

TOWNSHIP OF WEST ORANGE PLANNING
BOARD MEETING
ESSEX COUNTY, NEW JERSEY

IN THE MATTER OF:)
PB-24-01)
WEST ESSEX HIGHLANDS, INC.)
TRANSCRIPT
OF
PLANNING BOARD MEETING

Place: Council Chambers
66 Main Street
West Orange, NJ 07052

Date: November 13, 2024

BOARD MEMBERS PRESENT:

DR. ROBERT BAGOFF, Chairman
JERRY GUARINO, Vice Chairman
SUSAN McCARTNEY, Mayor
KEN ALPER
JOHN CARDOZA
LORI KAPFERER
LEE D. KLEIN
WILLIAM B. WILKES, II
BILL RUTHERFORD

BOARD PROFESSIONALS:

DIANA P. McGOVERN, ESQ., Board Attorney
JOHN J. HESS, PE, PP, Consulting Engineering
JAMILET BAQUERIZO VITE, Board Secretary

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APPEARANCES:

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Attorney for the Applicant

BRUCE AFRAN, ESQ. (Law Office of Bruce Afran)
Attorney for WeCare NJ

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A D D E N D U M

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

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

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1 THE CHAIRPERSON: The next regular Planning
 2 Board meeting will be held on December 4, 2024, 7:30
 3 p.m. via Zoom.
 4 Roll call please, Jamilet.
 5 MS. VITE: Mr. Alper?
 6 MR. ALPER: Here.
 7 MS. VITE: Mr. Cardoza?
 8 MR. CARDOZA: Present.
 9 MS. VITE: Ms. Kapferer?
 10 MS. KAPFERER: Here.
 11 MS. VITE: Mr. Klein?
 12 MR. KLEIN: Here.
 13 MS. VITE: Mr. Wilkes?
 14 MR. WILKES: Here.
 15 MS. VITE: Council President Rutherford?
 16 MR. RUTHERFORD: Here.
 17 MS. VITE: Mayor McCartney?
 18 MS. MCCARTNEY: Present.
 19 MS. VITE: Mr. Guarino?
 20 MR. GUARINO: Present.
 21 MS. VITE: Chairman Bagoff?
 22 THE CHAIRPERSON: Here. Thank you.
 23 At this time, ladies and gentlemen, I make a
 24 motion that the Planning Board move to executive
 25 session.

1 UNIDENTIFIED SPEAKER: Second, Mr. Chairman.
 2 THE CHAIRPERSON: All in favor say aye.
 3 BOARD MEMBERS: Aye.
 4 THE CHAIRPERSON: Opposed, say nay.
 5 The ayes have it. We're going to go into
 6 executive session.
 7 (Executive Session Held)
 8 THE CHAIRPERSON: We're convened at 6:55 p.m.
 9 I make a motion that we approve PB-24-18 -
 10 Turtle Back Zoo Australian Outback Draft Resolution be
 11 sent up to the Town Council that this application falls
 12 within the guidelines of the Master Plan.
 13 Do I have a second?
 14 MR. RUTHERFORD: Second.
 15 THE CHAIRPERSON: Council president second.
 16 On the motion?
 17 MS. VITE: Mr. Alper?
 18 MR. ALPER: Yes.
 19 MS. VITE: Mr. Klein?
 20 MR. KLEIN: Was I here for that?
 21 UNIDENTIFIED SPEAKER: (Indiscernible).
 22 MR. KLEIN: Yeah, I don't think I was here.
 23 MS. VITE: Mr. Cardoza?
 24 MR. CARDOZA: Yes.
 25 MS. VITE: Ms. Kapferer?

1 MS. KAPFERER: Yes.
 2 MS. VITE: Council President Rutherford?
 3 MR. RUTHERFORD: Yes.
 4 MS. VITE: Mayor McCartney?
 5 MS. MCCARTNEY: Yes.
 6 MS. VITE: Mr. Guarino?
 7 MR. GUARINO: Yes.
 8 MS. VITE: Chairman Bagoff?
 9 THE CHAIRPERSON: Yes.
 10 Motion's adopted.
 11 Will you swear in our Township professionals,
 12 Ms. McGovern?
 13 MS. MCGOVERN: Mr. Hess and (indiscernible)
 14 THE CHAIRPERSON Thank you.
 15 In order to comply with the Open Public
 16 Meetings Act, Chapter 231, Public Law 1975, the
 17 following is in the annual notice of public meetings in
 18 the Township of West Orange Planning Board 2025 has
 19 been posted on our bulletin board. Does anybody have a
 20 question on the Board about it?
 21 Mr. Klein?
 22 MR. KLEIN: Are the site plan review advisory
 23 board meetings going to now be in person or are they
 24 still going to be via Zoom?
 25 MS. VITE: They're still going to be in Zoom.

1 THE CHAIRPERSON: Yeah, Zoom.
 2 MR. KLEIN: Okay. Because it says in person
 3 here.
 4 MS. VITE: No, it says in person and via
 5 Zoom.
 6 UNIDENTIFIED SPEAKER: No, for the site plan
 7 review advisory board.
 8 UNIDENTIFIED SPEAKER: (Indiscernible).
 9 MR. KLEIN: Zoom? Okay. So, that's got to
 10 change.
 11 THE CHAIRPERSON: Do any other members of the
 12 Board have any questions? Seeing none, I make a motion
 13 that we adopt this meeting schedule for 2025. Do I
 14 have a second?
 15 MR. GUARINO: Second, Mr. Chairman.
 16 THE CHAIRPERSON: Vice chairman second.
 17 On the motion, Jamilet.
 18 MS. VITE: Mr. Alper?
 19 MR. ALPER: Yes.
 20 MS. VITE: Mr. Klein?
 21 MR. KLEIN: Yes.
 22 MS. VITE: Mr. Wilkes?
 23 MR. WILKES: Yes.
 24 MS. VITE: Mr. Cardoza?
 25 MR. CARDOZA: Yes.

1 MS. VITE: Ms. Kapferer?
 2 MS. KAPFERER: Yes.
 3 MS. VITE: Council President Rutherford?
 4 MR. RUTHERFORD: Yes.
 5 MS. VITE: Mayor McCartney?
 6 MS. MCCARTNEY: Yes.
 7 MS. VITE: Mr. Guarino?
 8 MR. GUARINO: Yes.
 9 MS. VITE: Chairman Bagoff?
 10 THE CHAIRPERSON: Yes. Vote carries.
 11 PB-24-01 West Essex Highlands, Inc., Block
 12 179, Lot 32 Zone: IH-1 Warner Road. We now have Mr.
 13 Wayne DeFeo who was in the middle of questioning by the
 14 public about his testimony.
 15 Do any members of the public have any
 16 questions for Mr. DeFeo on his testimony? Please come
 17 up to the mic.
 18 MS. MCGOVERN: And just for the record, Mr.
 19 DeFeo, you're still under oath.
 20 MR. DeFEO: Understood.
 21 THE CHAIRPERSON: State your name for the
 22 record, please, young lady?
 23 MS. WHITE: My name is Barbara White and good
 24 evening to everyone. And, Mr. DeFeo, this is actually
 25 a continuation of questions I started asking the last

1 time.
 2 MR. DeFEO: Okay.
 3 MS. WHITE: And the first is, during your
 4 testimony, you cited one or two successful
 5 reforestation efforts through the use of deer fences.
 6 If there's an opportunity for members of the community,
 7 and I am, I wanted to ask a couple questions on my
 8 behalf and on behalf of my friends and neighbors.
 9 With respect to the reforestation projects
 10 that you looked at, are any of those in what I would
 11 call encapsulated neighborhoods, in other words,
 12 similar to what we have in this particular petition
 13 which is 500 plus residences in the middle of an area
 14 that is highly restricted?
 15 MR. DeFEO: I can't speak to the demographics
 16 of your question -- are they within 500 home or is it
 17 encapsulated. The closest fenced areas to you, or to
 18 West Orange, to be more specific, would be the
 19 reservation, South Mountain Reservation. There are
 20 encapsulated areas in there, meaning there are deer
 21 fenced areas in there as well as open areas. And,
 22 clearly, South Mountain Reservation is on a much larger
 23 as a piece of property is surrounded by residential.
 24 MS. WHITE: Okay, so that's really -- my
 25 question really is, and I probably wasn't very clear,

1 is within the areas are encapsulated. And we're
 2 looking at a property that has one road in and one
 3 emergency road out. Have you seen any areas where you
 4 had large condensed dwellings where most of it has deer
 5 fence and other barriers to be able to readily get out
 6 in the event of a project-wide emergency?
 7 MR. DeFEO: I'm not certain about the
 8 question. None of these are generally planned around
 9 that --
 10 MS. WHITE: Yeah, and that's actually is my
 11 question --
 12 MR. DeFEO: -- but there is more -- as a
 13 point of -- I'm not the planner but as a point of
 14 information, as I've read the plans, there actually are
 15 three points of access and egress to that property, not
 16 one. So that would not be an accurate statement to say
 17 there's only one egress or access point. That's the
 18 only thing I could answer to.
 19 MS. WHITE: Okay. So, I guess -- make sure
 20 I'm very clear in understanding that, in the work that
 21 you did in determining that there was a like-kind
 22 situation -- other properties versus this one, you did
 23 not look at or encounter any area where you had heavy
 24 forestation, limited access on uneven terrain that had
 25 a large apartment unit or many units in the middle of

1 it?
 2 MR. DeFEO: Specifically, it was not a site-
 3 specific analysis, no.
 4 MS. WHITE: Okay. That was question one.
 5 MR. DeFEO: It wouldn't be relevant.
 6 MS. WHITE: I have another one. And this
 7 one, again, may be out of your primary background and
 8 information, but I am also curious since you've had the
 9 opportunity on several occasions to walk the full
 10 property and get, you know, some pretty decent
 11 familiarity.
 12 Based on your qualifications, I'm curious
 13 about if you have any thoughts about what you might
 14 have seen or might have been thinking in terms of the
 15 ability for anyone to respond if we were to have
 16 something similar to what we've had right now in New
 17 Jersey -- fast-moving fire in a relatively small place?
 18 MR. DeFEO: Well, again, I think this
 19 question had come up last -- whatever week that was --
 20 I'm not sure of the date now --
 21 MS. WHITE: Yeah, I'm losing track of time,
 22 too.
 23 MR. DeFEO: But to answer your question, I'm
 24 not a qualified fire expert, but I would say to you
 25 that as of right now, the property has limited access

1 as with any wooded property. In fact, there's no
2 technical access to the property today by road. I
3 would say, just by observation and common sense, the
4 property will have road access and fire hydrants, which
5 it does not today.

6 So, in light of today's fire emergency
7 scenario that we have statewide, first of all, no one
8 could predict this, no one can design around this. The
9 simple fact is that this property today is fully
10 exposed. Just, again, using a common sense analysis,
11 in the future, the property would have road access and
12 fire hydrants which it does not have today.

13 MS. WHITE: Right. And what you wouldn't be
14 about to speak to, I'm sure, is the adequacy is what is
15 in the plan relative to those things --

16 MR. DeFEO: The fire department would have to
17 do that.

18 MS. WHITE: -- so that really is my question
19 --

20 MR. DeFEO: That would be a fire department
21 question.

22 MS. WHITE: Absolutely. Okay. Thank you so
23 much.

24 MR. RUTHERFORD: Mr. Chairman, may I ask --

25 THE CHAIRPERSON: Council President

1 Rutherford?

2 MR. RUTHERFORD: How many points of ingress
3 and egress are there to this property?

4 THE CHAIRPERSON: At present?

5 MR. RUTHERFORD: Based on the proposed
6 design.

7 MR. DeFEO: I'm only citing based on what I
8 saw on the plans and looking at the maps, there would
9 be three.

10 MR. RUTHERFORD: Is that the Board's
11 understanding? Mr. Dezilla (phonetic)? Mr. Hess?

12 UNIDENTIFIED SPEAKER: It does show three.
13 They have asked that one not be put in, initially.
14 They wanted to have two and the other one they were
15 asking that that be held in reserve.

16 MR. RUTHERFORD: So, based on -- I just want
17 to be clear -- so, based on the way it's proposed
18 today, there is one mode of ingress/egress for regular
19 traffic and one in case of emergency. So, there would
20 be two in case of emergency but one on a regular basis,
21 is that -- is my understanding right?

22 UNIDENTIFIED SPEAKER: They have a normal
23 regular access on the southerly side of the site with a
24 second one that's proposed but they're asking that that
25 not be installed. And then they have an emergency

1 access on the northerly side of the property.

2 MR. RUTHERFORD: And the second one that
3 they're reserving, is that because of any settlements
4 or other agreements with other townships?

5 UNIDENTIFIED SPEAKER: No, not that I'm aware
6 of. I believe they asked -- they've shown it on the
7 plan. They've requested that the Board make a waiver
8 to not require it to be put in but that's a Board
9 decision.

10 MR. RUTHERFORD: So, they are allowed to have
11 two points of ingress/egress without violating any of
12 the agreements they currently have? And one additional
13 --

14 UNIDENTIFIED SPEAKER: We have a zone plan,
15 and it has to go with the zone plan, sir.

16 MS. McGOVERN: I think Mr. Plocker can speak
17 to that.

18 MR. PLOCKER: This is Bryan Plocker, Hutt,
19 Shimanowitz and Plocker, on behalf of the applicant. I
20 think Mr. Hess, your engineer, I think he got it right
21 at the end is that the plan, the site plan as
22 submitted, does propose the access on Kuzik Drive
23 However, we have requested a de minimis exception from
24 RSIS to have Kuzik serve as emergency access only.

25 MR. RUTHERFORD: So, that would be two?

1 MR. PLOCKER: What I said is what's on the
2 plan.

3 MR. RUTHERFORD: Well, I would like to
4 understand. I mean, I need to understand it in
5 layman's terms.

6 MR. PLOCKER: It would be -- what's proposed
7 right now, before we get into any exceptions or waivers
8 would be access via Warner Road and Kuzik Drive with
9 emergency access up off of Howell Drive. The
10 application that was before the Board that was applied
11 for and what the Board is going to consider now, seeks
12 a de minimis -- seeks a de minimis exception from RSIS
13 to have the Kuzik Drive access serve as emergency
14 access only.

15 UNIDENTIFIED SPEAKER: John, thank you.

16 THE CHAIRPERSON: Sir, come up to the mic,
17 say your name.

18 MR. HECK: I'm Werner Heck. I live on 84
19 Davey Drive in the West Essex Highlands. Our condo
20 overlooks the -- where Warner Road ends and the forest
21 begins. I'd like to address Mr. DeFeo's claim of the
22 forest being unhealthy. To demonstrate that he had
23 compared two photos last time he was here. He said one
24 had a very long range of sight --

25 THE CHAIRPERSON: Sir, the people in the back

1 can't hear you. Could you speak more into the
2 microphone, please? Thank you.

3 MR. HECK: Yeah. He used two photos to
4 support some of his case. One photo showed clearly a
5 very long range of sight in the forest. But to me,
6 that seemed to be a picture of that forest in the
7 winter time. There were a lot of brown leaves on the
8 ground and there was no green vegetation anywhere.
9 Then he had the other picture showing a healthy forest.
10 It was clearly in the summer and with a lot of, you
11 know, greenery.

12 So, Mr. DeFeo, do you think that was a fair
13 comparison to show those two photos when, to me, one
14 seemed to be in the winter and one in the summer?

15 MR. DeFEO: You're misunderstanding the
16 statement from what a healthy forest is and my point.
17 The point is not that the trees are there. The point
18 is not that there are large trees there -- there are,
19 indeed, large trees there. The health of the forest,
20 it is determined not so much and totally by the total
21 number of large trees.

22 The forest, as I stated last, was with the
23 trees that are there, with exceptions such as ash and
24 beech in particular, the trees that are there are
25 reasonably healthy. The forest is unhealthy on a long

1 term basis because there is no undergrowth. There are
2 no new trees coming in.

3 MR. HECK: But --

4 MR. DeFEO: Whether it's a winter or summer
5 image is irrelevant.

6 MR. HECK: But that was a winter photo. You
7 wouldn't expect --

8 MR. DeFEO: Young trees I would see. And the
9 simple fact is I could go get more photos if you like
10 but the simple fact is there is a dearth, statistically
11 and scientifically, of young trees in that forest. And
12 by every study done statewide, when you have a lack of
13 young trees to replace mature trees as they die, which
14 eventually will happen, you have an unhealthy forest.

15 MR. HECK: Okay. That may be so but I would
16 have preferred to see two summertime photos.

17 THE CHAIRPERSON: Thank you, sir.

18 Please step up to the mic and state your name
19 for the record.

20 MR. GUARINO: My name is Peter Guarino. I
21 live in the Highlands, by the way. I'm just confused a
22 bit. This gentleman mentioned three points of access
23 and somebody mentioned Kuzik Road as a point in access.
24 Kuzik Road goes into Warner. There's only one means of
25 egress and access. Can somebody explain to me how

1 there's three or two or --

2 UNIDENTIFIED SPEAKER: Mr. Plocker?

3 MR. PLOCKER: I'm certainly not testifying as
4 an engineering professional, but I'll repeat again.
5 So, the property is accessed from Eagle Rock Avenue via
6 Oval Road up Warner Road. From that point, the site
7 plan proposes that vehicular or pedestrian traffic can
8 continue off Warner into the proposed development or
9 make a left onto Kuzik Drive.

10 MR. GUARINO: Right. And Kuzik goes where?
11 It goes into the development which goes into Warner
12 Road.

13 MR. PLOCKER: We're talking about access into
14 the development. Up Warner Road and you either head up
15 Warner or you make a left if you were walking up from
16 Oval Road.

17 MR. GUARINO: Right.

18 MR. PLOCKER: And Kuzik has proposed access
19 to the development. But part of this application is,
20 is that the access would be there but we are seeking
21 relief to allow Kuzik access to serve only as an
22 emergency access.

23 MR. GUARINO: Okay. So, you still only have
24 one means of egress and access.

25 MR. PLOCKER: If your point is that

1 eventually it all goes to one road, that's absolutely
2 correct. But all --

3 MR. GUARINO: That's my point exactly. There
4 is one means of egress.

5 THE CHAIRPERSON: Okay. That's the answer to
6 the question. Thank you.

7 MR. WEISLEDER: Hello. Seth Weisleder. I'm
8 from West Orange. So, my question is, this being a,
9 you stated several times it's an unhealthy forest
10 mainly due to the deer and wildlife causing the issues.
11 With an unhealthy forest, how are slopes affected by an
12 unhealthy forest? Or a steep slope, how would that --
13 there's trees on these steep slopes, would you agree
14 with that?

15 MR. DeFEO: Yes. There are trees on a steep
16 slope and I can try to answer your question. Let me
17 see if I understand it correctly so I can answer it.
18 If I understand you correctly, your question is what is
19 the impact of the forest condition on the steep slopes?

20 MR. WEISLEDER: Correct.

21 MR. DeFEO: Okay. So, again, let me
22 emphasize, people keep using the term unhealthy forest
23 in a sense as if it's being testified to that the
24 forest is dying. I am not saying that. I have not
25 said that nor do I imply that.

1 MR. WEISLEDER: No, I --

2 MR. DeFEO: There is, however, a lack of
3 undergrowth that is healthy.

4 MR. WEISLEDER: Correct.

5 MR. DeFEO: And there is a lack of new
6 growth. So, to answer your question, I think I just
7 answered it, is that when you have steep slope and you
8 have a lack of undergrowth on that steep slope, you
9 have more water flow. As the forest becomes healthier
10 and undergrowth becomes denser, it reduces water flow.
11 And there are multiple studies around the country that
12 would show that you can have as you have more growth,
13 more plants, you have more water absorption and you
14 reduce the flow of water.

15 So, to answer your question on the steep
16 slope, where it is proposed to be fenced, the deer
17 fencing, the steepest slope from the property have
18 proposed deer fencing on them, over time those steep
19 slopes would have new undergrowth because a deer would
20 not be able to browse it and, therefore, it would
21 decrease the flow of water.

22 Does that answer the question?

23 MR. WEISLEDER: I agree with what you're
24 saying, but it's not lining up. If we have a map, it
25 looks like the deer fencing is not on the slope, it's

1 after the slope comes down to a plain at the bottom to
2 absorb the water like a sponge which was testified to
3 last time. So I'm confused that if you're saying
4 there's a lack of growth and a lack of new seedlings
5 that can grow, then how are we protecting the slopes if
6 that could be a problem. That's my question.

7 THE CHAIRPERSON: Mr. DeFeo, if you could
8 identify for the record what we're looking at now?

9 MR. DeFEO: Yes. This is one of the slides
10 from my original presentation of the 30th and this is a
11 rendering or, if you will, an SP-4, which was part of
12 the site plan submitted by the applicant. SP-4 has a
13 highlight of a deer fencing and is specifically
14 designed just to highlight where deer fencing would be.
15 This is not a topographical map, so bear with me. But
16 this is here, beginning roughly, of the steep slope.

17 MR. WEISLEDER: Okay.

18 MR. DeFEO: So, that entire area going down
19 the slope and across would be fenced.

20 MR. WEISLEDER: Okay. Can you show the
21 topographical map just --

22 MR. DeFEO: Let's see if --

23 MR. WEISLEDER: -- if that's there?

24 MR. DeFEO: Hang on.

25 MR. WEISLEDER: And, again, it was more maybe

1 a clarification.

2 MR. DeFEO: Okay.

3 MR. WEISLEDER: Thank you.

4 MR. DeFEO: Yeah, so you can see here this
5 dark green line, this is the deer fencing. Okay, the
6 red line is an approximately location of the ridge,
7 meaning water flowing on this side of the red line goes
8 down the steep slope. Water falling on this side of
9 the red line goes this way. And you can see, this
10 being the steepest slope area, it is encased in deer
11 fencing which will allow for new growth.

12 MR. WEISLEDER: Okay. No, that's fine. I
13 agree. We're in agreeance. My second question would
14 be would you recommend any other areas of the forest to
15 be protected for growth based on you and your team's
16 observations?

17 MR. DeFEO: Well, that's a good question.
18 There are some areas that are just not feasible. One
19 of which is, of course, you know, in the wetland area
20 it just makes it very difficult. You can't go into the
21 wetlands and disturb them. They are protected by state
22 law. So, there's very little you could really do in
23 here. There is another wetland area here as well right
24 along here.

25 So, those areas, in a perfect world, while I

1 might deer fence the entire property in a perfect
2 world, it's not feasible or necessary to do so. This
3 and this, the two areas that have been selected are
4 designed number one, because they are in the area where
5 there's no disturbance. Number two, they're selected
6 for the reason we just talked about in part.

7 And, number three, in part here, it's
8 selected for the same reason in the other direction
9 because, again, I have steep slope and I'm trying to
10 increase the overflow or the goal is to increase plant
11 growth to decrease water flow from interrupting into
12 this area and that water flow is going to go this way.
13 The rest of this area is contained and controlled,
14 which is not my design, and this is something the state
15 will approve, by a professional stormwater management
16 system to minimize any flow impact.

17 So, this area as we've discussed in previous
18 meetings I believe, one of the explanations is this
19 area which of course in the disturbed area, this will
20 be replanted with native plants which will act as a
21 seed bank for the entire property to allow for more
22 plant growth. Where we can control it, we are doing so
23 here and here because as these deer fenced acreage,
24 about 33 acres, begins to regenerate, it will then
25 become a reversed seed bank for the unfenced area.

1 And the hope, of course, over time and what
2 we have seen in studies is that the entire area will
3 start to see regeneration of growth. The goal being,
4 of course, the hope is that the areas here, which will
5 be planted by the developer with native plants, it will
6 be their -- I'm sure will do what they can to protect
7 those plants from excessive browse -- and there are
8 many ways to do that, one of which is a deer repellent
9 that can be applied, which that would be up to them.
10 There's no mandate that they do so, of course, but that
11 will then seed these areas.

12 So, would I say the whole area should be deer
13 fenced? Probably not feasible, at least in my reviews
14 of it, nor would I say it's necessary completely
15 because it would be impossible at that point, I think,
16 to keep and not cause problems with neighboring
17 properties. This gives an area that deer can still, if
18 you will, roam and play in that's open to them while
19 protecting the forest and allow it to regenerate. So
20 this is what you call the best of both worlds as I see
21 it.

22 MR. WEISLEDER: Right. So, in an
23 approximation -- I know it's not a perfect world
24 because there's so many different variables, in an
25 approximation, how long would it take before we see a

1 difference in the deer fenced area to absorb that
2 additional -- approximately?

3 MR. DeFEO: Based on my observations of other
4 deer fenced areas, you should start seeing new growth
5 within one to three years. Start within the first year
6 of seeing low growth herbs, flowers, that sort of thing
7 -- ferns.

8 Within three years you'll start seeing the
9 beginning of shrubbery. And then over about nine to
10 ten years, or nine years, this space should virtually
11 be impenetrable from the naked eye to look through.
12 So, I'd say within a year you'll start to see growth.

13 MR. WEISLEDER: Okay. If you don't see
14 growth, is there recommendations to help that growth in
15 that area?

16 MR. DeFEO: Well, I don't have a
17 recommendation, per se, because I've never seen an area
18 that's fenced not show new growth.

19 MR. WEISLEDER: Okay. Thank you.

20 MR. CHAIRPERSON: Thank you.

21 Come right up, sir.

22 MR. COOPER: Yes. Good evening. My name is
23 Randy Cooper. I live in the West Essex Highlands.
24 Thank you for your contribution. I just had one quick
25 question. What would you attribute the unhealthy

1 environment to that's in that area? Would you
2 contribute that to the deer or -- what would you say?
3 MR. DeFEO: If you're asking -- I think your
4 question is why is the forest so unhealthy in my view
5 over its long terms life? It's mostly over deer
6 browsing. Any study you'll see -- there are some
7 things posted online you could read if you want to, but
8 you'll look at almost every one of those studies about
9 forest health in New Jersey in a suburban like hours or
10 ex-urban area, you will see excessive deer browse is a
11 large and massive problem in this area. So I would
12 attribute that to deer browse.

13 MR. COOPER: Okay. So, you could also
14 consider this a healthy environment due to its deer
15 grazing. In other words, when you have deer grazing,
16 you would have this environment, you would expect this
17 environment to be as such.

18 MR. DeFEO: No, it's not healthy in that
19 regard because when you have a higher population of
20 deer than the forest can carry -- meaning it's carrying
21 capacity is exceeded, which is in the findings of this
22 area pretty generally true. In fact, in New Jersey in
23 urban areas pretty much generally true, or suburban,
24 some of the studies show as many as 90 to 120 deer per
25 square mile. The carrying capacity of a normal healthy

1 forest would be 20 deer per square mile.

2 When you have excessive deer per square mile
3 generally in an area, and we're not just talking about
4 this 120 acres, but when you have excessive deer
5 density, the deer are unhealthy and it is a sign of
6 unhealth. The herd becomes unhealthy because they do
7 not have enough forage and the forest itself becomes
8 unhealthy because about the only thing left that will
9 grow after excessive browsing, are invasive species
10 which we see an excess in this property, such as
11 barberry. That's just an example.

12 There are many invasive species but that's
13 what you will see left because Barberry has virtually
14 no wildlife value and the deer won't eat that. In
15 fact, I haven't seen deer eat that virtually at all
16 unless absolutely starving at which point they're not
17 healthy anyway.

18 MR. COOPER: So, in your opinion, you would
19 view this as a area that was over concentrated with
20 deer?

21 MR. DeFEO: All of West Orange and Essex
22 County is over concentrated with deer.

23 MR. COOPER: Okay. Thank you.

24 THE CHAIRPERSON: Mr. Coviatt?

25 MR. COVIAT: Good evening. Mr. DeFeo, your

1 presentation included a slide called total native plant
2 additions as proposed, which summarized the additional
3 plantings the applicant planned to make inside the
4 proposed deer fence to help restore the forest -- 279
5 trees, 1,065 shrubs and 2,166 perennials, grasses,
6 ground covers -- total of 3,510 plantings. And you
7 said these all, in terms of specific species are
8 subject to further discussion. So, just had a series
9 of questions from that.

10 Who determines this specific proposal and
11 what are the main factors impacting such a proposed
12 formulation?

13 MR. DeFEO: So, I understand the question,
14 are you asking specifically about the species being
15 selected as of right now and proposed?

16 MR. COVIAT: Well, both. It was a compound
17 sentence. I probably shouldn't have done that. But
18 I'll break it into two questions.

19 MR. DeFEO: Please.

20 MR. COVIAT: Who actually determines this
21 proposal and is there a formula that is generally
22 followed in the industry?

23 MR. DeFEO: I'm not certain I understand the
24 question. Let me try my best.

25 THE CHAIRPERSON: Are you asking the nature

1 of the individual trees -- how many elm trees, how many
2 oak trees -- the species of trees?

3 MR. COVIAT: Yes, and the actual number and
4 who actually does that.

5 MR. DeFEO: Okay. As far as the specific
6 species of plants that were selected, that is the
7 applicant submitting that to us for consideration.
8 They submitted native species. As I testified, I
9 think, in the prior testimony, I stated in at least one
10 case I have recommended that they consider replacing
11 one of the native species with a second one because of
12 climate change and the species probably would not do
13 well.

14 In fact, there are a number of studies that
15 show we need to be thinking about planting species that
16 are at the northern range, historically, of their
17 survival rate and picking more southern species as
18 they'll do better. So we talked about that. As far as
19 the formula itself and this number of trees, the
20 applicant submitted that.

21 MR. COVIAT: Okay. And would the applicant
22 typically hire a forester to help put this proposal
23 together? Would it be a forester or --

24 MR. DeFEO: Applicants can hire whomever they
25 want. I don't know who they hired to do this.

1 MR. COVIAT: Okay. So, when you say that the
2 proposal is subject to further discussion, do you mean
3 that the Planning Board can make changes to this
4 proposal as a condition of approval?

5 MR. DeFEO: I can't answer that question.

6 THE CHAIRPERSON: The Planning Board can have
7 a condition that a forester can be engaged to review on
8 behalf of the Planning Board all these new trees and
9 growth that we planted.

10 MR. COVIAT: Okay. So, again, I just want to
11 clarify a little bit. And I realize the witness is
12 here as opposed to the Chair, but could the Board,
13 perhaps upon the recommendation of Mr. DeFeo, say that
14 we need a different number of a particular proposed
15 species or that we need a different species as he's
16 already mentioned and is that something that the Board
17 would have to decide upon as part of their decision?

18 UNIDENTIFIED SPEAKER: The applicant will
19 work with the Planning Board as a condition whether
20 it's through our forester or their forester with our
21 forester to make sure that they are no invasive species
22 and are conducive to the new growth that Mr. DeFeo's
23 been speaking about.

24 MR. COVIAT: Okay. So, let me just throw out
25 a hypothetical. The proposal is for 279 trees. If Mr.

1 DeFeo or a majority of the Board said we think there
2 should be 30 more trees as opposed to what are
3 proposed, is that something that has to be reached by
4 consensus or the can the applicant say nope, not going
5 to do it?

6 MR. CHAIRPERSON: It would have to be by
7 consensus. And the applicant has been very reasonable
8 with this, so -- I can't speak for Mr. Plocker -- he
9 may want to --

10 MR. PLOCKER: Yeah, I just wanted to say for
11 the record because I thought this may have come up
12 before and I may have made a representation on behalf
13 of the applicant, if not, I'll make it now. We do have
14 a landscaping plan. That's what's before the Board.
15 The application complies with the tree requirement of
16 our zoning ordinance.

17 However, we did represent, and will continue
18 to represent that as a condition of approval, we will
19 continue to work with Mr. DeFeo, the town forester or
20 whatever town professionals are going to be involved
21 when we are out in the field and it is time to do these
22 plantings after the buildings are built. And we stand
23 by that representation.

24 UNIDENTIFIED SPEAKER: Thank you, Mr.
25 Plocker.

1 MR. COVIAT: And I didn't want to give the
2 impression that I was questioning that dedication that
3 commitment. I just was trying to clarify it.

4 UNIDENTIFIED SPEAKER: (Indiscernible).

5 MR. COVIAT: Okay. This question has to do,
6 Mr. DeFeo, with whether you have been involved in these
7 types of situations where an applicant would propose a
8 plan similar to this to help revive the forest. Have
9 you don't many of these or approximately --

10 MR. DeFeo: No. As I testified last time,
11 the answer's no because to my knowledge and talking to
12 other professionals around the state, no one's ever
13 tried to do this before. That doesn't mean that it
14 hasn't been done, just to my knowledge it hasn't been
15 done.

16 MR. COVIAT: Okay. And in your professional
17 opinion other than your suggestion that they change one
18 of the species, is there anything else in the plan at
19 this point that you think should be subject to
20 modification or further discussion?

21 MR. DeFeo: I have reviewed the existing
22 landscape plan and that was the only thing that I red
23 flagged in it. Other than that, it comes down to
24 nuance. You know, when they get out in the field and
25 when you start planting things, you know, you may say I

1 want to put a hole here, you may not be able to put a
2 hole there. And so things may have to be moved around
3 a little bit.

4 But that's something, as the Chairman noted,
5 in the field, things will of course be shifted but
6 under this situation which, again, I find highly
7 unusual, is that there will be someone there to look at
8 that and have a discussion with the builder at that
9 point as to, well, we need to do this or we need to
10 substitute that.

11 An example might be, a species may have been
12 selected -- it may be unavailable. That can happen.
13 Then we have to look at a substitute species. So, to
14 give you an example, it's not going to say you must
15 have a red maple. I mean, it might be that -- bad
16 example because they're easy to get but it might be I
17 can't get a red maple. Well, then you might have to
18 use a swamp white oak And I'm just giving you an
19 illustration of two species that could substitute one
20 for the other and still meet the same condition of
21 native plants in the right area. Does that answer your
22 question?

23 MR. COVIAT: Yes. So, just as a
24 hypothetical, if the application is approved and you do
25 move to the building stage and you come into that

1 situation where, professionally, that there should be a
2 change to the proposal but the builder is equally
3 convinced that they shouldn't make that change, what
4 happens?

5 THE CHAIRPERSON: (Indiscernible).

6 MR. COVIAT: If you must reach consensus but
7 you can't reach consensus?

8 MS. McGOVERN: Well, they must work within
9 what's required under the ordinance which has been set
10 by the Township for this site. So, there's numbers and
11 basic guidelines. They have to abide by those basic
12 guidelines in the ordinance.

13 Anything above and beyond that would become,
14 I guess, a negotiation after the fact, witness spirit
15 of cooperation, but there's only so much that this
16 Board can limit them to past what's delineated in the
17 ordinance and, you know, we have conditions that we can
18 put on and they have agreed to several already,
19 conditions. But at this point, there's no specifics
20 that we can say because if and when this project gets
21 built we don't know what the plans that would be
22 available and what (indiscernible).

23 THE CHAIRPERSON: Considering the Township
24 has a forester, we have Mr. DeFeo and the applicant,
25 I'm sure, will hire their own forester, I'm sure they

1 will come to some consensus in their field of
2 expertise. They wouldn't want to put something that's
3 not going to survive and they're definitely not going
4 to put something that's going to be invasive. So, I
5 don't know that you can put those words exactly into as
6 a condition but we've been -- for (indiscernible) we
7 have those words in the ordinance, and we'll condition
8 it as we previously said.

9 MR. COVIAT: Okay. Thank you. Are there any
10 size or maturity requirements for these plantings
11 within the forest?

12 MR. DeFeo: There's nothing that's been
13 specified at this point.

14 MR. COVIAT: Okay. So, if it says 279 trees,
15 the trees could be seedlings or they could be --

16 MR. DeFeo: No. The standard for landscaping
17 in New Jersey generally is a tree has to be one and a
18 half inches, it would be a sapling at that point, but
19 one and a half inches in diameter is the generally
20 accepted landscape replacement tree. Whether or not
21 they would go larger or not would depend on the site
22 and their final determinations.

23 As I stated last, fact is that in many cases,
24 you know, we often say let's put bigger trees in
25 because it has a bigger impact up front. There are two

1 sides to that coin. One is, yes, you can do that, but
2 we also find that larger trees require a lot more care
3 up front and there's a higher mortality rate from what
4 I've seen. You want to balance those two risks. The
5 goal is to get a tree to grow and, hopefully, grow
6 fairly quickly.

7 MR. COVIAT: Thank you. You also had on the
8 slide about the native seed mixture for 37,388 square
9 feet. And what is the composition of this seed mixture
10 and what is it supposed to do and are you aware of any
11 studies as to the impact it is supposed to have?

12 MR. DeFEO: I don't have the list in my head
13 of the native seed mixture. It was on the landscape
14 plan which I don't have in front of me. And I looked
15 at it, it is consisting of native plants for this
16 particular part of the country.

17 As far as its impact, I've seen native plant
18 restorations done before and if they're done well, and
19 we would hope they would do them well, the impact is
20 you get fairly quick germination and you have fairly
21 quick stabilization.

22 I've done two that have worked well. I've
23 done one particularly that worked fairly well at our
24 environment center in West Orange and one that didn't
25 work out so well. But that was just due to lack of

1 care. So, it really depends on follow up care.

2 Like, any seed mixture, you know, if you put
3 seed down on your lawn this fall, probably not going to
4 very well, you know, unless you watered it, right? But
5 in this case, it would be planting at the right time,
6 putting it in under the right conditions. I presume
7 we'll get rain again in the spring, you know, and
8 that's when those kinds of things will be determined.

9 MR. COVIAT: I also have not seen the
10 landscaping plan but it does occur to me that you, if
11 you've reviewed it before, whether you had an
12 distinctive thoughts about the proposal within the area
13 of disturbance?

14 MR. DeFEO: My looking at that landscape
15 plan, and I've looked at a lot of landscape plans for
16 developments over the years, being in my own
17 environmental commission and we review them fairly
18 heavily, this is one of the better ones I've seen.
19 There was not a let me see if I can slip in this
20 species or that species or some arcane hybrid. It was
21 very clean in terms of picking native species and
22 native plants.

23 The layout I leave to the applicant because
24 it's around their buildings but even on its face I
25 didn't see something that would jump out at me and say

1 oh my goodness, you're putting this tree next to a
2 building, are you nuts. I'm not seen that kind of
3 error. it looks like they took a fair amount of care.
4 Again, it's not finalized I realize, but it looked like
5 it was very well done compared to others that I have
6 seen.

7 MR. COVIAT: Okay. When you say well done,
8 do you think that will be effective in addressing in
9 any potential problems with erosion, the soil erosion,
10 or with water runoff?

11 MR. DeFEO: Well, this particular landscape
12 plan is fundamentally for -- let me go back and just
13 show it -- not the landscape plan, but the general area
14 --

15 MR. COVIAT: Well, my concern is it's the top
16 of the hill, so everywhere is down.

17 MR. DeFEO: Yeah, yeah, no, I get that.

18 But the landscape plan itself really isn't,
19 per se, with the exception of the seed mixture which is
20 to help stabilize soil. This area isn't being planted.
21 This area will regenerate on its own basis.

22 So, in terms of erosion and control, if
23 that's your primary concern, the area as it regenerates
24 will take care of that. Where there's disturbed area
25 and they're going to seed, that area, the young

1 plantings that come in because they're herbaceous
2 plantings, not trees or shrubs, will help to stabilize
3 those areas much more quickly. And in my experience,
4 that works out pretty well.

5 MR. COVIAT: Thank you.

6 THE CHAIRPERSON: Thank you.

7 Do any members of the public have any
8 questions for Mr. DeFeo about his testimony, please
9 come up and be recognized.

10 State your name for the record, sir?

11 MR. McGLYNN: Yeah, it's Mike McGlynn, 55
12 Lapis Circle and hello, Mr. DeFeo, the Mayor. Anyway,
13 I've lived in the community for just about --

14 THE CHAIRPERSON: Sir, come closer to the
15 microphone. People in the back can't hear you.

16 MR. McGLYNN: I've lived in the homeowner's
17 association area for the last four years. And my main
18 concern has to do with the water flow and all the trees
19 being cut down. I'm probably the closest unit next to
20 Canoe Brook, literally, a couple of feet away from it.
21 We've already had an issue where a tree from the brook,
22 after a big storm in the spring, was leaning against
23 our house and then several trees had to be cut down.

24 So, my concern is whether all these trees
25 being knocked down and all the construction about all

1 the water flow if there's been enough studies for the
 2 effect on increased -- you know, there's been times
 3 over the past year, it's not raining now but last year
 4 and early this year it was raining quite a bit and
 5 there's been quite a bit of water flow down Canoe Brook
 6 which ends up in the golf course and it's come pretty
 7 close to overflowing already so with all the trees
 8 coming down, just wondering about what the effect,
 9 besides all the other issues like the parking, I mean,
 10 the traffic. So, that's my concern.

11 MR. DeFeo: I really can't speak to that.
 12 That would be an engineering question and the
 13 engineering has already been testified to. I can't
 14 testify to the engineering.

15 MR. McGLYNN: Okay. That's about all I had
 16 to say but I just wanted to express my concerns.

17 THE CHAIRPERSON: Okay. Do any other members
 18 of the public have any questions?

19 Okay. Mr. Afran, you're up, sir.

20 MR. AFRAN: Good evening. For the record,
 21 I'm Bruce Afran, counsel for WeCare New Jersey.

22 EXAMINATION BY MR. AFRAN:

23 Q Mr. DeFeo, you or your company are presently
 24 employed in some capacity with the town aside from this
 25 engagement here, is that correct?

1 A Yes. I have a separate contract with the
 2 Township, yes.

3 Q And what is the subject of that contract?

4 A As the environmental compliance officer, my
 5 fundamental responsibility is to inspect and ensure
 6 compliance at the West Orange Recycling Center where
 7 the leaves are composted and the wood is processed.

8 Q How long have you had that responsibility?

9 A I believe that started -- yeah, that started on an
 10 emergency basis in 2005.

11 Q And have you continued in that capacity with
 12 the town since 2005?

13 A Yes.

14 Q Since 2005, aside from this engagement on
 15 this application, have you had any expansion of your
 16 responsibilities with the town other than the recycling
 17 function?

18 A Yes, I've had one other which was a one time
 19 processing -- sorry, let me rephrase that. I worked
 20 with the Township on the development of its solid waste
 21 and recycling bid specifications.

22 Q And does that represent the extent of your
 23 work with the Township aside from this site plan
 24 application?

25 A In terms of specific contracts, I think I had one

1 other short contract working -- it was during COVID,
 2 helping to develop safety procedures for well health
 3 and safety standards, actually, reviewing them would be
 4 a better way of putting it not developing them. The
 5 Township had a very good program on its own, to the
 6 credit of its staff.

7 Q Did I understand you to say well as in well,
 8 you mean, water from a well?

9 A No. No, well as in healthy.

10 Q Okay. So, that's why I clarified. What did
 11 that healthy element refer to? What type of work?

12 A Well health and safety means you review both the
 13 policies and procedures of a staff and building as well
 14 as the nature of what's being done to the building.
 15 For example, if you look behind you, you'll see an air
 16 filtration system in this building.

17 During COVID, those things were put in --
 18 again, the Township took the initiative in putting that
 19 kind of system in place. It was to help review those
 20 systems. As you walk into this building, you'll see
 21 there's one way in and one way out. You will see hand
 22 sanitizers, that sort of thing. It helps to review
 23 what are the policies and the procedures of the system.

24 Q So, well as in wellness?

25 A Well, as in wellness, yes.

1 A Good. Thank you. I wanted to clarify.

2 Now, tell us what actual specialized
 3 training, either academically during your master's
 4 degree program or otherwise you have in forestry?

5 A Well, as I've already testified, I am not a
 6 forester. I am a biologist with concentrations in
 7 botany and ornithology. I am also -- I have a master's
 8 in environmental studies which you would call today
 9 probably sustainability. That was how the title would
 10 have evolved over time. My concentrations in my
 11 master's would have been environmental science with
 12 concentrations also in botany and ornithology as well
 13 as environmental education.

14 Q Ornithology as in the study of birds, you
 15 said?

16 A Correct.

17 Q Now, my question was what training do you
 18 have in the field of forestry?

19 A As I stated, I am not a forester. I am trained as
 20 -- I would be qualified as a botanist if you were to
 21 look at my speciality.

22 Q And, again, my question is what training do
 23 you have in the field of forestry?

24 A I'll try to answer that again.

25 Q Do you have any? If you don't, say no.

1 A Yes, I have taken courses in towards getting my
2 degree in botany I've done, let's see, I have one
3 report that was done, published, where I did my own
4 independent study in a forestry analysis at Valhalla
5 Glen in New Jersey analyzing the impacts of an insect
6 called Fiorinia Externa Ferris, which was a scale
7 insect on the eastern hemlock forest. In that forestry
8 analysis I would have done a complete analysis using
9 quadrat analysis, an analysis of the forest
10 identification.

11 Towards my master's, I would have taught
12 multiple courses in forest management.

13 Q I'm sorry, you would have taught or took?

14 A Taught multiple courses and taken courses
15 simultaneously in forestry and forest management. I
16 was -- I don't know that they even have this
17 certification much, but I was certified as a Project
18 Learning Tree instructor which was done by the Western
19 Regional Environmental Education Council where I was
20 trained as an instructor on forestry.

21 WREEC and/or Project Learning Tree were used
22 to teach curricula on forestry and forest management to
23 teachers in order to teach students about the proper
24 means of forest management. I also would have worked
25 at that time teaching Project Wild, which would have

1 been a wildlife management curriculum.

2 And to answer your question further, the
3 point being that wildlife curricula and forestry
4 curricula and forest management curricula, as well as
5 botany and environmental studies and ecology, all of
6 which was training that I've had, the point being, you
7 look at the entire forest. A forester looks at,
8 specifically -- let me rephrase that. A forester looks
9 primarily at forest management. Forest management is
10 different than environmental science and his different
11 than the ecology of a forest.

12 It does not mean a forester does not look at
13 the ecology, what it does mean is a forester is looking
14 at a forest for a specific reason, typically, not
15 always, but typically, to look at that forest as a
16 harvestable crop versus looking at the forest as a
17 healthy ecosystem.

18 Now, you can't -- you can have without the
19 other so a forester might say it's okay to plant this
20 species of tree. We'll just pick loblolly pine in the
21 south because it grows quickly. And a forester will
22 look at the spacing and the culling and the speed with
23 which that's done for the purpose of getting the
24 greatest amount of board feet out of the forest in the
25 shortest period of time.

1 An environmental scientist will look at that
2 and say that forest is not really great and healthy
3 because it's a monoculture and we don't like that. As
4 I --

5 Q We don't have a monoforest here.

6 A You do not. You have an oak, primarily oak mixed
7 hardwood forest.

8 Q Now, we do have a town forester, do we not?

9 A You do have a town forester.

10 Q That's Mr. Kipp -- Walter Kipp, is that
11 correct?

12 A That is correct.

13 Q Now, you're not suggesting that he's
14 interested in managing the town forest to sell it as a
15 crop, are you?

16 A I am not. He has a different charge

17 Q Did you consult with Mr. Kipp before making
18 any recommendations to the town with respect to --

19 A He was not hired at the time I was doing that.

20 Q When was Mr. Kipp hired?

21 A I don't know, but he wasn't here then.

22 Q He's here now.

23 A No, I know, but he was not here when I was
24 negotiating and developing all of this.

25 Q Have you spoken to Mr. Kipp since?

1 A On this issue, no.

2 Q Don't you think consulting with the town
3 forester would be valuable in terms of developing the
4 whole range of testimony and ideas you've presented
5 here?

6 A Well, as I noted, again, this entire plan of
7 action vis-a-vis deer fencing et cetera that you see up
8 there was negotiated before he started and finalized.

9 So, there really would not be much point.

10 Q You mentioned Project Wild, that was a
11 project for teaching school children, isn't that
12 correct?

13 A Teachers.

14 Q Sorry?

15 A And school children.

16 Q Correct --

17 A The curriculum was for students. My job was to
18 teach teachers.

19 Q All right. So, you taught teachers who
20 taught school children about what exactly?

21 A In the Project Wild curriculum, that was wildlife
22 management as developed by that plan, discussing, for
23 example, and using wildlife ecology as a way to teach
24 math by using carrying capacity.

25 Q What grades were those children?

1 A The WREEC, those manuals were K to 12.

2 Q Now, what did you write your master's thesis
3 on?

4 A I did not -- I did a master's on the
5 interpretation -- I had two things I did for a
6 master's. There were two paths I could take. The
7 first was called a comprehensive examination system
8 which I did take, and obviously passed.

9 The second was a thesis on the interpretation
10 of a natural area which was the Delaware and Hudson
11 Canal in Port Jervis, New York on natural
12 interpretation of the site.

13 Q What does natural interpretation refer to?

14 A Interpretation of natural areas. Like, you might
15 see, you know, when you go to a park, a national park,
16 a ranger will give you interpretations of nature as a
17 naturalist. It was my writing helping to write the
18 curriculum and studying the park for that.

19 Q Now, the Learning Tree Project was also an
20 educational program for school children, in effect,
21 right?

22 A Yes.

23 Q Okay. Now, you mentioned you did a report
24 during your Master's degree program. When did you
25 graduate in your master's degree program?

1 A Eighty-two.

2 Q Eighty-two. Now, in terms of your
3 professional experience, your resume from your website
4 doesn't refer to anything dealing with forestry, would
5 you agree?

6 A Correct, because I'm not a forester.

7 Q And it doesn't refer to anything dealing with
8 any areas -- strike that -- it refers to the following:
9 Sustainable solutions for commercial, institutional and
10 residential buildings, am I correct?

11 A Sounds correct. I don't have it in front of me.

12 I'll trust you.

13 Q Development of environmentally friendly
14 purchasing policies, does that sound right?

15 A Mm-mm -- yes, it does, sorry.

16 Q Energy reduction strategies?

17 A Yes.

18 Q LEED building practices?

19 A Yes.

20 Q Recycling?

21 A Yes.

22 Q Solid waste handling systems?

23 A Yes.

24 Q It also refers to -- strike that. Now, it

25 does say you have successfully negotiated with county

1 government, New Jersey Department of Environmental
2 Protection, New Jersey Attorney General's Office and
3 New Jersey Board of Public Utilities on issues ranging
4 from solid waste licensing to environmental and
5 regulatory changes covering many areas of environmental
6 concern. Do you have any more specific to add to that
7 rather broad statement?

8 A I don't know what you're looking for in the way of
9 specifics. I don't have a way to answer that. I've
10 been in business for nearly 30 years. I can't really
11 remember everything I've ever negotiated at this point.

12 Q Where in your CV that you published on your
13 website does it refer to deer management or deer
14 maintenance?

15 A It doesn't.

16 Q It does not?

17 A No.

18 Q And where in your CV does it refer anywhere
19 to holistic analysis of ecological settings?

20 A With those specific words it doesn't state that
21 but the entire premise of the CV is to get to that
22 point, is to explain to a potential client that if they
23 have an issue, we look at things holistically. We
24 don't look at a specific item, per se, unless that
25 specific item has relevance to the holistic issue.

1 For example, you will see LEED green building
2 in there, as you read. In LEED green buildings, one of
3 the things we look at, depending on the development
4 that we are looking at, we will look at the plantings.
5 We will look at whether it's virgin land vis-a-vis
6 forest or if it's brownfield. We usually look at both.

7 We will look at energy. We will look at
8 water. We will look at runoff, we will look at
9 stormwater, we will look at ways to reduce all of

10 those. I have worked on projects where I've done the
11 calculations to reduce stormwater from roof lines and
12 how to meet certain standards for green building,
13 working with an engineer, of course. That --

14 Q Does it say anywhere -- sorry, go ahead.

15 A No, go ahead.

16 Q Does it say anywhere in your CV that you
17 actually do work in the area of analyzing forests,
18 woodlands or other natural settings?

19 A No, it's not called that.

20 Q Okay. Thank you. Now, tell us how you
21 became to be involved in the negotiating committee that
22 lead to what we've generally referred to as the
23 settlement agreement?

24 THE CHAIRPERSON: We're going to stop right
25 there. No settlement agreement here. We have an

1 overlay zone. The Planning Board is involved -- sorry,
2 it's a zone plan, not overlay zone. We're not involved
3 with a settlement agreement. That is not before this
4 Board.

5 MR. AFRAN: The witness spoke repeatedly of
6 his participating in the negotiating committee that
7 lead to the settlement agreement. Cross examination
8 follows --

9 THE CHAIRPERSON: We're not going through the
10 settlement agreement. The Planning Board is involved
11 with a IH-1 zone and I want to keep it with the IH-1
12 zone.

13 MS. McGOVERN: There's another issue also. I
14 mean, if Mr. DeFeo was retained through attorney/client
15 privilege communication, I don't know what, in fact
16 happened. I wasn't around at that point -- well, I was
17 around I just wasn't (indiscernible). That really
18 treads on attorney/client privilege communication.

19 MR. AFRAN: Mr. DeFeo has not given the
20 slightest shred of indication that anything he did
21 involved any communications with attorneys.

22 MS. McGOVERN: Settlement negotiations are
23 typically privileged and not evidentiary. So, in terms
24 of how he got to that point and what was said in the
25 negotiating room, that's not --

1 MR. AFRAN: Well, number one, I didn't ask
2 anything about what was said in the negotiating room at
3 this point. Secondly, I don't necessarily accept the
4 premise that all of that area is somehow privileged.
5 No one's established that.

6 MS. McGOVERN: I'm not saying it's all
7 privileged but it's touching upon that area and it's
8 also far afield from what we're doing here which is to
9 concentrate on the ordinance whether they satisfied the
10 requirements (indiscernible).

11 MR. AFRAN: Well, Mr. DeFeo's testimony is
12 quite broad and far reaching. He also repeatedly
13 analyzed -- he referred repeatedly, first of all, to
14 his role on the negotiating committee. All I did was
15 ask him how he came to be on that committee. I think I
16 can go further.

17 THE CHAIRPERSON: I think I can go look at
18 what Matt said. There's nothing about what was said in
19 the committee meeting. Of course that's privileged.

20 MR. AFRAN: Well, number one, this idea that
21 it's somehow privileged, I don't know where it's coming
22 from. Not every settlement negotiation in the world is
23 privileged, especially when it involves the town and
24 the developer and it becomes part of a public
25 submission. I haven't even asked about the settlement

1 negotiation yet, so I think you're being, perhaps,
2 overly zealous in protecting something I haven't
3 touched yet.

4 MR. PLOCKER: I have to weigh in. Mr.
5 Plocker. There was a mediation conducted through the
6 court with a special master in a confidential
7 mediation. There was pending litigation. That
8 litigation was a litigation filed by the Township of
9 West Orange seeking compliance which is with its third
10 round now for all affordable housing obligation.

11 Any communications in that room, it is the
12 applicant's position, or any drafts of documents,
13 anything that was not within the public domain remain
14 privileged as part of the settlement communications
15 under Rule of Evidence 408.

16 MR. AFRAN: The applicant wasn't even in the
17 settlement as far as I know. Well, I'll strike that.
18 First of all, the settlement agreement I'm holding up
19 right here. It has been publically released. All --

20 MS. McGOVERN: That's the culmination of all
21 those negotiations.

22 MR. AFRAN: I really don't understand why I'm
23 being interfered with at all at this stage. I asked a
24 simple question -- how did you come to be on the
25 negotiating committee.

1 MS. McGOVERN: And Dr. Bagoff said, go ahead
2 and answer that question.

3 MR. AFRAN: I know. But I don't know why the
4 constant statement is made well I'm not going to let
5 you go further. You don't even know where I'm going
6 yet.

7 THE CHAIRPERSON: Okay, go there and we'll
8 see what happens.

9 MR. AFRAN: Thank you very much. Thank you.

10 Q Mr. DeFeo, how did you come to be on the
11 negotiating committee?

12 A Mind you, that was six years ago now. I received
13 a call from the township attorney who said he wanted
14 assistance in the process and that was it.

15 Q And you participated in negotiations with
16 whom?

17 THE CHAIRPERSON: You can answer that.

18 A I would have met with West Essex Highlands
19 representatives and with Township representatives.

20 Q Now, in the settlement agreement, there is a
21 plan for a -- strike that, sorry. At Paragraph 2.5.4
22 headed Trees, there's a reference to a tree study
23 commissioned by the Township which is, quote, reflected
24 in the tree study report of DeFeo Associates, dated
25 February 3, 2020.

1 Are you familiar with that study?

2 A Yes.

3 Q Have you presented that study to this Board?

4 A I think so. There have been a lot of papers
5 presented, but let me double check what was submitted.

6 You know, I don't have my entire file with me.

7 Whatever I did submit to the Planning Board is posted
8 on the website. I'd have to look to see what was
9 submitted.

10 Q Well, as far as I know, I'm unaware of ever
11 seeing the February 3, 2020 tree study. Do you have
12 that in your possession in some way? Not here
13 necessarily but do you have access to it?

14 A Let's just see if it was submitted. I did submit
15 as of this week or last week the original basis which
16 is what I was asked for in the last meeting was the
17 very original study on which my report was predicated
18 and that was submitted and posted.

19 Q When was that posted?

20 A Part of my letter was -- I believe it didn't get
21 up until yesterday because we had technical problems.

22 Q Right. This was part of the material you
23 were going to post after the last meeting.

24 A But it was posted.

25 Q Yesterday?

1 A Yes because I couldn't get it posted before

2 because of problems with the internet.

3 MR. AFRAN: Mr. Chairman, I'll have to note

4 I've not yet had a chance even to see it so at some
5 point there may be supplemental questions on that
6 document.

7 Q In addition, the Duke's Farm study, did you
8 post that?

9 A No, and as I posted in my supplemental report,
10 there is a statement in there that very specifically
11 says that what happened with the Duke Farm study is the
12 fact that I referenced the Duke Farm study.

13 The study was referenced in an article and
14 that was my reference to that because I personally
15 interviewed people at Duke Farms and I put the two
16 together here rather than remembering that I had done
17 the two separately.

18 So what I did post, however, was an article
19 that was published -- I'll find that article which you
20 said you haven't seen -- it's called The State We're In
21 and it was written by the New Jersey Conservation
22 Foundation which highlights the statements I made from
23 the Duke Farms study and also gives you a link, if you
24 so choose, as anyone so chooses I should say, if they'd
25 like to see the entire workshop that was given at Duke

1 Farms, about an hour long workshop on deer management
2 which is there for the taking.

3 But in the reference that I give you in
4 regenerating native forest to fight climate change, the
5 statements -- the summary, and a very short summary,
6 I'll grant you, of the Duke Farm study is presented and
7 that article was offered by Allison Mitchell, John
8 Watson, Tom Gilbert, Michelle Byer (phonetic) and
9 Michelle Byers (phonetic).

10 MR. AFRAN: Well, Mr. Chairman, a
11 representation was made at the last meeting that that
12 study would be posted. Members of the public asked
13 about it. The representation was made. I would ask
14 that Mr. DeFeo post it so at least in connection with
15 an upcoming meeting, we all have access to it.

16 Q Is there any technical reason, Mr. DeFeo, why
17 that can't be done?

18 MS. McGOVERN: Okay. So, this is an online
19 study that anybody could find right now.

20 A The webinar is online. Anybody can find it --
21 it's public. The article that I submitted as part of
22 my supplemental report shows the link, so the link can
23 be taken and highlighted.

24 MR. AFRAN: Mr. DeFeo plainly relied on the
25 Duke's Farm study as part of his testimony. That's why

1 it was asked to be posted. We shouldn't have to go
2 finding it -- the gentleman should post it.

3 MS. McGOVERN: Well, you know, this is not a
4 court of law with strict rules of evidence, so we --

5 MR. AFRAN: And this is not a very strict
6 request. He said he would post it and for some reason,
7 it's not.

8 MS. McGOVERN: And he gave you access to that
9 and --

10 MR. AFRAN: Yesterday -- the day before we're
11 here to do cross examination. It was supposed to have
12 been posted promptly so there would be time to use it
13 and study it.

14 THE CHAIRPERSON: One minute.

15 Okay. Mr. Afran, we're going to ask Mr.
16 DeFeo to come back to the next meeting so you can
17 question on that specific document only. You can
18 continue questioning now --

19 MR. AFRAN: Well, the documents that he
20 posted yesterday we need to question on plus the
21 missing document.

22 THE CHAIRPERSON: Yes.

23 MR. AFRAN: Thank you.

24 THE CHAIRPERSON: You got it.

25 MR. AFRAN: Thank you very much.

1 THE CHAIRPERSON: And we're going to focus on
2 that next time.

3 MR. AFRAN: That's fine. Absolutely.

4 THE CHAIRPERSON: Thank you.

5 Now, one moment -- Mr. DeFeo?

6 THE WITNESS: Just to be clear, the work that
7 was done by Duke Farms is a video conference. That's
8 the study that was recorded. So, I don't know what to
9 do other than to give you the link to the video
10 conference.

11 And as I stated in my secondary letter dated
12 December 6th -- I'm sorry, November 6th which,
13 unfortunately, we had trouble posting, I had stated
14 that I had interviewed the people at Duke Farms to draw
15 some of my conclusions, discussing the study with them.
16 I was inaccurate in my last testimony and I created --
17 corrected that -- inaccurate in saying I had put the
18 two together.

19 I have seen the video. I talked to the
20 people at Duke Farms. I read the article and read
21 other deer studies. I don't have a specific written
22 Duke Farms study to give you. It's a video. I can't -
23 - that's posted.

24 MR. AFRAN: Well, that does clarify, Mr.
25 Chairman, but last week the representation was a study,

1 that's why I asked. If you can just post the link, at
2 least that will be helpful.

3 THE WITNESS: It is posted.

4 MR. AFRAN: Great. Thank you.

5 Q Now, in Section 2.5.4 of the settlement
6 agreement, it references the following. The Township
7 and (indiscernible) recognize the importance of
8 preserving and/or optimizing the regeneration of the
9 forest in connection with the development of the
10 subject property.

11 But also recognize that the Township's tree
12 protection and removal ordinance (Ordinance Section
13 25-7), (the tree ordinance), if applied to the proposed
14 development would constitute a cost generative
15 requirement contrary to Section 2.5.3 of this
16 agreement.

17 Now, is it fair to say that this is referring
18 to the cost of replacing those 6,000 plus trees under
19 the ordinary tree ordinance?

20 MR. PLOCKER: I'm going to object. The
21 settlement agreement speaks for itself. It was a
22 negotiated term and it was made part of the zoning
23 ordinance, that particular provision.

24 THE CHAIRPERSON: I'm going to say we're
25 going to stay out of anything negotiated and stick with

1 the ordinance. Whatever is in the ordinance, that's
2 what we're going to follow.

3 MR. AFRAN: Well, I'm asking if, in fact, the
4 language I just quoted is referring to what would be
5 the cost of replacing the trees under the ordinance.
6 Mr. DeFeo was a consultant to the committee. He's
7 obviously familiar with this and it's a proper
8 question.

9 THE CHAIRPERSON: Ms. McGovern?

10 MS. MCGOVERN: I think you're getting past
11 his expertise. He's not here to interpret the
12 settlement agreement.

13 MR. AFRAN: To the contrary. He spoke very
14 clearly about the cost of deer fencing versus other
15 measures and --

16 MS. MCGOVERN: He is not here to interpret
17 this document.

18 MR. AFRAN: Well --

19 MS. MCGOVERN: The document is a negotiated
20 document prepared by attorneys and reviewed by the
21 parties as agreed to by the parties.

22 MR. AFRAN: Well, let me ask a question.

23 Q What role, Mr. DeFeo, did you play in
24 preparing the settlement agreement?

25 MR. PLOCKER: I'm going to object and just

1 say for the record, Mr. DeFeo did not prepare the
2 settlement agreement.

3 MR. AFRAN: I don't know what Mr. DeFeo did
4 or did not and I don't know how Mr. Plocker knows that.

5 MS. MCGOVERN: Mr. DeFeo, did you prepare the
6 settlement agreement?

7 THE WITNESS: I did not.

8 Q Did you contribute to any of the items in the
9 settlement agreement?

10 MS. MCGOVERN: Again, I think his testimony
11 is clear and I'm not going to answer for him but we're
12 not going to go into the negotiation that took place
13 that resulted in this document.

14 Q Mr. DeFeo, who came up with the idea of deer
15 fencing in this agreement?

16 A I did.

17 Q And is it fair to say that you came up with
18 that as a replacement for the cost of placing trees
19 that the developer would otherwise have to bear?

20 A Not exactly as you stated. It came in as an
21 alternative because, if it's allowable --

22 MR. PLOCKER: Well, I think, Mr. DeFeo, with
23 all due respect, I'm just going to stop you there.
24 Object.

25 MR. AFRAN: He can talk -- well, he can

1 object, you can't stop him.

2 MR. PLOCKER: I can continue talking without
3 interruption, too, so I'd like to do that. I think Mr.
4 DeFeo was going to go and start to refer to possible
5 discussions that may have been had during the
6 negotiations, so I would just ask him to tread
7 carefully in that area.

8 MR. AFRAN: I don't know why we're treading
9 so carefully. What's in here is a public document. It
10 was released to the public. It forms the substantive
11 basis of why Mr. DeFeo is here.

12 MS. MCGOVERN: That's right. However, what
13 is on the table, what got taken off the table, what got
14 changed, that part is not in this document.

15 MR. AFRAN: It says specifically that --

16 MS. MCGOVERN: And that part is not going to
17 be discussed here because those settlement discussions
18 that are privileged communication.

19 MR. AFRAN: You don't know that, Ms.
20 McGovern, with due respect.

21 MS. MCGOVERN: I do know that. I know that
22 all settlement discussions on any cases in litigation,
23 they're not evidentiary.

24 MR. AFRAN: I, number one, didn't ask about
25 settlement discussions, per se. Number two, I reject

1 the premise you've raised that a settlement discussion,
2 a settlement document released to the public is so
3 subject to privilege, the questions about it can't even
4 be asked in public. There's no basis for it. There's
5 no basis for blocking me.

6 THE CHAIRPERSON: Obviously, the basis is the
7 Planning Board was not part of -- it says it clearly in
8 the documents. The Planning Board was not a part of
9 the settlement agreement. We have nothing to do with
10 the settlement agreement. He --

11 MR. AFRAN: You do have something to do with
12 (indiscernible).

13 THE CHAIRPERSON: The zone was adopted into
14 the Master Plan and the Board's responsibility is the
15 zone in the Master Plan. So, anything that travels
16 from the settlement agreement into the master plan, we
17 can refer -- into the O-IH-1 zone, we can talk about.
18 As long as it belongs in the IH-1 zone, we can talk
19 about it.

20 MR. AFRAN: This witness retained by the
21 Board to be here repeatedly referred to the virtues of
22 this settlement proposal because the developer agreed
23 to pay for deer fencing which he says is such a
24 miraculous occurrence, he's never even heard of it
25 before happening. So, the question of the --

1 THE CHAIRPERSON: Okay. Let's not -- he
2 didn't say miraculous.

3 MR. AFRAN: I'm being an advocate.

4 THE CHAIRPERSON: Okay. And this is
5 wonderful but let's focus on the IH-1 zone. Those
6 things traveled into the IH-1 zone --

7 MR. AFRAN: And they're there anyway.

8 THE CHAIRPERSON: Excuse me?

9 MR. AFRAN: They're there already. If it
10 traveled into it, it's relevant.

11 THE CHAIRPERSON: As long as it's in the
12 zone, that's what we're going to discuss.

13 MR. AFRAN: Mr. Bagoff, I must point out, the
14 witness repeatedly said how favorable this is because
15 the developer is willing to pay the high cost of this
16 deer fencing. It's entirely proper for me to ask is
17 this proposal in place of the otherwise very high cost
18 the developer would have to pay to plant and replace
19 the trees.

20 THE CHAIRPERSON: And he did testify to that.
21 I'll let him answer that because he did.

22 MR. AFRAN: Well, that's what I asked.

23 THE CHAIRPERSON: Then he can testify to it.

24 MR. AFRAN: That's all I asked.

25 THE CHAIRPERSON: And that's what we're going

1 to do.

2 MR. AFRAN: Good.

3 THE CHAIRPERSON: Thank you.

4 MR. AFRAN: We've reached consensus.

5 Q Do you remember the question?

6 A I think I have it. The simple fact is that the
7 deer fence -- if the applicant simply did a tree
8 replacement plan, the odds are better than even that
9 those trees would simply have been destroyed by the
10 deer. The idea of the deer fencing was in lieu of
11 simply planting lots and lots of trees which would
12 probably not survive and in my experience don't
13 survive.

14 The fact is, the deer fencing would help to
15 regenerate the forest at a better rate and make for a
16 healthier forest. So it was a discussion of how much
17 deer fencing could we get the developer and could we
18 get regenerated forest. Deer fencing will leave to a
19 healthier forest with greater undergrowth than planting
20 trees.

21 Q Wasn't it a fact that the deer fencing was
22 raised in substantial part because of the extremely
23 high cost of replacing the trees under the ordinance?

24 MR. PLOCKER: I'm going to object. The
25 settlement agreement references that. It speaks for

1 itself. It references another provision. My client is
2 providing a substantial set aside before
3 (indiscernible). Under the Mount Laurel doctrine and
4 its progeny as an inclusionary developer represents a
5 protected class of individuals in need of the housing.

6 The regulation is applicable to an
7 inclusionary developer, to the court settlement and
8 even to this Board talk about the reduction of cost
9 generative items. And it also talks about other
10 things. And Mr. Afran likes to say oh, well, the Board
11 is not bound by the settlement agreement. But the
12 settlement agreement does reference certain regulations
13 in that an inclusionary developer, applications are
14 looked on more favorably -- inferences are made.
15 The applicable regulations encourage the free granting
16 of variances, waivers, relief to make inclusionary
17 developments happen.

18 So, to the extent things like that are in the
19 settlement agreement, yes, and I believe Mr. Afran read
20 the provision. It does reference. I think it can be
21 easily inferred from this agreement that there was a
22 cost generative item with compliance, strict
23 compliance, with the tree ordinance. So, a combination
24 of that combined with what Mr. DeFeo testified to, is
25 reflected in the settlement agreement.

1 MR. AFRAN: Well then if it's reflected in
2 the settlement agreement, then my question is perfectly
3 relevant.

4 THE CHAIRPERSON: What was the question?

5 MS. McGOVERN: I think the question is --

6 THE CHAIRPERSON: Mr. Afran, is the question
7 which I believe was testified to, let's just be clear
8 here, is with the deer fencing, you bring a longevity
9 to the forest at whatever cost as opposed to just
10 replanting trees. In your professional opinion, would
11 replanting trees get the same result as the deer
12 fencing would. Is that the question that you're
13 asking?

14 MR. AFRAN: It's a lovely question but it's
15 not what I asked.

16 THE CHAIRPERSON: Ask the question again. I
17 want to understand.

18 MR. AFRAN: I asked, isn't it a fact that the
19 deer fencing proposal was raised in order to free the
20 developer of the extremely high cost of replacing trees
21 under the ordinance.

22 MS. McGOVERN: I think he's given several
23 reasons why he suggested deer fencing --

24 MR. AFRAN: I don't understand, Ms. McGovern,
25 why -- I don't mean to be rude or anything -- why are

1 you interjecting? It's a straightforward question.

2 MS. McGOVERN: I don't know that he has the
3 expertise to answer that specific about cost.

4 MR. AFRAN: He has the expertise to answer
5 what he heard and what was traded back and forth.

6 That's the point of the question.

7 MS. McGOVERN: And that's exactly what you're
8 asking for, is what went on in the back room trading
9 back and forth.

10 MR. AFRAN: No, I'm not asking for what went
11 on in the back room.

12 MS. McGOVERN: Yes --

13 MR. AFRAN: Mr. Plocker already helped us out
14 greatly by admitting that the alternative of replacing
15 the trees by cost was referenced in the settlement
16 agreement. Therefore, it's a relevant question to ask
17 him isn't it a fact that the deer fence proposal was
18 raised to free the developer of the very high cost of
19 replacing trees under the ordinance.

20 MR. PLOCKER: I object to the form of that
21 question. I know this is not a deposition but that is
22 a very loaded question with a lot of characterization.

23 MR. AFRAN: It's cross examination. We're
24 not here to serve tea.

25 THE CHAIRPERSON: We're not going to raise

1 our voices, you guys.

2 MS. McGOVERN: And we're also not in trial.

3 Mr. -- Mr. DeFeo --

4 THE CHAIRPERSON: Yeah, if you have the
5 information that is not privileged.

6 MR. AFRAN: Wait a second. It's a
7 straightforward question. It relates directly to the
8 relevant statements made in the settlement. All of
9 these directions -- if you have the information, if
10 it's not privileged -- are really carving out answers
11 from the witness. He should answer naturally on his
12 own.

13 THE CHAIRPERSON: Can you answer, Mr. DeFeo?

14 THE WITNESS: I'm not certain I can answer
15 the question exactly as asked. I can say, however,
16 since it's been asked several different ways, what I
17 can say is deer fencing is an alternative to the
18 replacement of trees, both of which have a cost.

19 In my opinion, the deer fencing is a more
20 effective use of money from the developer. I did not -
21 - I can't answer whether it's a dollar for dollar
22 savings. I think that answers the question, but I
23 don't know.

24 Q My question as asked stands. Is that the
25 answer you're giving, Mr. DeFeo?

1 A That's the answer I can give you.

2 Q You mentioned that if trees were replaced,
3 they'd be eaten by the deer and we wouldn't get
4 anything out of it anyway. That's the summary of what
5 you said, right?

6 A Not exactly. But I said if trees were simply
7 replaced with trees which, of course, would be small
8 trees, relatively speaking, that there's a good chance
9 that those trees might not survive. With deer fencing,
10 a natural receding of the forest and the natural growth
11 of seedlings have a much higher probability of
12 survival.

13 Q You said that in the area of disturbance
14 there are going to be native plants planted by the
15 developer, correct?

16 A The developer is limited to using native plants in
17 the area of disturbance -- in their landscaping plan,
18 let me be more specific.

19 Q And you said well that will help,
20 potentially, re-seed areas with native plants?

21 A Correct.

22 Q Now, deer eat native plants, right?

23 A Yes.

24 Q So, the developer is going to put these
25 native plants in the landscaping plan in the unfenced

1 area where the deer will congregate, won't the deer eat
2 those native plants?

3 A Well, first you're making several presumptions.
4 One, that the deer are immediately going to congregate
5 just in the paved areas of the property, which is
6 unlikely. They will certainly come there --

7 Q Don't deer walk down sidewalks, streets, all
8 over town?

9 A They do. They walk up my driveway. They will
10 walk around --

11 Q Okay. So why do you think they won't go to
12 plants in the paved areas?

13 A You did not listen to my answer, but I'll try
14 again. What I am saying is, the deer can, in fact, go
15 to the landscaped area. There are precautions that the
16 developer can take with the trees that they plant in
17 that area because they are limited in number. There
18 are a number of protective measures they could take for
19 those young trees.

20 For the other plantings -- shrubs, et cetera,
21 and flowering plants, as I testified to on several
22 occasions, they can use a deer repellent system and
23 that repellent system can be applied on a regular
24 schedule if they so choose. It really is their call.

25 I can't say what they would do, but if I was

1 investing that kind of money in plantings, I might
2 consider investing in a monthly repellent system which
3 will significantly reduce deer browse. It does not
4 eliminate it, but it can significantly reduce it.
5 They could also use small and limited fencing
6 criteria around areas. If they have congregated
7 shrubs, they could put a mild -- I call it deer fencing
8 light -- but basically small fencing which you've
9 probably all seen around plants in certain areas. Any
10 combination of their actions would help to reduce the
11 damage to their horticultural plantings.

12 Q Is there presently a landscape plan that
13 you've seen that contains the repellent measures?

14 A The landscape plan would not include something
15 like that.

16 Q Are you aware of any deer repellent measures
17 the developers yet committed to?

18 A Again, nothing in the plan would reference that,
19 that I am simply answering your question is can
20 plantings be protected and the answer is yes, they can
21 be, but it is not part of the application.

22 Q Thank you. That answers my question
23 actually. Thank you. Now, it's fair to say that you
24 proposed the deer fencing plan, correct?

25 A No.

1 Q Who proposed the deer fencing plan?

2 A I proposed the concept of deer fencing. The plan
3 was ultimately developed by the planner.

4 Q But the idea of the deer fence as a measure,
5 a remedial measure for lack of a better word, came from
6 you, initially, is that right?

7 A I think the concept -- yes, I can safely say the
8 concept was mine, yes.

9 Q Okay. Now, let me ask you a question.
10 Looking at the site as it is today, not the developed
11 site that appears in SP-11 on the screen, what
12 proportion of this 120 acre forest is core for interior
13 forest versus edge?

14 A I've not done that calculation. I can't answer
15 that.

16 Q Thank you. What is the effect of creating an
17 edge in the interior of a forest on the health of the
18 forest?

19 A I'm not quite sure what you're asking. Could you
20 clarify? If you're asking what is an edge zone -- is
21 that what you're asking me?

22 Q Well, why don't you start off by saying what
23 you understand in the question, what is an edge zone?

24 A If you're asking me what an edge zone is, an edge
25 zone is the border between a forested area and an un-

1 forested area, typically developed by grasslands or
2 non-trees. The best way would be to show you a
3 picture, I presume. Let me go forward here. Sorry, I
4 don't remember where all the pictures are.

5 All right. So, if you look in this image,
6 for example, now this is showing you what a protected
7 area and unprotected area would look like and by the
8 way, it goes to an earlier question, there is a growth
9 and forest after nine years, this area right here would
10 effectively be what you would call an edge zone. It's
11 an edge between a forest and an unforested area.

12 Q Now, you can also create edge zones
13 artificially by clear cutting 27 acres in the interior
14 of a forest, isn't that correct?

15 A You create an edge zone by creating anywhere where
16 there's a forested area meeting an unforested area.
17 West Essex, sorry, the development below is an edge
18 zone all along this developed area, where all these
19 homes are is an edge zone. All these homes preexist as
20 an edge zone. This is an edge zone.

21 Q Now, when you create the area of disturbance
22 in the center of SP-11 along with the roads that
23 connect, have you calculated how many feet or miles of
24 edge zone are being created in the interior of this
25 forest?

1 A No.

2 Q Why not?

3 A Unnecessary for the purposes that I was retained.

4 Q Well, what were those purposes in your
5 understanding?

6 A To develop this site in the best way possible for
7 the environment.

8 Q And don't you think that examining how much
9 new edge zone is being created in the interior of this
10 forest would be relevant to the health of this
11 environment?

12 A Based on this plan, no.

13 Q Would you agree that edge zones create areas
14 of forest degradation beginning at the point of the
15 edge and going into the interior?

16 A Edge zones inherently are not damaging to the
17 interior of the forest, edge zones are created
18 naturally every time a tree falls or a forested area is
19 damaged, so I wouldn't necessarily agree with that. I
20 would agree, of course, where there's disturbance the
21 area of disturbance, the area outside, to give you this
22 context here. You see, you have a road here and as I
23 testified already, certainly when I cut this road I've
24 already testified that any trees along the very outside
25 edge here may, in fact, be impacted negatively by that

1 because of their roots being cut. And how far in that
2 would go, it depends on the depth but, most likely, no
3 more than one or two trees in. It's not going to go
4 very far into the forest.

5 Q Isn't it a fact that most foresters and
6 people who work in this field believe that an edge zone
7 generally incorporates 300 feet from the edge to the
8 interior?

9 A I couldn't answer for most foresters.

10 Q Are you familiar with this concept?

11 A I'm familiar with foresters having a concept of
12 buffers and impacts that go beyond the roads that they
13 cut to forest and lodge, sure. But, I have not
14 specifically analyzed it to this particular project.

15 Q Well, wouldn't it be relevant if edge zones
16 can damage the interior of a forest, to determine how
17 deep the edge will be from the area of disturbance in
18 order to figure out how much forest is going to be
19 left?

20 A No, you're over simplifying this pretty badly.
21 What this would do, the indication or the implication
22 you're making is that the developed area is going to
23 somehow have an impact that -- and this is not to
24 scale, I can't give you the scale, but, is going to
25 negatively kill an entire area out here. There's no

1 presumption for that. The fact is that the developer
2 will have someone on site, retained by the township, to
3 ensure that minimum damage is done to this area, in
4 terms of it expanding out. The area will be gated,
5 fenced -- not gated, I'm sorry, will be fenced off or
6 marked off so that equipment is limited in its impact.

7 Absolutely, there will be an impact. Any
8 time you disturb land you have an impact. There's no
9 argument about that.

10 Q Are you in a position as a professional or
11 expert to discuss the depth of impact on the
12 surrounding woods as caused by the creation of new
13 edge?

14 A I would not make a comment to that in this, I have
15 not analyzed it.

16 Q And do you have the expertise to provide a
17 professional answer to my question if you had analyzed
18 it?

19 A I would have consulted with my foresters and I
20 would have come up with an answer if I was asked to,
21 but, I don't need to see this impact.

22 Q Is it fair to say that it's the foresters who
23 would have the expertise to answer this question?

24 A Foresters would have expertise in general impact,
25 they don't necessarily know the specific site, but they

1 could use general knowledge.

2 Q Is it fair to say that as compared to you,
3 it's the forester who would have the expertise to
4 address the issue of damage caused by creating new edge
5 in the interior of the forest?

6 A I don't know that a forester would have any more
7 knowledge of that compared to an environmental
8 scientist, but, they would have look at it more often,
9 certainly.

10 Q But, you agree you don't have that expertise
11 yourself.

12 A I haven't looked at it, so I can't answer the
13 question because I haven't looked specifically to give
14 you that answer. I would understand the studies, I
15 would be able to read the analysis and certainly report
16 on it, but I didn't in this case.

17 Q All right. So, in any event, you're not able
18 to answer the question because you didn't do that
19 analysis.

20 A Correct.

21 Q Okay, thank you. Now, I just want to go back
22 for one moment. You referred to your academic work
23 taking some courses in forestry or teaching some
24 students and you did report. I forgot what year you
25 graduated in your masters program, I'm sorry.

1 A My undergraduate was 1980, my graduate was '82.

2 Q Okay, thank you. Now, in your report, you
3 make a statement -- well, let's go back. It was mostly
4 in answer to questions from the public that you made
5 the following statement, as I recall. You compared the
6 photographs for this forest going back a certain number
7 of years and you indicated there's been no change in
8 the tree canopy in that span of time. Do you recall
9 those general answers?

10 A Generally, yes. They go to the slides that were
11 up here.

12 Q And then went back I think about 30 years
13 those slides, right?

14 A I don't believe that far. Twenty-two years.

15 Q Now, in this 22 year period you testified
16 that you did not observe any death of -- death,
17 d-e-a-t-h, death of tree canopies of any substance in
18 the different photographs that we saw, is that correct?

19 A What I testified to is based on my general
20 observations, I don't see any major impact. But,
21 that's what I testified to not specifically. And as I
22 pointed out in this testimony of these three particular
23 images, this is just meant to show an overview of the
24 site. Had I gone back further and I do have -- there
25 is an old photograph, it's really not very good, very

1 hard to see, from 1985 when the entire area here was
2 wooded.

3 It would have been continuous woodlands.

4 Q No, we understand --

5 A But, so the point is the forest has changed but
6 the change here is you can see, well, not well, I'm
7 afraid, is limited and that's all I was trying to use
8 these images to show.

9 Q So, there's been, essentially in this 22 year
10 period and, perhaps, even going back further, this
11 stretch of forest is essentially stable, is that fair
12 to say?

13 A Stagnant would be a better word.

14 Q Stagnant. In other words, this level of tree
15 density, the tree canopy, all of that is essentially
16 the same over this period of time, is that right?

17 A It is a stagnant forest, yes. That's a good way
18 to put it.

19 Q My question is a little bit different.
20 Essentially, you mean that the tree canopy, the extent
21 of woodlands, the density of tree, et cetera, is all
22 essentially the same throughout this 22-year period.

23 A Correct, it's stagnant.

24 Q Thank you.

25 A It's not evolving as it should.

1 Q Well that's, perhaps, another issue, I simply
2 wanted to ask that limited question right now. Now, in
3 your report you make a statement at Page 2, the forest
4 consists primarily of large trees. The initial study
5 showed no trees under four inches in diameter within
6 the study plot. Would you just take us to the slide
7 that shows the study plot, I want to just identify
8 that.

9 A There you go.

10 Q It's not easy to see, but there are --

11 A I know, I -- oh, there you go.

12 Q That's better, thank you, perfect. Thank
13 you. In that slide, roughly in the center and a little
14 bit, well, it looks like there's a kind of fold down
15 the center of the picture and on both sides of the fold
16 there are some circles, you see that?

17 A Are you talking about this line here?

18 Q Yeah. It looks like a fold line, from an old
19 document.

20 A Okay.

21 Q And there are circle lines on both sides of
22 it.

23 A Correct.

24 Q Are those the study sites?

25 A Those are study plots, yes.

1 Q And those are the study plots that you
2 referred to on Page 2 of your report.

3 A Yes. Assigning in those particular study plots we
4 did not find any trees below four inches in diameter in
5 the initial study in 2019.

6 Q Now, just for reference I'm referring when I
7 say report to the October 16th, 2024 report that Mr.
8 Defer submitted. Well, you say, though, that --

9 A I have mine.

10 Q -- in August of 2024, you did find small
11 stands of trees ranging from one to two inches.

12 A Correct. That was a non-statistical walk through
13 study.

14 Q Now, so, in fact, you do show trees under
15 four inches.

16 A No. The study that was done in -- this study does
17 not find any trees under four inches. Can you reduce
18 that for me, Joe. Yes. This is from the original tree
19 study. This is a statistical analysis.

20 Q Hang on, before you go further. That's
21 referring to the blue bar graph which also has the word
22 histogram, is that correct?

23 A Yeah, that's correct. A histogram --

24 Q Hang on one second, please. Mr. Chairman,
25 for reference, there are no page numbers, so I'm going

1 at this point describe the slide so we have a
2 reference. Now, when I say histogram page that would
3 -- you would understand I'm referring to the blue bar
4 graph page, correct?

5 A Correct.

6 Q Okay. Now, in that page it begins, the blue
7 bar graph, at four inches in diameter, is that correct?

8 A Correct.

9 Q Now, you said at the last meeting that there was
10 no study made of trees below four inches because
11 they're not counted. Is that what you said?

12 A They were not counted in this study, nor were they
13 found.

14 Q Well --

15 A There were observational, there's observational
16 work within the tree report and there's statistical
17 work.

18 Q Now, what do you --

19 A The observation -- this is the 2019 study, this is
20 the original study, this is the only statistical
21 analysis because everything, obviously, if you think of
22 the year, this was relevant in 2019. Statistically, we
23 did not find any. In observational walkthroughs we did
24 find some saplings and seedlings growing. Not many,
25 but, we found some, and I was very pleased to see them.

1 Q Where did you document these saplings
2 growing?

3 A You read it.

4 Q No, do you have a map showing where they were
5 growing?

6 A No. As I said, the 2024 walkthrough was not a
7 statistical analysis because the statistical analysis
8 was designed to look at the area of disturbance
9 fundamentally. I can't tell you that when we saw the
10 seedlings in our secondary walkthrough that they were
11 absolutely in the area of disturbance.

12 Q Well, do you have any ability to tell us
13 where these stands of trees that shows trees one to two
14 inches were found?

15 A No, they were -- as I stated, we did an
16 observational, non-statistical analysis, we walked
17 through. If I walk through today I could find them
18 again, probably because I would stumble on them as we
19 did the first time, second time, sorry.

20 Q Do you have any notes showing where you found
21 this?

22 A No. It was an observational walkthrough which is
23 a simple, non-statistical subjective observational note
24 saying we saw them.

25 Q And we have no ability to know where they are

1 on the site.

2 A Specifically, not from what I did, no.

3 Q And, we have no ability to know how widely
4 distributed these stands of trees were, based on what
5 you presented.

6 A Based on our observational walkthrough we saw very
7 few stands of young trees, which is why in the 2019
8 study, we found none.

9 Q Well, actually, that's not what you say in
10 your report. You say you found small stands of trees
11 ranging from one to two inches.

12 A That's in the 2024 non-statistical, non-analytical
13 walkthrough. It was a subjective walkthrough.

14 Q You don't say there was very few, you just
15 say you found small stands of trees ranging from one to
16 two inches, isn't that correct?

17 A Well, I will clarify to you that what I mean by
18 that is there were very few.

19 Q So, in other words, as an environmental
20 scientist you clarify orally after you cross examine
21 but you don't put your specific findings in the report,
22 is that what you're saying?

23 A I'll try to answer this again, The 2019 study is
24 the statistical analysis and what I stand by. The 2024
25 walkthrough was people asking has the forest changed.

1 In my opinion it has not changed. In the forester's
2 opinion that I took with me, it has not changed. The
3 forest is not regenerating. Might there be the odd
4 small three growing, might there even be a hundred odd
5 small trees growing, the answer is yes, there could be.
6 And, in fact, there might be 150. That does not make a
7 healthy forest. That's the point of my conclusion not
8 the specifics of the number of trees and where they
9 are, the specific finding is, is this a healthy forest.
10 The answer is no. On a long-term basis, this is a
11 stagnant forest, as you pointed out, and it is a forest
12 that is not evolving properly as it should because of
13 excessive deer browse.

14 Q And, we only have your words to say because
15 you didn't provide any notes of these observations of
16 the smaller trees, isn't that correct?

17 A You have my word, I'm under oath and I'm telling
18 you the truth.

19 Q How come you have a documentation, a very
20 specific number on the histogram beginning at four
21 inches but, you don't have any documentation of the
22 smaller trees that you observed?

23 A As I've testified to, this histogram is from the
24 2019 statistical analysis performed on the property.

25 The note referencing the small saplings and seedlings

1 is from a 2024 walkthrough of the property which was
2 requested by this board, that I go back and see that
3 property where it is a subjective, non-statistical
4 analysis.

5 Q You've answered my question as best you can,
6 I suppose, is that fair to say?

7 A I've answered your question accurately.

8 Q Now, you say also on Page 2, with limited
9 exception the trees observed were as large as 24 to 36
10 inch diameter at breast height. That's on Page 2 of
11 the study. Do you recall that line?

12 A Which are we talking -- give me the date of the
13 report, please.

14 Q Your Page 2 of the October 16th report.

15 A Okay.

16 Q Item 3Ai.

17 A Yes, I see that.

18 Q Right. It says with limited exception the
19 trees observed were as large as 24 to 36 diameter at
20 breast height. Now, when were those trees observed in
21 that way in the 2019 study for the histogram?

22 A No, that particular area -- well, that's from
23 both. That's from the 2019 study where we looked and
24 measured trees and to the 2024 where I just did general
25 observations.

1 Q So, what you're saying in Roman Numeral I
2 there, is that with very limited exception the trees
3 were large in the 24 to 36 inch range, is that correct?

4 A In what we observed on 2024, correct.

5 Q Well, let's go to the histogram that's on the
6 screen. If we could zoom in on little bit without
7 moving too much of the text.

8 A I'm not sure if we can -- I don't know how to do
9 that.

10 Q Well, just a little bit. I have trouble
11 seeing that's all. Good, perfect, thank you. Well,
12 what we actually see on this histogram is the exact
13 opposite of what you just read from your report because
14 the histogram shows virtually no trees from 24 inches
15 and higher and a heck of a lot of trees in the smaller
16 ranges, four inches, eight inches, 12 inches, et
17 cetera. Now, how do you explain this discrepancy
18 between the statistical analysis in the histogram and
19 your report where you said virtually all the trees were
20 in this high range when there are none shown virtually
21 in the histogram?

22 A Because we were looking for large trees when we
23 did our non-statistical analysis, so we were looking at
24 the biggest trees in the area. The four to eight to 12
25 inch, I would point out to you, four -- eight, 12 and

1 16 inch diameter trees are not small trees. What we
2 were noting is there are a number of larger trees and
3 we were walking through and saying, hey, there are a
4 number of larger trees here that we can observe, we did
5 not count them which is why in the October '16 report
6 one of the areas that, one of the recommendations, I
7 should say, I'm sorry, that we made was that we do an
8 additional study to try to identify some of the larger
9 trees in the area of disturbance to see if they could
10 be preserved. Now, we don't know that we can because
11 we haven't plotted them with a GPS system. Until we
12 plot them within a meter or so, we won't know, for
13 example, the 36 inch tree that we saw that we say, hey,
14 we'd love to save this large oak for example, is it in
15 the middle of where the building is? I can't say with
16 any certainty.

17 So, the reason that is in there is to support
18 the recommendation, which I made to the Board, that we
19 ask the applicant to allow us to go forth with that GPS
20 study which would then identify trees of note that we
21 think we might be able to save if at all.

22 Q Can we go back to my question please?

23 A I think I just --

24 Q No, you're talking about large trees in the
25 area of disturbance that could be identified as

1 specimens. I didn't get to that yet. I'm asking you
2 very simply, why is it that your report says that with
3 limited exception the trees observed were in the 24 to
4 36 inch category and your histogram shows the exact
5 opposite.

6 A Well, let me try to clarify again. That statement
7 is based on a walkthrough of the area looking for, we
8 were looking for large trees. It was inarticulate in
9 the way I've worded that paragraph. I should probably
10 have done it better, but, it is to state that when we
11 walked through it we were looking for bigger trees and
12 we found bigger trees because we looked for them. It
13 is not a statistical analysis, it is not meant to
14 compare to something that was done in a very rigid
15 statistically valid method. That statement is
16 subjective and they would not necessarily match.

17 Q But what seems to be then -- what seems to me
18 that a rigid statistical scientific method would be
19 more reliable than a visual that you do when you
20 casually walk through, isn't that fair to say?

21 A That's fair to say which also supports the
22 conclusion that the forest is stagnant and, therefore,
23 needs to be protected.

24 Q Well, it seems to me that if your histogram,
25 which is the scientifically rigid study shows mostly

1 smaller trees, four, eight, 12 inches and almost no
2 larger trees, that would be more reliable than what
3 you say at Page 2, 3Ai of your report.

4 A You're conflating information. I can't answer a
5 question that's got conflated data. I've tried to
6 explain that but I apparently have been unsuccessful.

7 Q Well, with respect it's your data. I'm not
8 conflating data, I'm not making it up, it's yours.

9 A You're interpreting differently than what I wrote.
10 I have stated what I wrote and what it means. I'll do
11 it again if you'd like, but, what it says is --

12 Q No, we can move on. You said what you had to
13 say, we can move on in the point unless you have
14 something new on that point to offer.

15 A I do not.

16 Q Okay. Now, you say your were looking for
17 large trees when you did that walkthrough but, when you
18 did the histogram you weren't looking for large trees?
19 I'm trying to understand that.

20 A I did not say that.

21 Q Well, it sounds like that and I'm trying to
22 understand what you mean.

23 A What I said was, in the scientific survey when
24 you're doing a tree survey, you're looking for what's
25 there and you do so in a statistically valid method

1 using a statistically valid pre-survey methodology.
2 For example, it states that you will use a GPS locator,
3 you will use GIS, you will locate your study plots
4 within a specific area if that is what you were
5 assigned to do. It says further that your study plots
6 must be of a specific size. They're 100 square feet,
7 actually statistically 10 by 10. You also look at --
8 and you do counts. You do counts, you do
9 identifications, you then subject all of that to a
10 statistical analysis.

11 What I stated about the trees when we walked
12 through in 2024, which, again, was at the request and I
13 don't know which meeting, forgive me for not
14 remembering that, it was, can you please walk through
15 and see if the forest has changed. In that discussion,
16 in that walkthrough, we decided to look, again,
17 subjectively, hey, are there any large trees here that
18 are worth saving, let's start looking at the larger
19 trees and see if there are some things here, we might
20 have some nice specimen trees, let's see if we can work
21 with the developer later and save some of these
22 specimen trees, which would be to everybody's benefit,
23 if they can be saved.

24 So, the secondary component is subjective and
25 not a statistically meritorious analysis. It is my

1 professional opinion based on observations in the field
2 which, scientifically, observations in the field have
3 value. Can I support those observations with
4 statistical analysis, I cannot.

5 Q Would you agree that the state of deer browse
6 on our forests has been essentially the same since the
7 early 1990's?

8 A I couldn't answer that.

9 Q Why can't you answer, you're a biological,
10 environmental scientist? I thought you had knowledge -
11 -

12 A Are you talking about this forest? I wasn't here
13 looking at it in 1990.

14 Q No, I'm asking you in general, is the
15 subject, is deer browse in our forest essentially the
16 same over this period of time?

17 A Deer browse has gotten worse since 1990.

18 Q Well, has it -- are you in a position to
19 state the extent of change in deer browse in our New
20 Jersey forests, northern, New Jersey, not the pine
21 barrens, over this time period?

22 A No. You would have to study a specific forest to
23 do that. You'd have to actually have a forest analysis
24 which I did, I add to my report in there for Essex
25 County, where they very specifically hire someone to go

1 out and do a survey of deer population with various
 2 recommendations on what to do with that population.
 3 Unless you do that, you can't determine specific
 4 numbers, no.
 5 Q Have you done that with this forest?
 6 A No.
 7 Q Now, let's go back to the study map, if you
 8 can. I don't know which frame it is.
 9 A Bear with me. All right. When you say the study
 10 map --
 11 Q The one with the circles.
 12 A Okay, thank you. Go ahead.
 13 Q If we can enlarge a little bit. Okay. Now,
 14 who chose these study plot locations?
 15 A Amy Greene Environmental who did the work for me.
 16 Q All right. Well, you don't --
 17 A It's done --
 18 Q -- you don't mean Amy Greene, but you mean
 19 her company? She's --
 20 A That's what I said, Amy Greene Environmental,
 21 yeah. Not her -- I don't know that personally she was
 22 there.
 23 Q Right, no, no. I think she sold the company.
 24 A I was, but she wasn't there.
 25 Q I'm just clarifying it, the company --

1 of the forest besides from the area of disturbance?
 2 A The primary concern was to determine the area of
 3 disturbance and the impact that development would have
 4 on that area because the rest of the forest was not
 5 being disturbed.
 6 Q But, you're using the results from these
 7 circled areas to discuss the health of the entire
 8 forest, aren't you?
 9 A No, I'm using the results of these circled areas
 10 to discuss the statistical number of trees in the
 11 forest.
 12 Q Well, didn't you tell us that -- well, let me
 13 ask you another question. How much of this forest did
 14 you actually look at yourself?
 15 A Myself? I've walked every inch of that forest.
 16 Q Every inch of the forest.
 17 A Well, let me be specific. I haven't crawled
 18 across it, but I've walked the perimeter of the forest,
 19 edge to edge, top to bottom.
 20 Q You've walked the perimeter around the
 21 forest.
 22 A Perimeter, I've walked through it, I've crossed
 23 it. I've walked in different areas. I've walked up
 24 and down in the areas, except for the wetlands.
 25 Q Do you have notes of where you walked, what

1 A She was still owning the company at that time.
 2 Q Now, the foresters or arborists you work with
 3 chose those sites, is that correct?
 4 A It's selected through using a statistical analysis
 5 methodology using GIS and plotting surveys. It's a
 6 randomized study. No one went out and said give me a
 7 circle right here because I want to see that circle.
 8 As I've testified before, this is a randomized study,
 9 that's what you do to make it statistically valid.
 10
 11 Q Well, wait a minute, wait a minute. It's not
 12 randomized you only focused on the area of disturbance,
 13 isn't that correct?
 14 A Correct.
 15 Q Okay. And it seems like the -- well, so, who
 16 decided which particular study plots on this map would
 17 be examined?
 18 A The foresters in the field.
 19 Q Okay. They decided where to look and study
 20 in the different locations.
 21 A They were charged, as I was, to look at the area
 22 of disturbance as we knew it and to develop the study
 23 methodology for randomized plotting in the area of
 24 disturbance, which is what they did.
 25 Q Why didn't you do study plots in other parts

1 you observed, what sections?
 2 A Any of my notes -- anything I've seen is observed
 3 and in the reports.
 4 Q So, you have no other notes or records
 5 showing where you went on the forest, aside from what
 6 you've just generally described?
 7 A No, other than the photographs I've submitted as
 8 part of this.
 9 Q Wouldn't a scientist whose done your field
 10 survey keep some sort of notes of the work they've done
 11 and the places they've observed things on the property?
 12 A I took photographs.
 13 Q Well, you gave us one photograph if I'm
 14 correct.
 15 A There are multiple -- there are other reports that
 16 have been submitted over the years, but, I don't have
 17 hundreds of photographs if that's the question, but,
 18 the presentation that was done, well, that's not
 19 relevant to this. The slides that I've shown here. I
 20 don't think it's this presentation, I think it's my
 21 prior report. Forgive me --
 22 Q Well, that report is not here. The question
 23 I'm asking is --
 24 A No, I mean the one I submitted, I'm sorry, the one
 25 I submitted originally, I think.

1 UNIDENTIFIED SPEAKER: Is it the July one?
 2 THE WITNESS: I think it's the July one,
 3 thank you. Thank you, because I can't remember the
 4 dates any more.
 5 UNIDENTIFIED SPEAKER: I have -- there's a
 6 July 1 and there's an October 16.
 7 THE WITNESS: But, I think to answer you
 8 question succinctly, no, I don't have a study log or a
 9 notebook log, if that's what you're asking me.
 10 Q Now, the people from Amy Greene Environmental
 11 who did the study plotting and did this work, did they
 12 keep such records for the studies they did?
 13 A I have no idea. They submitted a report to me.
 14 Q You didn't even ask to see their underlying
 15 notes?
 16 A No.
 17 Q Okay.
 18 A I asked to see the report.
 19 Q Now, based on your testimony at the last
 20 meeting, there's one photograph of this forest that you
 21 took and put in this report, is that correct?
 22 A I'm not certain of the question, I'm sorry.
 23 Q You put one photograph from this forest into
 24 this report that's on the screen, isn't that correct?
 25

1 Q That's it.
 2 A That one?
 3 Q Perfect, leave it right like that, thank you.
 4 A Yes.
 5 Q That's a slide headed Example of excessive
 6 deer browse, it contains two photographs, one on the
 7 right side, one on the left.
 8 A Mm-mm.
 9 Q Now, do I understand your testimony that the
 10 one on the left is the photograph you took of this
 11 forest that we're talking about?
 12 A It's -- yes. This is the actual site.
 13 Q Okay.
 14 A I can tell by the chair.
 15 Q All right. Now, there are no other
 16 photographs of the site that you've offered to the
 17 planning board, is that correct?
 18 A No, because the only thing that I'm looking at
 19 here, what I'm trying to explain to the Board is, this
 20 is an example of a forest that demonstrates excessive
 21 deer browse and as explained in prior testimony, when
 22 I can look through a forest with that kind of clarity
 23 as I can in this other example of another forest, you
 24 can see I can look through here. What it shows is, I
 25 have excessive deer browse because I have no under

1 A I think the only thing I put in here, yeah, here's
 2 the actual site.
 3 Q Okay, so --
 4 A I guess, my presumption is, to answer your
 5 question, I want to look to make sure I'm accurate by
 6 the way.
 7 Q Please take your time.
 8 A It looks to be correct, yeah. The one picture was
 9 used for illustrative purposes only, yes. Not meant to
 10 be exhaustive.
 11 Q Well, all photographs are for illustrative
 12 purposes. I'm simply asking how many photographs of
 13 this site did you include in this report?
 14 A In this document, one.
 15 Q Okay. Now, just scroll down a little so we
 16 can get an identification for the record of the slide.
 17 A I can't control this, I'm sorry.
 18 Q All right. There's a --
 19 UNIDENTIFIED SPEAKER: Which slide do
 20 you want?
 21 THE WITNESS: I don't know which one.
 22 MR. AFRAN: The one which has the --
 23 well, the photograph, it has two photographs, one in
 24 the lower left corner.
 25 A Hang on, Joe, I think I can get back to it.

1 story.
 2 Q For the record, the witness is pointing to
 3 the photograph on the right side of the slide.
 4 A But it -- sorry, I should have said that, I
 5 apologize. The left side is the actual site, the right
 6 side is the example photo and as you can see, the point
 7 of these photographs, again, just for a simple example,
 8 is to show an unhealthy forest with excessive deer
 9 browse, you have very clear visibility through the
 10 forest.
 11 Q Well, you're showing a photograph, is it fair
 12 to say the foreground appears to be in the area about
 13 40 feet wide?
 14 Would that be fair to say?
 15 A I don't know.
 16 Q Well, you took the picture, do you have any
 17 idea how big a space this is?
 18 A No.
 19 Q Well, it shows two -- you can't tell us how
 20 wide the foreground of this photograph is?
 21 A I didn't measure it, I'd be guessing.
 22 Q Well, you were there, do you have an estimate
 23 of how large this scene was --
 24 UNIDENTIFIED SPEAKER: He said he
 25 doesn't know, move on please. He said he doesn't know,

1 move on please.

2 Q I can press a little bit more. How far back
3 does this actually -- if you don't know the foreground
4 width, how can you say how far back we're looking in
5 the background?

6 A I did not give you an exact answer, I said, as I
7 stated, I can see a great distance. What that distance
8 is, I did not measure, but, it is comparable to this
9 other forest and then I tried to show -- I don't know
10 why there's two of --

11 Q Well, stick with my question, please, I'm
12 just trying to get the dimensions --

13 A Well, I'm trying to answer your question. The
14 difference is that in a healthier forest, this is not
15 this forest, there are four photographs here, try to
16 get the way you would do it.

17 Q This is the slides that says what a healthy
18 forest looks like.

19 A Correct. And these four photographs which were
20 taken by me, of another forest in New Jersey and to be
21 specific in Somerset County, New Jersey, a healthier
22 forest as you can see, looking through the aspect
23 ratio, is the same camera, so the aspect ratio is the
24 same, and you can see, I can't see very well through
25 this forest. The less you can see, the more

1 undergrowth. The more undergrowth the healthier the
2 forest.

3 Q Mr. DeFeo, with respect, I'm not asking about
4 another forest, so if we can go back to the last slide.
5 Now, that slide, we're looking at that slide on the
6 screen some distance, but, when we look at the printed
7 report, and you can look close up at the photograph,
8 there's actually quite a large diversity of trees in
9 the background of the slide, aren't there?

10 A Yes. Nothing in my report is commenting on the
11 diversity of speciation in that forest.

12 Q Right. No, no, I don't mean speciation
13 necessarily, I'm sure there is a diversity of species
14 there. I'm referring to the width of the trees. If
15 you look in the background on the photograph as opposed
16 to foreground, there are hundreds of trees represented
17 of many different diameters according to the photo,
18 isn't that true?

19 A Yes.

20 Q But, didn't you choose a photograph
21 intentionally showing an empty foreground just to
22 illustrate the thesis of a dying forest?

23 A There was no presumptive element in trying to make
24 a point other than to show you if I took pictures
25 throughout this forest they would all have a similar

1 type of depth and perception.

2 Q Well, I'm looking at this very picture in the
3 printed out version of your report and after the, you
4 know, first inch and a half is run, you can look at the
5 back of it and you can see a vast number of trees and
6 many of them actually are many different dimensions.
7 So, isn't it fair to say that the foreground does not
8 represent accurately even this part of the forest?

9 A No, you're conclusion is incorrect.

10 Q Okay.

11 A It's factually incorrect.

12 Q You would agree that a large forest is
13 variable and has many different elements to it, doesn't
14 it?

15 A All forests are valuable and have many different
16 elements, yes, I would agree.

17 Q So, why on earth did you give us one single
18 photograph of one small area of this forest to
19 demonstrate to a thesis that it's a forest that will
20 not regenerate?

21 A It is simply meant to demonstrate it by a single
22 image to show and compare to others what you would see
23 in an unhealthy forest.

24 Q But, we have no way of knowing, do we, that
25 the rest of the forest looks like the foreground here

1 because you've offered no other photographs, isn't that
2 true?

3 A I've offered my testimony to support that.

4 Q So, we have your testimony supported by no
5 notes or records and no photographs, is that fair to
6 say?

7 A You have my testimony supported by my reports
8 which I think are now three or four and my testimony on
9 three, at least three separate occasions.

10 Q And we have no documentary evidence other
11 than that photograph and the histogram, isn't that
12 correct?

13 A The documentary evidence is my report and the
14 photographs contained and the tree study.

15 Q If this condition of the foreground is so
16 widespread, why haven't you showed us photographs of
17 different parts of the forest? Wouldn't that address
18 the issue without leading to speculation and doubt?
19 Wouldn't a scientist do that and document properly
20 their thesis?

21 A There's no need to show you multiple photographs
22 to take up multiple space in a report of this nature
23 because in my professional opinion and in my
24 professional observations which I've testified to and
25 stated in my report, this is essentially what the

1 forest looks like.

2 Most importantly, the specific identification
3 of a specific area of the specific forest is irrelevant
4 because the overall conclusion of this forest shows
5 that walking the forest, the only, as I've testified
6 to, the only undergrowth that is there typically, to
7 say only, that's absolute, the majority of the
8 undergrowth growing there is typically invasive species
9 such as Japanese spill grass and barberry, which are
10 non-native and also not wildlife habitat and throughout
11 the forest there is a dirth, a very strong lack of
12 undergrowth. So, lack of undergrowth -- so the lack of
13 undergrowth in the entire forest indicates that the
14 forest is overly browsed which is supported by at least
15 two documents that have been submitted as additional,
16 per your request, I might add, for additional
17 information showing studies the most recent being the
18 2023 summary of the South Mountain Reservation study
19 done by the Essex County Park system and you will look
20 in multiple documents even up to and inclusive of the
21 Association of New Jersey Environmental Commission's
22 report on trees, dated 2024, every single report
23 discusses the impact of excessive deer browse leading
24 to a lack of under story growth. So, there are
25 multiple studies saying the same thing with different

1 observations. And the different reports that I
2 submitted, you don't see any photographs in some
3 cases. Some cases it's a statement of the scientist's
4 observations. I have given you my scientific
5 observations and my scientific conclusions.

6 Q Is there anything else to add in response to
7 my question as to whether it would be a proper
8 scientific act to document this report more thoroughly?

9 A In my opinion, this report has been documented
10 properly.

11 Q Did you consult any other tree studies on
12 this property, aside from the one that you had Amy
13 Greene do?

14 A I'm not certain I understand the question.

15 Q Have any other tree studies been done on this
16 property?

17 A I don't know.

18 Q Did you ask the developer if they had done
19 any?

20 A I may have, but, if I had he didn't have one to
21 the best of my knowledge.

22 Q Do you recall asking the developer if they
23 had done a tree study on this property?

24 A Again, my recollection is, I probably would have
25 but, I can't say with certainty but, I do not have any

1 other studies which is part of the answer, I believe.

2 Q The photograph that's on the screen, on the
3 slide example of excessive deer browse, would you agree
4 that actually reflects a trail or path that's been trod
5 over the years?

6 A No.

7 Q That in your opinion there's no evidence of -
8 -

9 A There's no trail there. That is not a trail.
10 There are trails on the property, that is not one of
11 them.

12 Q Now, you do recall asking the developer if
13 they had a tree study?

14 A Yes, I do.

15 Q Did you ask the developer?

16 A My recollection is I did, and there wasn't one.

17 But, I can't speak to certainty on that.

18 Q How many trees per acre do you calculate in
19 your statistical discussion?

20 A Bear with me, it's in here somewhere. There we
21 go. Using the analysis provided in the 2019 study, we
22 did a calculation of 212 trees per acre.

23 Q And you based that on what -- what was your
24 analysis that led to the 212 figure?

25 A The statistical tree study performed in 2019.

1

2 Q As reflected on the histogram.

3 A No, reflected in the tree study, which is posted.

4 Q But, you didn't submit the tree study itself
5 to the Board, did you?

6 A The Board asked me for my report which is what
7 they obtained. Subsequently, the Board asked for the
8 original tree study, which I submitted.

9 Q And when did you post that?

10 A As I said yesterday, supplementals were able to go
11 up yesterday because of problems we had last week.

12 Q I just want to clarify, Mr. Bagoff asked me
13 at the next time to focus on that, so that's one of
14 those documents we will look at.

15 A Okay.

16 UNIDENTIFIED SPEAKER: January 6, 2020?

17 THE WITNESS: That's when my report is dated,
18 yes.

19 MR. AFRAN: I don't remember the date off
20 hand but, whatever the date of that 2020 study was.

21 Q Now, the 212 figure comes from, is that an
22 average from the study plots?

23 A Well, statistical analysis doesn't work quite that
24 way.

25 Q Well, I'm asking you.

1 A You do mean media mode, you do standard deviation
2 of variance. It is the result of the conclusion of the
3 original tree study that was done in the field.

4 Additionally, although we did find different
5 calculations of different densities in some areas, I
6 picked the highest density of trees as I testified to
7 before in the original report to reflect the greatest
8 potential loss of trees, which I testified to before,
9 that might impact the developed site.

10 In fact, the projection is, there are
11 probably fewer trees in that area because there may be
12 some variation in density throughout but, we picked
13 what we thought would be the worst possible outcome in
14 the disturbed area to show the greatest possible impact
15 on the trees.

16 Q How did you get 212 per acre, what did you do
17 to get that figure?

18 A I used -- Amy Greene provided me a statistical
19 analysis which you are free to read, which uses a
20 methodology, if you'd like the methodology it's called
21 the Mueller-Dombois Ellenberg 1974 methodology to
22 conduct a tree survey.

23 Q Okay. And that was based on the tree study
24 in the study plot that we see on the other slide.

25 A Correct. Yes, correct. That tree density is

1 based on that, that is correct.

2 Q And the data for that conclusion of 212 came
3 from those individual study plots.

4 A It came from the entire study of that area and
5 then a statistical analysis of that.

6 Q Correct, but the study was in the plot
7 itself, correct?

8 A The study area was in, and let me be, to show you
9 the slide again, just so we're clear. There. That is
10 the image that was provided as part of the tree study
11 and from the data collected in the study plots, I think
12 this answers your question, correct me if I'm wrong.

13 Q Yes.

14 A Yes, those conclusions were drawn.

15 Q The data came from the study plots not the
16 whole square where the plots were.

17 A Correct.

18 Q Okay. Thank you. I just wanted to --

19 A Correct. You don't count every tree, correct.

20 UNIDENTIFIED SPEAKER: I don't want to stop
21 you on this roll, but could we take a five minute bio
22 break?

23 MR. AFRAN: I was just checking my phone to
24 see whether it was a good time, yes. Thank you.

25 UNIDENTIFIED SPEAKER: Five minutes.

1 (Off the record)

2 THE CHAIRPERSON: Back on the record.

3 MR. AFRAN: I understand we're going to break
4 at ten in terms of timing tonight, right?

5 THE CHAIRPERSON: I'm sorry?

6 MR. AFRAN: We're breaking at ten o'clock in
7 terms of timing.

8 THE CHAIRPERSON: Yes, sir, yes sir. Ten
9 o'clock.

10 MR. AFRAN: Okay. With respect to, I was
11 asking Mr. DeFeo about any earlier studies, tree
12 studies by the developer on this site and in general
13 his answer was, he was not aware of any, but he did
14 recall asking but he wasn't aware.

15 We do have evidence of that nature which in
16 discussions before Council, we will supply the
17 documentary records. There is a tree study that was
18 filed before on this property on another occasion and
19 we will submit that to Mr. Plocker, to the Board and
20 Mr. DeFeo so that it can be posted so the Board just
21 could look at it beforehand.

22 And, I'll just note that that was a document
23 that is present in other site plan proposals for this
24 site we are not submitting it for the site plan above
25 that, we're submitting it for the tree study results

1 that are on the bottom part of document.

2 So, we will submit them, but, just so people
3 see it, I don't want anyone to spend time studying the
4 site plan on that, that's not really relevant here.
5 What's relevant is the tree study that's on the
6 document and that's what we'll question Mr. DeFeo on at
7 the next meeting.

8 THE CHAIRPERSON: Will you submit a letter to
9 the Board so that is posted also describing exactly
10 what you said so nobody will get confused?

11 MR. AFRAN: With pleasure.

12 THE CHAIRPERSON: Thank you.

13 MR. AFRAN: I'm sorry, just give me a moment.

14 Q Mr. DeFeo, in terms of the undisturbed area
15 -- strike that. Let me turn to the limits of
16 disturbance or the disturbed area, as we see on SP-11,
17 is there a survey identifying the specific species that
18 are in the area of the disturbance?

19 A I'm sorry, you're talking about a specific species
20 of trees, in that area?

21 Q Well, let me rephrase that. Let's get to SP-
22 11.

23 A Oh, SP-11, I'm sorry.

24 Q I have another slide for you. If we can get
25 a little darker like we did the first -- thank you.

1 A Yeah, that's it isn't it?

2 Q SP-11 --

3 A That's it.

4 Q Now, I'm just going to just illustrate the
5 area.

6 A Sure.

7 Q Now, is there a survey of the different
8 species that were lost due to the 27 acre clear cut
9 that will comprise the area of disturbance?

10 A We did not do an analysis by number of each
11 species of tree. We did identify many of the species
12 that were present, but not by saying there were 57
13 white oak and 32 of this or the other thing in the
14 study area. What we did do is, we surveyed the area
15 and identified the fundamental number of trees that
16 were in the -- I'm sorry the fundamental types and
17 species of trees that are there to verify that this was
18 a mixed part of the forest.

19 Q Did you do any analysis as to the diameter of
20 specific species present in the area of disturbance?

21 A No. We didn't look at a specific area and say
22 this white oak is 16 inches or four inches or something
23 of that note.

24 Q We don't see a calculation of white oaks, 24
25 inches and higher, white oaks 12 inches to 24 inches or

1 anything like that?

2 A Correct. That wasn't part of the parameters of
3 the study.

4 Q Now, who set the parameters?

5 A We set the parameters to calculate tree density,
6 so I set those parameters. Identified the general
7 species in the area and confirmed the type of forest.
8 Our concern was density and numbers of trees that would
9 be lost. That's what we focused on.

10 Q Okay, thank you. Now, the undisturbed area
11 on this site that will not be fenced in relative to the
12 surrounding area or the new buildings that will be
13 built, is that correct?

14 A The undisturbed area will be comprised of two
15 sections. The undisturbed -- the deer fence area is
16 undisturbed area. So, there are two areas of
17 undisturbed property, one is deer fence here, here,
18 approximately 33 acres and the remaining undisturbed
19 area which is in green on this map, is just as it is
20 today. It will be undisturbed and not taken out or cut
21 down.

22 Q And when we say undisturbed you mean it will
23 undisturbed by means of construction or engineering
24 works?

25 A That's correct.

1 Q Now, I appreciate the clarification, I was
2 referring to the undisturbed area not to the sides
3 where the fencing will be but, to the undisturbed area
4 that's surrounding the area of disturbance. Now, that
5 area will not be fenced in for deer protection, is that
6 correct?

7 A That's correct.

8 Q So, since deer are prevalent in the area and
9 will be attracted to the woods, you will be typically
10 concentrating the deer presence on the unfenced
11 undisturbed area, isn't that fair to say?

12 A Well, it's presuming that the deer don't move,
13 they will have less land to move within than they did
14 before because of the deer fencing, so I can't say
15 they're going to be concentrated it's not as if they
16 live here exclusively, but when they come into this
17 area, they'll have an area they can walk through.

18 Q Well --

19 A When you say concentration you want to be clear
20 and say this is -- it's not like this whole area is
21 fenced, let me put it to you that way, if this entire
22 property were simply fenced in, they put fencing and we
23 left the deer in here, then clearly they would be
24 confined and their population concentration would
25 increase, but we're not doing that, they'll be free to

1 leave the property.

2 Q We live in a free society, we don't tell our
3 deer where they go. My question simply is, is by
4 fencing in the wooded area to the right and left of SP-
5 11, we will be allowing the deer to concentrate to the
6 extent they're on this property, to the unfenced area,
7 isn't that correct?

8 A They will be more confined in their movement, that
9 is correct.

10 Q And, therefore, they will be able to have a
11 greater browsing impact on that forest than they do
12 today, isn't that correct?

13 A Well, we've had this conversation I think from the
14 residents asking the same question and the simple, the
15 answer is, certainly the deer will have less room to
16 browse in this area and they could have a negative
17 impact as we talked about part of the goal of having
18 the deer fencing plus the planting of native plants in
19 the disturbed area, is to begin to get a higher
20 concentration of feeding in these areas with the
21 hopeful growth of greater plant numbers here because
22 we'll have so much more coming from this area, the
23 undisturbed area, will have so much more
24 transplantation if you will, of the feeding and the
25 plant movement than we did before.

1 Now, will the deer be, again, they have less
2 room to roam, so they will roam in this small area as
3 they do today because the impacting variable. In this
4 area, if the wrong species and I say wrong only insofar
5 as saying if all of the native species planted happened
6 to be deer preferred, they you're going to have to get
7 a greater level of work done here to protect them,
8 again, either using chemical repellants and looking to
9 be very clear when I say chemical repellants, we're
10 talking about nontoxic repellants that contain pepper,
11 oil, that sort of thing that the deer find unpalatable.

12 Q Well, my question was simply for fencing of
13 large parts of the site on the right and left, the deer
14 that tend to live in this area will tend to concentrate
15 more on the unfenced area and, hence, do their browsing
16 there in greater intensity than they are right now,
17 isn't that correct?

18 A Or they will move to other areas.

19 Q Well, you mean backyards?

20 A Well, if they come up to here, this area is not --
21 is either undisturbed or disturbed, different
22 properties, there's vacant right now.

23 Q Well, presumably that's already happening
24 because that's an existing condition, right?

25 A It's possible.

1 Q So, in other words, this will cause greater
2 focus of the deer on the unfenced wooded area, isn't
3 that fair to say?

4 A The deer will have less room to roam.

5 Q Is it a yes to my question?

6 A Well, it's not a yes or no type of question. It's
7 wildlife, wildlife doesn't -- the deer don't really
8 look so they don't read the studies so, the odds are
9 very good that they will walk through here and find,
10 oh, I can't go in this fenced area so I have to go
11 somewhere else --

12 Q Well, I'm asking --

13 A -- this is overly -- I'm trying to answer your
14 question. They may only concentrate in given areas,
15 even if there is nothing for them to eat. Right now,
16 there is very limited deer browsing here. We hope to
17 actually increase the number of plants growing. If I
18 lose some to deer browse, I'm fine with that overall
19 because I will have increased the health of the deer
20 and the forest simultaneously.

21 And, also, and most important by the way, I
22 know we focus on deer a great deal, my other concern is
23 or my other benefit of the deer fencing, sorry, when we
24 have areas that begin to regenerate with undergrowth I
25 benefit smaller game. I'll benefit rabbits, I'll

1 benefit other small wildlife because they'll have more
2 area to hide, they'll have more area to eat themselves,
3 rabbits, for example, et cetera. So, generally, what
4 we find is when areas are deer fencing to get
5 regenerative, all wildlife benefits.

6 Q I just asked if this part of the forest was
7 going to more browsing, yes or no?

8 A It's possible.

9 Q Okay, thank you. Have you done any study as
10 to the impact of the construction as shown on SP-11 on
11 the wetlands that are below the developed -- the area
12 to be developed?

13 A No, that's outside the area. I rely on wetlands
14 protection to be with the Department of Environmental
15 Protection.

16 Q Well, there are trees in the wetlands, are
17 there not?

18 A It's an undisturbed area and it will be determined
19 as to what can be done. There are uppers and
20 requirements that DEP will determine that to be meant.

21 Q Well, storm water runoff from the developed
22 area will be diverted to detention basins and is it
23 fair to say they will no longer go to the wetlands as
24 it has and wouldn't that affect the ecology of the
25 trees that live there?

1 UNIDENTIFIED SPEAKER: We didn't ask them to
2 do that, we did ask him to look at that. We didn't ask
3 them to do that.

4 MR. AFRAN: Well, we talked about trees on
5 the site and the impact to the client, and I'm asking
6 won't this affect the wooded areas in the wetlands?

7 UNIDENTIFIED SPEAKER: I think that's a
8 question for the engineer and it's storm water
9 question.

10 UNIDENTIFIED SPEAKER: Yeah, that's --

11 MR. AFRAN: Well, I don't think the
12 engineer knows much about trees, this gentleman says he
13 does know about trees, so, I'm asking the gentlemen who
14 says he knows about trees.

15 MR. CHAIRPERSON: He didn't look at the tree
16 -- we didn't ask him to look at the trees in the
17 wetland because we have -- the applicant nor us have
18 any control over that. Okay.

19 UNIDENTIFIED SPEAKER: Well, I'm simply
20 asking whether he did that analysis.

21 MR. CHAIRPERSON: Okay. You can ask whether
22 he did it or not.

23 THE WITNESS: I did not do a secondary
24 analysis, storm water was done by the engineers and was
25 done by DEP.

1 Q Let's just --

2 A (indiscernible) impacts are done by DEP.

3 Q Right. I'm not asking about storm water now,

4 I'm asking about impacts on the wetlands and deviation

5 of the normal storm water.

6 A All of that is determined by the Department of

7 Environmental Protection, it's outside my purview.

8 Q Fair enough. Appreciate it. Now, would you

9 turn to the slide documenting the number of trees to be

10 lost from the project? I don't recall the title of the

11 slide.

12 UNIDENTIFIED SPEAKER: I know which one

13 you're referring to.

14 MR. AFRAN: We don't need that.

15 UNIDENTIFIED SPEAKER: Hang on. Is that it?

16 MR. AFRAN: Let me look at my --

17 UNIDENTIFIED SPEAKER: General findings.

18 Talks about the acreage and the total of trees? No,

19 that's not it.

20 MR. AFRAN: I think I'm looking at tree

21 removal front --

22 UNIDENTIFIED SPEAKER: You're right. It's

23 the wrong slide, I apologize. That one. I think

24 that's the slide you're referring -- great.

25 MR. AFRAN: By the way, it's not a criticism

1 but it's easier if page numbers go on these.

2 UNIDENTIFIED SPEAKER: That's on me. My bad.

3 Q So, I just want to clarify, get into the

4 record these numbers. The area of disturbance is 27.5

5 acres (indiscernible) --

6 (Multiple speakers)

7 MR. AFRAN: Sorry?

8 UNIDENTIFIED SPEAKER: The numbers actually

9 appear as a consequence --

10 UNIDENTIFIED SPEAKER: They don't change.

11 UNIDENTIFIED SPEAKER: Oh, they don't?

12 MR. AFRAN: What do you mean? What's the

13 matter?

14 UNIDENTIFIED SPEAKER: We thought that there

15 was number on the --

16 UNIDENTIFIED SPEAKER: Oh, the pages, but

17 you're saying --

18 UNIDENTIFIED SPEAKER: Oh --

19 UNIDENTIFIED SPEAKER: I don't know. This is

20 not the PowerPoint so there's a confusion. This is a

21 pdf.

22 MR. AFRAN: Yeah, so I'm referring as much as

23 I can to the title so that if anyone looks at this, we

24 know as best we can what we're looking at.

25 UNIDENTIFIED SPEAKER: Sure.

1 UNIDENTIFIED SPEAKER: We thought maybe there

2 was another way, but --

3 MR. AFRAN: I'm sorry. Is it possible it

4 make it a drop darker, I just can't see. I appreciate

5 that. Thank you, perfect.

6 Q So, the area of the surface on this slide is

7 27.5 acres and the total number of trees, the maximum

8 we're looking is 5,833, is that correct?

9 A Correct.

10 Q And you find on this slide, you indicate a

11 total trees on site, as plus or minus 25,440, is that

12 correct?

13 A Yes.

14 Q And by site you mean 120 acre property.

15 A Correct.

16 Q Okay, thank you. Now, it does say a minimum

17 of trees preserved forever on minimum 77 percent of

18 trees preserved forever. There was some discussion of

19 this from the public. Does that mean there's a

20 conservation easement to your knowledge to be on the

21 property or is it voluntary preservation by the

22 developer?

23 A I can't speak to what the ordinance says I can

24 just say that area is actually undisturbed area. I

25 don't believe that's all referenced in the ordinance.

1 Q That's fine. Did you do any studies of this

2 site in terms of the affect on property, of

3 fragmentation of the forest.

4 A No.

5 Q And by fragmentation, you understand I mean

6 the removal, say, of 27 acres approximately in the

7 center of the site.

8 A Correct. Yes, I understand what you're saying, we

9 did not.

10 Q Why wouldn't the study on fragmentation be

11 relevant to determining, ultimately, the future health

12 of the property?

13 UNIDENTIFIED SPEAKER: Joe, could I ask you

14 to enlarge that for me, please?

15 UNIDENTIFIED SPEAKER: Yeah, that's S-11.

16 I'm sorry.

17 UNIDENTIFIED SPEAKER: No, no, it's okay.

18 That's it, that's fine.

19 UNIDENTIFIED SPEAKER: Yeah it --

20 UNIDENTIFIED SPEAKER: Oh, whatever number,

21 right, Slide 12. It is working. Slide 12 for future

22 reference, as well. You won't see it from there. It's

23 all the way up here. So, that'll be -- that's the page

24 for slide -- well, you see, that's the problem. On the

25 printed version --

1 UNIDENTIFIED SPEAKER: It wouldn't appear on
2 the printed version.

3 MR. AFRAN: It doesn't come out on printed
4 version, so that's why I gave her a record of these we
5 looked at, I still feel like we can refer to --

6 UNIDENTIFIED SPEAKER: That's okay.

7 UNIDENTIFIED SPEAKER: Yeah, yeah, that's
8 fine,

9 THE WITNESS: This is SP-11 to be in context
10 that slide. To answer your question about
11 fragmentation. This forest is not being very heavily
12 fragmented. For the most part it'll be contiguous,
13 with the exception, of course, of the road passages
14 that are here. But, otherwise there is contiguous
15 passage throughout, disregarding the fenced area, of
16 course, which we are purposely pulling out of this.
17 But, fragmentation typically refers to something where
18 if I took this entire piece, came down to the bottom of
19 the slide, and all the way up to here, now I've
20 fragmented this forest into two pieces rather than what
21 we have here.

22 Part of the basis here in this design, which
23 I like, is that the forest, while not completely
24 contiguous, this is not an access road. So, there
25 actually is contiguous passage throughout this area.

1 There is certainly some fragmentation, obviously, where
2 we're putting -- where the building will be put and
3 where the primary road is, but depending on what this
4 Board does, of course, even this road would be non-
5 competitive to passage, if, in fact, the road is not
6 for daily use. So, there's quite a bit of free
7 movement, is I guess the way I would put that. It's
8 not fragmenting the forest to say this development in
9 Essex Fells did, or this development in West Orange
10 did, this is fragmenting the forest. This is what we
11 talk about when we say fragmentation, this kind of
12 suburban single family home development. This is what
13 ties together the --

14 Q Is it fair to say that you don't consider the
15 construction of these four very large buildings and
16 parking facilities in the center of this forest to be
17 fragmented?

18 A I didn't say that. What I said is --

19 Q Is it --

20 A -- development fragmentation is minor compared to
21 the other types of development. In green building
22 design one of the things you try to do to minimize
23 damage and to minimize fragmentation, is to concentrate
24 development into the smallest footprint possible. This
25 does that. This type of development here, this type of

1 development here is much more impactful of the forest
2 and historic, these are historic buildings, I'm not
3 suggesting there's any wrong with it. The old crop
4 dust coater, I'm sure, from a green building standpoint
5 and a forestry standpoint, this is infinitely more
6 destructive to the environment than what this is
7 proposing because this minimizes the fragmentation.
8 Certainly is a form of fragmentation, I will not argue
9 that. But, it is less impactful on an overall basis,
10 than most other types of development.

11 Q My question was only, did you do any study on
12 effect on the ecology of the site due to the
13 fragmentation of this project?

14 A And I think I answered you.

15 Q Did you do any self-study?

16 A No, it's outside of my purview.

17 Q That's all I asked. Okay. Thank you. Did
18 you do any analysis of fauna that are present on the
19 site, aside from your observing the seven to ten-year
20 medication?

21 A We did not do a wildlife analysis, that was not a
22 part of the project.

23 Q Have you done any analysis -- the question
24 would probably be the same, so if it'd be the same I
25 imagine you just state for the record, did you do any

1 analysis on the impact of bird migration across this
2 property or like history of birds who live on this
3 site?

4 A We did not do any analysis of wildlife at all. I
5 think we do with wildlife specifically, is within
6 DEEP's purview.

7 Q Well, whether it is or is not I'm not sure I
8 simply asked whether you did the analysis.

9 A The answer is no.

10 MR. AFRAN: I'm sorry, I'm just going through
11 my notes quickly, I don't want to --

12 THE CHAIRPERSON: It's okay.

13 Q I'm a little puzzled because when you
14 testified at the last meeting, either direct or in
15 response to questions, you said that, and I wrote down
16 what you said, I think it's a pretty accurate quote. I
17 look at everything, birds, plants, et cetera, from
18 holistic point of view. Do you recall saying that?

19 A Yes.

20 Q Well, then why didn't you do any study of
21 wildlife or birds and the impact of this project on
22 that wildlife, if that's what you do holistically?

23 A First, as I stated, I was not charged to do a
24 wildlife analysis because I know that DEEP will be
25 looking at whether or not there are species or whether

1 or not there are any other species of concern on
2 plants or animals on site. But, I say that as an
3 environmental scientist, I look holistically at the
4 property, wildlife, at all. I am looking to see what
5 the general impacts are of anything on the property.

6 First, looking at this property, and based on
7 my observations and on the tree study, but on my
8 observations as well, I can see that it's an unhealthy
9 wildlife habitat simply because there is very little
10 variation or under story growth. To have a healthy
11 wildlife habitat you need to have multiple tiers of
12 growth. You need ground growth, you need under story
13 growth, you need shrubs which are under stories, small
14 trees and large trees, a greater the variety of plants
15 on the property, when I look at a forest, I look at the
16 variation of plants. Yes, I have variations of the
17 species, but the answer to the question you asked was
18 an answer to a question of what is the difference
19 between a forester or an arborist would look at or a
20 tree expert would look at compared to what an
21 environmental scientist or ecologist might look at on a
22 property.

23 And as I was explaining that at that time or
24 trying to explain that an arborist or a forester or a
25 tree expert is looking at a very simple -- I'm going to

1 rephrase that, that's not fair, in a much more myopic
2 view. Yes, do they take into account that there are
3 other issues within that forest? Certainly. But, they
4 don't look at it for that reason. They all have
5 different charges for different components. I was
6 explaining that, that's where that answer comes from.

7 In my case when I look at a forest, I am
8 looking at it and saying, for the way I was trained,
9 hey, is this forest healthy for all things living
10 there? My answer in this forest is no.

11 Q Well, you told us your holistic approach
12 means you look at birds, plants, everything. Fair to
13 say you didn't look at wildlife at all, isn't that
14 true?

15 A No. What is fair to say is I did not do any sort
16 of analysis about wildlife on the property. I made
17 observational changes, observational -- I made
18 observations, sorry, on the property and your
19 conclusion is predicated on my experience of what a
20 healthy forest should be in the way of life.

21 Q As to wildlife the only observation you
22 reported to the Board was that there was seven to ten
23 deer that you say, isn't that correct?

24 A Statistically, there is no data given to the
25 Board, all I stated to the Board was in the one day we

1 happened to see seven to ten deer. I did not do a
2 statistical wildlife analysis on this property.

3 Q I simply asked, aside from saying you saw
4 seven to ten deer on the site, you offered no other
5 information about wildlife on the property, isn't that
6 correct?

7 A I did not offer a wildlife analysis on this
8 property. I was not charged with doing so.

9 Q Data, do you have in terms of the damage to
10 the deer fence, some other sites to the fence, the tree
11 fells and related matters?

12 A I don't have specific data on that.

13 MR. AFRAN: I just need a moment to
14 speak to my colleague for a second.

15 Q I'd like to talk to you about the tree
16 species that you identified on the site.

17 A Okay.

18 Q You identified some of them in your report at
19 Item 3 on Page 2, oak, several species of oak, rather,
20 maple, hickory, flowering dogwood, sassafras, American
21 beech, black cherry. Are there any others that you've
22 identified on the site? Is there another chart that
23 contains that?

24 A In the original tree study there were a number of
25 other species identified. We just didn't -- we weren't

1 asked to do an identification, they were observed but,
2 we had a number of others that were there that were
3 greater than four inches in diameter. We observed, I
4 think you said red maple or red (indiscernible), you
5 did, right?

6 Q You said maple, in general.

7 A Okay. We observed red maple, black birch, I'm
8 using the common language, proper names not Latin.
9 Pignut hickory, a shagbark hickory, mockernut hickory,
10 American beech, green ash, tulip, black oak, white oak,
11 chestnut oak, red oak, black oak and sassafras which I
12 think you did mention, in that site. Those were the
13 ones we just happened to observe. There might be
14 other, but that would be a good mix of what's in that
15 property. Some of those are wetlands species, some of
16 them are not.

17 Q Well, so, you -- there were a few that you
18 did not include. The tulip, black gum and -- tulip and
19 black gum for example.

20 Now, in terms of these species, in terms of
21 the large trees you've seen, 24 to 36 inches, what is
22 the average linesman of these trees?

23 A Everyone of these trees has a different linesman.
24 Oaks could, a white oak, the oldest living one that was
25 recently cut down that I know of, was 250 years old.

1 That was cut down in Basking Ridge at the year '02 I
2 believe. It was down since the time -- the Washington
3 oak down in Princeton was over 200 years. That was
4 also, I believe, a white oak. Trees such as sassafras
5 and black cherry have a relatively short lifespan.
6 Sassafras might live 50 years. And, again, bear in
7 mind when I say lifespan, we all have a lifespan, it's
8 totally variable on the conditions the tree is
9 experiencing at the time. So, some of these are
10 shorter lived, some are longer lived. Tulip trees have
11 a pretty good lifespan, they tend to be very brittle,
12 so it's all over the place. There's no set answer is
13 the short answer.

14 Q Well, I assume that, I'm asking of different
15 species. A Yes.

16 Q What would be the lifespan typically of the
17 tulip tree?

18 A It varies. I mean tulip trees live over a hundred
19 years, but, it may not. You know there are a number of
20 other factors that affect that, of course.

21 Q Now, what about the various maple species
22 that you've seen on the site?

23 A Same thing. There's all variables, but maple --

24 Q I'm speaking about the different species.

25 A It's all variable. I mean trees with anywhere

1 from -- there are sugar maples which we didn't
2 particularly observe, although I may have seen there in
3 the last visit, there are sugar maples well over 100
4 years old in the United States, but, I can't tell you
5 the age of any given tree on a given property because
6 you really can't judge a tree by looking at it. You
7 can't judge --

8 Q I don't mean to interrupt you, I don't mean
9 to interrupt you, I didn't ask you to judge the age of
10 a given tree, I just asked you to typically identify
11 the lifespan of the different species you've
12 identified.

13 A The oldest trees in our area could be 250 years
14 old. None of these would be, in my opinion. The
15 oldest living things, of course, are not in this area,
16 but the oldest trees in this area, the oldest species
17 that -- what would be the term I'm looking for --
18 greatest life expectancy of species in this area,
19 probably in the 250-year range. That's a pretty good
20 run if you're a tree.

21 Q Well, that's -- you're referring to the oaks
22 that you've seen.

23 A Hum?

24 Q You're referring to the oak trees that you've

25 --

1 A That's what I'm saying, that's an extraordinary
2 run.

3 Q Now, let's talk about the maple species, what
4 is the different species of maple that you identified,
5 red maple. For example, what is its typical lifespan?

6 A Off the top of my head I don't have that. It
7 varies. Well, it's not anywhere near an oak tree.

8 Q Do you know it, yes or no

9 A No, because I don't have it off the top of my
10 head.

11 Q Black birch, what's its typical lifespan?

12 A Again, I haven't memorized the life expectancy of
13 every species of tree. Black birch would have what I
14 would call a relatively short life expectancy compared
15 to a oak or a maple.

16 Q Do you have any knowledge of the typical life
17 expectancy of black birch?

18 A I think I just stated, I have not memorized the
19 life expectancy of each species. I certainly could
20 look them up, but, I haven't memorized them.

21 Q Shagbark hickory?

22 A Shagbark hickories do live a long time, but,
23 again, I can't give you the specific life expectancy
24 because I have not memorized the life expectancy of
25 each species. Hickory would be a longer lived species

1 than birch.

2 Q Do you have any understanding of the typical
3 lifespan of shagbark trees?

4 A I did not memorize the individual life
5 expectancies of individual species.

6 THE CHAIRPERSON: Okay. Mr. Afran, we're
7 done with the tree life. He says -- we're going to put
8 that all together, he doesn't know the life of the
9 trees, let's move on.

10 MR. AFRAN: Well, I'm testing the point.

11 Thank you.

12 Q With respect to the condition of approval
13 that you recommended on the areas of disturbance to
14 identify specimen trees, that survey would be done only
15 after approval of the plan under your recommendation,
16 is that correct?

17 A I don't have the sequence of work.

18 Q Well, you said it would be a condition of
19 approval, didn't you?

20 A I just don't understand the -- I don't understand
21 the sequence of the process, I can't answer it.

22 Q Well, you said in your report that you
23 recommended it as a condition of approval, didn't you,
24 that there would be as survey done as to specimen trees
25 in the area of disturbance.

1 A I know that's what it says in the report, but I
2 can't answer as to the sequence of the way things
3 occur, we don't know.

4 Q Well, wouldn't that occur only after the plan
5 is approved if it's a condition of approval?

6 A I don't -- I'd be guessing, I don't know, you'd
7 have to ask counsel or someone else, I'm not familiar
8 with the procedural sequence that they would follow.

9 Q So, no survey of specimen trees in terms of
10 the area of disturbance has been done as of yet, is
11 that correct?

12 A Correct. My recommendation is that we do one.

13 Q All right. Now, if the specimen trees are
14 identified where the buildings are or where the roads
15 are going to be or the detention basin or other
16 structures, you'll have a conflict between your goal of
17 preserving them and the plan which would allow them to
18 be destroyed, is that -- how will you then build this
19 project if the specimen trees are going to be in the
20 middle of building deeper.

21 A Specimen tree, a specimen tree or a creative
22 interest in note of size is found where there's a
23 building, that tree is not going to be considered for
24 preservation. The goal is try to find those trees that
25 might be within the area of disturbance, that might be

1 in such an -- in an area in such a way that he could
2 preserve them. For example, and I don't have an exact
3 tree here, just bear that in mind with me. So, could
4 you zoom in on that for just a moment for me please?

5 UNIDENTIFIED SPEAKER: I'm sorry, I was
6 dozing.

7 THE WITNESS: I have that affect on people,
8 I'm sorry. Sorry. It's that time of night. So, just
9 by illustration, okay, if you have an area where it's
10 going to be unmade, but still theoretically in the area
11 of disturbance, let's say right here just for argument
12 sake. Let's just say hypothetically we, with our GIS
13 plotting and everything else, say hey, we've got a 36
14 inch white oak sitting here, that would be a point of
15 negotiation with the builder, saying we've got this
16 really nice specimen tree, we got it marked and tagged,
17 can we work around it and fence around it? Some of
18 that tree would live, hard to say, you never know, but
19 if the builder is willing to work with us on it, that's
20 what we would do. It's the same with big trees around
21 this complex. If there's a tree here, for example,
22 that might provide shade and it happens to be a
23 specimen tree and we work to save it, that's what we'd
24 be identifying. Where trees are in the middle of
25 roadways, there's nothing we're doing. They may be

1 there, but they're not going to be saved.

2 Q And where they're in the middle of buildings,
3 for example, the same would apply.

4 A Of course, yes.

5 Q Don't you think this survey should be done
6 before the plan is approved, to know whether some large
7 number are specimen trees or valuable trees to be of
8 interest are about to be destroyed?

9 A Yes.

10 UNIDENTIFIED SPEAKER: That's fine with us.

11 MR. AFRAN: Mr. Chairman, I think it's ten
12 o'clock.

13 THE CHAIRPERSON: Time.

14 MR. AFRAN: Thank you.

15 THE CHAIRPERSON: Thank you. Okay. The next
16 special meeting of the planning board will be held
17 December 11th, 6:30 p.m. in council chambers. No
18 additional notice will be required and that will be for
19 application PB-24-01 West Essex Highlands, Inc., Block
20 179, Lot 32, Zone IH-1, where Mr. DeFeo will continue
21 with cross by Mr. Afran. Mr. Afran is going to have
22 something on the website tomorrow or the next day.

23 MR. AFRAN I'd rather if I could do it
24 Monday, I tend to doubt I'll get if of by Friday.

25 THE CHAIRPERSON: Monday?

1 MR. AFRAN: Yeah, is Monday all right?

2 THE CHAIRPERSON: Monday. One other thing,
3 Mr. Afran just housekeeping. Are the people that you
4 represent, they know they're not to speak and they
5 haven't come up to the microphone to questions, is that
6 correct?

7 MR. AFRAN: I don't believe they have at this
8 point. There was one individual who did want to raise
9 an issue personal to her property not in terms of the
10 group interest. So, I was going to raise that special
11 before she did. But, one or two of those individuals
12 or some of those individuals might be called as
13 witnesses by me, but that decision hasn't been made
14 yet.

15 THE CHAIRPERSON: That's different.

16 MR. AFRAN: I have instructed them not to
17 speak in the public portion.

18 THE CHAIRPERSON: Okay, thank you. And --

19 UNIDENTIFIED SPEAKER: Mr. Chairman, there's
20 no further notice required for --

21 THE CHAIRPERSON: I did, I did, no further
22 notice to be required. Absolutely. And the next
23 regular planning board meeting will be held, Wednesday,
24 December 4th, 2024 at 7:30 p.m. via Zoom. Do I have a
25 motion to adjourn?

1 UNIDENTIFIED SPEAKER: So moved.

2 THE CHAIRPERSON: So moved. All in favor?

3 BOARD MEMBERS: Aye.

4 THE CHAIRPERSON: Any nays? I ayes are above
5 the no's. Thank you all, thank you all on Zoom. Have
6 a wonderful evening. And Happy Thanksgiving.

7 * * * * *

8 C E R T I F I C A T I O N

9 WE, ALYCE STINE and ELAINE HOWELL, the
10 assigned transcribers, do hereby certify the foregoing
11 transcript of proceedings on CD is prepared in full
12 compliance with the current Transcript Format for
13 Judicial Proceedings and is a true and accurate
14 non-compressed transcript of the proceedings as
15 recorded, and to the best of our ability.

16

17

18 /s/ Alyce H. Stine

19 ALYCE H. STINE

20

21 /s/ Elaine Howell

22 ELAINE HOWELL

23 FISHMAN COURT REPORTING DATE: December 9, 2024

24

25