

Board Meeting

Thursday, December 13, 2018

10:00 a.m.



**AGENDA
REGULAR SESSION**

Thursday, December 13, 2018 - 10:00 a.m.
Two DeKorte Park Plaza, Lyndhurst, NJ

I. **PLEDGE OF ALLEGIANCE**

II. **OPENING STATEMENT**

III. **ROLL CALL**

IV. **APPROVAL OF MINUTES** - (Action)

- Approval of Regular Session Meeting Minutes of November 15, 2018.

V. **PUBLIC PARTICIPATION ON RESOLUTIONS**

VI. **APPROVALS** – (Action)

Cash Disbursements Approval and/or Ratification of Cash Disbursements over \$100,000 for November 2018.

Resolution 2018-53 Consideration of a Resolution Authorizing the Placement of Property and Excess Liability Insurance.

Resolution 2018-54 Consideration of a Resolution Issuing a Decision on the Suitability Recommendation as Required by the *NJSEA Interim Policies Governing Affordable Housing Development in the Meadowlands District* – File No. 18-430, SOF/EPC 630 LLC/Edison Park Fast-Surface Parking Lot – Block 10, Lots 10 & 13 in Secaucus.

Resolution 2018-55 *Removed at Applicant's Request*

Resolution 2018-56 Consideration of a Resolution Issuing a Decision on the Variance Application Submitted as Part of File No. 18-011 – 111 Kero Holdings LLC/Addition & Variances – Block 126, Lots 33 & 34 in Carlstadt.

VII. **PUBLIC PARTICIPATION**

VIII. **PUBLIC PARTICIPATION ON RESOLUTIONS 2018-58 and 2018-59**

IX. **EXECUTIVE SESSION**

Resolution 2018-57 Consideration of a Resolution authorizing the New Jersey Sports and Exposition Authority to conduct a meeting, to which the general public shall not be admitted for the purposes of discussing legal matters, personnel matters and contract negotiations.

X. **APPROVALS**

Resolution 2018-58 Consideration of Towers Associates' Motion to Stay Resolution 2018-46 regarding File No. 17-239 MEPT Lincoln Crossing, LLC/Lincoln Gateway-New Bldg./Variance

Resolution 2018-59 Consideration of a Resolution Authorizing Settlement and the Issuance of a Final Decision in Scannell Properties #181, LLC v. N.J. Sports & Exposition Auth., OAL Docket No. HMD 07753-16

XI. **MOTION TO ADJOURN**

***TO VIEW THE FULL BOARD BOOK, PLEASE VISIT OUR WEBSITE AT:
<http://www.njsea.com/njmc/about/commission-meetings.html>***

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

MINUTES



REGULAR SESSION BOARD MEETING

DATE: November 15, 2018
TIME: 10:00 a.m.
PLACE: 2 DeKorte Park Plaza - Lyndhurst, NJ
RE: **REGULAR SESSION MEETING MINUTES**

Members in Attendance:

John Ballantyne, Chairman
Joseph Buckelew, Vice Chairman (via phone)
Vincent Prieto, President and CEO
Robert J. Dowd, Member
Michael Ferguson, Member (via phone)
Armando Fontoura, Member
Michael Griffin, NJ State Treasurer's Representative (via phone)
Steven Plofker, Member
Andrew Scala, Member
Anthony Scardino, Member
Robert Yudin, Member

Absent:

Michael Gonnelli, Member
Michael H. Gluck, Esq., Member
George Kolber, Member

Also Attending:

Frank Leanza, Senior Vice President/ Chief of Legal and Regulatory Affairs
Christine Sanz, Senior Vice President/COO
Adam Levy, Vice President of Legal & Regulatory Affairs
John Yarenis, Director of Finance/CFO
Sara Sundell, Director of Land Use Management and Chief Engineer
Steven Cattuna, Chief of Staff
Wayne Hasenbalg
Lauren LaRusso, Assistant Counsel, Governor's Authorities Unit
Christine Ferrante, Executive Assistant/Paralegal

Chairman Ballantyne called the meeting to order.

- I.** Pledge of Allegiance
- II.** Opening Statement - Chairman Ballantyne read the Notice of Meeting required under the Sunshine Law.
- III.** Roll Call

IV. APPROVAL OF MINUTES

Chairman Ballantyne presented the minutes of the Regular Session Board Meeting held on October 18, 2018.

Upon motion made by Commissioner Yudin and seconded by Commissioner Scardino, the minutes of the Regular Session Board Meeting held on October 18, 2018 were unanimously approved.

V. PUBLIC PARTICIPATING ON RESOLUTIONS - None

VI. APPROVALS

- Approval of Cash Disbursements Over \$100,000 and Professional Invoices

Chairman Ballantyne presented the report of cash disbursements over \$100,000 and Professional Invoices for the month of October 2018.

Upon motion by Commissioner Scardino and seconded by Commissioner Fontoura, the cash disbursements over \$100,000 for the month of October 2018 were unanimously approved.

Resolution 2018-47 Resolution Approving the NJSEA Annual Schedule of Meetings for the Year 2019.

Chairman Ballantyne presented Resolution 2018-47. Upon motion made by Commissioner Yudin and seconded by Commissioner Scala Resolution 2018-47 was unanimously approved by a vote of 11-0.

Resolution 2018-48 Resolution Authorizing the President and CEO to Execute a Deed Notice for Property Known as Block 105.01, Lot 8 in East Rutherford.

Mr. Leanza explained that NJSEA purchased property from Honeywell International in East Rutherford. He further explained that under the contract, Honeywell continued to perform its obligations with respect to environmental remediation. Mr. Leanza stated that Honeywell has fulfilled all of its obligations under the contract. He further explained that Honeywell and other parties have remediated contaminated soil at the Property and that the USEPA and the NJDEP approved a remedial action. Soil contamination remains in certain areas of the Property that contains contaminants that do not allow for the unrestricted use of the Property. Mr. Leanza stated that as a result, there is a statutory requirement for a Deed Notice and engineering controls. Mr. Leanza noted that the Authority's Licensed Site Remediation Professional, Environmental Counsel and General Counsel have all reviewed the Deed Notice and found it in compliance with the contract and Federal and New Jersey Law.

Upon motion made by Commissioner Dowd and seconded by Commissioner Scardino Resolution 2018-48 was unanimously approved by a vote of 11-0.

Resolution 2018-49 Resolution Authorizing the Placement of General Liability, Crime, Fiduciary, Site Pollution and Public Officials Liability Insurance.

Mr. Yarenis explained that the insurance policies cover the period of January 1, 2019 through January 1, 2020. He also explained that the agency utilized the services of Wills Towers Watson to obtain the coverage quotes for these policies. He noted that there was a minor increase from the current policy year. Mr. Yarenis indicated that they are still in negotiations with regards to property insurance and excess liability and that as soon as those premiums become available they will be brought before the board for approval.

Upon motion made by Vice Chairman Buckelew and seconded by Commissioner Scala Resolution 2018-49 was unanimously approved by a vote of 11-0.

Resolution 2018-50 Resolution Authorizing Action Regarding the PSE&G Penhorn Substation Expansion Project.

Mr. Levy explained that the resolution concerns NJSEA's desire to assist PSE&G with its efforts to upgrade the Penhorn Substation located along Secaucus Road in Jersey City. He stated that as part of their efforts to perform the upgrade, PSE&G needs to acquire certain property within the vicinity. Mr. Levy indicated that PSE&G is unable to identify the owner of the property needed and has asked NJSEA to step in to obtain the property either through purchase or eminent domain. Mr. Levy stated that NJSEA will enter into an agreement with PSE&G. PSE&G will reimburse NJSEA for all costs associated with the acquisition. The NJSEA will then transfer the property to PSE&G for the sole purpose of incorporating the parcel into the upgrade of the Penhorn Substation. Mr. Levy noted that the NJSEA is authorized under statute to acquire property for public purchase and stated that public purpose does exist with this project.

Upon motion made by Commissioner Dowd and seconded by Commissioner Scardino Resolution 2018-50 was unanimously approved by a vote of 11-0.

VII. PUBLIC PARTICIPATION

- Kristoffer Burfitt of Sills Cummis and Gross – representing Towers Associates spoke about the filed motion to stay the resolutions approved at the October 18 meeting regarding the use variance application submitted by MEPT Lincoln Crossing, LLC. Mr. Burfitt stated that they believe this motion is emergent and requested that it be heard at today's meeting.

Mr. Levy explained that the agency has received the papers requesting the board to hear the motion for stay and also received the papers from the applicant opposing the motion. Mr. Levy further explained that the board intends to hear the application at the December board meeting, which is considered timely as the application was received on October 30.

VIII. EXECUTIVE SESSION

Chairman Ballantyne stated a need for the Board to enter into Executive Session to discuss contractual matters, personnel matters and litigation matters.

Resolution 2018-51 Resolution Authorizing the NJSEA to Conduct a Meeting to which the General Public Shall Not Be Admitted.

Upon motion made by President Prieto and seconded by Commissioner Fontoura Resolution 2018-51 was approved by a vote of 11-0.

Returned to open session at 10:25 a.m.

Resolution 2018-52 Resolution Authorizing the Filing of Additional Requests for Extensions of Time to Issue a Final Agency Decision

Ms. LeBoeuf explained that this resolution, with approval from all parties, would allow the agency to make additional future requests, if necessary, to OAL for extensions in the matter of Scannell Properties #181 v NJSEA. Ms. LeBoeuf stated that the extensions would allow parties to continue working towards a resolution for filing the final decision until January 31, 2019.

Upon motion made by Commissioner Scala and seconded by Commissioner Dowd Resolution 2018-52 was approved by a vote of 11-0.

IX. MOTION TO ADJOURN

With no further business, motion to adjourn the meeting was made by President Prieto and second by Commissioner Plofker with all in favor.

Meeting adjourned at 10:28 a.m.

I certify that on information and belief this is a true and accurate transcript of the Minutes of the Regular Session of the New Jersey Sports and Exposition Authority Board Meeting held on November 15, 2018.



Christine Sanz
Assistant Secretary

November 15, 2018

Commissioner	Roll Call	2018-47	2018-48	2018-49	2018-50	2018-51	2018-52
Ballantyne, Chairman	P	Y	Y	Y	Y	Y	Y
Buckelew, Vice Chairman	P (via phone)	Y	Y	Y	Y	Y	Y
Prieto	P	Y	Y	Y	Y	Y	Y
Dowd	P	Y	Y	Y	Y	Y	Y
Ferguson	P (via phone)	Y	Y	Y	Y	Y	Y
Fontoura	P	Y	Y	Y	Y	Y	Y
Gluck	--	--	--	--	--	--	--
Gonnelli	--	--	--	--	--	--	--
Kolber	--	--	--	--	--	--	--
Plofker	P	Y	Y	Y	Y	Y	Y
Scala	P	Y	Y	Y	Y	Y	Y
Scardino	P	Y	Y	Y	Y	Y	Y
Yudin	P	Y	Y	Y	Y	Y	Y
Treasury Rep Griffin	P (via phone)	Y	Y	Y	Y	Y	Y

P - Present A - Abstain
 -- Absent R = Recuse
 Y = Affirmative N = Negative

APPROVALS



CASH DISBURSEMENTS
\$100,000 OR MOR8
NOVEMBER 2018

EAST RUTHERFORD - SPORTS COMPLEX

<u>Nov</u>	<u>\$ AMOUNT</u>	<u>REFERENCE LETTER</u>	<u>ACCOUNT DESCRIPTION</u>
GIBBONS P.C.	196,901.68	A	LEGAL SERVICES - AUTHORITY TRANSACTIONS COUNSEL: SEP 2018 - OCT 2018
NEW JERSEY FIRE EQUIPMENT	102,893.50	A	PURCHASE OF FIRE GEARS & EQUIPMENT FOR FIRE DEPARTMENT
NEW JERSEY STATE POLICE	1,640,529.38	A/L	OVERTIME CHARGES & MISCELLANEOUS BILLINGS: AUG 2018 - SEP 2018
NRG BUSINESS SOLUTIONS	384,428.74	J/L	ELECTRICITY CHARGES: OCT 2018
EAST RUTHERFORD - SC TOTAL	<u>2,324,753.30</u>		

LYNDHURST

<u>PAYEE</u>	<u>\$ AMOUNT</u>	<u>REFERENCE LETTER</u>	<u>ACCOUNT DESCRIPTION</u>
JERSEY CITY, CITY OF	341,241.21	I	TAX SHARING: CALENDAR YEAR 2018
KEARNY, TOWN OF	1,088,836.46	I	TAX SHARING: CALENDAR YEAR 2018
NORTH ARLINGTON, BOROUGH OF	261,728.33	I	TAX SHARING: CALENDAR YEAR 2018
RIDGEFIELD, BOROUGH OF	337,831.19	I	TAX SHARING: CALENDAR YEAR 2018
RUTHERFORD, BOROUGH OF	180,063.48	I	PILOT & TAX SHARING: CALENDAR YEAR 2018
WASTE MANAGEMENT OF NEW JERSEY	545,054.61	A	OPERATIONS CONTRACT - KEEGAN LANDFILL: OCT 2018
LYNDHURST TOTAL	<u>2,754,755.28</u>		



CASH DISBURSEMENTS
\$100,000 OR MORE

<u>REFERENCE LETTER</u>	<u>TYPE</u>
A	CONTRACT ON FILE
B	PURCHASE AWARDS - APPROVED AT MONTHLY BOARD MEETING
C	STATE REQUIREMENT FOR RACING
D	STATE VENDOR
E	SOLE SOURCE*
F	APPOINTED BY RACING COMMISSION
G	ADVERTISED BID
H	PRESIDENT/CEO APPROVAL
I	STATUTORY PAYMENT
J	UTILITIES
K	LOWEST PROPOSAL
L	REIMBURSABLE
M	OUTSTANDING PROFESSIONAL INVOICES APPROVED AT MONTHLY BOARD MEETING
N	PURCHASES ON BASIS OF EXIGENCY
*	PURCHASES DIRECT FROM SOURCE
	EXPENDITURE TO BE CHARGED TO MAINTENANCE RESERVE FUND

RESOLUTION 2018-53

**RESOLUTION AUTHORIZING THE PLACEMENT OF
PROPERTY AND EXCESS LIABILITY INSURANCE**

WHEREAS, the New Jersey Sports and Exposition Authority (“Authority”) utilized the services of its Insurance Broker, Willis Towers Watson of Pennsylvania (“Willis”) to obtain insurance coverages for Property and Excess Liability; and

WHEREAS, Willis solicited quotes from multiple insurers for the above referenced policies, and

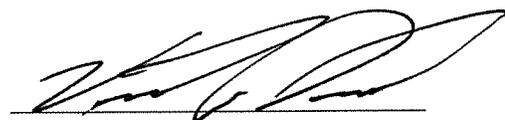
WHEREAS, as a result of its solicitation, Willis is recommending that the NJSEA bind the following policies:

<u>Coverage</u>	<u>Carrier</u>	<u>Quote</u>
Property	Zurich/ Allianz/ Axis/Markel /RSUI/Liberty International	\$604,484
Excess Liability	Philadelphia Insurance	<u>\$111,211</u>
	Total	\$ 715,295

WHEREAS, the Authority staff has evaluated the insurance premium quotation options submitted by Willis and concurs with its recommendation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the New Jersey Sports and Exposition Authority hereby authorizes Willis to bind the policies that will be effective January 1, 2019 through January 1, 2020 at a total cost of \$715,295.

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Sports and Exposition Authority at their meeting of December 13, 2018.



Vincent Prieto
Secretary

RESOLUTION 2018-54

**RESOLUTION ISSUING A DECISION ON THE
SUITABILITY RECOMMENDATION AS REQUIRED BY THE
NJSEA INTERIM POLICIES GOVERNING AFFORDABLE HOUSING
DEVELOPMENT IN THE MEADOWLANDS DISTRICT
FILE No. 18-430, SOF/EPC 630 LLC/Edison Park East - Surface Parking Lot
BLOCK 10, LOTS 10 & 13
IN THE TOWN OF SECAUCUS**

WHEREAS, in a decision dated May 21, 2007 (A-4174-03T3; A-3107-04T1), the Appellate Division of the New Jersey Superior Court determined, among other things, that the New Jersey Meadowlands Commission (NJMC) should consider whether new development in the Meadowlands District should be avoided until the Commission implements new rules concerning affordable housing; and

WHEREAS, on July 25, 2007, the Commission adopted Resolution No. 07-68, which approved the "Policy Statement Regarding the NJMC's Expanded Responsibilities to Plan and Zone for Affordable Housing"; and

WHEREAS, on May 6, 2008, COAH adopted new rules, which became effective upon publication in the New Jersey Register on June 2, 2008 and, in addition, adopted new rules on September 22, 2008, which became effective on October 20, 2008; and

WHEREAS, on July 17, 2008, P.L. 2008, Chapter 46 became law, revising various parts of the statutory law concerning affordable housing; and

WHEREAS, on July 23, 2008, the Commission adopted Resolution No. 08-80, which approved the "*Interim Policies Governing Affordable Housing Development in the Meadowlands District*," in order to govern the review of and restraints upon applications for further development in the Meadowlands District in a manner consistent with these regulatory and statutory changes, prior to the implementation of new regulations regarding same; and

WHEREAS, pursuant to Public Law 2015, Chapter 19, the New Jersey Meadowlands Commission (NJMC) has become part of the New Jersey Sports and Exposition Authority (NJSEA), effective February 5, 2015; and

WHEREAS, the *Interim Policies*, last revised by Resolution No. 11-29 on July 27, 2011, govern all zoning certificate applications, petitions to amend the Official Zoning Map, new redevelopment plans, and proposed amendments to a redevelopment plan pertaining to new proposed uses or changes to existing uses,

received on or after July 24, 2008, and remain in effect until the NJSEA promulgates new regulations concerning affordable housing, or the *Interim Policies* are withdrawn or rescinded by Commission action or court order, whichever occurs first; and

WHEREAS, the *Interim Policies* set forth the criteria for a Review Team, comprised of three NJSEA staff members including one New Jersey-licensed professional engineer and one New Jersey-licensed professional planner, and also a professional planner representing the municipality in which the proposed development is located, to review each applicable application to determine the suitability of the subject site for residential use; and

WHEREAS, a zoning certificate application was submitted to the NJSEA on September 27, 2018, by Anthony Borelli of Edison Properties and representing the property owners of the premises located at 614 New County Road, Block 10, Lot 13, and 630 New County Road, Block 10, Lot 10, in Secaucus, New Jersey, which is located within the Station Square Zone of the Secaucus Transit Village Redevelopment Area; and

WHEREAS, the subject application proposes the construction of an interim 1,111-space surface commercial parking lot and, as such, is not exempt from the *Interim Policies*; and

WHEREAS, the application was forwarded to the Review Team for review of the application in accordance with the *Interim Policies*; and

WHEREAS, the Review Team evaluated the suitability of the subject property taking into consideration the specific application submitted for the construction of an interim surface commercial parking lot; and

WHEREAS, a suitability review, dated December 3, 2018, and attached hereto, has been prepared, indicating the recommendation of the Review Team in this matter; and

WHEREAS, the suitability review recommends that the subject properties are unsuitable for residential use; and

WHEREAS, the Board of Commissioners of the NJSEA has reviewed the suitability review and recommendation prepared by the Review Team, regarding the subject property; and

WHEREAS, the Board of Commissioners of the NJSEA concurs with the recommendation of the Review Team; and

WHEREAS, the Board of Commissioners of the NJSEA hereby determines that the subject properties are unsuitable for residential use.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the New Jersey Sports and Exposition Authority, that the properties located at 614 New County Road, Block 10, Lot 13, and 630 New County Road, Block 10, Lot 10, in the Town of Secaucus, New Jersey, are deemed to be unsuitable for residential use.

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Sports and Exposition Authority at their meeting of December 13, 2018.

A handwritten signature in black ink, appearing to read 'Vincent Prieto', written over a horizontal line.

Vincent Prieto
Secretary



MEMORANDUM

To: NJSEA Board Members and Vincent Prieto, President/CEO

From: Sara J. Sundell *Date:* December 13, 2018

Subject: Site Suitability Recommendation for Block 10, Lots 10 & 13, in the Town of Secaucus (File No. 18-430)

In a decision dated May 21, 2007 (A-4174-03T3; A-3107-04T1), the Appellate Division of the New Jersey Superior Court determined, among other things, that the New Jersey Meadowlands Commission (NJMC or Commission) should consider whether new development in the Meadowlands District should be avoided until the Commission implements new rules concerning affordable housing. The Commission followed up by adopting Resolution No. 07-68, on July 25, 2007, which approved the "Policy Statement Regarding the NJMC's Expanded Responsibilities to Plan and Zone for Affordable Housing." Thereafter, on July 23, 2008, the Commission adopted Resolution No. 08-80, which approved the "*Interim Policies Governing Affordable Housing Development in the Meadowlands District*," which was last revised by Resolution No. 11-29 on July 27, 2011, in order to govern the review of and restraints upon applications for further development in the Meadowlands District in a manner consistent with regulatory and statutory changes regarding affordable housing, prior to the implementation of new regulations regarding same.

Pursuant to Public Law 2015, Chapter 19, the New Jersey Meadowlands Commission (NJMC) has become part of the New Jersey Sports and Exposition Authority (NJSEA), effective February 5, 2015.

The *Interim Policies* apply to all zoning certificate applications, petitions to amend the Official Zoning Map, new redevelopment plans, and proposed amendments to a redevelopment plan pertaining to new proposed uses or changes to existing uses, received on or after July 24, 2008, and will remain in effect until the NJSEA promulgates new regulations concerning affordable housing, or the *Interim Policies* are withdrawn or rescinded by Authority action or court order, whichever occurs first. The *Interim Policies* set forth the criteria for a Review Team, comprised of three NJSEA staff members, including one New Jersey-

licensed professional engineer and one New Jersey-licensed professional planner, and also a professional planner representing the municipality in which the proposed development is located, to review each applicable application to determine the suitability of the subject site for residential use.

The NJSEA received an application for the construction of an interim 1,111-space, surface commercial parking lot at the premises located at 614 and 630 New County Road, at Block 10, Lots 10 and 13, in Secaucus, New Jersey. The subject property is located within the District's Station Square Zone of the Secaucus Transit Village Redevelopment Area.

The matter was forwarded to the Review Team for review of the proposed site in accordance with the *Interim Policies*. A suitability review, dated December 3, 2018, has been prepared, indicating that the Review Team recommends that the subject property is not suitable for residential use.

At this time, the NJSEA staff is recommending that the members of the NJSEA concur with the site suitability recommendation prepared by the Review Team, which determines that the subject property is not suitable for residential use.

Suitability Review - Summary

File No. 18-430

SOF/EPC 630 LLC/Edison ParkFast - Surface Parking Lot

Block 10, Lots 10 and 13, in the Town of Secaucus

December 3, 2018

The NJSEA received a zoning certificate application, signed by Anthony Borelli, and submitted by William Sullivan, Jr., Esq., of the firm, Scarinci Hollenbeck, on behalf of Edison Properties, to construct an interim 1,111-space surface commercial parking lot on portions of two properties located within the Station Square Zone of the Secaucus Transit Village Redevelopment Area.

The properties are identified as 614 and 630 New County Road, Block 10, Lots 10 and 13, in the Town of Secaucus, New Jersey. Both properties are currently owned by affiliate companies to Edison Properties, who operates the Edison ParkFast commercial parking lot located on Block 12, Lot 1, situated on the opposite side of New County Road. The applicant proposes to demolish the existing 17,000-square-foot single-story masonry building located on Lot 13 and an 18,000-square-foot portion of the 138,500-square-foot warehouse building on Lot 10 in order to utilize these properties as a commercial off-street parking facility. The masonry building located on Lot 13 is currently occupied by Hudson County Motors and utilized as a commercial truck sales, service and repair business. The 18,000-square-foot portion of the warehouse building located on Lot 10 has been occupied by a number of warehouse and distribution tenants over the years and is currently referenced by the company name, Arrowpac. The proposal involves the placement of 1,111 surface parking spaces on the combined two lots.

In keeping with the review process, the site characteristics of the property have been evaluated in accordance with the "Interim Policies Governing Affordable Housing Development in the Meadowlands District," adopted by the NJMC on July 24, 2008, and last revised on July 27, 2011.

In accordance with Section IV(c)1 of the Interim Policies, the criteria to deem a site suitable for housing are as follows:

- i. The site is adjacent to compatible land uses and has access to appropriate streets.

Arrowpac property (Block 10, Lot 10)

- The 8.9-acre property is currently contains a 138,500-square-foot warehouse and distribution facility. A portion of the existing structure, incorporating

approximately 18,000 square feet, is proposed to be demolished to create additional space for surface parking. The remainder to the Arrowpac warehouse and distribution facility is proposed to continue to operate on Lot 10.

- Lot 10 is essentially located in the center of the block and is surrounded by a warehouse and distribution building to the north, a vacant parcel proposed for additional surface parking to the west, and the Hudson County Motors commercial truck sales, service and repair facility on Lot 13 to the east and south. The property has one access point to a public street in the form of a narrow driveway extension that fronts on Castle Road. Operationally, additional vehicular access to New County Road is informally allowed across adjacent Lot 13, also a subject of this application.
- The surrounding active commercial, industrial and warehouse uses in the area would present challenges with respect to circulation and safety of residents and are not compatible with residential uses.

Hudson County Motors property (Block 10, Lot 13)

- The irregularly-shaped, 5.8-acre Hudson County Motors property is utilized by a commercial truck sales, service and repair business. The site is currently improved with an approximately 17,000-square-foot building and associated parking, driveway, and loading areas. The existing building is proposed to be demolished and the business will be relocated elsewhere in order to utilize the entire property for commercial off-street parking.
- The site is located along the eastern edge of the Station Square zone of the Secaucus Transit Village Redevelopment Area, at the corner of New County Road and Seaview Drive Extension. The adjacent land uses include a warehouse on adjacent Lot 10 to the west, also a subject of this application, and a warehouse/light industrial facility to the north. Seaview Drive runs along the eastern edge of the property and to the east across Seaview Drive is an open parcel of property owned by Norfolk Southern Railway Company. The existing 1,089-space Edison ParkFast commercial parking lot is located directly across New County Road to the south.
- The existing developed lot has access points on New County Road and Seaview Drive. As the surrounding area consists of industrial, warehouse and commercial uses, there is heavy truck traffic both day and night. Seaview Drive is also a main thoroughfare leading to the Frank R. Lautenberg Rail Station and Exit 15X off of the New Jersey Turnpike, resulting in high congestion at the intersection of Seaview Drive and New County Road. As such, this is a heavily congested area throughout many hours of the day.
- The surrounding active commercial, industrial and warehouse uses in the area would present challenges with respect to circulation and safety of residents and are not compatible with residential uses.

ii. **The site has access to water and sewer infrastructure with sufficient capacity.**

- This criterion is met by both subject properties.

iii. **The site can be developed consistent with the District Zoning Regulations.**

- Both properties are located within the Station Square Zone of the Secaucus Transit Village Redevelopment Area and are subject to the requirements of the Plan.
- This criterion is met by both of the subject properties.

iv. **Former and existing land uses, either on the site or in the vicinity, may not expose residents to environmental hazard. Alternatively, the site shall be remediated to NJDEP residential standards as a condition of the Board's approval.**

- The applicant asserts this criterion is met by both of the subject properties.

v. **The size, shape, or layout of any existing structure that shall remain, or other physical limitation(s) not listed previously, do not preclude residential use.**

Arrowpac property (Block 10, Lot 10)

- The Arrowpac property is substantially developed with a 138,500-square-foot warehouse and distribution facility. An 18,000-square-foot portion of the existing structure is proposed to be demolished. Due to the location and configuration of the remaining 120,500-square-foot building on the subject property, including parking and truck loading and circulation areas, the site would have limited area to build residential units.
- A residential structure could not be constructed in the parking lot or in the location of the 18,000-square-foot demolished portion of the building and still maintain a reasonable separation distance and appropriate buffering between the different uses. The site would present challenges with respect to vehicular and pedestrian circulation and safety of residents.

Hudson County Motors property (Block 10, Lot 13)

- The Hudson County Motors property is currently developed with an existing single-story masonry building with associated parking and loading areas. The existing structure is proposed to be demolished, leaving a vacant site. The size and shape of the subject property after demolition does not preclude the development of residential units.

vi. The site is suitable for residential use pursuant to sound planning principles.

- Both properties, Block 10, Lot 10 and Lot 13, are located within the Station Square zone of the Secaucus Transit Village Redevelopment Area. The Plan dictates that the Station Square zone serve as the core of the redevelopment area, as it is the zone most accessible to Secaucus Junction (Frank R. Lautenberg Rail Station). The Plan further states that the Station Square zone shall provide land uses that benefit both community and transit users, as well as safe and efficient movement of pedestrian and vehicular traffic.
- The warehouse and industrial uses in the immediate area of both properties generate truck traffic, noise and associated pollution both day and night, which would be detrimental to the quality of life and long-term safety of residents on the subject properties.
- While a limited number of residential units are permitted within the Station Square zone, they are not necessarily appropriate on every parcel within the zone. The specific circumstances of the two parcels, including the limited accessibility to community facilities and limited sidewalks and pedestrian accommodations, render them unsuitable for residential use.
- With respect to the Arrowpac property (Lot 10), the site is substantially built-out, with an active and viable warehouse and distribution development, associated parking and loading areas, and areas for vehicle circulation. No appropriate areas remain on the site to construct residential units that could be suitably separated from the warehouse and distribution uses on site. In addition, elements of the warehouse business on Lot 10 and in the area are potentially hazardous to residents. Open loading docks, trucks maneuvering on site and in the streets, and safety concerns render this site unfavorable to residential uses. Further, the continuation of warehouse and distribution operations at the site are not conducive to residential living, with truck noises, site lighting, and the potential for 24-hour-per-day operations.
- Regarding the Hudson County Motors property (Lot 13), after the demolition of the existing structures, the site would have some available space to construct residential units; however, the proximity of the property with respect to the active warehouse and distribution operations taking place on the adjacent Arrowpac property (Lot 10) render this site unfavorable to residential uses.

In summary, only three (3) of the above criteria, as per Section IV(c)1 of the Interim Policies, apply to the Arrowpac property (Lot 10). Four (4) of the above criteria apply to the Hudson County Motors property (Lot 13).

Conclusion

The subject properties, located at 614 and 630 New County Road, Block 10, Lots 10 and 13, in the Town of Secaucus, are recommended to be deemed unsuitable for housing.

Contingent upon the approval of this recommendation by the NJSEA Board of Commissioners, the review of the submitted zoning certificate application for the proposed construction of an interim commercial surface parking lot with 1,111 parking spaces may proceed for these sites.

RESOLUTION 2018-56

**RESOLUTION ISSUING A
DECISION ON THE VARIANCE APPLICATION
SUBMITTED AS PART OF FILE NO. 18-011
111 KERO HOLDINGS LLC/ADDITION & VARIANCES
BLOCK 126, LOTS 33 & 34, IN THE BOROUGH OF CARLSTADT**

WHEREAS, an application for two bulk variances has been filed with the New Jersey Sports & Exposition Authority (NJSEA) by 111 Kero Holdings, LLC, for the premises located at 111 Kero Road, identified as Block 126, Lots 33 and 34, in the Borough of Carlstadt, New Jersey; and

WHEREAS, the premises is located within the District's Light Industrial B zone; and

WHEREAS, the bulk variances are sought in connection with the applicant's proposal to construct an 11,247-square-foot warehouse building addition with associated site improvements on the subject premises; and

WHEREAS, the applicant requested relief from N.J.A.C. 19:4-5.84(a)1, which permits a maximum lot coverage of 50 percent, whereas a lot coverage of 55.81 percent is proposed; and

WHEREAS, the applicant has also requested relief from N.J.A.C. 19:4-8.3(b)1, which prohibits loading in any front yard, whereas two loading areas are proposed in the front yard facing Kero Road; and

WHEREAS, notice of the requested bulk 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 NJSEA on Tuesday, October 2, 2018, before Adam Levy, Esq., Legal Counsel; Sara Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; and Mia Petrou, P.P., AICP, CFM, Principal Planner; and

WHEREAS, a comprehensive report dated December 3, 2018, has been prepared indicating the recommendations of the Director of Land Use Management and the Senior Vice President/Chief of Legal & Regulatory Affairs in this matter; and

WHEREAS, a copy of the recommendation and comprehensive report was provided to the applicant on December 4, 2018; and

WHEREAS, the report recommends the conditional approval of the requested bulk variance from N.J.A.C. 19:4-5.84(a)1, to permit a lot coverage of 55.81 percent; and

WHEREAS, the report also recommends the conditional approval of the requested bulk variance from N.J.A.C. 19:4-8.3(b)1, to construct two loading areas within the front yard facing Kero Road; and

WHEREAS, the Board of Commissioners of the NJSEA has reviewed the full record, including the transcripts of the public hearings, the submissions of the applicant, and recommendations on the application by the Director of Land Use Management and by the Senior Vice President/Chief of Legal & Regulatory Affairs; and

WHEREAS, the Board of Commissioners concurs with the recommendations of the Director of Land Use Management and the Senior Vice President/Chief of Legal & Regulatory Affairs; and

WHEREAS, the Board of Commissioners hereby determines that the requested bulk variance application to permit a lot coverage of 55.81 percent 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 Board of Commissioners hereby determines that the requested bulk variance application to permit two loading areas within the front yard facing Kero Road also 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 Board of Commissioners of the New Jersey Sports and Exposition Authority, that the 111 Kero Holdings LLC/Addition & Variances application for one bulk variance from N.J.A.C. 19:4-5.84(a)1, to permit a lot coverage of 55.81 percent, is hereby **APPROVED WITH THE FOLLOWING CONDITION** for the reasons set forth in the recommendation report dated December 3, 2018.

1. All roof drains servicing the proposed building addition shall be connected to the on-site stormwater conveyance system.

BE IT FURTHER RESOLVED, by the Board of Commissioners of the New Jersey Sports and Exposition Authority, that the 111 Kero Holdings LLC/Addition & Variances application for one bulk variance from N.J.A.C. 19:4-8.3(b)1, to permit two loading areas in the front yard facing Kero Road, is hereby **APPROVED WITH THE FOLLOWING CONDITIONS** for the reasons set forth in the recommendation report dated December 3, 2018:

1. The length of vehicles utilizing the southernmost loading area along the east face of the proposed addition shall not exceed 40 feet.
2. The length of vehicles utilizing the northernmost loading area along the east face of the proposed addition shall not exceed 50 feet.
3. Striping and/or signage shall be provided alerting drivers to the length limitations of each proposed loading area.

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Sports and Exposition Authority at their meeting of December 13, 2018.



Vincent Prieto
Secretary



MEMORANDUM

To: NJSEA Board Members and Vincent Prieto, President/CEO

From: Sara J. Sundell *Date:* December 13, 2018

Subject: Variance Recommendation-111 Kero Holdings LLC/Addition & Variances (File No. 18-011)

An application for two bulk variances has been filed with the New Jersey Sports & Exposition Authority (NJSEA) by 111 Kero Holdings, LLC, for the premises located at 111 Kero Road, identified as Block 126, Lots 33 and 34, in the Borough of Carlstadt, New Jersey. The subject property is located within the District's Light Industrial B zone. The variances are sought in connection with the applicant's proposal to construct an 11,247-square-foot warehouse building addition with associated site improvements on the subject premises.

Specifically, the applicant requested bulk variance relief from the following:

1. N.J.A.C. 19:4-5.84(a)1, which permits a maximum lot coverage of 50 percent, whereas a lot coverage of 55.81 percent is proposed.
2. N.J.A.C. 19:4-8.3(b)1, which prohibits loading in any front yard, whereas two loading areas are proposed in the front yard facing Kero Road.

A public hearing was held in the Office of the NJSEA on Tuesday, October 2, 2018.

In a comprehensive report dated December 3, 2018, the Director of Land Use Management and the Senior Vice President/ Chief of Legal & Regulatory Affairs recommended the conditional approval of the bulk variance requested above in Items 1 and 2. A copy of the comprehensive report and variance recommendation was provided to the applicant on December 4, 2018.

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

RECOMMENDATION ON THE VARIANCE APPLICATION OF

111 Kero Holdings LLC/Addition & Variances

FILE # 18-011

I. INTRODUCTION

An application for two bulk variances has been filed with the New Jersey Sports & Exposition Authority (NJSEA) by 111 Kero Holdings, LLC, for the premises located at 111 Kero Road, identified as Block 126, Lots 33 and 34, in the Borough of Carlstadt, New Jersey. The subject property is located within the District's Light Industrial B zone. The variances are sought in connection with the applicant's proposal to construct an 11,247-square-foot warehouse/light manufacturing building addition with associated site improvements on the subject premises.

Specifically, the applicant is requesting relief as follows:

1. N.J.A.C. 19:4-5.84(a)1, which permits a maximum lot coverage of 50 percent, whereas a lot coverage of 55.81 percent is proposed.
2. N.J.A.C. 19:4-8.3(b)1, which prohibits loading in any front yard, whereas two loading areas are proposed in the front yard facing Kero Road.

Notice was given to the public and all interested parties as required by law. The public notice was published in The Record newspaper. No written objections were received. A public hearing was held in the Office of the Commission on Tuesday, October 2, 2018. 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, which consists of Lots 33 and 34, is approximately 4.65 acres in area. The site fronts along Kero Road to the east and is encumbered by two easements—a 10-foot-wide water easement located along the northerly lot line, which increases to a width of 20 feet along the westerly lot line adjacent to Lots 59, 60 and a portion of Lot 61, and a 20-foot-wide storm sewer easement with an east-west orientation located within the paved vehicular use area on the northerly portion of the subject premises. Properties within the immediate vicinity are developed with a mix of light industrial and warehouse/distribution uses.

The subject property is currently developed with a one-story, 106,077-square-foot manufacturing and warehouse/distribution facility building with associated parking, which is predominately located on Lot 34, with a small portion located on Lot 33. The building has a pre-existing nonconforming setback of 30 feet from Kero Road, whereas a minimum front yard setback of 35 feet is required. Direct access to the site is provided by driveway curbs-cuts located along Kero Road. Eight existing, non-conforming tailboard loading doors are located in the front yard facing Kero Road. Two existing overhead loading doors will remain on the north side of the building. An existing loading door along the westerly building façade facing adjacent Lot 60 (owned by Eagle Realty, LLC) was used when the building was occupied by multiple tenants, is no longer utilized for loading. There are two additional existing loading docks along the westerly building façade facing Lot 61 (owned by the Yoo-Hoo Chocolate Beverage Corporation), which are also no longer utilized. An existing overhead door along the southerly building façade will be abandoned in order to construct the proposed warehouse/light manufacturing building addition. All existing parking and loading areas are accessed from Kero Road.

The existing building is occupied by the applicant's business, Pioneer Industries, which manufactures steel doors and frames. The applicant is proposing

to construct an 11,247-square-foot warehouse/light manufacturing building addition on an existing paved area on Lot 33 that will result in a proposed overall lot coverage of 55.81 percent. The proposed warehouse/light manufacturing building addition will accommodate the applicant's growing business operations by providing additional space for the manufacture and storage of their largest welded door frame units, which can be up to 20 feet long by 10 feet high, and by minimizing the distance these units must be moved to be loaded onto trucks. As part of its application, the applicant has proposed two loading areas within the front yard facing Kero Road and one loading door at the rear of the addition that will accommodate smaller trucks. Vehicles will continue to enter the site from Kero Road in order to access the proposed loading areas. No vehicle maneuvering will occur within the Kero Road right of way or on neighboring properties. Overall, a total of 92 parking spaces are required and will be provided on site.

The applicant also proposes to establish a zoning lot of record joining Block 126, Lots 33 and 34, for zoning purposes only.

B. Response to the Public Notice

No written objections were received prior to the public hearing.

III. PUBLIC HEARING (October 2, 2018)

A public hearing was held on Tuesday, October 2, 2018. NJSEA staff in attendance were Adam Levy, Esq., Legal Counsel, Sara J. Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; and Mia Petrou, P.P., AICP, CFM, Principal Planner.

Arnold Serchuk, of Eagle Realty, LLC, ("Objector") appeared at the public hearing as an objector and was represented by Barry S. Crane, Esq., of the firm, Becker, LLC. Eagle Realty, LLC is the owner of the adjacent property to the rear of the site, located at 707 Commercial Avenue and identified as Block 226, Lot 60,

in the Borough of Carlstadt, which is occupied by a light industrial and warehouse building with associated parking and loading facilities.

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	"Cover Sheet," Sheet 1 of 8, prepared by Mianeki Consulting Engineers, dated September 28, 2017, last revised on May 9, 2018.
A-2	"Site & Dimensional Layout Plan," Sheet 2 of 8, prepared by Mianeki Consulting Engineers, dated September 28, 2017, last revised on May 9, 2018.
A-3	"Grading, Drainage, & Utility Plan," Sheet 3 of 8, prepared by Mianeki Consulting Engineers, dated September 28, 2017, last revised on May 9, 2018.
A-4	"Landscape & Lighting Plan," Sheet 4 of 8, prepared by Mianeki Consulting Engineers, dated September 28, 2017, last revised on May 9, 2018.
A-5	"Truck Turning Plan (WB-50 Design Vehicle)," Sheet 7 of 8, prepared by Mianeki Consulting Engineers, dated September 28, 2017, last revised on May 9, 2018.
A-6	"Truck Turning Plan (WB-40 Design Vehicle)," Sheet 8 of 8, prepared by Mianeki Consulting Engineers, dated September 28, 2017, last revised on May 9, 2018.
A-7	"Building Addition for Pioneer Industries," prepared by Arcari & Iovino Architects, PC, dated November 6, 2017.

- A-8 "Existing and Proposed Elevations," Drawing Number A.102, prepared by Arcari & Iovino Architects, PC, dated November 6, 2017.
- A-9 "Existing and Proposed Elevations," Drawing Number A.103, prepared by Arcari & Iovino Architects, PC, dated November 6, 2017.
- A-10 "Aerial Photograph," prepared by Burgis Associates, Inc., dated September 26, 2018.

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

- | <u>Number</u> | <u>Description</u> |
|---------------|--|
| O-1 | "Drainage Improvements," prepared by Schwanewede/Hals Engineering, dated October 1, 2018. |
| O-2 | Digital photograph entitled, "Rain Event - September 25, 2018." |
| O-3 | Three (3) emails with subject, "Disproportional Mania," dated November 10, 2017, from Arnold Serchuk of Eagle Realty, LLC, to the offices of O'Toole Scrivo and Schwanewede/Hals Engineering; November 12, 2017, from Arnold Serchuk of Eagle Realty, LLC, to the offices of Becker, LLC; and December 8, 2017, from Arnold Serchuk of Eagle Realty, LLC, to Schwanewede/Hals Engineering. |
| O-4 | Digital photograph entitled, "Oct. 2016." |
| O-5 | Letter dated October 30, 2017, from Arnold Serchuk of Eagle Realty, LLC, to James (last name unknown). |
| O-6 | Two (2) digital photographs entitled, "Sept. 25, 2018." |

- O-7 Untitled digital photograph depicting 111 Kero Road and the sump pit.
- O-8 Two (2) untitled digital photographs along the property line between the Yoo-Hoo Chocolate Beverage Corporation and Eagle Realty, LLC properties.

B. Testimony

Bruce R. Rosenberg, Esq., of the firm, Winne Banta Basralian & Kahn, P.C., represented the applicant at the hearing. The following witnesses testified in support of the application:

1. Mitchell Dorf, 111 Kero Holding, LLC;
2. Joseph S. Mianeki, Jr., P.E., Mianeki Consulting Engineers;
3. Edward Arcari, R.A., Arcari & Iovino Architects, PC; and
4. Steve Lydon, P.P., Burgis Associates, Inc.

Barry S. Crane, Esq., of the firm, Becker, LLC, represented the Objector at the public hearing. The following witnesses testified in opposition to the application on behalf of the Objector at the hearing:

1. Joseph Vince, P.E., P.F., Schwanewede/Hals Engineering; and
2. Arnold Serchuk, Eagle Realty, LLC.

Staff findings and recommendations are based on the entire record. A transcript of the public hearing was prepared and transcribed by Beth Calderone, Certified Shorthand Reporter.

C. Public Comment

The Objector, Arnold Serchuk of Eagle Realty, LLC, was present at the public hearing, and was represented by Barry S. Crane, Esq., of the firm Becker, LLC.

IV. RECOMMENDATION

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19-4-5.84(a)1, which permits a maximum lot coverage of 50 percent, whereas a lot coverage of 55.81 percent is proposed.

The Hackensack Meadowlands District 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.

The 4.65-acre site, which is comprised of Lots 33 and 34, is located within the Light Industrial B zone of the Hackensack Meadowlands District. The southerly and westerly property lines of the subject premises are skewed resulting in a somewhat irregular shape. The site's parking and loading facilities are accessed from Kero Road. The property is currently developed with a one-story, 106,077-square-foot light manufacturing and warehouse/distribution building, which is located on both Lots 33 and 34 and set back 30 feet from the Kero Road right of way, whereas a minimum front yard setback of 35 feet is required.

Further development on the site is limited, as the existing building covers 50.3 percent of the subject premises, whereas the maximum permitted lot coverage in the Light Industrial B zone is 50 percent. The applicant is proposing to construct an 11,247-square-foot warehouse/light manufacturing building addition along the southern side of the existing building on Lot 33 to accommodate Pioneer Industry's fabrication of oversized steel door frame units. This proposal represents an increase in the existing lot coverage of approximately 5.51 percent, for an overall proposed lot coverage of 55.81 percent.

These pre-existing nonconforming conditions uniquely affect the ability of the property owner to comply with the zoning requirements, and have not been created by any action of the property owner or applicant.

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 permit a lot coverage of 55.81 percent for the proposed building addition, whereas a maximum lot coverage of 50 percent is permitted, will not adversely affect the rights of neighboring property owners. There are no residents located in the vicinity of the subject premises. Adjacent and nearby land uses include warehouses and various commercial enterprises. These establishments have been operating unimpeded, despite the existing nonconforming conditions of the subject properties, which include the pre-existing nonconforming lot coverage of 50.3 percent, open space of 6.81 percent, whereas a

minimum open space of 15 percent is required, and minimum front yard setback of 30 feet, whereas a minimum front yard setback of 35 feet is required. Also, the site is configured such that existing loading doors are provided in the front yard at a 30-foot setback.

The proposed 11,247-square-foot building addition will change the overall lot coverage on the property from 50.30 to 55.81 percent, a 5.51 percent increase. The purpose of the proposed addition is to improve production and accommodate additional warehouse capacity for the applicant's steel door and frame manufacturing facility. The proposed addition, with its higher ceilings will accommodate the applicant's fabrication of oversized steel door frame units. The applicant has testified that six to ten new employees will be required as a result of the proposed building expansion. A total of 92 parking spaces will be provided on-site in order to meet the increased parking requirement resulting from the additional building area. The requested variance enables the construction of an addition that will also result in aesthetic improvements benefitting the neighborhood. It is noted that the proposed addition and site improvements will not be visible from the Objector's property, as the rear yard of the Objector's property abuts the northerly portion of the rear yard of the applicant's property. Existing stormwater runoff will not be negatively impacted, and the project will result in a slight reduction of the runoff peak flow rate.

The Objector's professional expressed concerns regarding the surface discharge of roof leaders along the southerly façade of the proposed building addition towards the rear of the subject

property in the general direction of the Objector's property. The Objector's professional testified that, in his professional opinion, all roof drains from the roof of the proposed building addition should be piped into the on-site stormwater conveyance system for eventual discharge into the public storm sewer located in the Kero Road right of way. Based upon the merits of Objector's professional's request, the granting of the requested variance will be conditioned upon the connection of all roof drains for the proposed building addition into the on-site stormwater conveyance system for eventual discharge into the public storm sewer located in the Kero Road right of way.

Therefore, the granting of the requested variance will not adversely affect the rights of neighboring property owners, as the properties will be able to continue to operate in their current capacity.

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 governing maximum permitted lot coverage will result in exceptional practical difficulties and undue hardship upon the property owner. The existing 106,077-square-foot manufacturing and warehouse/distribution building covers 50.3 percent of combined Lots 33 and 34, slightly exceeding the maximum permitted lot coverage of 50 percent for the zone. Further development is thereby limited on the site, as the existing building and associated parking and

loading facilities cover approximately 93.19 percent of Lots 33 and 34.

The applicant testified that the assembly of oversized steel doors and frames will occur within the new building addition. This location was selected by the applicant for two reasons - the higher proposed ceiling height to accommodate the fabrication of the oversized steel frame units and the close proximity of this area to the proposed loading doors to load the oversized door frame units that will be fabricated in the addition onto awaiting trucks, which will enhance safety by minimizing the distance the very large frames would have to be moved.. Assembly activities, such as welding, need to occur where there is sufficient ceiling height and proper ventilation. Therefore, a second-story building addition within the footprint of the existing building, which would not increase lot coverage, is not practical in this instance.

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 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. Public safety will not be compromised by the additional lot coverage resulting from the proposed building expansion. Adequate light and air will be maintained. The applicant is proposing to reduce the pre-existing degree of nonconformity by increasing the open space area provided on

combined Lots 33 and 34 from 6.81 percent to 8.76 percent, whereas minimum open space of 15 percent is required. The proposed increase in lot coverage will have no adverse effects on neighboring property owners, including the Objector, as the proposed increase in open space area will reduce the stormwater peak runoff rates to the existing public storm sewer system.

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

The granting of the requested variance will not result in any substantial adverse environmental impacts. The proposed building expansion will be constructed on an existing paved area and will not negatively impact current drainage patterns. Although the Objector expressed concerns that the proposed construction will increase stormwater runoff peak flow towards the Objector's property, the applicant's engineer testified that, after construction of the proposed building addition and associated site improvements, the post-development runoff peak flow in the general direction of the Objector's property will be slightly less than the current pre-development runoff peak flow rate in that direction, and thus will not negatively affect the Objector or his tenant's business operations.

The addition is proposed to be located on an existing paved area and landscaped open space on the site is proposed to be increased and therefore not further infringed upon by the proposed addition. No environmentally sensitive areas will be disturbed. Also, District performance standards will not be exceeded for noise, vibration,

airborne emissions, glare, hazardous or radioactive materials and wastewater.

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

The provision of a conforming lot coverage of 50 percent on the subject site is not possible; as the 106,077-square-foot building's pre-existing nonconforming lot coverage of 50.3 percent already exceeds this amount. The proposed building addition will meet the minimum required front, side and rear yard setbacks and the landscaped open space percentage on the site is proposed to be increased. Furthermore, this application proposes a floor-area ratio (FAR) of only 0.58, whereas a maximum FAR of 2.5 is permitted in the Light Industrial B zone. The increased lot coverage of 5.51 percent resulting from the addition is 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 requested variance to permit an overall lot coverage of 55.81 percent, whereas the pre-existing nonconforming lot coverage is 50.3 percent and a maximum lot coverage of 50 percent is permitted, will not substantially impair the intent and purpose of the regulations. The subject properties are located within the District's Light Industrial B zone. The purpose of the Light Industrial B zone is to accommodate a wide range of industrial, distribution and commercial uses that generate a minimum of

detrimental environmental effects. If the subject properties were located within the District's Light Industrial A zone, which is designed to accommodate a wide range of industrial, distribution, commercial, and business uses on larger lots, the proposed lot coverage of 55.81 percent would not exceed the maximum allowable lot coverage for the Light Industrial A zone of 60 percent.

The intent and purpose of lot coverage requirements is to regulate the amount of land that can be covered by structures for both aesthetic purposes and for adequate site drainage and open space. The increase in lot coverage resulting from the proposed addition will not generate any detrimental environmental effects. The proposed addition will be constructed over existing asphalt, not open space, and the area of open space on the site will be increased. The applicant has testified that the post-development stormwater peak runoff rate will be less than the pre-development stormwater peak runoff rate due to the proposed reduction in impervious cover. Furthermore, the aesthetic appearance of the surrounding area will not be compromised by the proposed increase in lot coverage. As such, the requested variance will not substantially impair the intent and purpose of the regulations.

B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19-4-8.3(b)L, which prohibits loading in any front yard, whereas the applicant is proposed two loading areas in the front yard facing Kero Road.

The Hackensack Meadows District 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.*

The subject property, which is somewhat irregular in shape due to skewed southerly and westerly lot lines, contains frontage on Kero Road to the east. The property is currently developed with a one-story, 106,077-square-foot light manufacturing and warehouse/distribution building, which is located on both Lots 33 and 34. The subject property contains pre-existing nonconforming conditions related to the size and location of the existing building. In particular, the existing building covers 50.3 percent of the site, whereas a maximum lot coverage of 50 percent is permitted in the Light Industrial B zone; the existing building is set back 30 feet from the Kero Road right of way, whereas a minimum front yard setback of 35 feet is required; and the existing open space 6.81 percent is, whereas a minimum 15 percent open space is required. Also, the site is configured such that existing loading docks are provided in the front yard. These are pre-existing nonconforming conditions that affect the future development of the property in question.

District regulations require that loading doors and facilities be located in rear and side yards. However, the location and configuration of the existing building on the site limit the potential locations of new loading areas with adequate vehicle circulation

and appropriate building access that would be in conformance with the regulations.

Two new loading doors are proposed along the easterly face of the addition, with a setback of 73.9 feet from the Kero Road right of way, adjacent to eight existing loading doors on the easterly face of the existing building, which are setback only 30 feet from the Kero Road right of way, whereas the minimum required front yard setback is 35 feet. Two existing overhead loading doors will remain on the north side of the building. An existing loading door along the westerly building façade facing Lot 60, which is owned by the Objector, is no longer utilized for loading. There are two additional existing loading docks along the westerly building façade facing Lot 61, which is owned by the Yoo-Hoo Chocolate Beverage Corporation, which are also no longer utilized. An existing overhead door along the southerly building façade will be abandoned in order to construct the proposed warehouse/light manufacturing building addition. All existing parking and loading areas are accessed from Kero Road.

Possible locations for conforming loading areas are limited to the southerly and northerly side yards and the westerly rear yard. However, the provision of new loading spaces in the southerly and northerly side yards or westerly rear yard would cause site circulation conflicts with adjacent vehicular use and parking areas and would create the need for additional variances and the construction of additional paved areas beyond that which is currently proposed, which would lead to a decrease in the amount of open space provided. Due to the siting of the existing building

and adjacent parking areas, there is no possibility to provide a conforming loading space with adequate maneuvering area in the northerly side yard of the subject property. No additional land can be acquired from any adjacent properties. These pre-existing nonconforming conditions that limit potential loading locations on the site were not created by any action of the applicant or property owner.

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 provide two loading areas in the front yard facing Kero Road will not adversely affect the rights of neighboring property owners or residents. The neighborhood in which the subject property is located is primarily industrial in nature, and there are no residences located nearby. Trucks will enter the site from the existing driveway on Kero Road to utilize the proposed loading areas in the addition. In accordance with the applicant's testimony, the proposed southerly and northerly loading areas located in the front yard along the east face of the addition, will be utilized by vehicles with a maximum length of 40 feet and 50 feet, respectively. Both maximum vehicle lengths were proposed by the applicant after an analysis was performed to determine the largest-sized vehicle that could safely maneuver on-site into each loading area along the easterly façade of the addition without encroaching upon neighboring properties or the Kero Road right of way, while the adjacent loading areas are occupied by a parked vehicle. The vehicle length limitations, along with

requirements for corresponding striping and signage, will be a condition of approval of this variance request.

The proposed improvements will not create any negative visual impacts to neighboring properties or impede their ability to function as intended. Properties within the immediate vicinity of the site are already developed. The existing loading areas for the industrial property located directly across Kero Road from the subject site (Block 126, Lot 30) are set back from the street and will not be affected.

The Objector provided comments at the public hearing and inquired whether new loading areas are necessary when existing loading facilities are currently provided along the westerly building façade abutting the Objector's property (Block 126, Lot 60). The applicant testified that its oversized steel door frame unit assembly activities, such as welding, are presently conducted in an area at the center of the existing building, and are not within close proximity of the existing loading doors facing Kero Road. If Pioneer Industries were to continue to utilize the existing loading areas in question for the oversized units that would be manufactured in the addition, this portion of the existing building would have to be modified to provide higher ceilings and adequate ventilation systems.

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 prohibit front yard loading will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner. In balancing the requirements of the Light Industrial B zone with the particular characteristics of the property, the proposed variance is required to ensure a functional building and parking layout. Both proposed loading doors will be constructed adjacent to an existing loading area containing eight loading doors, which represents a consolidated approach to the site's layout. Two existing overhead drive-in loading doors will remain on the north side of the building, however, due to the current building configuration and site/parking area layout, these existing loading areas are not accessible to tractor trailers.

Testimony was provided that the applicant needs the additional loading doors to accommodate their expanding business operations. The doors will be utilized to load the oversized door frame units that will be fabricated in the addition, thus enhancing safety by minimizing the distance the very large frames would have to be moved. By setting the front building façade of the proposed addition back an additional 23 feet from the existing front building façade, two loading spaces will be provided with adequate truck maneuvering area within the site, thereby minimizing the degree of nonconformity, as compared with the

existing front yard loading areas, by not having trucks maneuver in the Kero Road right of way.

Alternative site layouts, such as constructing loading areas along the southerly or westerly facades of the building addition, would result in site circulation conflicts with vehicular parking areas and create the need for additional variances and the construction of additional paved areas beyond what is currently proposed, which would lead to a decrease in the amount of open space provided. Therefore, the strict application of the zoning regulations with respect to loading limitations in the front yard results in practical difficulties in the functionality of the site.

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 placement of the proposed addition's loading areas within the front yard facing Kero Road will have no adverse impact on public safety or health as adequate light, air and open space will continue to be provided.

The applicant provided testimony that trucks utilizing the southerly and northerly loading areas along the east face of the addition will not exceed 40 feet and 50 feet in length, respectively. The location of the two front yard loading areas, which are

proposed to be set back 73.9 feet from the Kero Road right of way, will permit vehicles to safely maneuver within the site to access the doors, without the need to back up into those loading areas from Kero Road. In addition, excess noise, odor, vibration or glare will not be generated as a result of the proposed front yard loading areas. It is anticipated that the number of vehicle trips associated with the proposed loading areas will not cause significant changes to current traffic patterns.

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

The granting of the requested variance to provide two loading areas in the front yard facing Kero Road will not have any adverse environmental impacts. There will be an increase in open space provided on site from 6.81 percent to 8.76 percent, and no additional paved surfaces have been proposed. No environmentally sensitive areas, such as wetlands or stormwater facilities, will be disturbed. New light fixtures will be shielded and positioned to prevent glare from becoming a hazard or nuisance to site users, adjacent properties and the traveling public. The applicant provided testimony that the new loading areas will decrease the number of trucks queuing in Kero Road, thereby reducing engine idling. Therefore, the requested variance to locate two proposed loading areas within the front yard facing Kero Road will not cause the District's environmental performance standards for noise, glare, vibrations, airborne emissions or hazardous materials to be exceeded.

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. The applicant provided testimony that the additional loading areas are required to streamline their current business operations by allowing oversized steel door frame units that are manufactured in the proposed addition to be safely loaded directly onto awaiting trucks through the proposed nearby loading doors. Potential locations to provide alternative loading areas outside of the front yard facing Kero Road are limited due to building configuration and existing site layout. The proposed loading areas have been situated to ensure safe and efficient operations of the light industrial and warehouse/distribution facility due to space limitations in the side yard for adequate access/maneuvering, necessitating their location in the front yard facing Kero Road.

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

The two proposed loading areas facing Kero Road will not substantially impair the intent and purpose of these regulations. The intent and purpose of front yard loading regulations are rooted in the promotion of public safety and aesthetics. Although this proposal locates two loading areas in the front yard, public safety is not adversely impacted. Maneuvering to access the loading areas will not impede on-site or off-site circulation. The proposed loading area will not be a significant detriment to area aesthetics, as

the proposed loading doors will be located adjacent to an existing loading area.

V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 194-5.84(a)1, which permits a maximum lot coverage of 50 percent, whereas a lot coverage of 55.81 percent is proposed.

Based on the record in this matter, the bulk variance application to construct an 11,247-square-foot warehouse/light manufacturing building addition that will result in a proposed lot coverage of 55.81 percent, whereas a maximum lot coverage of 50 percent is permitted, is hereby recommended for APPROVAL.

CONDITIONED UPON THE FOLLOWING:

1. All roof drains servicing the proposed building addition shall be connected to the on-site stormwater conveyance system for eventual discharge into the public storm sewer located in the Kero Road right of way.

CONDITIONAL APPROVAL 12/3/2016

Recommendation on
Variance Request

Date


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

CONDITIONAL APPROVAL 12/1/16

Recommendation on
Variance Request

Date


Frank Leanza, Esq.
Senior Vice President
Chief of Legal & Regulatory Affairs

B. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19-4-8.3(b)1, which prohibits loading in any front yard whereas the applicant is proposed two loading areas in the front yard facing Kero Road.

Based on the record in this matter, the bulk variance application to construct two loading areas within the front yard facing Kero Road, whereas loading in any front yard is not permitted, is hereby recommended for APPROVAL
CONDITIONED UPON THE FOLLOWING:

1. The length of vehicles utilizing the southernmost loading area along the east face of the proposed addition shall not exceed 40 feet.
2. The length of vehicles utilizing the northernmost loading area along the east face of the proposed addition shall not exceed 50 feet.
3. Striping and/or signage shall be provided alerting drivers to the length limitations of each proposed loading area.

CONDITIONAL APPROVAL 12/21/2018
Recommendation on _____ Date
Variance Request


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

CONDITIONAL APPROVAL 12/13/18
Recommendation on _____ Date
Variance Request


Frank Leanza, Esq.
Senior Vice President
Chief of Legal & Regulatory Affairs

EXECUTIVE SESSION

RESOLUTION 2018-57

**RESOLUTION AUTHORIZING THE
NEW JERSEY SPORTS AND EXPOSITION AUTHORITY
TO CONDUCT A MEETING TO WHICH
THE GENERAL PUBLIC SHALL NOT BE ADMITTED**

BE IT RESOLVED by the New Jersey Sports and Exposition authority (“Authority”) that it shall conduct a meeting to which the general public shall not be admitted to discuss personnel matters, the status of pending and anticipated litigation and other matters within the attorney client privilege, contract negotiations, and, if necessary, to act upon pending contracts.

BE IT FURTHER RESOLVED that the time when such discussions may be disclosed to the public shall be when and as such disclosure may be made without adversely affecting the Authority’s pending and/or anticipated legal, personnel, contractual matters and other matters within the exceptions provided for by the statute.

I hereby certify the foregoing to be a true copy of the Resolution adopted by the New Jersey Sports and Exposition Authority at their meeting of December 13, 2018.



Vincent Prieto
Secretary

RESOLUTION 2018-58

**RESOLUTION DENYING TOWERS ASSOCIATES' MOTION
REQUESTING A STAY OF N.J. SPORTS & EXPOSITION AUTHORITY OF
NJSEA RESOLUTIONS 2018-45 AND 2018-46.**

WHEREAS, on August 24, 2018 a report and recommendation was issued by the New Jersey Sports and Exposition Authority staff ("NJSEA Staff") which recommended the conditional approval of a use variance application submitted as part of File No. 17-239 by MEPT Lincoln Crossing, LLC (the "Applicant") in connection with its proposed development of a warehouse facility on the premises identified as 1 Daffy's Way (2701 Route 3 East), Block 451.05, Lot 14.011, in the Township of North Bergen, and Block 155, Lots 1.03, 1.04, and 6, in the Town of Secaucus, New Jersey; and

WHEREAS, on September 10, 2018 Towers Associates, Ltd. ("Towers"), challenged the recommendation and sought an appeal before the Office of Administrative Law ("OAL") pursuant to N.J.A.C. 19:4-4.19; and

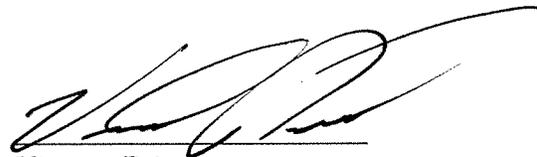
WHEREAS, on October 18, 2018, the NJSEA Board adopted Resolution 2018-45 finding that Towers, a neighboring property owner, lacked the requisite interest under the Administrative Procedure Act to appeal the recommendation; and

WHEREAS, on October 18, 2018, the NJSEA Board adopted Resolution 2018-46 conditionally approving the MEPT Lincoln Crossing, LLC/Lincoln Gateway-New Bldg/Variance application, to construct a warehouse and distribution facility with related site improvements on the subject property; and

WHEREAS, Towers has requested a stay of the effectiveness of Resolution 2018-46 pending its appeal of the Resolution 2018-45 and Resolution 2018-46.

NOW, THEREFORE IT BE RESOLVED, by the Board of Commissioners of the New Jersey Sports and Exposition Authority that Towers Associates' motion requesting a stay is **DENIED** for those reasons set forth in the document annexed hereto.

I hereby certify that the foregoing to be a true copy of the Resolution adopted by the New Jersey Sports and Exposition Authority at their meeting of December 13, 2018.



Vincent Prieto
President

**IMO TOWERS ASSOCIATES, LTD.'S
REQUEST FOR A STAY OF
RESOLUTION 2018-46 RE: USE
VARIANCE APPLICATION IN
CONNECTION WITH FILE NO. 17-239
PENDING ITS APPEAL OF
RESOLUTIONS 2018-45 AND 2018-46**

On August 24, 2018 the New Jersey Sports and Exposition Authority (“NJSEA”) staff issued a report and recommendation regarding the use variance application of MEPT Lincoln Crossing, LLC (“MEPT”) in connection with MEPT’s proposed development of a warehouse and distribution facility. On September 10, 2018 Towers Associates, Ltd. (“Towers”) filed a motion seeking an appeal before the Office of Administrative Law (“OAL”). On October 18, 2018 the Board of Commissioners (the “Board”) adopted Resolution 2018-45 denying Towers’ request for an appeal to the OAL (the “OAL Resolution”) and thereafter adopted Resolution 2018-46, approving MEPT’s use variance application (the “Variance Resolution”).

Towers has requested a stay of the effectiveness of the Variance Resolution pending its appeal of the OAL Resolution and the Variance Resolution. For the reasons set forth herein, the Board denies Towers’ request for a stay.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

MEPT is the owner of a 19.9 acre parcel of land (the “Property”) in the Hackensack Meadowlands District’s Regional Commercial Zone. The Property is currently improved with a 236,207 square foot building that was most recently utilized as a warehouse/distribution facility, corporate headquarters, and accessory retail outlet for the clothing-retailer Daffy’s. Towers is the owner of two adjacent lots, one of which is developed with a Home Depot and the other of which is vacant. Towers maintains that it intends to develop the vacant lot with a hotel in the future. A private roadway governed by a Reciprocal Easement Agreement (“REA”), known as Daffy’s Way, traverses portions of both Towers’ and MEPT’s property.

A. Towers Appeal of the Prior, 2015 Application

In March of 2015, MEPT initially applied for variance relief in connection with an application to develop the Property with a warehouse (the “2015 Application”). A public hearing was opened on the 2015 Application and was carried across a number of hearing dates, during which Towers’ appeared and actively objected. On February 23, 2016, prior to the completion of the public hearing, MEPT withdrew the 2015 Application. Towers thereafter filed a motion with the NJSEA requesting that the 2015 Application be deemed withdrawn with prejudice or, in the alternative, that Towers be awarded attorneys’ fees and costs. The Board adopted a resolution denying said application by Towers (the “2017 Resolution”). Towers

thereafter appealed the 2017 Resolution to the Appellate Division (the “Withdrawal Appeal”), which appeal remains pending.

In June of 2017 MEPT filed land use application 17-239, a new application seeking to develop the Property with a smaller warehouse and distribution facility on a reconfigured site layout (the “MEPT Application”). Because warehouse and distribution facilities are not a permitted use in the Regional Commercial Zone, MEPT applied for a use variance. Towers filed a request with the NJSEA in October of 2017 to stay the MEPT Application pending resolution of the Withdrawal Appeal by the Appellate Division (the “First Towers’ Stay Application”). The NJSEA subsequently adopted Resolution 2018-05, denying the First Towers Stay Application. Thereafter Towers appealed the NJSEA’s denial of the First Towers Stay Application with the Appellate Division and on February 23, 2018 the Appellate Division likewise denied Towers’ request for a stay.

B. Public Hearing and Staff Recommendation

A public hearing on the use variance relief in the MEPT Application was opened on April 17, 2018 and was continued across seven hearing dates, concluding on May 29, 2018. Towers, through its counsel, was present for and actively objected to the MEPT Application during each of the public hearing dates. Towers was afforded the opportunity to cross-examine each of MEPT’s expert witnesses, present direct testimony from its own witnesses, and to enter evidence in the form of hearing exhibits and other documents. Additionally, the public record was kept open to allow the parties, including Towers, to submit written summations to be considered by the NJSEA staff in their preparation of a report and recommendation. On August 24, 2018 the NJSEA staff issued a report and recommendation wherein they recommended granting approval of MEPT’s use variance application, with certain conditions (the “Recommendation”).

C. Towers’ Request for Appeal to the OAL and Approval of the Use Variance

On September 10, 2018 counsel for Towers filed a notice of appeal with Vincent Prieto, President and Chief Executive of the NJSEA, challenging the recommendation of the NJSEA Staff and seeking an appeal before the OAL. During the Board’s October 18, 2018 it adopted the OAL Resolution denying Towers’ request for an appeal to the OAL, finding that Towers’ lacked the particularized property interest necessary under NJSEA regulations and State statute to sustain a non-applicant appeal of a permit decision. Thereafter, the Board adopted the Variance Resolution, approving MEPT’s use variance application, with certain conditions.

Following the NJSEA’s adoption of the OAL Resolution and the Variance Resolution on October 18, 2018, Towers filed a motion and letter brief with the NJSEA seeking to stay the NJSEA’s “adoption of [the Variance Resolution] and corresponding grant of MEPT’s use variance request pending Towers’ appeal of [the OAL Resolution and the Variance Resolution].” On November 5, 2018, MEPT forwarded a letter brief and certification in opposition of the Towers’ Stay Application.

DISCUSSION

A. Legal Standard

Applications for stays pending appeal are evaluated in accordance with the standard for injunctive relief outlined in Crowe v. DeGioia, 90 N.J. 126 (1982). See Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). A party seeking a stay must therefore satisfy each of the following elements (the so-called “Crowe factors”) demonstrating that: (1) the relief it seeks is necessary to prevent irreparable harm; (2) its claim rests on settled law and has a reasonable probability of succeeding on the merits, and (3) a balancing of the relative hardships to the parties weighs in favor of granting the stay. Garden State Equality, 216 N.J. at 320 (citing McNeil v. Legislative Apportionment Com’n of State of New Jersey, 176 N.J. 484, 486 (2003)). While in certain cases where an applicant’s relief is designed merely to preserve the “status quo,” courts are permitted to take “a less rigid view of the Crowe factors,” see e.g., Waste Management of New Jersey, Inc. v. Morris County Municipal Utilities Authorities, 433 N.J. Super. 445, 453 (App. Div. 2013), the general and prevailing rule is that each of the Crowe factors must be proved by clear and convincing evidence. See Garden State Equality, 216 N.J. at 320 (citing Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012)).

B. Legal Analysis

Towers’ is seeking to stay the “adoption of [the Variance Resolution] and corresponding grant of MEPT’s use variance request” pending its appeal of both the Variance and OAL Resolutions. Since the Variance Resolution has already been adopted, however, Towers’ is presumably seeking to stay its effectiveness in order to prevent MEPT from advancing the MEPT Application in reliance on the conditional grant of the use variance.

To be entitled to such relief, Towers must offer proof satisfying each of the Crowe factors. For the reasons set forth below, Towers has failed to satisfy this burden and its request for a stay should be denied.

i. Irreparable Harm

To be entitled to a stay, Towers must first demonstrate that it will suffer some immediate and irreparable harm in the absence of such relief. Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). Harm will generally be deemed “irreparable” where it cannot be adequately remedied by money damages alone. McNeil, 176 N.J. at 486.

Towers has offered two forms of irreparable harm in support of its request for a stay. First, Towers alleges that, in the absence of a stay, it will be “stripped” of its appellate rights in connection with both its appeal of the Recommendation to the OAL and in connection with its pending Withdrawal Appeal. With respect to its appeal of the Recommendation, Towers maintains that if MEPT is permitted to proceed with its development of the Property, it will “render Towers’ right to appeal the Recommendation to the OAL, which should have occurred before the Board ever considered the use variance in the first place, wholly ineffectual.” With respect to the pending Withdrawal Appeal, Towers argues that if it ultimately succeeds “it would mean that the [MEPT Application] should never have gone forward and that no use variance should ever have been issued.”

Towers' arguments for irreparable harm relating to its appellate rights are unavailing. With respect to the purported harm to Towers' appellate rights in an OAL appeal, to the extent there is any risk of harm to Towers' at all, such harm is simply not "irreparable." If a court later determines that an appeal to the OAL should have been granted, the matter can be returned to the OAL for a full hearing without any prejudice to Towers' rights. Any claim of irreparable harm relating to Towers' appellate rights in the Withdrawal Appeal is likewise unavailing. As noted above, Towers previously sought a stay of the MEPT Application based on the Withdrawal Appeal. That request was considered by the NJSEA and by Appellate Division, and was denied. The 2015 Application was never completed and was withdrawn. The subsequently filed MEPT Application is for a totally different site plan requiring use variance relief that is unique from that sought in connection with the 2015 Application. Moreover, if Towers ultimately prevails on the Withdrawal Appeal any resulting relief Towers is entitled with respect to the current MEPT Application and use variance can be accounted for. The circumstance is therefore no different than when the First Towers Stay Application was denied and Towers has offered no explanation or legal basis for concluding otherwise.

Second, Towers argues that it will suffer irreparable harm to its property rights if a stay is not issued because MEPT's proposed development will result in an "exponential increase in traffic" which will "traverse Towers' property." Towers also asserts that it will suffer "irreparable harm" as a result of a condition of approval in the Variance Resolution relating to Daffy's Way, since Towers, as the owner of the dominant tenement, has not consented to any modifications of Daffy's Way.

Towers' claims of irreparable harm relating to its property rights also fail. First, a stay is appropriate to prevent "substantial, *immediate* and irreparable harm." See Subcarrier Communications, Inc., 299 N.J. Super. at 638 (emphasis added). There is no *immediate* risk that Towers will suffer any of the harm it claims will befall it in the absence of a stay. The Variance Resolution merely granted MEPT a *conditional* use variance approval. Thus, before MEPT can even rely on the grant of the use variance, it must satisfy each of the conditions of approval attached to it. Use variance aside, MEPT must also still secure a zoning certificate and other necessary permits before it can even commence construction. Even after it commences construction, much of the harm Towers' claims it will suffer will not even begin to run until MEPT is actually operating on the Property. For these reasons alone the irreparable harm alleged by Towers is insufficient to support a stay.

Additionally, the purported "exponential increase in traffic" cited by Towers' does not constitute irreparable harm to its property rights. If MEPT's development necessitates a reliance on Daffy's Way that is more intense than the REA contemplates or permits, Towers' has the right to seek enforcement of that document with a properly filed action in the Superior Court. Despite this purportedly irreparable harm, Towers has apparently never sought interpretation or enforcement of the REA in court. Moreover, Towers has not offered "clear and convincing evidence" to support a conclusion that there will even be an "exponential increase in traffic," nor that same would necessarily result in "irreparable harm" to Towers. As set forth in the Recommendation, the NJSEA staff considered the traffic study prepared by MEPT's traffic consultant, along with the methodology relied on to produce it, and generally found its conclusions credible. See, e.g. Resolution 2018-46, Recommendation at pp. 25-28. Despite retaining a number of expert witnesses to testify during the public hearing, none of Towers' (or

any other objector's) experts conducted or prepared any independent traffic counts or traffic studies to rebut MEPT's traffic study, nor did they offer any testimony deemed reliable by the NJSEA staff to support the claim that an unreasonable or harmful increase in traffic is likely to result from MEPT's proposed use. See Id. Furthermore, any of the harm Towers' claims in this regard is repairable. If Towers' position is ultimately vindicated, and MEPT's development of the Property was improperly advanced, MEPT's use of the Property in violation of such a conclusion would have to stop. Any "exponential increase in traffic" effected by such use would then be abated as well.

Towers' position that it will suffer irreparable harm as a result of a condition of approval in the Variance Resolution requiring MEPT to submit plans proposing alterations to the Daffy's Way driveway and a curbed island located in the driveway, is similarly unavailing. Towers' does not explain how MEPT's submission of proposed plans to alter portions of the driveway will cause any actual or direct harm to Towers; rather, Towers argues that it has the right, as the dominant tenement owner under the REA, to consent to, or to refuse to consent to, such a modification. However, as noted above, any rights that Towers' possesses under the REA are unaffected by the NJSEA's decision. Thus, if Towers' has the right to prevent MEPT from advancing its proposed alterations based on the REA, it may exercise that right at any time and independent of the land use proceedings before the NJSEA.

For all of these reasons, Towers has failed to demonstrate that it will suffer irreparable harm in the absence of its requested stay.

ii. Settled Legal Rights and Reasonable Probability of Success on the Merits

Towers must next demonstrate that "its underlying legal claim is settled" and that it has "a reasonable probability of success on the merits." Garden State Equality, 216 N.J. at 325. In support of its application for a stay, Towers maintains that: (1) it has a settled legal right to appeal the Recommendation to the OAL based on its status under the REA and that it is thus likely to succeed on its appeal challenging the OAL Resolution; and (2) it has a settled right to challenge the use variance granted to MEPT, and it is likely to succeed on a challenge of the Variance Resolution, based on MEPT's failure to adequately support its right to variance relief.

(1) The OAL Resolution

Towers' maintains that it has a settled legal right to appeal the Recommendation to the OAL. This is the precise issue that the NJSEA considered in connection with its adoption of the OAL Resolution which denied Towers' request for an appeal to the OAL.

As previously noted in the statement of reasons attached to the OAL Resolution, N.J.A.C. 19:4-4.19 provides that when a non-applicant objector, such as Towers files the notice of appeal, the Board must determine whether such objector "has the required interest under the Administrative Procedure Act (the "APA"), N.J.S.A. 52:14B-3.1 through 3.3," which otherwise prohibits state agencies from adopting regulations permitting "third parties" to appeal permit decisions. The APA defines "third parties" as anyone other than an applicant, a State agency, or a person with a "particularized property interest sufficient to require a hearing on constitutional or statutory grounds." N.J.S.A. 52:14B-3.2. As to the final category, where there is no statutory

basis for an appeal to the OAL (such as here) a non-applicant can only be permitted to appeal to the OAL where it demonstrates “a particularized property interest of constitutional significance that is directly affected by an agency’s permitting decision.” In re NJPDES Permit No. NJ0025241, 185 N.J. 474, 482 (2006) (citing N.J.S.A. 52:14B-3.1).

In its initial appeal of the Recommendation to the NJSEA, Towers claimed a “particularized property interest” in the MEPT Application because: (1) increased truck traffic will directly impact the viability and efficiency of its businesses on the properties adjoining the MEPT site; and (2) its rights under the REA would be impacted by an increase in traffic over Daffy’s Way and by the condition of approval in the Recommendation requiring submission of revised plans for the reconfiguration of the Daffy’s Way driveway and curbed island. In adopting the OAL Resolution and rejecting Towers’ request to appeal to the OAL, the NJSEA first concluded that Towers’ general concerns about traffic and the impacts to Towers’ present and future business interests based on traffic did not constitute a “particularized property interest” sufficient to warrant a hearing on constitutional grounds. In reaching this conclusion the NJSEA relied on a number of cases, including In re Amico/Tunnel Carwash, 371 N.J. Super. 199, 212 (App. Div. 2004) in which the Appellate Division, addressing a determination of the NJSEA’s predecessor, concluded that neither ownership of an adjoining property nor a claimed increase in traffic congestion in front of such adjoining property, constitutes a “particularized property interest” sufficient to require a hearing on constitutional grounds.

Towers has offered no basis for reevaluating this conclusion and, insofar as Towers claims a settled legal right by virtue of any increased traffic in the surrounding areas of the Property, the NJSEA reaffirms its earlier conclusion that Towers lacks the requisite interest for an appeal to the OAL and therefore finds Towers also lacks a settled legal right sufficient to support the entry of a stay.

Second, with respect to Towers’ claim that its rights under the REA would be impacted by an increase in traffic over Daffy’s Way and by the aforementioned condition of approval, the NJSEA likewise concluded that Towers’ rights under the REA did not constitute a “particularized property interest” sufficient to warrant a hearing on constitutional grounds. Specifically, the NJSEA concluded Towers rights under the REA were not directly affected by the grant of a variance to MEPT since the approval did not authorize MEPT’s violation of the REA nor limit any rights belonging to Towers’ under same. The NJSEA likewise emphasized that the 1993 supplements to the APA evidenced, at N.J.S.A. 52:14B-3.1(c), a clear purposes to strictly limit third party appeals which the legislature found create “chaotic unpredictability” and “cripple economic development.”

In its present application for a stay, Towers has not advanced any arguments addressing the NJSEA’s conclusion that Towers’ rights under the REA remain unaffected by the grant of the use variance. Rather, Towers again merely emphasizes that it *possesses* rights under the REA and argues that MEPT’s proposed development will necessitate a violation of the REA, a private agreement between them as property owners. The NJSEA does not resolve property disputes a private property owners. Accordingly, for the reasons already articulated in the statement of reasons appended to the OAL Resolution, Towers has failed to demonstrate that it has a settled legal right to appeal the Recommendation to the OAL.

(2) The Use Variance

Towers maintains that it is likely to succeed in its appeal of the grant of the use variance to MEPT because MEPT has failed to provide evidence sufficient to support the grant of a variance. As provided in N.J.A.C. 19:4-14(e)(2), the grant of a use variance must be supported by “specific written findings of fact” which are based upon evidence presented to support the conclusion that:

- i. The strict application of [the NJSEA’s regulations] will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner;
- ii. 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;
- iii. 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;
- iv. The variance will not have a substantial adverse environmental impact;
- v. The variance will not substantially impair the intent and purpose of [NJSEA’s regulations]; and
- vi. The variance at the specified location will contribute to and promote the intent of the NJMC Master Plan.

In adopting the Variance Resolution, the Board incorporated the reasoning set forth in the Recommendation. In the fifty page Recommendation, the NJSEA Staff made detailed findings based on the evidence presented during the public hearing with respect to each of the requirements of N.J.A.C. 19:4-4.14(e)(2).

In its present application for a stay, Towers argues that MEPT failed to submit evidence sufficient to support a findings by the NJSEA with respect to any of the requirements of 19:4-14(e)(2). To support its position, Towers’ advances the same arguments presented during the public hearing and restated in its written summation in opposition to the use variance. These arguments have all been considered and rejected. The NJSEA’s adoption of the Variance Resolution was grounded in specific and detailed fact finding addressing each of the use variance criteria set forth in 19:4-4.14(e)(2) based on the evidence adduced during the public hearing.

Courts will disrupt the final determination of a state administrative agency only where such decision is “arbitrary, capricious, or unreasonable, or is not supported by substantial credible evidence in the record as a whole.” See In re Adoption of Amendments to Northeast, Upper Raritan, Sussex County, 435 N.J. Super. 571, 582 (App. Div. 2014)(quoting J.D. v. N.J. Div. of Developmental Disabilities, 329 N.J. Super. 516, 521 (App.Div.2000)). A “strong presumption of reasonableness” is afforded to the exercise of statutorily delegated

responsibilities by an agency. Id. Considering the extensive record adduced at the public hearing, the thorough and detailed fact-finding upon which the Recommendation and Variance Resolution rest, and the deferential standard afforded to final decisions of state agencies, it cannot be said that Towers' has a reasonable probability of succeeding on its appeal of the Variance Resolution.

iii. Balancing of the Relative Hardships

Finally, the grant of a stay requires a balancing of the relative hardships to the parties to determine whether greater harm is likely to occur if a stay is not granted, than if it is. Crowe, 90 N.J. at 134. Towers maintains that in the absence of a stay it will suffer injury to its property rights along Daffy's Way, and that its appellate rights — as set forth above — will be destroyed.

An examination of the relative hardships leads to the conclusion that no stay should be granted. MEPT applied for and was granted a use variance after a lengthy and extensive public hearing, based on detailed findings of fact captured in the Recommendation and Variance Resolution, and, absent a stay, would have the right to pursue its development. Staying the effectiveness of the Variance Resolution and thus delaying Towers' ability to advance the MEPT Application constitutes a clear hardship to MEPT. On the other hand, the harm Towers maintains it is likely to suffer is, as set forth above, not significant. The property rights Towers claims are threatened by MEPT's development remain fully protectable and are unaffected by the NJSEA's grant of a variance. Towers' claimed harm relating to its appellate rights are similarly without basis, as discussed above. A balancing of the relative hardships, therefore, does not weigh in favor of granting the stay requested.

iv. Status Quo

While Towers has failed to prove each of the Crowe factors by clear and convincing evidence, where such relief is designed to preserve the status quo less emphasis may be placed on a particular Crowe factor "if another greatly requires the issuance of the remedy." Waste Management of New Jersey, Inc. v. Union Cty. Utilities Auth., 399 N.J. Super. 508, 520 (App. Div. 2008). Though the letter brief submitted by Towers notes the flexibility available where relief is designed to preserve the status quo, Towers has not offered any discussion regarding whether it views its present request as a preservation of the status quo. To the extent that Towers believes its request for a stay does preserve the status quo and should be granted on such basis, such an argument must fail. First, because Towers has failed to establish *any* of the Crowe factors support the issuance of a stay, such relief is not appropriate even if it is designed to preserve the status quo. More importantly, the status quo is not meaningfully threatened by the Variance Resolution. As already indicated above, MEPT is still many steps away from breaking ground on construction of its warehouse, and further still from actually operating it. Then, even if operations do commence at the Property, the status quo remains fully restorable, as MEPT can simply be prohibited from operating its non-conforming use if Towers ultimately prevails.

Because Towers has failed to satisfy *any* of the Crowe factors and since the status quo is not threatened by the Variance Resolution, there is no basis for issuing a stay.

CONCLUSION

For the reasons set forth above, Towers has failed to demonstrate by clear and convincing evidence that: (1) a stay is necessary to prevent irreparable harm; (2) its claim rests on settled law and has a reasonable probability of succeeding on the merits, and (3) a balancing of the relative hardships to the parties weighs in favor of granting a stay. In light of this failure, and given the fact that that there is no meaningful threat to the status quo even in the absence of a stay, Towers' request for the issuance of a stay is denied.

RESOLUTION 2018-59

**RESOLUTION AUTHORIZING SETTLEMENT AND THE ISSUANCE OF A
FINAL DECISION IN THE MATTER OF
SCANNELL PROPERTIES #181, LLC V. NJSEA,
OAL DOCKET NO. HMD 07753-2016**

WHEREAS, Scannell owns the property located at 1051-1075 Secaucus Road, Block 101, Lots 18.01 and 23.01, Jersey City, New Jersey (the "Property"), which Property is located in the Hackensack Meadowlands District (the "District") and houses a FedEx warehouse facility; and

WHEREAS, under the Hackensack Meadowlands Transportation Planning District Act of 2005, P.L. 2005, c. 102, formerly codified at N.J.S.A. 13:17-95 et seq., (the "2005 Transportation Planning Act"), the New Jersey Meadowlands Commission had authority to impose a development fee known as a Transportation Mitigation Assessment Notification ("TMAN") upon certain developments within the District; and

WHEREAS, a Conditional Zoning Certificate (CZC-14-373) was issued by the New Jersey Meadowlands Commission for the Project on November 19, 2014 (the "Conditional Zoning Certificate"); and

WHEREAS, on March 17, 2015 a TMAN totaling \$2,618,939.25 was imposed under the retroactivity provision of the Hackensack Meadowlands Transportation Planning District Act of 2015, N.J.S.A. 5:10A-69 et seq. (the "2015 Transportation Planning Act"); and

WHEREAS, Scannell challenged NJSEA's authority to impose the TMAN in the Office of Administrative Law ("OAL") and entered into a Payment Memorandum of Agreement ("PMOA") with NJSEA requiring the payment of the TMAN in annual installments while reserving its right to maintain the challenge; and

WHEREAS, Scannell filed a motion for summary decision in the litigation, arguing that NJSEA does not have authority to assess a TMAN for the Project because the Project qualifies for an exemption set forth at N.J.S.A. 5:10A-75; and

WHEREAS, on June 1, 2018, the ALJ issued an Initial Decision granting Scannell's motion; and

WHEREAS, Scannell and NJSEA, rather than proceeding with the expense and risk of additional litigation, and for purposes of preventing future disputes, desire to settle the within matters; and

WHEREAS, the Board of Commissioners have been briefed on proposed terms of settlement and desire to authorize the President and CEO or his designee to complete negotiations and enter into an agreement with Scannell resolving all outstanding issues in the matter; and

WHEREAS, Hudson County ("the County") and the NJSEA have identified a need for a left turn lane on the Northbound side of Secaucus Road to improve traffic circulation (the "Road Improvement") to mitigate or eliminate offsite impacts of the Project on Secaucus Road; and

WHEREAS, Scannell has been unable to complete this improvement and has proposed as a term of this settlement that this condition of the NJSEA and County approvals be struck; and

WHEREAS, Scannell agreed to accelerate payment of the balance of the contested TMAN to the NJSEA and NJSEA agreed to assume Scannell's responsibility to design and construct the Road Improvement; and

WHEREAS, portions of adjacent properties are required for the construction of the Road Improvement; and

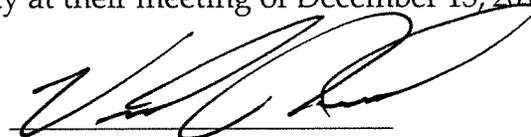
WHEREAS, the County has agreed to acquire the properties that are required for the construction of the Road Improvement and the NJSEA, in place of Scannell, has agreed to fund all costs and expenses associated with acquisition of the properties and construction of the Road improvement utilizing TMAN funds received under the settlement.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the New Jersey Sports and Exposition Authority that the execution of a Stipulation of Settlement with Scannell, is hereby authorized;

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Commissioners of the New Jersey Sports and Exposition Authority that the issuance of an agency final action in this matter, in the form attached hereto, is hereby authorized subject to the execution of the Stipulation of Settlement with Scannell;

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the Board of Commissioners of the New Jersey Sports and Exposition Authority that the execution of a Memorandum of Agreement with the County is authorized for the design and construction of the Road Improvement and the acquisition of the properties that are required for the construction of the Road Improvement.

I hereby certify that the foregoing to be a true copy of the Resolution adopted by the New Jersey Sports and Exposition Authority at their meeting of December 13, 2018.



Vincent Prieto
President



SCANNELL PROPERTIES #181, LLC,

Petitioner,

v.

NEW JERSEY SPORTS AND EXPOSITION
AUTHORITY,

Respondent.

ADMINISTRATIVE ACTION
FINAL DECISION

OAL DKT. NO. HMD 07753-16
AGENCY REF. NO. 14-373

This Order addresses the appeal by Scannell Properties #181, LLC (Scannell) of the transportation development fee imposed by the New Jersey Sports and Exposition Authority (NJSEA) prior to the issuance on May 20, 2016 of a revised conditional zoning certificate to Scannell for the construction of a large distribution center and associated improvements on property designated Block 101, Lots 18.01 and 23.01 on the tax map of Jersey City (the Property). Scannell maintains that, although it signed a Payment Memorandum of Agreement (Payment Agreement) with the NJSEA on January 22, 2016 in which it agreed to pay the transportation development fee, it is exempt from payment of the fee under the provisions of the 2015 Hackensack Meadowlands Transportation Planning District Act, N.J.S.A. 5:10A-69 to -81 ("2015 Transportation Planning Act").

On February 10, 2016, Scannell requested a hearing to contest imposition of the transportation development fee. The NJSEA granted the request and transmitted the matter to the Office of Administrative Law on May 20, 2016, where it was assigned to Administrative Law Judge (ALJ) Richard McGill, and later reassigned to ALJ Joann Lasalla Candido. Scannell filed a motion for summary decision on March 7, 2017, and the NJSEA filed a cross-motion for summary decision on May 25, 2017. Scannell filed a reply brief on August 21, 2017.

ALJ Candido issued an Initial Decision on June 1, 2018 in which she granted Scannell's motion for summary decision finding that it was exempt from payment of the transportation development fee under the 2015

Transportation Planning Act, and that any payments made by Scannell under the Payment Agreement were made under protest, not voluntary, and should be returned.

The NJSEA filed exceptions arguing that the ALJ's Initial Decision should be rejected because it failed to apply the retroactivity provisions of the 2015 Transportation Planning Act which support imposition of the fee. In particular, the NJSEA argues that the retroactivity clause in the 2015 Transportation Planning Act serves to reinstate and continue the virtually-identical 2005 Hackensack Meadowlands Transportation Planning District Act, N.J.S.A. 13:17-95 to -106, and does not impose any new procedural requirements on the NJSEA prior to imposing a fee.

Through orders of extension, the time for issuing the Final Decision was extended, with the parties' consent, until January 14, 2019 to accommodate the NJSEA Board of Commissioners' meeting schedule and to allow the parties to explore a settlement that would fully resolve this matter. Scannell and NJSEA have agreed on the terms of a settlement that is memorialized in a Stipulation of Settlement executed by the parties. Therefore, further review of the ALJ Candido's Initial Decision is not necessary as the matter is now moot. As such, the recommendations in the Initial Decision are REJECTED as moot and the Stipulation of Settlement is ADOPTED as the Final Decision in this matter.

IT IS SO ORDERED.

DATE

Vincent Prieto, President
New Jersey Sports and Exposition Authority

SCANNELL PROPERTIES #181, LLC, v.
NEW JERSEY SPORTS AND EXPOSITION
AUTHORITY
OAL DKT. NO. HMD 07753-16
AGENCY REF. NO. 14-373

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