granting of the variance, as there has been no evidence or testimony provided to the contrary and the functional intensity of the lot will not be increased over previous operations.

*vi. The variance represents the minimum deviation from the regulations that will afford relief.*

The regulations require a minimum side yard setback of 20 feet in the Light Industrial B zone. The applicant is proposing to create a side yard setback of zero feet on a proposed 3.462 acre lot. Due to the proximity of the existing building to the proposed subdivision line, the required 20 foot side yard setback will not be met. However, a zero foot setback will eliminate sufficient space for property and building maintenance on both proposed lots.

Upon the removal of the roof area attaching both buildings, there will, however, be sufficient space to create a greater side yard setback for the proposed 3.462 acre lot. This will allow side yard space for property and building upgrades and maintenance on both parcels. The extent to which the side yard should be increased should be based upon reasonable planning principles that provide for orderly building maintenance on both lots and represent the minimum deviation from the regulations that will afford relief.

*vii. Granting the variance will not substantially impair the intent and purpose of these regulations.*

The specific regulation from which the variance is requested requires a minimum side yard setback of 20 feet in the Light Industrial B zone. The intent of the Light Industrial B regulations is to accommodate a wide range of industrial, distribution, and commercial uses that generate a minimum of detrimental environmental effects. One purpose of a minimum side yard


setback is to ensure that certain areas of a lot remain unoccupied and unobstructed for safety, maintenance and aesthetic reasons.


The past and prospective uses on the subject lot are for a conforming industrial and/or warehouse facility. Although a minimum side yard setback of 20 feet is required regardless of use, the intent of the NJMC regulations is not compromised as the proposed functional intensity of the lot will not be increased over previous operations. The building footprint on the 3.462 acre lot will not be expanded, and no substantial site improvements are necessary to support the operation of the facility. Bulk requirements for lot area, width, depth, floor area ratio, coverage and open space will be met for the zone. It is expected that that the subject 3.462 acre lot will become fully occupied, thereby rehabilitating the underutilized site. Furthermore, a greater side yard setback, rather than the requested zero foot side yard setback, would allow for building maintenance on both proposed lots. In addition, building design upgrades to meet current *New Jersey Uniform Construction Code* requirements could decrease the risk of potential health and safety hazards. Therefore, a modified approval of this variance to permit a greater side yard setback on the proposed 3.462 acre lot would not substantially impair the intent and purpose of the NJMC's zoning regulations.

V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.83(a)1, which requires a minimum lot area of one acre.

Based on the record in this matter, the bulk variance application to create one undersized lot of 0.379 acres as part of a two lot technical major subdivision on the subject premises, where a minimum lot area of one acre is required, is hereby recommended for approval.

<u>Approval</u>	<u>7-7-09</u>	
Recommendation On	Date	Sara J. Sundell, P.E., P.P.
Variance Request		Director of Land Use Management

<u>Approval</u>	<u>7/7/09</u>	
Recommendation On	Date	Robert R. Ceberio
Variance Request		Executive Director

B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.84(a)3ii, which requires a minimum side yard setback of 20 feet.

Based on the record in this matter and the following modification and conditions of approval, the bulk variance application to create a side yard setback of 6.04 feet on a proposed 0.379 acre lot, as part of a two lot technical major subdivision on the subject premises, where a minimum side yard setback of 20 feet is required, is hereby recommended for approval as modified and conditioned:

1. Modification: The side yard setback shall be revised to be a minimum of four feet on the proposed 0.379 acre lot and the proposed minimum 0.379 acre lot area shall be maintained.
2. Condition: Certain design upgrades, conforming to the *New Jersey Uniform Construction Code*, shall be provided for the building on the proposed 0.379 acre lot. To that end, the existing structure's exterior wall along the north side yard setback line shall be fire rated as required by the *International Building Code, New Jersey Edition (2006)*. Construction plans and specifications for the wall upgrades shall be approved by the NJMC prior to the submission of the Subdivision Plat.
3. Condition: The boundary survey shall be updated to accurately depict current conditions for the subject premises, and particularly for the configuration of the structure connecting the two existing buildings.
4. Condition: A subdivision plat and site plans shall be submitted and shall incorporate the revised minimum side yard setback of four feet on the proposed 0.379 acre lot.
5. Condition: The applicant shall file an application for a Zoning Certificate to construct the improvements on the proposed 0.379 acre lot.

**MODIFIED,  
CONDITIONAL APPROVAL**

7-7-09



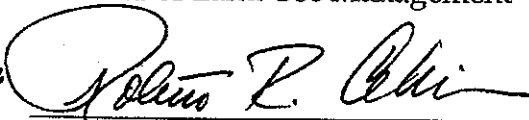
Recommendation On  
Variance Request

Date

Sara J. Sundell, P.E., P.P.  
Director of Land Use Management

**Modified  
Conditional Approval**

7-7-09



Recommendation On  
Variance Request

Date

Robert R. Ceberio  
Executive Director

C. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-5.84(a)3ii, which requires a minimum side yard setback of 20 feet.

Based on the record in this matter and the following modification and conditions of approval, the bulk variance application to create a side yard setback of zero feet on a proposed 3.462 acre lot, as part of a two lot technical major subdivision on the subject premises, where a minimum side yard setback of 20 feet is required, is hereby recommended for approval as modified and conditioned:

1. Modification: The side yard setback shall be revised to be a minimum of four feet on the proposed 3.462 acre lot.
2. Condition: Design upgrades, conforming to the *New Jersey Uniform Construction Code*, shall be provided for the building on the proposed 3.462 acre lot. To that end, the existing building's exterior wall along the south side yard setback line shall be fire rated as required by the *International Building Code, New Jersey Edition (2006)*. Construction plans and specifications for the wall upgrades shall be approved by the NJMC prior to the submission of the Subdivision Plat.
3. Condition: The boundary survey shall be updated to accurately depict current conditions for the subject premises, and particularly for the configuration of the structure connecting the two existing buildings.
4. Condition: A subdivision plat and site plans shall be submitted and shall incorporate the revised minimum side yard setback of four feet on the proposed 3.462 acre lot.

MODIFIED,  
CONDITIONAL APPROVAL 7-7-09



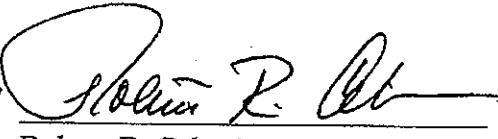
Recommendation On  
Variance Request

Date

Sara J. Sundell, P.E., P.P.  
Director of Land Use Management

Modified

Conditional Approval 4/7/09



Recommendation On  
Variance Request

Date

Robert R. Ceberio  
Executive Director

**RESOLUTION ISSUING A DECISION ON THE VARIANCE APPLICATION  
SUBMITTED AS PART OF FILE NO. 08-663  
FORSGATE/SITE IMPROVEMENT/VARIANCE  
BLOCK 39, LOT 9.02, IN THE BOROUGH OF MOONACHIE**

**WHEREAS**, application for one bulk variance was filed with the New Jersey Meadowlands Commission (NJMC) by William C. Sullivan, Jr., Esq. on behalf of Forsgate Ventures XI, LLC, for the premises identified as 2 Empire Boulevard, Block 39, Lot 9.02, in the Borough of Moonachie, New Jersey; and

**WHEREAS**, the variance is sought in connection with the applicant's proposal to voluntarily construct four (4) barrier free parking spaces with associated site improvements in the front yard facing Empire Boulevard on the subject property, which is located in the Light Industrial A zone; and

**WHEREAS**, the applicant has requested relief from N.J.A.C. 19:4-8.2(b)1 which prohibits vehicular use areas in the required 50 foot front yard setback, where the applicant is proposing to provide a vehicular use area, including four (4) barrier free parking spaces, at a setback of 9 feet; and

**WHEREAS**, notice of the requested variance relief was given to the public and all interested parties as required by law and was published in The Record newspaper; and

**WHEREAS**, a public hearing was held in the Office of the NJMC on May 12, 2009, before Nicholas Agnoli, Chief Engineer and Deputy Director of Land Use Management, and Ronald Seelogy, Engineer; and

**WHEREAS**, a comprehensive report dated June 30, 2009, has been prepared indicating the recommendations of the Director of Land Use Management and the Executive Director in this matter; and

**WHEREAS**, the report recommends approval of the requested bulk variance from N.J.A.C. 19:4-8.2(b)1 to construct a vehicular use area within the required front yard at a minimum setback of 9 feet; and

**WHEREAS**, the members of the NJMC have reviewed the full record including the transcripts of the public hearings, recommendations on the application by the Director of Land Use Management and the Executive Director, and the submissions of the applicant; and

**WHEREAS**, the members of the NJMC concur with the recommendations of the Director of Land Use Management and the Executive Director; and

**WHEREAS**, the NJMC hereby determines that the requested variance to construct a vehicular use area within the required front yard at a minimum setback of 9 feet conforms with the standards for approving applications for variances as set forth in N.J.A.C. 19:4-4.14(e).

**NOW, THEREFORE, BE IT RESOLVED**, by the New Jersey Meadowlands Commission, that the Forsgate/Site Improvement/Variance application for one bulk variance to construct a vehicular use area within the required front yard at a minimum setback of 9 feet is hereby **APPROVED** for the reasons set forth in the June 30, 2009 recommendation.

The foregoing was adopted on Commission vote.

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Joseph V. Doria, Jr.  
Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of July 22, 2009.

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Robert R. Ceberio  
Secretary

Resolution No. 09-60

# Memorandum



## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio, Executive Director

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From: Sara J. Sundell Date: July 22, 2009

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Subject: Variance Recommendation - Forsgate/Site Improvement/Variance (File 08-663)

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Application for one bulk variance was filed with the New Jersey Meadowlands Commission (NJMC) by William C. Sullivan, Jr., Esq., on behalf of Forsgate Ventures XI, LLC, for the premises identified as 2 Empire Boulevard, Block 39, Lot 9.02, in the Borough of Moonachie, New Jersey. Said premises are located in the Commission's Light Industrial A zone.

The bulk variance is sought in connection with the applicant's proposal to voluntarily construct four (4) barrier free parking spaces with associated site improvements in the front yard facing Empire Boulevard on the subject property.

The applicant has requested variance relief from the following:

1. N.J.A.C. 19:4-8.2(b)1 prohibits vehicular use areas in required front yards. A vehicular use area, including four (4) barrier free parking spaces, is proposed within the required front yard at a setback of 9 feet, whereas 50 feet is required.

A public hearing on this matter was held in the Office of the NJMC on May 12, 2009.

In a comprehensive report dated June 30, 2009, the Director of Land Use Management and the Executive Director recommended the approval of the bulk variance requested above.

At this time, the Commission is required to issue a decision on the variance application described above. A resolution requesting the same is attached for your consideration.

RECOMMENDATION ON THE VARIANCE APPLICATION OF  
Forsgate/Site Improvement/Variance

File #08-663

I. INTRODUCTION

An application for one bulk variance has been filed with the New Jersey Meadowlands Commission (NJMC) by William C. Sullivan, Jr., Esq., of the firm Scarinci Hollenbeck, on behalf of Forsgate Ventures XI, LLC, for the premises located at 2 Empire Boulevard, Block 39, Lot 9.02, in the Borough of Moonachie, New Jersey. Said premises are located in the Commission's Light Industrial A zone. The variance is sought in connection with the applicant's proposal to construct four (4) barrier free parking spaces with associated site improvements in the front yard facing Empire Boulevard on the subject property.

Specifically, the applicant is requesting relief as follows:

1. N.J.A.C. 19:4-8.2(b)1 prohibits vehicular use areas in required front yards. A vehicular use area, including four (4) barrier free parking spaces, is proposed within the required front yard at a setback of 9 feet, whereas 50 feet is required.

Notice was given to the public and all interested parties as required by law. The public notice was published in The Record newspaper. A public hearing was held in the Office of the Commission on Tuesday, May 12, 2009. No written objections were received by the Division of Land Use Management. All information submitted to the Division of Land Use Management relative to this application is made part of the record of this recommendation.

## II. GENERAL INFORMATION

### A. Existing and Proposed Use

The property in question consists of approximately 4.5 acres. It contains frontage on Empire Boulevard to the south, and is located roughly 300 feet east of the signalized intersection of Empire Boulevard and Moonachie Road. The property is bordered to the north and east by warehouse buildings and to the west by an office building. Other properties in the vicinity are generally a combination of office and warehouse uses.

The lot is comprised of a 57,044 square-foot, one-story, masonry warehouse building with accessory office space and associated parking. The applicant is proposing to construct four (4) barrier free parking spaces with associated site improvements such as curbing, sidewalks, striping, lighting, and landscaping in the front yard facing Empire Boulevard. This application proposes no changes to the exterior or interior of the existing structure. The facility currently provides lighting equipment for the entertainment industry.

### B. Response to the Public Notice

No written comments were submitted to this Office regarding this application prior to the public hearing.

## III. PUBLIC HEARING (May 12, 2009)

A public hearing was held on Tuesday, May 12, 2009. NJMC staff in attendance were Nicholas Agnoli, Chief Engineer and Deputy Director of Land Use Management; and Ronald Seelogy, Engineer.

### A. Exhibits

The following is a list of the exhibits submitted by the applicant to the NJMC regarding the variance request:

<u>Number</u>	<u>Description</u>
A-1	"Dimension Plan," Sheet SP-2, prepared by The Reynolds Group Inc., dated September 18, 2008, revised through February 17, 2009.

**B. Testimony**

The applicant was represented at the hearing by William J. Sullivan, Jr., Esq., of the firm Scarinci Hollenbeck. The following witness testified in support of the application.

1. F. Mitchell Ardman, P.E., P.P., The Reynolds Group Inc.

Staff findings and recommendations are based on the entire record. A transcript of the public hearing was prepared and transcribed by Mary Ann Adams, Certified Court Reporter.

**C. Public Comment**

There were no members of the public present at the hearing.

**IV. RECOMMENDATION**

- A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.2(b)1 which prohibits vehicular use areas in required front yards. A vehicular use area, including four (4) barrier free parking spaces, is proposed within the required front yard at a setback of 9 feet, whereas 50 feet is required.**

The NJMC Zoning Regulations at N.J.A.C. 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*
  - i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

Within the Light Industrial A zone, a minimum front yard setback of 50 feet is required. The subject property was developed in the mid-1970's, prior to the establishment of current Americans with Disabilities Act (ADA) guidelines and current NJMC zoning regulations. The existing structure is setback 50 feet from the front lot line. A total of 91 parking spaces, including four barrier free parking spaces, are currently provided. Only one existing barrier free parking space, along with six (6) other non-barrier free parking spaces, are presently located in the required front yard, where the main entrance to the office is located. Similar properties and uses within the general vicinity have their parking facilities at the side and/or rear of the building, outside of the required front yard. The current parking configuration within the front yard was not created by any action of the applicant and current property owner and is not compliant with the ADA, which requires a minimum of four (4) barrier free parking spaces adjoining a specified accessible route for entry into the building. The requested variance to permit a vehicular use area within the required front yard arises from this condition.

- ii. *The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The neighborhood in which the subject property is located is primarily commercial in nature and thus, no residences are located nearby. The properties to the north and east contain warehouses with accessory office. The property to the west contains a multi-story office building.

Due to the forward placement of the existing building on the subject property and the location of office space at the front of the structure, barrier free parking spaces are proposed in the required front yard. No additional traffic will be generated as the use of the subject premises will not be intensified. The configuration of the existing one-way exit drive onto Empire Boulevard will not be altered. Existing loading facilities will remain. Vehicles utilizing the proposed barrier free parking spaces have adequate maneuvering area available on site and will not directly back out into Empire Boulevard. The flow of traffic will not be affected by placing a vehicular use area in the required front yard. Proposed landscaping will screen the vehicular use area from neighboring properties and reduce headlight glare, while maintaining lines of sight.

The proposed improvements will not create any negative visual impacts to neighboring properties or impede their ability to function as intended. Therefore, granting of the requested variance will not adversely affect the rights of neighboring property owners.

*iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

The strict application of the regulations, which do not permit vehicular use areas in the required front yard, would result in practical difficulties and undue hardship upon the property owner. In balancing the zoning requirements of the Light Industrial A zone

with the particular characteristics of the property, the proposed variance is required to accommodate the disabled.

The intent of the ADA Code is to have the barrier free parking most accessible to a building without crossing a traveled way. Alternative layouts were evaluated, including placing the proposed barrier free parking at the rear of the building. This configuration would present possible hazards to a disabled person, as they would be required to travel across a drive aisle and through the warehouse portion of the existing building. Inside the building, significant alterations would have to be made to the existing warehouse space in order to allow for safe passage to the front of the building. The proposed site layout with a vehicular use area in the required front yard represents the preferred planning alternative.

*iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

There will be no substantial detriment to the public good and no adverse impacts to the public health, safety, morals, order, convenience, prosperity or general welfare by the granting of the requested variance. The public good is advanced by the construction of an ADA-compliant parking area on the subject property, which is currently lacking adequate facilities. The placement of the vehicular use area within the required front yard setback, as proposed, is required to provide functional site circulation and accommodate barrier free parking requirements

while reducing the potential for on-site vehicular conflicts. The proposed vehicular use area within the required front yard is not located in the line of sight for vehicles exiting onto Empire Boulevard. Additionally, the property in question is located approximately 300 feet east from the signalized intersection of Moonachie Road and Empire Boulevard.

*v. The variance will not have a substantial adverse environmental impact.*

The granting of the requested variance will not have any adverse environmental impacts. The location of the proposed vehicular use area within the required front yard will not cause the NJMC's performance standards regarding noise, vibrations, airborne emissions, hazardous materials, glare or water quality to be exceeded. The improved site will contain approximately 8.5 percent open space, one-tenth of one percent more open space than was previously provided. Adequate drainage is provided and no additional runoff is expected.

*vi. The variance represents the minimum deviation from the regulations that will afford relief.*

The requested variance represents the minimum deviation from the regulations that will afford relief. Due to the forward placement of the existing building, the property cannot be reasonably or functionally developed without such improvements within the required front yard. Potential locations to provide an alternative barrier free parking location outside of the required front yard are limited due to the location of existing office space toward the front

of the building. The proposed site layout represents the preferred planning alternative for development of the site.

The dimensions and quantity of the barrier free parking spaces proposed in this application reflects the minimum requirements of the NJ UCC Barrier Free Subcode. Additionally, no non-barrier free parking spaces are proposed, aisle widths and vehicle circulation patterns have been maintained, bulk requirements of the Light Industrial A zone have not been impacted, and no further disturbance is proposed beyond the construction of the barrier free parking spaces.

*vii. Granting the variance will not substantially impair the intent and purpose of these regulations.*

The proposed vehicular use area within the required front yard will not impair the intent and purpose of the regulations. The placement of the vehicular use area within the required front yard results in a more efficient site layout with appropriate access provided for those with physical disabilities. Through the use of sound planning practices, the proposed front yard vehicular use area will contribute to and promote the intent of the NJMC Master Plan by allowing for the site to be developed and utilized in a safe and orderly manner.


V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.2(b)1 which states that no vehicular use areas are permitted in required front yards.

Based on the record in this matter, the bulk variance application to construct a vehicular use area with associated site improvements within the required front yard facing Empire Boulevard is hereby recommended for approval.

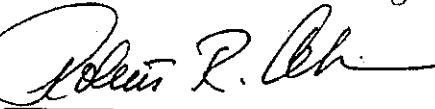
APPROVAL  
RECOMMENDATION ON  
VARIANCE REQUEST

6-30-09  
Date

  
Sara J. Sundell, P.E., P.P.  
Director of Land Use Management

Approval.  
RECOMMENDATION ON  
VARIANCE REQUEST

6-30-09  
Date

  
Robert R. Ceberio  
Executive Director

**RESOLUTION ISSUING A DECISION ON THE SPECIAL EXCEPTION  
APPLICATION SUBMITTED AS PART OF FILE NO. 08-700  
TOWN OF SECAUCUS/WIRELESS TELECOMMUNICATION MONOPOLE,  
BLOCK 225, LOT 4.02, IN THE TOWN OF SECAUCUS**

**WHEREAS**, an application for one (1) special exception has been filed with the New Jersey Meadowlands Commission by Frank Ferraro, Esq., on behalf of Omnipoint Communications, Inc., for the premises owned by the Town of Secaucus and located at 1200 Koelle Boulevard, identified as Block 225, Lot 4.02, in the Town of Secaucus, New Jersey; and

**WHEREAS**, the special exception is sought in connection with the applicant's proposal to install a new 100-foot high wireless telecommunications tower and facility on the subject premises, which is located in the Public Utilities zone; and

**WHEREAS**, the applicant requested a special exception in accordance with N.J.A.C. 19:4-5.109(a)3, where communications transmission towers are listed as a special exception use in the Public Utilities zone; and

**WHEREAS**, notice of the requested special exception was given to the public and all interested parties as required by law and was published in The Jersey Journal and Secaucus Home News newspapers; and

**WHEREAS**, a public hearing was held in the Office of the NJMC on Tuesday, May 5, 2009 before Nicholas Agnoli, P.E., P.P., Chief Engineer and Deputy Director of Land Use Management, and Brad Miller, Engineer; and

**WHEREAS**, a comprehensive report dated July 1, 2009, has been prepared indicating the recommendations of the Director of Land Use Management and the Executive Director in this matter; and

**WHEREAS**, the report recommends approval of the requested special exception to install a new 100-foot high wireless telecommunications tower and facility on the subject premises; and

**WHEREAS**, the members of the NJMC have reviewed the full record including the transcripts of the public hearings, recommendations on the application by the Director of Land Use Management and by the Executive Director, and the submissions of the applicant; and

WHEREAS, the members of the NJMC concur with the recommendations of the Director of Land Use Management and the Executive Director; and

WHEREAS, the NJMC hereby determines that the requested special exception to install a new 100-foot high wireless telecommunications tower and facility on the subject premises conforms with the standards for approving applications for special exceptions as set forth in N.J.A.C. 19:4-4.13(e).

NOW, THEREFORE, BE IT RESOLVED, by the New Jersey Meadowlands Commission, that the Town of Secaucus/Wireless Telecommunication Monopole special exception application to install a new 100-foot high wireless telecommunications tower and facility on the subject premises is hereby **APPROVED** for the reasons set forth in the July 1, 2009 recommendation.

The foregoing was adopted on Commission vote.

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Joseph V. Doria, Jr.  
Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of July 22, 2009.

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Robert R. Ceberio  
Secretary

Resolution No. 09-61

# Memorandum



## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert Ceberio, Executive Director

From: Sara J. Sundell

Date: July 22, 2009

Subject: Special Exception Recommendation: Town of Secaucus/Wireless  
Telecommunication Monopole (File 08-700)

An application for one (1) special exception has been filed with the New Jersey Meadowlands Commission by Frank Ferraro, Esq., on behalf of Omnipoint Communications, Inc., for the premises owned by the Town of Secaucus and located at 1200 Koelle Boulevard, identified as Block 225, Lot 4.02, in the Town of Secaucus, New Jersey. Said premises are located in the Commission's Public Utilities zone. The special exception is sought in connection with the applicant's proposal to install a new 100-foot high wireless telecommunications tower and facility on the subject premises.

The applicant has requested a special exception in accordance with N.J.A.C. 19:4-5.109(a)3, where communications transmission towers are listed as a special exception use in the Public Utilities zone. A public hearing on this matter was held in the Office of the NJMC on May 5, 2009.

In a comprehensive report dated July 1, 2009, the Director of Land Use Management and the Executive Director recommended the approval of the special exception requested above.

At this time, the Commission is required to issue a decision on the special exception application described above. A resolution requesting the same is attached for your consideration.

RECOMMENDATION ON THE SPECIAL EXCEPTION APPLICATION OF  
TOWN OF SECAUCUS/WIRELESS TELECOMMUNICATION MONOPOLE

FILE # 08-700

I. INTRODUCTION

An application for one (1) special exception has been filed with the New Jersey Meadowlands Commission by Frank Ferraro, Esq. on behalf of Omnipoint Communications, Inc., for the premises owned by the Town of Secaucus and located at 1200 Koelle Boulevard, identified as Block 225, Lot 4.02, in the Town of Secaucus, New Jersey. Said premises are located within the Commission's Public Utilities zone. The special exception is sought in connection with the applicant's proposal to install a new 100 foot tall wireless telecommunications tower and facility on the subject premises.

The applicant is requesting relief from:

1. N.J.A.C. 19:4-5.109(a)3, where communications transmission towers are listed as a special exception use in the Public Utilities zone. The applicant is proposing to erect a 100-foot high monopole as part of a proposed telecommunications facility on the subject premises.

Notice was given to the public and all interested parties as required by law. The public notice was published in The Jersey Journal and Secaucus Home News. No written objections were submitted to the Division of Land Use Management. A public hearing was held in the Office of the Commission on Tuesday, May 5, 2009. All information submitted to the Division of Land Use Management relative to this application is made part of the record of this decision.

## II. GENERAL INFORMATION

### A. Existing and Proposed Use

The property in question is an irregularly shaped parcel of approximately 3.84 acres in which the Town of Secaucus Recreation Center is located. Neighboring properties consist of a public utility use, recreational uses, environmental conservation, and residential uses. The site is accessed from Koelle Boulevard to the north, borders the Secaucus Municipal Utility Authority Sewage Treatment Plant to the west, Mill Creek to the south, and the new Centex Homes condominium complex to the east. The 32,212 square foot Town of Secaucus Recreation Facility occupies the subject premises. The applicant is proposing to erect a telecommunications tower and associated facility to the rear of the existing recreation building. A total of six wireless antennas are proposed to be installed on the 100-foot high tower. A 500 square foot accessory equipment structure is proposed adjacent to the tower.

### B. Response to the Public Notice

No written objections were submitted to this Office regarding this application prior to the public hearing.

## III. PUBLIC HEARING (May 5, 2009)

A public hearing was held on Tuesday, May 5, 2009. NJMC staff in attendance were Nicholas Agnoli, P.E., P.P., Chief Engineer and Deputy Director of Land Use Management, and Brad Miller, Engineer.

**A. Exhibits**

The following is a list of the exhibits submitted by the applicant at the public hearing and marked for identification as follows:

<u>Number</u>	<u>Description</u>
A-1	"Antenna Site FCC RF Compliance Assessment and Report," prepared by Pinnacle Telecom Group, dated September 8, 2008.
A-2	"Site Plan and Notes," Sheet A-01, prepared by French & Parrello Associates, P.A., dated March 30, 2009, revised through April 6, 2009.
A-3	"Enlarged Area Plan...", Sheet A-02, prepared by French & Parrello Associates, P.A., dated March 30, 2009, revised through April 6, 2009.
A-4	"Site Details Sheet A-03, prepared by French & Parrello Associates, P.A., dated March 30, 2009, revised through April 6, 2009.
A-5	RF Propagation Maps (base map/overlay map).
A-6	"Visual Analysis For Omnipoint Communications (NJ-05-571)," prepared by T.K. Design Associates, dated November 5, 2007.
A-7	"Aerial Photograph," prepared by T.K. Design Associates.

**B. Testimony**

Frank Ferraro, Esq., of the Law Offices of Frank Ferraro represented the applicant at the hearing. The following four (4) witnesses testified in support of the application:

1. David Collins of Pinnacle Telecom Group
2. Joshua Cotrell, P.E., of French & Parillo Associates, P.A.

3. Bob Leavell of Omnipoint Communications, Inc.

4. Timothy M. Kronk, P.P., AICP, CLA, of T. K. Design Associates

Staff findings and recommendations are based on the entire record. A transcript of the public hearing was prepared and transcribed by Mary Ann Adams, Certified Shorthand Reporter and Notary Public of the State of New Jersey.

**C. Public Comment**

No members of the public attending the public hearing commented on the application.

**IV. DECISION**

**A. Standards for the Granting of a Special Exception from the Provisions of N.J.A.C. 19:4-5.109(a)3, where Communications Towers are listed as a Special Exception Use in the Public Utilities zone.**

The NJMC Zoning Regulations at N.J.A.C. 19:4-4.13(e) states in part that, *a special exception use shall not be granted unless specific written findings of fact are made based upon the evidence presented that supports the following conclusions:*

1. *The proposed special exception use at the specified location will contribute to and promote the welfare or convenience of the public;*

Testimony was provided by the applicant explaining that there is an existing coverage gap for wireless telecommunications service within the general vicinity of the site. The proposed 100-foot high monopole communications tower will allow the installation of six panel type antennas at a sufficient height to close this existing coverage gap in Omnipoint Communication's telecommunication service. Currently, areas of the surrounding neighborhood, specifically the Centex Homes

condominium complex, only receive reliable in-vehicle wireless service. The proposed wireless telecommunications facility will allow for reliable in-building service for these residents, allowing contact to emergency services from wireless telephones. Additionally, the structure has been designed to allow for future co-location by other carriers as required by NJMC regulations. The proposed seamless telecommunications coverage shall promote the welfare and convenience of the public.

2. *The proposed special exception use will not cause substantial injury to the value of other property in the neighborhood;*

The proposed 100-foot high monopole communications tower will not cause substantial injury to other properties in the surrounding neighborhood. The tower and associated telecommunications facility is a benign commercial use that will be located in the rear of the subject property, set back 500 feet from the public right-of-way behind the existing Town of Secaucus Recreational Facility. As the telecommunications facility is listed as a special exception use for Public Utility zone, the only potential negative impact created by the tower would be its visibility. However, this effect shall be mitigated by the monopole's location behind the existing building, the proposed 8-foot board-on-board fence that will screen the ground-level electrical equipment, and the proposed color of the antennas and monopole, which shall be gray to blend in with the sky.

The public will benefit by the closure of a gap in wireless telecommunications service, particularly in cases where the subject carrier is utilized by emergency services. Additionally, there are no

noise, glare, odor, vibration, or noxious characteristics associated with the proposed tower and facility. The applicant has noted that an FCC license has been issued for the subject facility.

3. *The special exception use will not dominate the immediate neighborhood in a manner that could prevent development and use of neighboring properties in accordance with the applicable regulations, in consideration of the following:*

- i. The location and size of the special exception use;*
- ii. The nature and intensity of the operation of the special exception use;*
- iii. The location of the site with respect to access and circulation;*
- iv. The location, nature, and height of structures, walls and fences on the site; and*
- v. The nature and extent of landscaping and screening on the site.*

*i.* The location and size of the proposed 100-foot high monopole telecommunications tower will not dominate the immediate area or neighborhood as to prevent development in accordance with NJMC zoning regulations. The monopole shall be installed in the rear of the property to screen the equipment building and to provide as much distance as possible from the public right-of-way. As such, the monopole will not be particularly noticeable from the surrounding area, and it shall be designed to mitigate any visual impact that it may create.

*ii.* The proposed monopole and associated telecommunications facility shall be unmanned, requiring only monthly visits for maintenance purposes. Sufficient parking areas will be available on site for the visiting technician. This low intensity

use will have no detrimental effects on the surrounding properties.

- iii. The subject property has been fully developed with the recreation center and contains sufficient on-site access and vehicular circulation for the existing use. The *de minimis* increase in intensity on the subject premises by the installation of the monopole and associated unmanned telecommunications facility will not burden or create a dominating effect on the surrounding area. A lease agreement between the Town of Secaucus and Omnipoint Communications provides for 24 hours per day, seven days per week access to the proposed facility. Required access to the proposed paver access road, through the parking space adjacent to it, will be coordinated with the Town of Secaucus prior to servicing. Neighboring properties will not be impeded in their ability to function in accordance with applicable zoning regulations, as little activity and traffic will result from the installation of the monopole and facility.
- iv. The location, nature, and height of structures and fences on the site will not dominate the surrounding area. The telecommunications equipment at the base of the monopole will not be visible from most points since it will be located behind the existing building, adjacent to wetlands and Mill Creek. The monopole will be the most visible component of the facility, however, the structure has been designed to mitigate any visual impact that the monopole may create.

- v. Adequate screening and fencing will be provided for the base of the monopole and telecommunications facility. As the proposed installation location is 500 feet from the public right-of-way, visibility from the road will be limited. Additionally, the adjacent existing recreational building screens the equipment building from nearby properties, and the equipment building will be surrounded by an 8-foot high fence.
4. *Adequate utilities, drainage and other necessary facilities have been or will be provided;*

The proposed monopole and associated telecommunications facility shall not require any water, sewer or gas. Proposed connections to the existing infrastructure are designed to prevent potential negative impacts to existing utility services. The electric and telephone services required by the facility are available in the vicinity. The proposed monopole and equipment will not impact the existing drainage infrastructure or conditions. The proposed vehicular access path shall consist of pervious grass pavers to provide as little stormwater runoff impact as possible, and is *de minimis* in nature.

5. *Adequate access roads and drive aisles have been or will be provided and shall be designed to prevent traffic hazards and minimize traffic congestion;*

Adequate site access and circulation for the proposed monopole and associated telecommunications facility is provided. The impact to traffic in the surrounding area will be insignificant. Traffic generated by the

un-manned facility would be comprised of one site visit every four to six weeks for facility maintenance purposes. Adjacent roadways are capable of handling the minimal traffic generated by the proposed use. A lease agreement between the Town of Secaucus and Omnipoint Communications provides for 24 hours per day, seven days per week access to the proposed facility. Required access to the proposed paver access road will be coordinated with the Town of Secaucus prior to servicing.

6. *The special exception use will not have a substantial adverse environmental impact.*

The proposed monopole and associated telecommunications facility will not cause any adverse environmental impacts. NJMC environmental performance standards will not be exceeded as there will be no noise, vibration, glare, air emissions, hazardous or radioactive materials generated from the proposed facility. No wetlands or environmentally sensitive areas will be disturbed, and all required buffers shall be maintained. Additionally, all structures will be at least one foot above the base flood elevation.


V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Special Exception from the Provisions of N.J.A.C. 19:4-5.109(a)3, where Communications Towers are listed as a Special Exception Use in the Public Utilities zone.

Based on the record in this matter, the application for a special exception to erect a 100-foot high monopole as part of a proposed telecommunications facility on the subject premises is hereby recommended for approval.

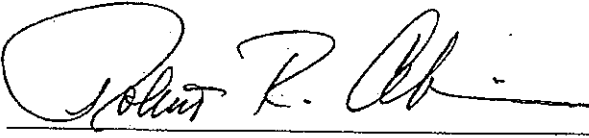
APPROVAL  
Recommendation on  
Special Exception Request

7/1/09  
Date

  
Sara J. Sundell, P.E., P.P.  
Director of Land Use Management

Approval  
Recommendation on  
Special Exception Request

7/1/09  
Date

  
Robert R. Ceberio  
Executive Director

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO  
ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH  
THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S  
DIVISION OF LAND USE REGULATION**

**WHEREAS**, approvals are needed from the New Jersey Meadowlands Commission (NJMC) and the New Jersey Department of Environmental Protection's Division of Land Use Regulation (DLUR), among other agencies, for development on certain lands within the Hackensack Meadowlands District; and

**WHEREAS**, the New Jersey Department of Environmental Protection (NJDEP), through the recent formation of the Permit Efficiency Review Task Force, is committed to addressing environmental permit review efficiency; and

**WHEREAS**, NJMC engineers and planners are well-suited to participate in the regulatory review of environmental permit applications for projects and property within the Hackensack Meadowlands District because of their proximity to those projects and their experience with environmental permitting; and

**WHEREAS**, it is mutually beneficial for NJMC and NJDEP to develop a process to share parts of the review of environmental permit applications in the Hackensack Meadowlands District because it will share and potentially save government resources, provide a thorough and efficient review for applicants and serve the goals of the NJMC and the NJDEP Permit Efficiency Review Task Force.

**NOW, THEREFORE, BE IT RESOLVED** that the Executive Director is authorized to execute an MOU with the NJDEP DLUR regarding the sharing of NJMC staff resources to jointly review environmental permit applications in the Hackensack Meadowlands District.

The foregoing was adopted on Commission vote.

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Joseph V. Doria, Jr.  
Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of July 22, 2009.

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Robert R. Ceberio  
Secretary

# Memorandum



## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio, Executive Director

From: Christine A. Sanz

Date: July 22, 2009

Subject: MOU with NJ Department of Environmental Protection - Permitting Process

The New Jersey Meadowlands Commission (NJMC) is devoted to its statutory mandate of providing orderly development within the Hackensack Meadowlands District (District). Towards that end, the NJMC has historically provided thorough and efficient permit review on the land use applications it receives and its staff has become expert in the properties within the District. Recently, the New Jersey Department of Environmental Protection (NJDEP) created a Permit Efficiency Review Task Force that developed recommendations for the NJDEP. After reviewing those recommendations, NJMC determined it could assist the NJDEP in saving resources by offering the services of its experienced staff in the review of environmental permit applications within the District. The NJMC and the NJDEP believe that a partnership among the agencies with respect to certain aspects of permit review could create governmental efficiency as well as provide more efficient review for applicants while maintaining the high level of standards that currently exist for environmental permitting and the protection of our environment. NJMC staff respectfully requests that the Executive Director be authorized to execute an MOU with the NJDEP's DLUR that will permit NJMC staff to assist NJDEP in the review of certain environmental permits for applications within the District.

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER  
INTO AN AGREEMENT WITH THE  
MEADOWLANDS MUSEUM OF RUTHERFORD, NJ  
TO PROVIDE ADDITIONAL EDUCATIONAL PROGRAMMING**

**WHEREAS**, the New Jersey Meadowlands Commission's 2004 Master Plan includes as a central goal strengthening the existing communities that make up the 14 municipalities that are part of the Meadowlands District, and it also includes a focus on recognizing and preserving historic sites within the District; and

**WHEREAS**, the Meadowlands Museum in Rutherford, NJ, is an important cultural and historical resource with specific ties to the Meadowlands District that adds to the quality of life for residents and visitors to Rutherford, NJ, and the surrounding communities; and

**WHEREAS**, the unique collection of artifacts and educational expertise available through the Meadowlands Museum is complimentary to the existing schedule of public programs offered by the NJMC through the Meadowlands Environment Center, and the Meadowlands Museum is equipped to provide lessons on the early history of the area that are currently unavailable to MEC visitors.

**NOW, THEREFORE, BE IT RESOLVED**, that the NJMC Executive Director his hereby authorized to enter into an agreement with the Meadowlands Museum calling for the Museum to provide public educational programming specific to the history of the Meadowlands District at the NJMC's Meadowlands Environment Center facility in DeKorte Park for a fee of \$25,000 a year, for up to three years.

The foregoing was adopted on Commission vote.

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Joseph V. Doria, Jr.  
Chairman

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of July 22, 2009.

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Robert R. Ceberio  
Secretary

# Memorandum



## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio, Executive Director

From: Lilo Stainton

Date: July 22, 2009

Subject: Meadowlands Museum Agreement for Educational Programming

The NJMC is requesting authorization to form a partnership with the Meadowlands Museum, of Rutherford, NJ, to provide additional public programming on the history of the Meadowlands District, particularly focused on early settlers, businesses and communities along the Hackensack River. The agreement would allow the NJMC to pay the Meadowlands Museum up to \$25,000 a year for three years to provide educational programs at the NJMC's DeKorte Park site, and to enhance programs for Meadowlands District residents at the Museum's Rutherford facility. Given the Museum's expertise in local history, this arrangement would fill an existing gap in the programming now provided by the NJMC's Meadowlands Environment Center, which runs a schedule of arts and science programs for people of all ages. The Act authorizing the Commission called for increasing "public recreational and other needs," and the NJMC's 2004 Master Plan includes as a goal strengthening existing communities, and this partnership helps meet both these objectives.

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER  
INTO A LEASE AGREEMENT WITH DONJON MARINE CO., INC. FOR  
DREDGE DISPOSAL AT THE NJMC LANDFILLS**

**WHEREAS**, as part of the New Jersey Department of Environmental Protection landfill closure regulations, the NJMC must furnish and install capping material at the landfills owned by the NJMC; and,

**WHEREAS**, in the past the NJMC has leased air space for the placement of dredge materials at various landfills; and,

**WHEREAS**, additional quantities of PDM are being utilized to complete the capping at the landfill sites; and,

**WHEREAS**, DonJon Marine has approximately 600,000 cubic yards of PDM available that are suitable for use as capping material at the NJMC landfill sites; and,

**WHEREAS**, to compensate the NJMC for disposal of the 600,000 cubic yards of PDM, DonJon Marine Co., Inc. will furnish, install and operate a seven acre solar array on the sideslopes of the NJMC Erie Landfill that will provide up to 1.3 megawatts of power to the NJMC Office complex; and

**WHEREAS**, as part of the closure activity, DonJon Marine will install approximately seven acres of the landfill cap and final cover consisting of processed dredge material and a geomembrane liner anchored to the slope of the landfill in order to alleviate the need to try to get vegetation to grow on a steep slope; and,

**WHEREAS**, DonJon Marine will own and operate a thin film flexible laminated solar panel installed over the liner for a period of six years after initial start-up; and,

**WHEREAS**, during that six year period DonJon Marine will provide up to 1.3 megawatts of power to the NJMC Office complex at one-half of the current market rate for power being charged by PSE&G and DonJon will convey all SREC credits from the power generation to the NJMC; and,

**WHEREAS**, at the end of the six-year period above, the entire solar array and facilities will become the property of the NJMC.

**NOW THEREFORE BE IT RESOLVED** that the Executive Director is hereby authorized to enter into a lease agreement with DonJon Marine Co., Inc. 1250 Liberty Avenue, Hillside, New Jersey 07205 for the acceptance of approximately 600,000 cubic yards of PDM at the NJMC 1-E, Erie and Keegan landfills or at the Kingsland Redevelopment project.

The foregoing was adopted on Commission vote.

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Joseph V. Doria, Jr.  
Chairman

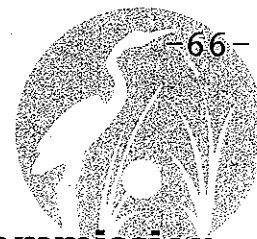
I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Meadowlands Commission at its meeting of July 22, 2009.

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Robert R. Ceberio  
Secretary

Resolution No. 09-65

# Memorandum



## New Jersey Meadowlands Commission

To: NJMC Commissioners and Robert R. Ceberio, Executive Director

From: Thomas R. Marturano Date: July 22, 2009

Subject: Lease Agreement with DonJon Marine for Dredge Disposal at the NJMC Landfills

In accordance with the New Jersey Department of Environmental Protection closure plan requirements, the NJMC must furnish and install a landfill cap at the 1-E, Erie and Keegan landfills. In the past, the NJMC has leased air space for the placement of dredge materials at these sites to be used as part of the landfill cap. We have done this 3 times in the past and it has always been a win-win for the NJMC because we get a portion of the landfill capped/covered and we receive a one time lease payment. In order to complete the current capping process at the three landfills, additional capping material is required.

DonJon Marine Co., Inc. was the successful bidder on an Army Corps of Engineers' contract and has approximately 600,000 cubic yards of processed dredge material (PDM) available for capping. This material has been approved by the New Jersey Department of Environmental Protection as being suitable for use as landfill capping material.

Our past experience with use of the PDM as capping material indicates it works very well on the flatter top portions of the sites. However, use of the PDM for a cap is not quite as successful on the sideslopes due to erosion issues caused by the difficulty in maintaining a soil cover and growing a vegetative layer on the slopes. Therefore, we are proposing to place PDM on approximately 7 acres of sideslopes at the Erie landfill and to cover it with a new liner system that not only covers the landfill but will produce about 1.3 megawatts of electricity. This new liner system will alleviate the problem that we currently have with covering the side slopes with PDM because no soil is placed on the liner.

The liner system for the Erie sideslopes will include a layer of PDM, a geomembrane installed and anchored into the sideslope, and a thin film flexible laminated solar panel installed over and fastened to, the geomembrane.

Normally we would receive a dollar amount for the air space we are leasing. However, under this lease agreement, as compensation for the NJMC accepting the 600,000 cubic yards of PDM from DonJon Marine Co., Inc., DonJon will furnish, install and operate a seven acre solar array at the Erie landfill.

DonJon Marine will own and operate the solar panel installation for a six year period. During that six year period DonJon Marine will provide up to 1.3 megawatts of power to the NJMC Office complex at one-half the current market rate for power being charged by PSE&G. In addition, DonJon Marine will convey the value of all SREC credits from power generated at the site to the NJMC. At the end of the six year period, the entire solar array and associated facilities will become the property of the NJMC.

The electricity produced will reduce the NJMC's power costs by 50 percent. Additionally, the SRECs that are generated from the solar installation (which are sold on the open market) are estimated to be over \$500,000 per year for 20 years.

Accordingly, I recommend that the Commission authorize the Executive Director to enter into a lease agreement with DonJon Marine Co., Inc. 1250 Liberty Avenue, Hillside, New Jersey 07205 for the acceptance of approximately 600,000 cubic yards of PDM and the installation of a solar panel at the NJMC 1-E, Erie and Keegan landfills or at the Kingsland Redevelopment project.