

1 1 TOWNSHIP OF WEST ORANGE 2 DEPARTMENT OF PLANNING AND DEVELOPMENT 3 WEDNESDAY, JUNE 4, 2025 4 6:30 P.M. 5 RE; PB-24-01 WEST ESSEX HIGHLANDS, INC. 6 7 8 BOARD MEMBERS: 9 ROBERT BAGOFF, Chairman 10 SUSAN McCARTNEY, Mayor 11 JERRY GUARINO, Vice Chairman 12 KEN ALPER 13 FRANK NOBORINE 14 JOHN CARDOZA 15 16 RYAN MacNEILL, Engineer 17 GERARD HAIZEL, Planner 18 JAMILET BAQUERIZO VITE, Board Secretary 19 GENIECE GARY-ADAMS, Zoning Official 20 JOSEPH FAGAN, Zoom Moderator 21 22 23 24 25 26 FISHMAN COURT REPORTING AGENCY 27 89 HEADQUARTERS PLAZA NORTH 28 4 SPEEDWELL AVENUE, SUITE 1440 29 MORRISTOWN, NEW JERSEY 07960 30 (973) 285-5331 - FAX - (732) 605-9391	3 1 2 INDEX OF EXHIBITS 3 4 EXHIBIT DESCRIPTION 5 6 O-14 SLIDE PRESENTATION 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
2 1 APPEARANCES: 2 3 HUTT, SHIMANOWITZ & PLOCKER, ESQS. 4 BY BRYAN D. PLOCKER, ESQ. 5 Bplocker@huttshim.com 6 459 AMBOY AVENUE 7 WOODBRIDGE, NEW JERSEY 07095 8 Appearing on behalf of the Applicant 9 10 11 GACCIONE & POMACO, ESQS. 12 BY DIANA P. MCGOVERN, ESQ. 13 ONE BOLAND DRIVE, SUITE 102 14 WEST ORANGE, NEW JERSEY 07052 15 Appearing on behalf of the Board 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000	4 1 CHAIRMAN BAGOFF: Application PB-24-01, West 2 Essex Highlands, Inc. Block 179 Lot 32 Zone IH-1. 3 Warner Road. The applicant is proposing to develop a 4 496 unit inclusionary multifamily residential 5 development on a vacant 120 acre property in the 6 northwest corner of the Township. 7 Mr. Plocker, for the applicant. 8 MR. PLOCKER: Good evening everybody. Good 9 to see you again. 10 Brian Plocker with the firm Hutt, 11 Shimanowitz and Plocker, on behalf of the applicant. 12 CHAIRMAN BAGOFF: Okay. 13 Mr. Afran, you have the floor, sir. 14 MR. AFRAN: Thank you. 15 Good evening everyone. Bruce Afran for the 16 objector, We Care NJ. Good to see everyone again. 17 We have one witness tonight, it's possible 18 there may be a second witness, I'm not sure yet. That 19 witness is Mark Gallagher from Princeton Hydro who is 20 testifying as to wetlands, ecology and hydrology. 21 Before we do that, I want to raise one 22 housekeeping issue. I don't mean this at all by 23 criticism of the applicant, I was just wondering if we 24 roughly know when the supplemental geotechnical report 25 is coming in because that affects some of our planning

5 1 of our witnesses. If we don't, that's fine, we'll talk 2 later on. 3 Mr. Plocker gestured, I think, we don't know 4 yet. 5 MR. PLOCKER: I didn't make any gesture. 6 MR. AFRAN: I'm sorry. 7 MR. PLOCKER: We'll have to get back to you. 8 I know the test was done and, you know, but you and me, 9 we're all busy, we'll have to check. 10 MR. AFRAN: Fine. Okay. 11 So in terms of planning witnesses, to some 12 degree ours depend on that but we'll work through it the 13 best we can. 14 So we have one witness tonight. I'll call 15 Mark Gallagher. 16 MS. McGOVERN: Please put your full name on 17 the record and spell your last name. 18 THE WITNESS: Mark Gallagher, 19 G-A-L-L-A-G-H-E-R. 20 MS. McGOVERN: Please raise your right-hand. 21 Do you swear or affirm the testimony you are about to 22 give will be the truth the whole truth nothing but the 23 truth. 24 THE WITNESS: I do. 25 Ms. McGOVERN: Thank you.	7 1 Drexler or Temple? 2 A. Temple University. 3 Q. And what course is that? 4 A. Wetlands Ecology. 5 Q. And how long have you taught that course for? 6 A. Eight years. 7 MR. AFRAN: Without going further, I believe 8 this would qualify the witness in his field of wetlands, 9 ecology and hydrology. I could do more but I don't 10 think it's necessary. 11 CHAIRMAN BAGOFF: Everybody okay? Any Board 12 members have a question. 13 Let me ask you a question before we get started. 14 What area of the ordinance would his testimony apply to 15 that the Panning Board can use to make their decision? 16 Is this the body that should be hearing this 17 information. 18 MR. AFRAN: Well, it relates really in the 19 same way to the prior witnesses who testified as to 20 forest ecology, stormwater management and ornithology. 21 And the principle is very simply, the Board has an 22 expert, Mr. DeFeo, who was contracted to provide an 23 environmental appraisal. The applicant signed a 24 settlement agreement agreeing to submit it's site plan 25 application to DeFeo for comment for -- as for
6 1 MARK GALLAGHER, having been duly 2 sworn under oath testifies as follows: 3 Q. I don't know if the people could hear me in the 4 back. I know there's, the air-conditioning is necessary 5 but is it okay -- can you hear? I'll ask Mr. Gallagher 6 to begin, I'll ask if he would speak up just because 7 there is air-conditioning. 8 Let me just qualify the witness. 9 Mr. Gallagher has been sworn. 10 Mr. Gallagher, who are you employed by presently? 11 A. I am the president of Princeton Hydro. 12 Q. I think you may have to speak louder. You can 13 actually use this ultimately when I'm done. 14 And what is your area or focus presently at 15 Princeton Hydro? 16 A. It's primarily regulatory compliance. Geological 17 restoration. 18 Q. Geological restoration? 19 A. Correct. 20 Q. What is your degree in? What degrees do you 21 hold? 22 A. I have a bachelor's degree in biology from 23 Moravian College and a master's degree from Rutgers 24 University. 25 Q. Now, I understand you also teach a course at	8 1 environmental appraisal, and Mr. DeFeo testified 2 pursuant to that. The settlement agreement is a 3 mandatory part of this proceeding and therefore this is 4 relevant to environmental evidence Mr. DeFeo gave. Now, 5 he didn't cover a full range of these subjects as our 6 witnesses are, and that's the point. He limited his 7 discussion largely to deer fencing and the impact on 8 regenerating the understory in the woods with deer 9 fencing, but that's not all there is to an environmental 10 appraisal. And since the applicant's required to 11 undergo an environmental consultation with Mr. DeFeo, 12 our point is there is substantial environmental harm and 13 evidence to show that from the project and all that's 14 relevant in the way that I described. 15 CHAIRMAN BAGOFF: I am going to ask Mr. 16 MacNeill, our board engineer, who is paid -- our board 17 engineer is paid for by the Planning Board. He is an 18 independent person that looks at all sides, he is not 19 involved with the applicant or the objectors. He is 20 charged with looking at information that we present to 21 him and coming back and saying this is your purview or 22 it's the purview of another regulatory body. If it is 23 not in the purview of the Planning Board to use that 24 information in their decisions then it should be 25 somewhere else. If, on the other hand, it is pertinent

9 1 and we can use it in our discussion making process then 2 we should hear it. So I am going to defer and, I am 3 sorry, I want to qualify you and your expertise. You 4 have any expertise in stormwater management or exactly 5 what, hydrology? 6 MR. MacNEILL: Yes, exactly. So I am a 7 licensed professional engineer in the State of New 8 Jersey. I have over ten years of experience. In that 9 time I have reviewed or designed over 100 stormwater 10 management designs as well as obtained NJ DEP land use 11 approvals, including freshwater wetlands, as well as 12 flood hazard areas. 13 CHAIRMAN BAGOFF: You read the description, 14 the testimony provided before us, is this in the purview 15 of the Planning Board and can we use it or is there 16 another regulatory body that should be hearing this? 17 MR. AFRAN: Before the answer comes forward, 18 I raise an objection to the question and the reason for 19 that is, I mean no disrespect to you or the engineer. 20 The reason for that is the engineer doesn't decide what 21 evidence and testimony is heard by the Planning Board. 22 Number one. That's for the Planning Board to decide if 23 it wishes to rule in or out evidences or not allow a 24 witness to be heard, but the engineer doesn't have any 25 special role here in telling the Board what it should	11 1 as to what type of evidence goes before what body is not 2 within the professional training of an engineer and he 3 doesn't have that authority. So you are asking his 4 opinion, you are asking the opinion of an expert, I 5 would say not an expert in that field. And so therefore 6 he doesn't have the right and the Board should not be 7 consulting him on a jurisdictional question. So I do 8 raise the objection. 9 CHAIRMAN BAGOFF: We are asking him to give 10 us an opinion as to information you provided relevant to 11 making our decision. 12 MR. AFRAN: It's exactly the same point. 13 How can the engineer decide an issue of relevance as to 14 an objectors position. It's not in the engineer's 15 purview to make rulings on whether evidence is proper or 16 improper. The only one that can make that ruling is 17 you, Mr. Bagoff, because that's your job as Chair 18 ultimately. But certainly the engineer has no purview 19 to say whether evidence is relevant in a site plan 20 application. It's outside -- I never heard of such a 21 request. 22 CHAIRMAN BAGOFF: Well, stick around. 23 MR. AFRAN: Also evidence hasn't been heard 24 yet. 25 CHAIRMAN BAGOFF: Right. So.
10 1 hear or not hear. Nor is the engineer a lawyer, even 2 Ms. McGovern doesn't have the power to make such 3 decisions. So the engineer, not being a lawyer, is not 4 in a position to say what this Board should hear 5 jurisdictionally. It should not -- that's outside the 6 purview of the engineer. 7 CHAIRMAN BAGOFF: I asked the engineers 8 opinion based on his expertise. The Board will then 9 talk amongst ourselves in the public view and decide 10 based on what's provided -- the information provided and 11 I understand what you're saying, we are not asking him 12 to say yes or no for us, we are asking him in his 13 opinion can the Board use this information to make a 14 decision or should it be viewed by another governing 15 body to make a decision. 16 MR. AFRAN: And the basis of my objection is 17 very simple. That I don't know what the engineer will 18 say, but it's my job to object to something I don't 19 like. I don't hear something and say wait, I object. 20 The point is that the engineer is not a lawyer. The 21 engineer doe not have expertise in the jurisdiction of 22 different body's. Now, if I ask Mr. Gallagher to speak 23 to an engineering question, he would not have the basis 24 to give an opinion nor would the Board be justified in 25 hearing it. In the same way a jurisdictional question	12 1 Ms. McGOVERN: The Board Chair is not 2 suggesting that Mr. MacNeill is going to make a 3 decision. He is asking him to give the Board 4 information so that the Board can make that 5 determination as to whether this is useful or not. Just 6 going to flesh out what types of information are helpful 7 or relevant to this application. 8 MR. AFRAN: My clients are not bound by an 9 engineers opinion about what's helpful to the Board and 10 understanding the objectors position or the applicant's 11 case. So even though it's been put to the engineer in 12 the context of well, we want your opinion to guide us, 13 it would be like Mr. Gallagher, a wetland scientist, to 14 give expertise on whether or not a building can sit on a 15 ridge without collapsing. The engineer is not a lawyer 16 and is not someone with expertise in relevance. This is 17 evidentiary questions and we are a quasi judicial body 18 here and Mr. Bagoff ultimately makes these decisions. 19 But asking the engineer to give his view of what is 20 relevant is simply another way of asking the engineer to 21 make a legal judgment. It's simply outside his purview. 22 I've never heard of a board requesting an engineer to 23 give such an opinion. 24 CHAIRMAN BAGOFF: That's why we asked the 25 engineer for an opinion and we'll listen to the opinion

13 1 and we'll make a decision based on the opinion. That's 2 why they're experts. 3 MR. AFRAN: If you're making a distinction 4 of addressability and jurisdiction based on the opinion 5 of the civil engineer, then you're asking to be guided 6 with expertise from someone who doesn't have that 7 expertise. An engineer doesn't have expertise on 8 evidentiary evidence or jurisdiction, administrative 9 jurisdiction. 10 Well, I also make an additional point that 11 someone just made now to me. That an engineer is not a 12 wetlands scientist, an ecologist or active in any 13 related field and therefore the relevance finding of the 14 engineer really cannot guide the Board because the 15 engineer is not an expert in the field. I spoke as to a 16 consultant, I don't know if you heard what I said. 17 CHAIRMAN BAGOFF: I heard. 18 MR. AFRAN: Therefore he is not an expert in 19 this field anyway. 20 CHAIRMAN BAGOFF: We have to be able to take 21 the information and make sure that we can use it based 22 on our ordinance and the law. If we spend time 23 listening to information that we can't use based on our 24 ordinance and the law it was information that's on the 25 record but it may or may not be relevant. So what I	15 1 respect to wetlands. So we would say that, that statute 2 and the DEP, which is empowered by that statute, is the 3 body that has exclusive jurisdiction over wetlands. So 4 we would object to the testimony and the Board 5 considering any testimony regarding wetlands, which is 6 within the exclusive purview of the DEP. 7 And I want to address one more comment that 8 Mr. Afran had addressed and he's addressed it previously 9 that Mr. DeFeo was retained by this Board. He's 10 mentioned in the settlement agreement, and I just want 11 to make it clear, there's a statement that, you know, he 12 has to issue an environmental report and I am going to 13 read from the settlement agreement, Section 20.5.1 under 14 Completeness. It says, after it talks about the 15 submission and where that's deemed complete, "In 16 addition, the Applicant shall submit all the plans to 17 DeFeo and Associates, the Townships environmental 18 consultant, for review and comment." And that we shall 19 meet with him in good faith regarding all trees. I am 20 paraphrasing. 21 The settlement agreement also specifically 22 references that the applicant and this application was 23 exempt from any kind of Environmental Impact Statement 24 under the ordinance, and with all due respect to the 25 witness that recently testified on behalf of the
14 1 would do to meet in the middle is start, and I know 2 there's a PowerPoint presentation, we'll listen and go 3 from there. How's that? 4 MR. AFRAN: Can I take one second, my mother 5 has an issue. 6 CHAIRMAN BAGOFF: Go ahead. 7 MS. McGOVERN: While you're figuring that 8 out. The PowerPoint presentation, will you send it over 9 to Joe. 10 MR. FAGAN: I have it. 11 MS. McGOVERN: You're way ahead of me. 12 What is that exhibit marked? 0-14. Okay. 13 MR. AFRAN: Thank you, Mr. Chairman for 14 hearing me out. I appreciate it. 15 MR. PLOCKER: Mr. Chairman, may I. 16 I think I know where the Board is trying to 17 go, so I just want to state for my record that Mr. 18 Gallagher, he's being qualified as a wetlands expert. 19 The applicant would object subject to the Board's 20 discretion to allow him to testify, but wetlands is a 21 very specific area that's regulated by a very specific 22 statute, the Freshwater Wetlands Act and the last 23 section of that act, it's N.J.S.A. 13:9B-30 pretty much 24 says that no town, no subdivision of a town such as a 25 Planning Board can make any rules or regulations with	16 1 objector, such as Mr. Devito about trees and the birds, 2 those are items that are typically required as part of 3 an EIS. So the applicant's going to state for the 4 record that it seems that the objector group is seeking 5 this Board to consider information in connection with 6 the application that the application was explicitly 7 exempted from by the town council by way of the 8 settlement -- by way of the court ruling in the 9 settlement agreement. 10 MR. AFRAN: I appreciate Mr. Plocker's 11 comments, I assumed he'd address the issue in a similar 12 way he did. I would just note, all though the ordinance 13 does release, at least, and I don't have in it front of 14 me, but let's assume just for the sake of argument, most 15 environmental constraints are all released under the 16 ordinance, nevertheless, this is a fundamental point, 17 the applicant signed voluntarily a settlement agreement 18 agreeing to submit to an environmental appraisal in this 19 site plan application. So regardless of what the 20 ordinance does say, in the settlement agreement that the 21 applicant voluntarily signed and agreed to does commit 22 the applicant to an environmental -- the application to 23 an environmental appraisal and that's the point. The 24 applicant voluntarily did that in the settlement 25 agreement.

17 1 CHAIRMAN BAGOFF: And for the record, the 2 Planning Board was not a signatory or participant in any 3 settlement agreement. So we are going to consider the 4 IH-1 zone only. So let us not talk anymore about the 5 settlement agreement. 6 MR. AFRAN: Well, with respect I must 7 respectfully disagree. Because the settlement agreement 8 binds the applicant to submitting to a site plan 9 application and binds the applicant to submitting to the 10 environmental appraisal. And so whether the Planning 11 Board's a party to it or not, the applicant assumed 12 those duties. 13 CHAIRMAN BAGOFF: Mr. Plocker. 14 MR. PLOCKER: I want to clarify, Mr. Afran, 15 when you said, we submitted to an environmental 16 appraisal, are you referring to any provision in the 17 settlement agreement other than the one I just read? 18 MR. AFRAN: No, but I think that's good 19 enough. "In addition, WEHI shall submit all plans to 20 DeFeo and Associates, the Township's environmental 21 consultant, for review and comment." And following 22 that, th Planning Board hired Mr. DeFeo under a contract 23 to provide an environmental report and therefore 24 anything responsive to environmental issues in harm is 25 relevant and admissible in this hearing.	19 1 THE WITNESS: No problem. 2 So what I want to discuss today is one, 3 where the wetland is and in general how the wetlands 4 function on the West Essex Highlands site. And that 5 ends up being important because it's the basis for 6 understanding what the impacts are. 7 We mentioned New Jersey before and this is 8 New Jersey's definition of a freshwater wetland. An 9 area that is inundated or saturated by surface water or 10 groundwater frequency enough to support, under normal 11 circumstances, vegetation adapted to life in saturated 12 soil conditions. 13 MR. AFRAN: Could I just ask Mr. Gallagher 14 to hold the microphone close to his mouth. I can't hear 15 you very well. 16 A. The vegetation that is growing in wetlands, 17 typically called hydrophytic vegetation. And one of the 18 key elements to this is hydrology and there's three 19 parameters that are required to define vegetation. 20 Hydrophytic vegetation, soil and hydro soils, soils that 21 are saturated long enough that they change their 22 characteristics. As I said, hydrology is the key point. 23 And to be a wetland the New Jersey manual, 1989 manual 24 describes that soils have to be saturated within 25 one-foot of the soil surface for as little as one week
18 1 MR. PLOCKER: And the ordinance explicitly 2 exempts an applicant from the items required by an EIS. 3 So why in any instance would Mr. DeFeo consider a review 4 of those items and -- let me finish. And I'm just going 5 to leave that to the Board and if that is the objectors 6 position on the issue, I am fine with the record on 7 that. 8 MR. AFRAN: And the documents, I'll just 9 essentially repeat again, we the agreed to submit to the 10 environmental appraisal. 11 CHAIRMAN BAGOFF: Okay. 12 MR. AFRAN: Thank you. 13 As always, I think Mr. Plocker and I 14 appreciate the Board's tolerance in listening to U.S. go 15 back and forth. 16 CHAIRMAN BAGOFF: Nice colloquy. 17 Go ahead, sir. 18 MR. AFRAN: Mr. Gallagher, your credentials, 19 I believe, have been accepted, you are now testifying as 20 an expert. Would you prefer to use this microphone so 21 you could be louder and hold it right up. I am told by 22 Mr. Fagan that if I speak, because of the audience 23 online, I will have to walk over and share the mic, but 24 I'd rather Mr. Gallagher be heard by everyone and I will 25 go over and do that when I have to.	20 1 during the growing season. So those areas that are 2 saturated for only one week, really if you look at a 3 gradient of how wet an area is and upland doesn't have 4 any of the wetland hydrology characteristics and then 5 there is a wetland boundary and right at that line is th 6 driest part of the wetland and that's where the 7 definition sits. That might only be saturated for one 8 week at the beginning of a growing season. It is 9 because of that, that impacts the forested grounds can 10 be pretty easily done and anything that modifies 11 hydrology, either surface flows or groundwater flows, 12 could impact the composition of a wetland, how the 13 ground functions and one of the key purposes is wetland 14 nutrient transformation. So when the nutrients go 15 through a wetland they're absorbed and they're 16 transformed into a different form that's less 17 problematic than surface water and which is one of the 18 main reasons to protect it. 19 This is just a depiction of what I've been 20 describing. So this is the groundwater, this dash line, 21 and this is in the spring where it's higher. And then 22 as the growing season progresses the water table drops. 23 And typically that happens in spring when the leaves on 24 the trees come out. These now are subject to 25 transpiration. So the trees literally pull the water

21 1 out of the soil and the water table drops. The wettest 2 time in the growing season right here. This represents 3 that point. And then anything more upland of that 4 wetland the water table is deeper than one-foot. 5 Now, one of the other key elements on any site 6 investigation is understanding of soils and this is a 7 soil map taken from the U.S. Department of Agriculture 8 Web Soil Survey. And I believe it's the same one the 9 applicant used in their submission. And on this site 10 there's three main soils. The ones with a B are Boonton 11 soils, and there's a Haledon series, and a Hasbrouck 12 series. There are three main soil types. 13 The Boonton soils are well drained. The Haledon 14 soils are somewhat poorly drained and the Hasbrouck 15 soils are poorly drained. The Hasbrouck soils typically 16 would occur associated with wetlands. 17 This just at section of their site plan showing 18 Basin 7. You can see this is Haledon soil. The area 19 with BOGBC, that's Boonton soil. And this doesn't show 20 any Hasbrouck. 21 Here's a general description. These soils, 22 Boonton soil is on the steeper slopes, well drained and 23 what they call a fragipan at 29-50 inches and this 24 information is taken out of the web soil survey. And 25 that fragipan is a very dense impermeable layer of soil,	23 1 Hasbrouck silt loam poorly draining water table 2 is at the surface. Restrictive horizon, again, that 3 fragipan is 6-34 inches. 4 This is just a general depiction of what that 5 fragipan means to the site. Just so happens that this 6 site the soils had developed on a glacial hill. 7 So how does this site functional in general. 8 During a rainfall event water either runs off and 9 percolates through the soil, but when it goes through 10 the soil and reaches the fragipan that's where it percs 11 and tends to move down slope and these fragipan's, as I 12 showed you with the depth of the fragipan based on the 13 different soil series, all go down towards the streams 14 that drain the site. And this is what it shows. It 15 comes down and right about this point is where the 16 fragipan get's close enough to the surface that the 17 waters is perched above it and dries that well 18 hydrology. And ultimately it's discharged through the 19 stream channel that tends to be somewhere in the middle 20 of the low point of the ground. 21 This is just a picture of the stream just as it 22 leaves the site. One of the things that's important, 23 streams tend to be rock lines. So that fragipan, that 24 water moves along the fragipan and discharges to the 25 stream which means the streams are considered to have
22 1 actually very brittle and any water that's percolating 2 or infiltrating through the surface soil tends to get 3 hung up or sits on top of that fragipan and that's a 4 very important part of the soil. 5 The Haledon series somewhat poorly drains and the 6 fragipan is a little shallower, 24-36 inches. So on 7 this site the Boonton soils tend to be in the higher 8 landscape position, the Haledon soils are more on the 9 mid slopes towards the bottom and the last one, that 10 Hasbrouck soil, that's another poorly drained soil or 11 ones associated with the wetlands. 12 So Hasbrouck soils are poorly drained and that 13 fragipan is down near the slope. Again, that fragipan 14 is a restrictive horizon that water tends not to move 15 down through. Percs on top. 16 Another description of Haledon soils. That depth 17 of the water table is about 7-18 inches. And that is 18 because the water is sitting above that restrictive or 19 fragipan perch. And perched water is 12 inches off the 20 surface in late winter and early spring. And I know I 21 listened to Sean's testimony he talked about mottling 22 but another term which means the same is redoximorphic 23 features that change the colors of the soil indicates 24 seasonal high water table. And Haledon series it could 25 be as high as 18 inches from the surface.	24 1 intermittent flow, so it is likely that July and August 2 these streams are probably dry, but the early spring and 3 winter they're full. 4 MR. AFRAN: I want to see if this mic is 5 working Mr. Fagan gave me. 6 It is. All right. 7 THE WITNESS: Yes. 8 MR. AFRAN: I wouldn't have interrupted if I 9 needed to speak. Thank you. 10 A. This is a plan in the applicant's plan set that 11 shows where all the wetlands are. You can see the 12 wetlands are in this pattern. The darker gray 13 delineates the state open water or the headwater streams 14 that drain them. And this might help show better. 15 These are the main drainage areas on the site. If you 16 look at the topography you can see that it kind of 17 creates a bowl on this side. Everything's forced to 18 the wetlands, the stream in the western watershed. 19 The eastern watershed of the site is a little 20 different up here, you can see the way the contour wraps 21 around the wetlands. The stream that creates that 22 bowl, so all the water, either surface water or ground 23 water, flows towards that wetland and the two streams. 24 MR. AFRAN: For the record, you're depicting 25 the western drainage area, the darker green and the

25 1 eastern drainage area, the lighter green, is that 2 correct? 3 THE WITNESS: That's correct. 4 A. So with the development what's happening, this 5 blue indicates the current surface flow patterns towards 6 the wetlands. Pretty much follows the topography high 7 to low and the wetlands occupy the lower landscape 8 position on the site. And this is a typical headwater 9 wetland system where this is the beginning of Canoe 10 Brook. Both streams are at the headwater of Canoe 11 Brook. But with the development you see that that 12 current pattern now is modified by man, it's designed to 13 collect storm water and be directed towards storm water 14 facilities or best management practices. This features 15 storm water basins, whatever it might be for treatment, 16 and ultimately discharged. You can see these pink 17 arrows are collecting and ultimately discharging well 18 below the wetlands on the site. So it is modifying that 19 flow path of surface flow to the wetlands. You could 20 see in the western wetlands about 32 acres, it's reduced 21 by nine acres, roughly 28 percent of the flow that goes 22 there. 23 And as I was saying before, these are forested 24 wetlands that tend to be a dryer end of a wetland 25 contiguuum. So the reduction in surface water flow has	27 1 water in the wetland draining towards the basin. And 2 there's two things here that are important. One, and we 3 said it before when Sean Walsh testified, somehow their 4 testimony missed the fragipan. Missed the restrictive 5 horizon. But this is an issue defined and well looked 6 at here. 7 Here's the same basin. 8 And the groundwater elevation, they have the 9 estimated seasonal high elevation at 519. Well, go 10 back, their's 540, wetland elevation 536, it's like 15 11 feet lower than the wetlands. One of the things to 12 remember in those sites is that wetland hydrology should 13 make sense. That groundwater flow path that follows the 14 contours, follows the topography towards the wetlands, 15 it's just a natural way that these wetlands function. 16 To find a seasonal high water table below the elevation 17 of a wetland, and not by feet by more than ten feet, 18 makes no sense. That water here from that seasonal high 19 water table is not flowing uphill. So this basin does 20 two things, one, it makes no sense. Partly because it 21 is lower than the wetland for a seasonal high water 22 table. 23 But two, the designer would have to take into 24 account the water from the wetland and the stream are 25 now being redirected towards the wetland. That's an
26 1 an impact. 2 The eastern wetlands are similar. 48.4 acres, 3 it's going to be reduced by 16 acres. So 33 percent of 4 the existing drainage area. 5 Just another depiction of the post development 6 drainage area. You could see where the drainage area 7 will be reduced, the same with the eastern drainage 8 area. 9 In addition to surface flow paths, the 10 groundwater flow paths are also indicated. And 11 generally, as I was saying, that groundwater hydrology 12 is moving over those restrictive horizons, in this case 13 the fragipan, and it's moving down slope towards the 14 wetland towards the stream. And at a minimum it's being 15 daylighted or it's discharging to the surface at or near 16 the stream. 17 And here's an example of one of the impacts. So 18 this is the wetland, this is Basin 7, one of the 19 infiltration basins. So the basin's bottom is proposed 20 at 532. The wetland elevation is 540. So the 21 infiltration basin is eight feet lower than the adjacent 22 wetland. And one of the key issues here is that 23 groundwater flows towards the wetland. With this part 24 of their development it's changing the hydraulic 25 gradient from the water going to the wetland to the	28 1 additional amount of water in the basin that impacts 2 function. 3 Again, you can see this is the high water table 4 here, 528. 522. 519. 5 Q. Now, whose seasonal high measures are those? 6 A. These are the applicant's soil investigation. 7 Q. Thank you. 8 A. And these are just from the applicant's plan. 9 The red is what I added to make it easier for you and 10 the audience to see. 11 Same basin, this is Basin 7. Again, here's the 12 wetland, 534. This storm water basin estimate seasonal 13 high is 519. It's only 50 feet away and it should be up 14 slope. The water should be flowing towards the wetland 15 and in this case it is indicating that the seasonal high 16 water table is 15 feet lower than the wetland. Once 17 again, it just doesn't make sense. 18 Basin 7, same idea. Basin bottom, 544. Wetland, 19 546. Here is 548. 550 contour. Basin bottom, once 20 again, is below the elevation of the wetland. 21 And the test pits show a seasonal high water 22 table of anywhere from 537 to 542. And we'll go back, 23 sorry, and look at the wetland elevation. 546. 544. 24 So, again, the natural path of water in the groundwater 25 should be towards the wetland. It should be a gradient

29 1 from high and discharging at the low point in the 2 landscape by the wetland. To have a seasonal high water 3 table below the elevation of the wetland, again, makes 4 no sense. 5 That was it. Thank you. 6 CHAIRMAN BAGOFF: I have a question. 7 Q. I have some follow up questions for the witness. 8 CHAIRMAN BAGOFF: Go right ahead, sorry. 9 Q. So let me be clear, when you are reciting the 10 wetland figures -- I'm sorry, the high water table 11 figures, you're citing the applicant's calculations? 12 A. Yeah, all the estimated seasonal high water 13 tables are from the applicant's soil survey or soil 14 investigation. 15 Q. Now, Mr. Walsh testified that he thought their 16 elevations were incorrect because the actual water 17 tables higher based on what the mottling showed. Is 18 this similar in direction to what he was saying? 19 A. Yes, it is. 20 Q. Okay. 21 So you're making, you're illustrating now by 22 comparing these measured points from the applicant with 23 the situation with the actual wetlands elevation, high 24 water table? 25 A. Correct.	31 1 Now, that water after construction will go where 2 on your chart? 3 A. Well, some of it, anything outside of the 4 development footprint will continue toward the wetland. 5 But anything below the ridge line that would normally or 6 currently flow toward the wetland would be collected. 7 Q. Now, those four blue arrows on the left side, 8 those would be redirected? 9 A. The upper part of those arrows, yes. Because it 10 starts at the ridge over here somewhere. 11 Q. Okay. 12 A. So this is the part that flows. 13 Q. That's why there's more drainage area lost on the 14 eastern side than the western? 15 A. That's correct. 16 Q. Okay. Thank you. 17 And I see the pink arrows on the lower left-hand 18 corner going into the basin, you see that? 19 A. Here? 20 Q. Yes. And then there is an arrow going off the 21 chart, that's going back into the stream at the bottom, 22 is that correct? 23 A. That's correct. 24 Q. So I understand you to be saying that the water 25 that would normally flow across into the wetland is
30 1 Q. Thank you. 2 Now, if you would be kind enough to turn to slide 3 -- they're not numbered. With the arrows. The blue and 4 violet arrows. That's it. Thank you. 5 I want to be clear that this is understood, the 6 blue arrows represent the current movement of water 7 across the site as conditions presently are, is that 8 correct? 9 A. That's correct. 10 Q. And your inclusion of the pink arrows show 11 movement after the development is constructed, is that 12 correct? 13 A. That's correct. 14 Q. Okay. 15 Now, when you say that -- well, if you look at 16 the lower left-hand corner -- well, strike that. 17 If you look in the middle at the top you see blue 18 arrows moving to the right. Essentially perpendicular. 19 Do you see that? No, on the other side. No, on the 20 other side. That's it. Yes. On the right side -- left 21 side, excuse me, my apologies. On the upper right side 22 there's four arrows in blue. Now, those are directed to 23 the wetlands in the gray mottling, is that correct? 24 A. Correct. 25 Q. Mottling I mean the gray speckles on the map.	32 1 being deviated away down to the bottom, is that correct? 2 A. That's correct. 3 Q. Now, if we look at the center again, we see, if 4 you look at the lower part of the chart in the center 5 there is a speckled area in gray, that's a wetland, 6 correct? 7 A. In the center, yes. The stippled area. 8 Q. Yeah, the stippled area. That's what you look 9 for. 10 Now, there are blue arrows, again, I think 11 there's four of them going in the center right to that 12 stippled area, do you see that? 13 A. Yes. 14 Q. Okay. 15 That represents the current flow of water into 16 the wetland, is that correct? 17 A. That's correct. 18 Q. Okay. 19 Now, looking at where those arrows begin, what 20 would be the difference in water flow after this is 21 constructed based on the pink arrows? 22 A. Well, the surface load is all collected by the 23 storm water system and redirected to different BMP's. 24 There would be impervious gradient parking lots to this 25 basin down here.

33 1 Q. Well, but there will no longer be a stippled area 2 in the lower center, is that correct? 3 A. That's correct. 4 Q. And, again, on the far right side, again, the far 5 eastern part of the drainage area there's a series of 6 blue arrows, again, going to the stippled area. Would 7 your testimony as to that area be the same? 8 A. Yes, it would be. 9 Q. Now, what is the affect ecologically of losing a 10 substantial portion of the normal water that drains to 11 these wetlands today? 12 A. Well, as I said, one, it's less water. Less 13 surface water runoff getting into the wetlands. But the 14 groundwater hydrology is equally as important, if not 15 more important and some of the areas it's not just 16 cutoff. Now I will give an example. Like the 17 foreground water flow it would be following the same 18 general path as the blue arrows but you will have less 19 surface flow, but this building, just to fill a large 20 structure like this, is going to completely eliminate 21 ground water flow towards that way. 22 Q. The center wetland at the bottom? 23 A. Correct. 24 Q. Okay. 25 Again, you're referring to the winged orange	35 1 then moves over the fragipan slowly down the slope. 2 Q. Now, I think we all understand the groundwater 3 movement because stormwater goes across the site. 4 A. Yes. 5 Q. In terms of losing the groundwater, you referred 6 to construction of the building, what does that do 7 physically to the movement of groundwater and its 8 ability to do that? Can you explain that. 9 A. Well, in the orange building, again, we're 10 talking about kind of somewhat a U-shaped building, this 11 blue arrow is the water that would be below that would 12 hit the building and tend to mound on the upgraded side 13 and then tend to be a shadow. There's no water on the 14 downgraded side. So the building would essentially 15 cutoff all that groundwater. 16 Q. And by U-shaped building you mean the one in the 17 center, there's another one on the upper part of the 18 chart? 19 A. Correct. The one that's in the center on the 20 south. 21 Q. Thank you. 22 And now, when wetland areas lose say 28 percent, 23 33 percent, whatever they be, of the drainage, what does 24 that typically do to the ecology of those sites? 25 A. Well, the one key thing is there would be less
34 1 structure in the middle, correct? 2 A. That's correct. 3 Q. Now, so you're saying that, if you go back to the 4 chart with the, I think it was an orange fragipan line. 5 Do you recall that chart? That's it. 6 You say the ground water movement, now I see a 7 word that says, permeable layer, and then there's a gray 8 area with an arrow, then there's the orange fragipan 9 line. What does this relate to in terms of groundwater 10 movement to the wetland and streams, how does this 11 relate? 12 A. Because of the restriction provided by the 13 fragipan, that's even though water might move downward 14 and in surface layers once it hits the fragipan it 15 starts to move laterally and that's represented in the 16 gray color as saturated. 17 Q. Is this what you mean by groundwater movement? 18 A. Right. 19 Q. Continue, sorry. 20 And so the discharge point there would be similar 21 to the discharge point on the chart where the stippled 22 area in the center is, is that correct? 23 A. Yeah, this groundwater flow follows a similar 24 path as the blue arrows. It's just a slower moving 25 water that the rainwater percolates into the ground and	36 1 water to drive the hydrology that makes their wetland. 2 So you can anticipate some of those current wetland 3 areas will be dryer and especially the ones that are 4 more dead will probably come up upland. They'll no 5 longer enough water to drive hydrology into the wetland. 6 Q. And so when they change their wetland to the 7 upland what does that do to the flora for example? 8 Typically would they grow there? 9 A. It would be a change in the plant species 10 composition of the wetland. 11 Q. And does that affect the flora? 12 A. There's an element of that, especially in the 13 wetter parts that a lot of the variable chemical 14 reactions that occur in wetlands occur when they're 15 saturated. An anaerobic or anaerobic conditions that 16 allow oxygen and that's where nutrients are transformed. 17 If they're dryer there are periods it won't be as long 18 and so that function ends up being negatively impacted. 19 Q. You when you were describing the types of soil on 20 the site, in those three types of soil, and you 21 mentioned there was a source, but I couldn't quite hear 22 you. Could you define the source of the information 23 about the soil composition on the site? What is the 24 source for that information. 25 A. For the mapping and the information?

37 1 Q. Yes. 2 A. U.S. Department of Agriculture Web Soil Survey 3 and U.S. Department of Agriculture Official Soil 4 Description. 5 Q. And the information you took is that specific to 6 this site? 7 A. The official soil description just describes that 8 soil series. The Web Soil Survey map has a little more 9 detail. There are some for Essex County but not 10 necessarily specifically to the site. 11 Q. But for the vicinity? 12 A. Correct. 13 MR. AFRAN: Just need one moment, please. 14 Mr. Chairman, I think we should just offer to mark the 15 slide presentation. I don't remember what number we're 16 up to and Jamilet, I haven't given her all the exhibits 17 yet, so I have absolutely no idea what number we're up 18 to. 19 MS. McGOVERN: We are on 0-14. 20 MR. AFRAN: Thank you. 21 So we would offer that as Exhibit O-14 for 22 the objector. 23 So that concludes my questions for now, 24 unless anything prompts anything further. Thank you. 25 CHAIRMAN BAGOFF: Thank you very much for	39 1 CHAIRMAN BAGOFF: Correct. 2 THE WITNESS: -- are the soils on the ridge 3 similar? 4 CHAIRMAN BAGOFF: Right. 5 THE WITNESS: My answer is probably, yes. 6 CHAIRMAN BAGOFF: Okay. 7 Okay. Mayor McCartney, do you have any 8 questions? 9 MAYOR McCARTNEY: Chairman, thank you. 10 So I am trying too make sense of this. With 11 Mr. Gallagher, your testimony that, yes, the buildings 12 will in fact displace the water. 13 MR. AFRAN: Mayor, I couldn't hear. 14 MAYOR McCARTNEY: I am just trying to 15 reiterate that Mr. Gallagher's testimony was saying 16 that, yes, the project will displace the water. But it 17 would seem to me that being an overlay zone on what the 18 stormwater management plan is, on how is that water 19 being redirected and we don't see that. So do you 20 understand what I am saying? 21 MR. AFRAN: I could follow-up. 22 MAYOR McCARTNEY: I understand it's being 23 displaced, but maybe it was the beginning of the year 24 about stormwater and stormwater management. 25 MR. AFRAN: I think I could help by
38 1 your presentation. 2 Could you go to the mapping. See Howell 3 Drive and as an expert is this a unique piece of land 4 that is not found anywhere else in the surrounding area 5 territory? There was a map that you had of the 6 property. That one. So is this a unique piece of land, 7 nowhere else to be found or are -- 8 THE PUBLIC: Can't hear you. 9 CHAIRMAN BAGOFF: Is this a unique piece of 10 land similar with the fragipan or are the other areas 11 contiguous to this similar? 12 THE WITNESS: Adjacent to this? 13 CHAIRMAN BAGOFF: Correct. 14 THE WITNESS: No. 15 CHAIRMAN BAGOFF: No which? 16 THE WITNESS: The land adjacent to this 17 property are all developed. 18 CHAIRMAN BAGOFF: But initially we are 19 talking, I am asking before it was developed, Howell 20 Drive, West Highland Golf Course was similar. Could 21 this be a unique piece of land that was not similar to 22 all those other pieces of land or your expert opinion is 23 the surrounding land is similar to this land? 24 THE WITNESS: If you're asking 25 historically --	40 1 following up with a question, if that's all right. 2 Could you please go back to the map with the arrows. 3 THE WITNESS: Which one? 4 MR. AFRAN: The map with the arrows. Blue 5 and violate arrows. Okay. Now, is it possible to zoom 6 in little bit on that. Thank you. 7 Now, on this map you're showing the pink 8 arrows demonstrating water going to certain defined 9 places, correct? 10 A. Correct. 11 Q. Now, looks like conduit or some kind of a 12 semicircle, is that correct? 13 A. Yes. 14 Q. Okay. 15 Now, then there are detention basins built into 16 the, say on the bottom where you pointed to and there's 17 several. This is part of the stormwater management 18 plan, isn't it? 19 A. It is, yes. 20 Q. So these features that are marked here with the 21 arrows go to -- are reflective of the stormwater 22 management plan, is that fair to say? 23 A. It is, yes. 24 MR. AFRAN: So Mayor, I think that in a 25 sense there's an overlay through this because he is

41 1 showing that water movement, after the storm water 2 management plan is replaced, changes the natural flow 3 and the pink arrows reflect it going into the management 4 system. So I am not sure if that's what you're driving 5 at but I think it does give an overlay, to a great 6 degree. 7 CHAIRMAN BAGOFF: I want to add for clarity, 8 was that the storm water management plan that was sent to 9 the DEP for their evaluation? 10 MR. AFRAN: That would be the same 11 storm water management plan. 12 CHAIRMAN BAGOFF: So this represents what 13 was sent to the DEP for evaluation? 14 MR. AFRAN: Except for one thing. 15 Q. In Mr. Gallagher's review of the stormwater 16 management plan, what is their focus in your view? 17 A. They're supposed to look at compliance with 18 N.J.A.C. 7:8. 19 Q. Now, what's the point of their analysis? Are 20 they looking at wetlands, water quality, drinking water, 21 what are they looking at? 22 A. One, compliance and two, water quality. 23 Q. Okay. 24 So when you say, water quality, they're referring 25 to the quality of the water after recharge, is that	43 1 stormwater management system on returning water back to 2 the drinking water system to the streams and rivers, is 3 that correct? 4 A. Can you repeat that. 5 Q. No. They're looking at the well, I think I asked 6 the question. 7 CHAIRMAN BAGOFF: Ask him a question don't 8 tell him, them. Please ask him a question. 9 MR. AFRAN: I agree. 10 CHAIRMAN BAGOFF: Thank you. 11 Q. Outside of looking at that the return of the 12 water back into the river system, is the DEP's analysis 13 going to the quality of wetlands post construction? 14 A. No. 15 Q. Okay. 16 MR. AFRAN: And therefore there's -- Mr. 17 Chairman, there are -- our position is that even though 18 DEP did an analysis on recharge that's not an analysis 19 of wetlands post construction. And so that relates to 20 the environmental analysis. 21 CHAIRMAN BAGOFF: This is what your 22 hypothesizing, what DEP did or did not do? 23 MR. AFRAN: No, I am not hypothesizing. The 24 expert who does permitting said so. 25 CHAIRMAN BAGOFF: Did you read DEP
42 1 correct? 2 A. Or after treatment through any BMP, be it 3 recharge or for quantity management over peak flow 4 management. 5 Q. Okay. 6 So on this particular site we're going to see 7 water, stormwater going into say detention basins in the 8 lower left-hand corner, that's one example? 9 A. Right. 10 Q. The water then infiltrates eventually out of 11 their and then goes to the very far corner where the 12 arrow points to the bottom of that stream. Now, the 13 recharge analysis by the state is directed to the 14 efficiency of that aspect of the management system, is 15 that correct? 16 A. In theory, yes. 17 Q. Yes. I am not saying whether right or wrong. 18 MR. PLOCKER: I'm going to object. These 19 seem like questions directed towards an engineer. 20 MR. AFRAN: No, I am not done. 21 MR. PLOCKER: Stormwater design -- I want to 22 state my objection for the record. 23 MR. AFRAN: I'm not finished -- 24 CHAIRMAN BAGOFF: Mr. Afran. 25 Q. So now they're looking at the effect of	44 1 evaluation of the site? 2 THE WITNESS: We do not. 3 MR. AFRAN: I think -- 4 CHAIRMAN BAGOFF: He said, we do not. 5 MR. AFRAN: You said you did read -- 6 CHAIRMAN BAGOFF: Did you read it. You did 7 you it when doing the evaluation of the site, correct? 8 So you said he did, he said he didn't. 9 MR. AFRAN: No, I didn't say he did. I said 10 he's an expert and what DEP does in terms of recharge 11 analysis. 12 CHAIRMAN BAGOFF: So my question was, did 13 you read what DEP said about this particular site? 14 THE WITNESS: Their permits pretty brief, it 15 doesn't describe the analysis just their conclusion. 16 And I am not sure this Board knows but we did send a 17 letter to the DEP requesting that permit be suspended 18 based on inaccurate information, and like I said, we 19 have a seasonal high water table below the wetland 20 elevation. Just elements like that, that don't make 21 sense. So we made a request from the DEP to look at 22 this, absolutely. 23 CHAIRMAN BAGOFF: Did they? 24 THE WITNESS: They just got the letter a 25 couple weeks ago.

45 1 MR. AFRAN: There's been no activity yet. I 2 think the applicant responded and there's no activity 3 yet from DEP. 4 MR. PLOCKER: For the record, I believe, and 5 Mr. Afran can correct me if I am wrong, I believe that 6 letter was sent after the filing of the Notice of Appeal 7 in the Appellate Division -- 8 MR. AFRAN: Correct. 9 MR. PLOCKER: -- of all the permits. So why 10 would the DEP, and Ms. McGovern can correct me if I 11 wrong, the DEP shouldn't even have jurisdiction over the 12 permits. 13 MS. MCGOVERN: Well, that's my 14 understanding. They made a request to the DEP they did 15 it and now there's an appeal in front of the Appellate 16 Division. So now it's under their jurisdiction. 17 MR. AFRAN: Not necessarily. 18 CHAIRMAN BAGOFF: Let's go back to the 19 original question. You stated that you're not sure what 20 the DEP did in their analysis. They only came to a 21 conclusion. 22 THE WITNESS: Correct. 23 CHAIRMAN BAGOFF: I am asking him. 24 THE WITNESS: Yes, the permit described 25 their conclusion.	47 1 quality following the return of the water to the system. 2 And he said specifically they do not look at wetlands 3 health following construction. And so the criteria 4 don't change each time we do this. He's saying DEP's 5 analysis does not go to these environmental points. 6 That doesn't change each time and then let me ask a 7 follow up question, if I can. 8 Q. In reading DEP's stormwater approval as you 9 described it, do you see any reference there commenting 10 on wetland conditions post construction? 11 A. No. 12 Q. So the DEP did not comment on in it and their 13 decision administratively that he read is where they put 14 their findings. There aren't a separate set of findings 15 somewhere else that they don't share with us. So we 16 know two things. One, an expert who works on permitting 17 in this area says that they focus on water quality 18 following a recharge. And when reading DEP's stormwater 19 analysis they don't address wetlands health at all. So 20 we have two things. One, this is not what they focus on 21 normally in terms of criteria. 22 And two, they did not address this in their 23 findings. So in answer to the Chairs question, they 24 indeed made a decision but it doesn't go to these 25 environmental issues dealing with wetland conditions and
46 1 CHAIRMAN BAGOFF: Okay. So their analysis 2 may be done by the normal process that they do of an 3 analysis of a site, is that correct? 4 THE WITNESS: We don't know if they used the 5 normal process. 6 CHAIRMAN BAGOFF: So is it, in your expert 7 opinion, does the DEP in areas not using the normal 8 process use something that is more or less? 9 THE WITNESS: Well, I can answer your 10 question this way. We were surprised that the things 11 DEP missed in the stormwater management plan that 12 affects how the basin will function. 13 CHAIRMAN BAGOFF: So the answer to the 14 question is, nobody here is 100 percent sure what the 15 criteria were the DEP used in the analysis but only in 16 the conclusion? 17 MR. AFRAN: Mr. Chairman, hold on a second. 18 The criteria don't change for each application. He is 19 an expert in permitting in this field and he is 20 testifying that the criteria used, the analysis used 21 focuses on water quality subsequent to recharge. That's 22 the standard DEP uses and he testified to that. The 23 criteria don't change for each application. He is an 24 expert in that and says when DEP does stormwater 25 analysis they're looking at recharge in terms of water	48 1 health. That's our point. That this is not something 2 that is superceded by DEP. This is an environmental 3 question and to the extent environmental questions are 4 relevant here, and we said they are for what reason we 5 have in our colloquy, this testimony is relevant. 6 CHAIRMAN BAGOFF: Mr. MacNeill. 7 MR. MacNEILL: I definitely have a question 8 on, have you identified any noncompliance with the 9 freshwater rules specifically towards the drainage area 10 towards the portion of the sloped wetland area? 11 THE WITNESS: Remember, the freshwater 12 wetlands permit on this site were really close so that 13 would subsume the freshwater wetlands. 14 MR. MacNEILL: So the freshwater rules do 15 not regulate the flow of surface runoff to specific 16 sections of a slope or wetland area? 17 THE WITNESS: No. 18 MR. MacNEILL: So I guess, just a follow up 19 question. Would a recommendation if you are the 20 applicant be simply adding addition that stormwater 21 discharge upstream to ensure the ecological impacts are 22 avoided? 23 THE WITNESS: I think the bigger issue here 24 is to relook at the soils to determine where the 25 seasonal high water table is.

49 1 MR. MacNEILL: Okay. That's all I have for 2 now. 3 CHAIRMAN BAGOFF: Okay. 4 Mayor McCartney. 5 MAYOR McCARTNEY: I want to go back now, 6 looking through my notes. I was listening to Sean 7 Walsh's testimony back in February, looks like that was 8 the question that I asked. The question I asked was, 9 Mr. Walsh, you recommended additional basins to be added 10 either deeper or wider, that's what I meant by having a 11 overlay and it wasn't just this basin it was a whole 12 stormwater management. 13 MR. AFRAN: I'm sorry. I thought you meant 14 overlay map. My apologies. 15 MAYOR McCARTNEY: I meant the whole plan, 16 not just Basin 1. 17 THE WITNESS: My general view on the site 18 like this is that these are difficult sites to develop. 19 They tend to have high water tables. So even making the 20 basin bigger isn't necessarily going to solve the 21 problem. And I know I've pointed out some other issues 22 that, if I remember right, I identified some problems 23 with their calculations that under estimated the volume 24 of water. So all those issues together make this a 25 complicated site to design. And, again, key issue here,	51 1 landscaping of the site. DEP tends to believe the 2 applicant that those borings are correct. But in this 3 case, just looking at that flow path from upland to a 4 wetland it seems that their test pit investigation just 5 doesn't make sense relative to where the wetlands are on 6 this site. There should be gradient from the top of the 7 ridge towards the wetland groundwater, surface water 8 both flowing toward them. And that fragipan is the key 9 element for anyone doing a test pit to identify. 10 CHAIRMAN BAGOFF: Okay. 11 MR. GUARINO: Mr. Guarino, do you have any 12 questions of the witness? 13 MR. GUARINO: Thank you, Chairman. 14 Thank you for your presentation. I want to 15 get a clarification. I know you were talking about 16 chemical reactions, would those chemical reactions have 17 any impact on the water flow percolation or result in 18 any environmental impact? 19 THE WITNESS: No. They're usually -- why 20 wetlands, at least in part, they're important in 21 transforming our receiving bodies like streams and 22 basins. And they -- and it can convert it from a form 23 that becomes like a gas. So there's anaerobic condition 24 for value. A healthy functioning wetland is important 25 for just reducing the amount downstream.
50 1 and Sean Walsh brought this up as well, is that getting 2 the soil testing and description down accurately and 3 that's why I pointed out it makes no sense the seasonal 4 high water table can be below than the elevation of a 5 wetland. It has to be higher. There's no mention of a 6 fragipan in any of the soil borings. And in every soil 7 series it described the fragipan and having those soils 8 have a fragipan actually makes sense with the hydrology 9 of the wetlands. Follows the surface groundwater flow 10 paths, flows towards the wetlands stream line to have 11 soil, estimated seasonal high water below the wetland to 12 me indicates they missed that defining layer and the New 13 Jersey DEP BMP manual requires that you identify that 14 would be restrictive horizons in your soil testing. 15 MAYOR McCARTNEY: So Chairman, again, going 16 back to my notes here. That was one of the points that 17 I actually have a condition here that more test pits be 18 run and to recalculate. 19 CHAIRMAN BAGOFF: So I got another question 20 based on what you just said. The DEP requires it and it 21 wasn't provided, wouldn't they ask for it before they 22 made a conclusion? 23 THE WITNESS: Soil descriptions were 24 provided for the basins. What I showed the Board 25 tonight is how they fit in with the rest of the	52 1 MR. GUARINO: Okay. Thank you, sir. 2 Thank you, Mr. Chairman. 3 CHAIRMAN BAGOFF: Mr. Naborine, do you have 4 any questions for the witness? 5 MR. NABORINE: Not at this time, Chairman. 6 CHAIRMAN BAGOFF: Mr. Alper, do you have any 7 questions for the witness? 8 MR. ALPER: I do. Thank you. 9 Couple. First I want to make sure I have 10 the phrasing right. You said the seasonal high water 11 table was below the wetlands elevation? 12 THE WITNESS: For those two basins. 13 MR. ALPER: Right. 14 And you also said the basin bottom is at a 15 lower elevation? 16 THE WITNESS: Correct. 17 MR. ALPER: So when you were first saying 18 that, I maybe misunderstood. I thought you basically 19 were saying that, that was a design problem, that they 20 designed the basin bottom to be lower but from what 21 you're more recently presenting, I think I misunderstood 22 and maybe you're saying it's a math issue and they 23 miscalculated the water. Is that -- is my understanding 24 that to be right? 25 THE WITNESS: I think that you're right on

53 1 both accounts. This, for example what I was saying, 2 this Basin 1 interrupts that groundwater flow as well. 3 And then it's at 532 and the wetlands are at 45 -- 540. 4 So you change that gradient from groundwater moving 5 towards the wetland to now groundwater or water in the 6 wetland moving towards the basin. But not only is that 7 an impact on the wetlands, but it is going to compromise 8 the design of the basin because there's water that was 9 never anticipated in the design. 10 MR. ALPER: Okay. 11 And then can, if you could go back to the 12 arrow page with the blue arrows. Yeah, that's good. 13 So if I understood you correctly, you're 14 saying that the impact here of the pink arrows is 15 there's going to be less water to the northern part of 16 the wetlands? They're going to dry out. 17 THE WITNESS: To an extent, yes. There's 18 just less water getting to them. 19 MR. ALPER: Is that what you might call 20 destruction of wetlands or not to that extent or is 21 that -- 22 THE WITNESS: It does definitely have an 23 impact. 24 MR. ALPER: Also, DEP doesn't have 25 jurisdiction on that or they do but they didn't look at	55 1 responds on X, does the Planning Board have some 2 jurisdiction in that regard? 3 MS. McGOVERN: Well, I think under N.J.S.A. 4 13:9B-30, pretty clear that the DEP has the exclusive 5 right for regulations, number one. 6 Number two, and what this Board has to 7 review is if this application complies with its 8 ordinance, with the towns ordinance. And the town 9 ordinance specifically state's under General Provisions, 10 which is Section C5. "The development of the tract 11 shall be exempt from all bulk design and environmental 12 regulations of West Orange Land Use regulation 13 ordinances unless otherwise indicated herein." And 14 there are no other environmental regulations set forth 15 in this ordinance. So if the Board finds that they 16 complied with ordinance as it applies to this zoning 17 district, that's what the Board is supposed to be 18 looking at. If the Board disagree with the DEP, the 19 Board has no power to disagree with the DEP. It is a 20 higher level. The Appellate Division has to make that 21 decision. 22 MR. ALPER: Even if the DEP maybe didn't 23 look at it as we say they should? 24 MS. McGOVERN: Well, we know there was a big 25 submission, so we didn't look at that. I don't know
54 1 it or they looked at it and decided it was okay? 2 THE WITNESS: There you go. Their footprint 3 of jurisdiction is the wetlands and the wetland 4 transition area. 5 MR. ALPER: So who does have that 6 jurisdiction or who does it go to if the wetlands are 7 disturbed? 8 THE WITNESS: Normally DEP does it. Many 9 times Townships, even though they can't supercede 10 ordinances, but they could have stream buffers or stream 11 impact requirements and that would feed into that. So 12 it's often part of a municipal EIS. 13 MR. ALPER: Are these your arrows or -- 14 THE WITNESS: They are. 15 MR. ALPER: Has the DEP seen these arrows? 16 THE WITNESS: They have now. 17 MR. ALPER: This is in the letter that you 18 sent, they just haven't responded? 19 THE WITNESS: That's correct. 20 MR. ALPER: I guess my remaining questions 21 are for Mr. Bagoff. 22 Do we have some power if the DEP is not 23 weighing in on specific actions as opposed to DEP? If 24 you say X and DEP says no, X is fine. I assume maybe we 25 don't have an issue. If you say X and DEP never	56 1 whether the witness did look at everything that was 2 submitted to the DEP by the applicant because it is on 3 file. 4 THE WITNESS: Yes. Well, I am not sure we 5 looked at every page but we looked at a lot. 6 MS. McGOVERN: Also I would defer to our 7 expert, perhaps if something was egregious or something 8 really like, I don't know, whether these are minor 9 consistencies or this is something totally unusual. 10 MR. MacNEILL: So when we develop a site 11 regarding freshwater wetlands any impacts of that 12 development are regulated by NJ DEP. So NJ DEP doesn't 13 have N.J.S.A. 7A, it is not a regulation that as a Board 14 we could point back to. It's not in our code. It's not 15 in the freshwater protection rules. There is -- it's 16 nothing that I have identified that had showed any 17 noncompliance with those freshwater wetland rules based 18 on my review of them. Typically as a Board it's always 19 a condition of any potential approval that you need to 20 obtain your outside agency approvals. One of them in 21 this case, as the Board engineer, we identified those 22 required approvals and it's up to the applicant to 23 obtain them and provide them for us to review and verify 24 that it is consistent with what we're reviewing. The 25 revision that was approved we have also reviewed and

57 1 approved or commented on, so generally speaking I 2 understand maybe some of the points about the reduction 3 in volume to the northern portion of the freshwater 4 wetlands, but for the Board, this, in my opinion, is not 5 something that we can comment on. It would just be a 6 condition of potential approval that they would -- the 7 applicant would have to obtain the necessarily LOI as 8 well as any development permits, general permits related 9 to freshwater wetlands. 10 MR. AFRAN: If I could just respond briefly. 11 I don't know if this is working so -- is this working? 12 I think at this stage we disagree certainly to one 13 extent regarding everything that's been said, namely the 14 applicant itself agreed to submit to an environmental 15 appraisal in the settlement agreement. 16 In addition the applicant agreed to go 17 through site plan review. In fact since the ordinance 18 removes most constrains it could have been a curtesy 19 review, but the applicant agreed to submit in the 20 settlement agreement the site plan review for this 21 project. And in that same agreement it agreed to submit 22 the environmental appraisal. So even though there may 23 be a question whether or not there are any DEP 24 regulations that are violated directly by this 25 structure, nevertheless the applicant agreed in exchange	59 1 CHAIRMAN BAGOFF: Mr. Plocker. 2 MR. PLOCKER: Yeah. Look, I take issue. 3 First of all, we're using all types of terms. There's 4 nothing in the settlement agreement about an 5 environmental appraisal. There's nothing about 6 environmental injuries. All it says is that Mr. DeFeo 7 will review. That is part and parcel of the settlement 8 agreement. And it's funny that Mr. Afran when he first 9 came here back in July didn't want to acknowledge the 10 settlement agreement at all. Then all of a sudden he 11 acknowledges the settlement agreement and what that 12 settlement agreement says, as Ms. McGovern pointed out, 13 we're governed by the IH zoning ordinance. It exempts 14 us from all other land use provisions unless it's 15 specifically in the IH zone. One of the exemptions is 16 the EIS. So as Mr. Afran, I don't know if he's a 17 contract lawyer, but you read contracts as a whole. I 18 believe the contract is clear and when read as a whole 19 it was never -- there was never an intent of the 20 Township of West Orange or my client to have to provide 21 or have this Board consider any items out of the IH-1 22 zone. We can go back and forth, and I respect Mr. Afran 23 speaking, but this clearly is a legal issue and I am 24 sure there will be another arm, another time, another 25 place, but the settlement agreement is clear, the intent
58 1 for being relieved of all environmental constraints 2 otherwise, to submit to an environmental appraisal. 3 And that means the Board must still take into account 4 environmental harm from the project. So our position is 5 still that, and we don't need to reach this issue yet, 6 you heard the evidence, obviously this comes to the time 7 of decision whether this enters into the Board's 8 decision or not, but our position is still since the 9 applicant submitted to the environmental appraisal and 10 did not have to in the settlement agreement as a part of 11 the site plan application that regardless of what the 12 DEP rules particularly say, if this project is going to 13 cause environmental harm in the form of wetland injury 14 or otherwise, as you heard from other witnesses, it's 15 still within the Board's jurisdiction. But the 16 applicant is not free of it's own contractual commitment 17 to submit an environmental appraisal for this property. 18 Doesn't matter what the DEP says. Contractually the 19 applicant agreed this Board must consider environmental 20 injuries. That's why Mr. DeFeo was appointed, for 21 example. Because of that contractual agreement the 22 applicant made. This Board nor the DEP eliminate that. 23 If it contracted for that as the price of getting this 24 rather generous zoning ordinance, then it has to live 25 with it and it's within the Board's jurisdiction.	60 1 of the parties is clear. 2 MR. AFRAN: One thing I would say is that I 3 never said the settlement agreement does not affect this 4 case. All I said early on, and that's about a year ago, 5 all I said early on was that the settlement agreement 6 cannot bind this Board to approving this application. I 7 simply said just because there was a settlement with the 8 town and WEIH, does not mean that this Board loses its 9 authority. That's what I said when I meant -- that's 10 what I said when I spoke of the settlement agreement. 11 In fact Mr. Plocker several times you told me, Mr. 12 Afran, we're not talking about the settlement agreement. 13 Doesn't apply here. I was the one urging its 14 applicability. I was simply saying it doesn't free the 15 Board of its duty. I was saying it doesn't bind this 16 Board. 17 CHAIRMAN BAGOFF: The Board understands we 18 are free of our duty. 19 MR. PLOCKER: And I agree with him. 20 MR. AFRAN: In addition, we shall submit all 21 plans to DeFeo Associates, the towns environmental 22 consultant for review and comment. And he did comment 23 and this evidence is all in response to his comment or 24 lack thereof. So the agreement itself makes all of this 25 relevant and it does say the environmental consultant,

61 1 doesn't just say for review in the abstract. It says, 2 for review by the Township environmental consultant. 3 MR. ALPER: All right. That was it for my 4 questions. 5 CHAIRMAN BAGOFF: Mr. Cardoza, do you have 6 any questions of the witness? 7 MR. CARDOZA: No questions. 8 MR. AFRAN: Probably got more than you 9 bargained for by way of colloquy. 10 MR. CARDOZA: No questions. 11 CHAIRMAN BAGOFF: Mr. Haizel. 12 MR. HAIZEL: Someone asked this question a 13 little differently. In your experience have you ever 14 come across a situation where there has been any sort of 15 an error, if you will, meaning any of the DEP findings 16 that has been -- have you ever come across a situation 17 where that occurred and how was that dealt with? 18 THE WITNESS: Yes, and we just did a review 19 of a project in Mercer County that the state ended up 20 overturning or suspending their permit. Same process. 21 MR. HAIZEL: Okay. 22 CHAIRMAN BAGOFF: The state, when you say 23 the state, what portion? 24 THE WITNESS: New Jersey DEP and specifically 25 with the Flood Hazard Area Control Act issue.	63 1 volume has to match an existing proposed condition for 2 the wetland impacts to be minimal? Essentially like 3 runoff volume has to match the existing condition for 4 there to be no ecological impacts to the wetland area? 5 THE WITNESS: And look, we know that's never 6 possible, especially in a headwater site like this. 7 They are very sensitive to change. It doesn't take a 8 lot to change, to modify surface and groundwater flow 9 paths. A little bit of excess volume you're going to 10 have these streams erode, so there will be impacts. But 11 really your question focussed on stormwater management. 12 Again, it's really understanding the constraints that 13 the site has relative to how you manage stormwater. 14 That's the first step and that's the step we think they 15 missed. Because that fragipan is typical on all those 16 sites and for some of the borings to find seasonal high, 17 eight to ten feet, it just defies logic, at least as far 18 as we are concerned. 19 MR. MacNEILL: That's all I have. Thank 20 you. 21 CHAIRMAN BAGOFF: Okay. 22 We are going to take a five-minute break and 23 come -- I'm sorry. One second. 24 Mr. Plocker. 25 MR. PLOCKER: I have just at few questions
62 1 CHAIRMAN BAGOFF: DEP looked at an 2 application again and came up with a different decision? 3 THE WITNESS: That's correct. 4 CHAIRMAN BAGOFF: Okay. So that's within 5 the body of the DEP? 6 THE WITNESS: Correct. 7 CHAIRMAN BAGOFF: Okay. 8 Mr. MacNeill, do you have any questions? 9 MR. MacNEILL: Kind of going back to my last 10 question. Do you have any recommendation for this 11 development to lessen the impacts to the northern 12 portion of the wetlands area from an ecological 13 perspective? 14 THE WITNESS: And, again, I would say that 15 right now it's all based on a better understanding of 16 the soils and in the absence of that it makes it 17 difficult to make a recommendation. If the soils are 18 what the soil survey says they are, their seasonal high 19 water table is high. It can be a major constraint on 20 how to manage the stormwater on the site. So in an 21 ideal world, to me there are often ways you can do 22 things better, but you still need a fundamental 23 understanding of what the constraints are before you can 24 kind of take that journey. 25 MR. MacNEILL: So is it a volume, like the	64 1 for Mr. Gallagher. 2 First, I would like to reiterate my 3 objection that if the objector and Mr. Gallagher take 4 any issue with what the DEP didn't do, any methodology 5 or procedure that they disagree with that is currently 6 at the Appellate Division or the Superior Court of New 7 Jersey, it is not in the purview of this Board, the 8 jurisdiction of this Board. That being said, I have a 9 few questions. 10 Are you aware that the site currently has an 11 LOI? 12 THE WITNESS: I am. 13 MR. PLOCKER: Have you reviewed the LOI? 14 THE WITNESS: I've reviewed the LOI. I 15 didn't see the submitted documentation. 16 MR. PLOCKER: Okay. 17 Did you testify today that you take any 18 issue with the delineations as set forth in the LOI 19 which was issued this past November? 20 THE WITNESS: That was an extension that was 21 issued. 22 MR. PLOCKER: Correct. 23 THE WITNESS: I did not take issue. 24 MR. PLOCKER: Okay. 25 And what is the process or procedure when

65 1 the DEP issues a wetland LOI or in this case an 2 extension? Do they inspect the wetland delineations. 3 THE WITNESS: They probably did it the first 4 time. I am not sure if they did it or didn't do it the 5 second time. 6 MR. PLOCKER: So even the first time do they 7 inspect soils? 8 THE WITNESS: They did. 9 MR. PLOCKER: Do they inspect hydrology? 10 THE WITNESS: Yes. 11 MR. PLOCKER: Do they inspect vegetation? 12 THE WITNESS: Yes. 13 MR. PLOCKER: Okay. Thank you. 14 I have nothing further. 15 CHAIRMAN BAGOFF: Thank you. 16 We're going to take a five-minute break. 17 (Whereupon, a short recess is taken.) 18 CHAIRMAN BAGOFF: Mr. Afran, do you have 19 questions or are you going to -- 20 MR. AFRAN: I don't have any more questions, 21 but just a clarification. 22 Ms. McGovern asked earlier, this goes back 23 to the colloquy's about whether or not the matter on 24 appeal means that the reconsideration, so to speak, 25 presently under the DEP is no longer jurisdictionally	67 1 point. 2 MR. PLOCKER: Let me rephrase my question. 3 At any time during the 20 month period within the 4 application remained open, did your firm comment, submit 5 comments or objections to the DEP during that time 6 period about the application? 7 THE WITNESS: We did not. 8 MR. PLOCKER: Your firm never sent in any 9 applications or none that you're aware of? 10 THE WITNESS: I believe all our comments 11 were directed to the town at that point. 12 MR. PLOCKER: Okay. 13 Do you know that for sure? 14 THE WITNESS: No, I wasn't involved at that 15 point. 16 MR. PLOCKER: Okay. I wanted to make that 17 clear, and at the end it's your understanding all 18 permits were granted and the LOI was extended, correct? 19 THE WITNESS: That's correct. 20 MR. PLOCKER: Okay. Thank you. 21 MR. AFRAN: I am not sure when the 20 month 22 -- I'm sorry. I am not sure when the 20 month period 23 began and ended Mr. Plocker refer's to or what it means, 24 so to the extent I think the witness said he doesn't 25 know anyway, but I don't think there is a clear time
66 1 possible. I want to clarify that the application with 2 the DEP is an application to suspend the permits, and 3 that's a separate administrative proceeding from the 4 challenge to its approval. So all while there is a 5 relationship, obviously one is not barred by the other. 6 This is a suspension always a separate administrative 7 application. 8 CHAIRMAN BAGOFF: Okay. 9 MR. AFRAN: I wanted to clarify that. 10 CHAIRMAN BAGOFF: And nothings been 11 adjudicated yet? 12 MR. AFRAN: Correct. 13 CHAIRMAN BAGOFF: Mr. Plocker. 14 MR. PLOCKER: I just have a couple more 15 question for Mr. Gallagher. 16 CHAIRMAN GALLAGHER: Go right ahead. 17 MR. PLOCKER: I want to know, were you or 18 anyone at you firm aware that my client's DEP 19 application was open for about 20 months? 20 THE WITNESS: Yes. 21 MR. PLOCKER: And during that time period 22 did you or anyone in your firm have a chance to submit 23 any comments or objections to any of my client's 24 submissions? 25 THE WITNESS: We were not retained at that	68 1 period offered. 2 I have no further questions of the witness. 3 CHAIRMAN BAGOFF: Okay. Thank you. 4 At this time I would ask members of the 5 public to come up one at a time and ask Mr. Gallagher 6 questions based on his testimony. So we're going to 7 hone in on his testimony. The questions, just like 8 members of the Board did, if, when, why, what, where, 9 how, how does this apply and if you start testifying I'm 10 going to ask you politely to stop testifying. We're 11 going to focus in on questions. So please come up, 12 state your name for the record and please use the 13 microphone and go ahead, sir. 14 THE PUBLIC: My name is Richard Mayer. I 15 live at the Grand in West Orange. 16 Based on what information you just gave us, 17 I live in the community that's right below where this 18 would be built. In anticipation of say heavy rains, 19 would that being built there, would that affect our 20 community in terms of flooding? Could that possibly 21 affect my community? 22 MR. PLOCKER: I'm just going to object to 23 the question. I don't know Mr. Gallagher covered that 24 testimony. He covered the conditions regarding on site 25 wetlands.

69 1 THE PUBLIC: Could the water affect my 2 community? 3 CHAIRMAN BAGOFF: If you can answer you can 4 answer. 5 MR. AFRAN: I would say this, he did speak 6 to flooding on terms of building on Mr. Walsh's 7 testimony when he spoke about the water table being 8 different from how the applicant measured. He didn't 9 speak of flooding directly but he talked about the 10 problems because of the water table. 11 CHAIRMAN BAGOFF: Didn't speak to flooding 12 on the contiguous properties. 13 THE PUBLIC: Based on what you -- I'll try 14 and rephrase it. Based on what you told us today what 15 would be the effects of the heavy rains in my 16 neighborhood? 17 MR. PLOCKER: Same objection. 18 CHAIRMAN BAGOFF: He didn't look at your 19 neighborhood, sir. 20 THE PUBLIC: In the adjacent neighborhood to 21 where this is being built? 22 MR. PLOCKER: Same objection. 23 CHAIRMAN BAGOFF: Did you talk about runoff? 24 THE WITNESS: So are you in the neighborhood 25 right down here?	71 1 And normally you need two feet of separation between the 2 bottom of a basin and the seasonal high water table. If 3 the seasonal high water table is actually found to be 4 above the elevation of the basin that's an inherent 5 problem within the design. 6 THE PUBLIC: So going a little further on 7 that, you had mentioned something about water quality, 8 N.J.A.C. 7.8. You talked about it not being in 9 compliance with water quality standards and infiltration 10 standards recharge. And this is a wholly natural 11 property, so recharge would apply on this particular 12 site, would that be correct? 13 THE WITNESS: Yes. 14 THE PUBLIC: So, okay. 15 So the recharge standard can't actually 16 occur if the water level is higher, than the water has 17 nowhere to go. It's not going to infiltrate into the 18 ground. So they would not be in compliance with the 19 recharge standard and the water quality standard would 20 also necessitate some kind of infiltration or flow 21 through some kind of grasses or some kind of vegetation, 22 but how would that actually be conducted if none of 23 these pits are working? 24 THE WITNESS: Again, that goes back to our 25 fundamental concern with the design and what I tried to
70 1 THE PUBLIC: Yes. 2 THE WITNESS: So my firms concern about this 3 whole project is their stormwater management plan is 4 flawed based on what we still believe that being 5 inaccurate soil information. With that said, it's going 6 to -- understanding where the seasonal high water table 7 accurately is, si important to make sure all the 8 stormwater BMP's proposed function in accordance with 9 the NJ BMP manual. If they're incorrect with any aspect 10 of the existing features it's going to impact how they 11 function. And then, yes, you will have an increase in 12 water going down the hill towards your development. 13 THE PUBLIC: Thank you. 14 CHAIRMAN BAGOFF: Thank you. 15 Please state you name. 16 THE PUBLIC: Jessica Pearson, Verona. 17 Okay. You just, and a couple of times 18 before, you had testified that the seasonal high water 19 table is higher than the bottom or the base of the pits. 20 Okay. That being said, so obviously what are the 21 ramifications of a retention basin that cannot retain 22 the water? 23 THE WITNESS: It is a compliance problem. 24 And the New Jersey BMP manual has very strict guidelines 25 on how to design a basin and what the constrains are.	72 1 show with the seasonal high water table and fragipan as 2 it relates to wetlands, is that the environment should 3 make sense. That water is not moving uphill to get to 4 the wetland. Their seasonal high water table elevation 5 being below the wetland makes no sense. Every other 6 wetland in every other landscape in New Jersey is, 7 unless it's in an Arcasian City. The water moves 8 downhill towards the lowest landscape position and if it 9 is a wetland it is a wetland and a stream. And that's 10 what we believe occur's here. So any indication that a 11 seasonal high water table is below the elevation of an 12 adjacent wetland the basis for our position is that it 13 just makes no sense. 14 THE PUBLIC: Speaking back -- going back to 15 the fragipan. Have you ever seen a situation in which 16 the change of flow, the pattern of flow being changed 17 with the arrow diagram that was up earlier, could that 18 change of flow have an impact on the topsoils before you 19 hit the fragipan so as to erode them more quickly, 20 whether that lead to intense storms, to redirection, the 21 removal of trees and upsetting the root systems, so that 22 the fragipan actually now is closer to the surface than 23 it was long before and, again, that would, would that or 24 could that disrupt the infiltration process, the natural 25 recharge process that had once occurred on that site?

73 1 THE WITNESS: I don't know for sure. 2 THE PUBLIC: Okay. 3 THE WITNESS: But one of the things I can 4 describe is you look at development patterns, something 5 like this. So this is a pervious pavement site and 6 there's buildings and there's roads. So what could 7 happen and what often happens is when you put a road in 8 this position where water is moving towards the wetland, 9 you could get mounding on one side. 10 THE PUBLIC: Can you just explain mounding? 11 THE WITNESS: So let me go back to this one. 12 So this is a normal flow path. Water is moving down 13 gradient from high to low elevation. If I put a 14 structure, this water would be blocked and it would tend 15 to elevate and mound on the upgradient side because it 16 has no where to go. So any time there's changes in 17 development or just land use patterns on the site it 18 changes hydrology. So if I build a road here I could 19 make the water table higher upgradient and there's kind 20 of a shadow effect where it's lower downgradient. So 21 those are all the effects that happen with any kind of 22 development as it relates to groundwater flow paths. So 23 this is a complicated site, so it's hard to really 24 estimate or describe what could happen but waters not 25 disappearing, it's going somewhere.	75 1 going to modify how water moves towards the wetland. 2 And then cases like this, there's inherently increased 3 volume of runoff on a development site and that's all 4 being discharged to a point, one single point. So it's 5 going to impact the stream downgradient. And to go back 6 and look at the stream, it's in pretty nice shape. It's 7 a pretty healthy stream typical of a natural area. 8 There is not a lot of erosion, you know, the banks are 9 low. Increased volumes going to cause that stream to 10 either widen or to -- 11 THE PUBLIC: So that -- it's another 12 question. If that stream is beginning to widen, and I 13 am not sure if that's on a hill or if that's in a gully 14 sort of area at the bottom of the hill, would that -- 15 could that form a new wetlands area? 16 THE WITNESS: It could. 17 THE PUBLIC: Okay. And so would that, if 18 the development is not that far away from it how would 19 the riparian zone then apply to a newly formed wetlands 20 on a site due to the redirection of the water? 21 THE WITNESS: One, the riparian zone is off 22 of the stream channel, so that begins at the top of 23 that, which would be here or there. 24 THE PUBLIC: But what if the stream widens? 25 THE WITNESS: It would shift at some point in
74 1 THE PUBLIC: Okay. It's going somewhere. 2 So -- but it's not going to -- it's being drained away 3 from your assessment of the site and gravity, etc., and 4 the redirection of the stormwater patterns by the 5 proposed stormwater management plan, that water is going 6 away from the wetlands. Where is it going? It's going 7 -- gravity right. It's going down the hill, to the 8 gentleman's question that came up a few moments ago, 9 it's going to flow the path of easiest resistance which 10 is -- 11 CHAIRMAN BAGOFF: Let him testify. Ask him 12 a question and let him testify. 13 THE PUBLIC: Would it go down the hill? 14 THE WITNESS: In this case, this is -- the 15 blue was existing surface flow patterns and pretty much 16 going to reflect what happens with the groundwater as 17 well. So any time there's any new structure, that's 18 going to change that path. So in this case even with 19 the road, so even if this blue line surface water can be 20 -- could be collected by the stormwater system, 21 groundwater is going to be impacted because roads tend 22 to be impacted or there's infrastructure in the road 23 like storm sewer or sanitary sewer which end up either 24 intercepting or blocking the groundwater flow pattern. 25 So pretty much all these areas in the development are	76 1 the future where that riparian side begins. Now, they 2 have a permit now, so that governs the riparian zone for 3 now. 4 THE PUBLIC: Okay. 5 And it's only 50 feet right now? 6 THE WITNESS: That's what I believe, yes. 7 THE PUBLIC: Okay. Thank you. 8 CHAIRMAN BAGOFF: Thank you. 9 Any other members of the public have a 10 question for Mr. Gallagher? Please come up and state 11 your name. 12 THE PUBLIC: Don Ershow. I live on Holmdel 13 Lane in Roseland and I have a question specifically 14 related to the flow of water in Canoe Brook. 15 Could you go back to the map with the blue 16 arrows. Is that dark gray the Canoe Brook on the left? 17 THE WITNESS: That gray? 18 THE PUBLIC: Yes. 19 THE WITNESS: That's the headwater of the 20 Canoe Brook. 21 THE PUBLIC: That's the headwater of Canoe 22 Brook. 23 MR. AFRAN: Let me just note for the record 24 that's the stream to the far right of the drawing. 25 CHAIRMAN BAGOFF: It's left.

77 1 MR. AFRAN: Far left. 2 THE WITNESS: So this is what I am pointing 3 out, the western most tributary, the eastern tributary 4 as well. And their confluences south of the site. 5 THE PUBLIC: Okay. 6 So does all of this water currently work its 7 way into the Canoe Brook or is it just on the left? 8 THE WITNESS: No, both. They're both 9 tributary's of Canoe Brook. 10 THE PUBLIC: They're all tributary's of the 11 headwater of Canoe Brook. Okay. So after the, assuming 12 that construction occurred, and with this plan and with 13 the basins the way they are designed, the water would 14 flow out ultimately back into the brook? 15 THE WITNESS: Yes. 16 THE PUBLIC: Okay. 17 So am I understanding correctly, that give 18 or take 30 percent of the coverages, the natural 19 coverages removed from a rain of any voracity, and 20 natural percolation and everything, and then it goes 21 through the system, is it absorbed into and retained 22 into a basin and then it goes back into the natural -- 23 the Canoe Brook. Okay. And then it makes its way down 24 into the Canoe Brook which runs for approximately, I 25 don't know, whatever it is, you may know, but half a	79 1 with Princeton Hydro, testified as to the issues, but 2 they weren't testified to here tonight. They weren't 3 part of his testimony and I would object to this line of 4 questioning. 5 MR. AFRAN: Well, I would just add though in 6 response -- 7 CHAIRMAN BAGOFF: Mr. Afran. 8 MR. AFRAN: -- that the question of the 9 accuracy of the high water table leading to flooding 10 because of the detention basins can't support it, is 11 directly related to the subject matter. And if water is 12 going to flood any part of the system because 13 inaccuracies, he did testify to those inaccuracies and 14 it naturally flows from, no pun intended, from his 15 testimony. Therefore it's relevant for members of the 16 community to ask questions. 17 CHAIRMAN BAGOFF: In his opinion. 18 MR. AFRAN: Of course. All in his opinion. 19 CHAIRMAN BAGOFF: As long as you say that. 20 MR. AFRAN: And his opinion is relevant 21 because of the predicate coming from the original 22 examination. 23 CHAIRMAN BAGOFF: Did you get your answer, 24 sir? 25 THE PUBLIC: Okay. Thank you very much.
78 1 dozen miles or whatever. It runs through, at least in 2 Roseland where I am, it runs -- 3 CHAIRMAN BAGOFF: Sir, is there a question 4 in there somewhere. 5 THE PUBLIC: It floods -- I am concerned 6 about the way a rush of water might from a flooding 7 perspective, since there's no ground percolation, is 8 the, based on what you've testified today when we get 9 these heavy storms, which I am no expert, but is it fair 10 to say that it becomes more severe in general 11 occasionally over the past 20 years? 12 THE WITNESS: Yes. 13 THE PUBLIC: Okay. 14 Will the flooding as it goes from a lack of 15 percolation, natural percolation into any retention 16 system, at least as you're seeing it, it's going to 17 become worse? 18 THE WITNESS: I'll answer your question 19 again by saying, if the systems aren't designed to 20 completely satisfy the NJ BMP manual and New Jersey 21 stormwater rules, then yes, it's going to change 22 downstream flooding. 23 MR. PLOCKER: I am going to object to this 24 testimony. I believe it was outside the scope of his 25 testimony. I acknowledge that his colleague, Mr. Walsh	80 1 CHAIRMAN BAGOFF: Any other members of the 2 public have any questions of Mr. Gallagher? Please come 3 up and be identified. 4 THE PUBLIC: Seth Weisleder, Howell Drive, 5 West, New Jersey. 6 I think my question, and thank you for the 7 education this evening and for sharing, you know, 8 definitely a course for me tonight. So thank you, but I 9 would like to ask in layman's terms the design of the, I 10 forget the vocabulary, the design of the stormwater 11 system, you testified tonight that it's not 100 percent 12 correct or up to par as it should be. So in layman's 13 terms, if there is that 100-year storm that we mentioned 14 several times in different testimony, what is the 15 effects of this actual property and what could be the 16 effects of the properties around it? 17 THE WITNESS: To avoid -- 18 CHAIRMAN BAGOFF: I'm sorry, Mr. Gallagher. 19 Testify about this property and water collection on this 20 property. You didn't testify about surrounding 21 properties. 22 THE WITNESS: That's correct. 23 THE PUBLIC: But -- 24 CHAIRMAN BAGOFF: He testified about this 25 property. So he can --

81 1 MR. AFRAN: Mr. Chairman, then I would just 2 note there's going to be flooding say at the lower 3 detention basin because inaccuracies in the high water 4 table calculation. 5 CHAIRMAN BAGOFF: That's fine. 6 MR. AFRAN: That water has to go somewhere. 7 It just doesn't stay in the basin. So it's going to go 8 off-site onto the neighboring property, that's really 9 relevant to the general subject matter. 10 CHAIRMAN BAGOFF: Focus on this property. 11 What's going on, on this property. 12 THE PUBLIC: Okay. So let me rephrase that. 13 How would it affect this property not just the 14 construction on the site but the entire property that is 15 owned by the builder in terms of how it would affect 16 everything on this property, so we are focused in on 17 the, where the buildings are but there's other acreage 18 of land where there's deer fencing and other things, how 19 would that be affected? 20 THE WITNESS: A lot of the areas proposed 21 for deer fencing aren't going to change. The areas that 22 are proximate to the development will have the greatest 23 impact as it relates to surface and groundwater flow 24 patterns. 25 THE PUBLIC: All right.	83 1 and welfare of the community not just development. 2 MR. PLOCKER: I am going to object. I 3 believe it's mischaracterizing the towns own ordinance, 4 which my understanding follows the DEP regulation word 5 for word. I am not an expert on -- I am not holding 6 myself out to be an expert in that area but my 7 understanding, and I defer to the esteemed engineer, 8 that the area, there has to be a drainage area of 50 9 acres or more and that this doesn't come close and this 10 is evaluated by the DEP during the 20 months that the 11 applications pending. We shouldn't get bogged down with 12 legalese when the ordinance applies, but I'll leave that 13 to the professionals that know those regulations. 14 MR. MacNEILL: The floodplain administrator 15 for the Township will only review development only 16 within the flood hazard area. So this application is 17 not within a flood hazard area as defined by NJ DEP, so 18 it will not be reviewed as a, as a purview of the 19 floodplain administrator of the Township. 20 MS. McGOVERN: It's not relevant to this. I 21 mean, our engineer is just -- 22 THE WITNESS: And I read the flood management 23 ordinance for your Township and it's broader in scope. 24 MR. AFRAN: I'd like to just say, if I 25 could, I'm sorry, it really is a legal issue at this
82 1 What would -- is there any other impact to 2 this property, not focused on the deer fencing, but in 3 general? 4 THE WITNESS: I can't offer this to show 5 because flooding questions are going to come up that the 6 applicant's flood hazard permit has a caveat on Page 1 7 that says, it doesn't obviate the town from having or 8 getting an approval from the Township floodplain 9 management. So the town -- well, that permit really 10 isn't quite 100 percent valid until the town blesses -- 11 CHAIRMAN BAGOFF: Sir, I'm going to leave 12 that to the Board attorney and she read some things in 13 the record and we are going to leave the legalese to the 14 attorney. I want you to testify on the water and -- 15 THE WITNESS: This is regulatory and I am 16 happy to read the clause in their permit. But the DEP 17 typically does this in their flood hazard permit to not 18 overstep their role in dealing with local flooding 19 issues and the Township Floodplain Act -- 20 MR. MacNEILL: Mr. Chairman, I would add, 21 DEP's evaluation of the flood hazard area streams are 22 regulated with the riparian, but it is not within the 23 flood hazard area. 24 THE WITNESS: But, again, any floodplain 25 managers responsibility is to look at the health, safety	84 1 stage and I haven't researched everything that's been 2 said here, Mr. Plocker either at the moment, so my point 3 of view, I think we have heard the witnesses answer, 4 we've heard the expert give a viewpoint, I think we may 5 have to develop this further through legal argument. 6 CHAIRMAN BAGOFF: Not this evening. 7 MR. AFRAN: Correct. Thank you. 8 CHAIRMAN BAGOFF: Do you have anything else 9 to say? 10 MR. AFRAN: No. And I didn't mean to 11 interrupt. 12 CHAIRMAN BAGOFF: Would any other members of 13 the public have any questions for Mr. Gallagher on his 14 testimony? Please come up. 15 THE PUBLIC: Debbie Jensen, West Orange. 16 I have a question based on what you just 17 said about the floodplain. If there was not a 18 floodplain but the development created a floodplain, 19 does that happen? 20 THE WITNESS: It could create a nuisance 21 flooding issue, that's possible. 22 THE PUBLIC: Okay. 23 THE WITNESS: Doesn't mean, this isn't part 24 of it, it doesn't mean it's within the 100-year 25 floodplain as mottled by FEMA or NJ DEP, there could be

85 1 issues of, flooding issues that created or exacerbated 2 by any problem. 3 THE PUBLIC: Thank you. 4 CHAIRMAN BAGOFF: Thank you. 5 THE PUBLIC: Thank you. I was here in the 6 fall and submitted pictures of the area to the rear of 7 the street that I reside on. It's Fowler Drive. Have 8 you had any opportunity to see those pictures of a 9 merging wetland in that area? 10 MS. McGOVERN: Could you put your name on 11 the record. 12 THE PUBLIC: Susan Small, like little. 13 CHAIRMAN BAGOFF: Thank you. 14 THE PUBLIC: I submitted pictures, I came in 15 and talked to the planner here, I also had an 16 opportunity to look at your myriad of heavy plans that 17 no one in the office was able to assist me in opening up 18 and looking at. 19 CHAIRMAN BAGOFF: Ma'am, ask him a question. 20 THE PUBLIC: My concern is that, that you 21 have, you haven't had an opportunity to see that merging 22 wetland and I could not take pictures of that wetland -- 23 CHAIRMAN BAGOFF: Ma'am, ask him a question, 24 please. You're testifying. 25 THE PUBLIC: What time, if he hasn't seen	87 1 they've never been opened before. But I can't tell from 2 this where Fowler Drive is. I am trying to draw your 3 attention to that as the person who's looking to get 4 drainage and planning for the safety of all the 5 surrounding communities. So I am just openly asking 6 you, we should be searching for solutions and possible 7 problems, that's what we should be doing here. Not 8 trying to stifle someone who doesn't have enough 9 information to ask questions. But are you familiar with 10 that area? 11 MR. PLOCKER: To the extent that she's 12 asking about off-site potential conditions, I would 13 renew my objection from earlier. 14 THE WITNESS: Well, I will point something 15 out. You can see how this wetland comes down and hits 16 the property line right here? 17 THE PUBLIC: Yes. 18 THE WITNESS: That's a large wetland area 19 that ends at that property. What you will see here is 20 there's a stream that kind of runs underneath this road 21 and up this way, but this wetland, it can never -- 22 THE PUBLIC: Could you just show me where -- 23 show me with that little light where Fowler Drive is? I 24 believe it's -- 25 THE WITNESS: I am not sure exactly.
86 1 that, than he can't answer a question. Let me 2 complete -- please give me a little bit of leeway. 3 Okay. I'm just at plain citizen. 4 CHAIRMAN BAGOFF: Me too. 5 THE PUBLIC: The wetland is -- you're an 6 official. 7 The wetland is larger now, the grass is 8 growing in greater and spreading, and the deciduous 9 trees are dying -- 10 CHAIRMAN BAGOFF: Ma'am, I'm going to ask 11 you one more time. People in the audience have 12 questions. You're taking their time not mine. I am 13 asking you to ask a question of him. 14 THE PUBLIC: I am asking the question. I am 15 giving information. 16 CHAIRMAN BAGOFF: You're testifying. I 17 don't want to argue with you, you are testifying. 18 Please ask a question. I know you know what to do. 19 Do you live anywhere on that street? 20 THE PUBLIC: I can't even make clear exactly 21 where Fowler Drive is on that and I have a hard time 22 being able to open up all of the maps and looking at 23 them when I came into the planning office and it was not 24 very -- they were not very cooperative, not that they 25 could be I guess. They don't know. They look like	88 1 THE PUBLIC: The orange area on the right, I 2 believe. I could be wrong. 3 THE WITNESS: All I am pointing out is if 4 you have what you believe is a wetland that's forming it 5 probably has to, historically this wetland probably 6 extended into that development area. From what I 7 understand this is an older development that predated 8 the Freshwater Wetlands Protection Act, so it's very 9 possible that some of the homes and some of this area 10 are what was historic wetlands. 11 THE PUBLIC: Predated the Wetlands Act, I 12 doubt it. The Wetlands Act to my recollection was way 13 before these were built. 14 THE WITNESS: 1988. 15 THE PUBLIC: 1988, that's before the 16 highlands was built, 1988. They were built in the 17 '90's. 18 THE WITNESS: I don't know the approval 19 history. 20 THE PUBLIC: All I could say is that I 21 believe the Wetlands Act was in affect at the time. It 22 was not a wetland 16 years ago when I moved in there. 23 The trees were all deciduous and already Mother Nature 24 is taking her action. 25 CHAIRMAN BAGOFF: Ma'am, will you please ask

89 1 a question. 2 THE PUBLIC: The question is, will you be 3 responsible, do you care to look into in that effect? 4 I have a question -- 5 MR. AFRAN: He is not the builder. 6 THE PUBLIC: Well, if I asked the builder 7 will the builder be willing to look into this? 8 CHAIRMAN BAGOFF: Ma'am, do you have a 9 question about Mr. Gallagher's testimony? 10 THE PUBLIC: Do you think you should be 11 concerned about what might happen, because the best laid 12 plans of men and other men usually go astray. 13 THE WITNESS: Look, the applicant's attorney 14 made it clear we're looking at the site, but site 15 impacts can go off-site. So do I think that they should 16 be looking at off-site, yes. 17 THE PUBLIC: Could you tell them that they 18 should take a look at this because -- 19 THE WITNESS: I think he heard. 20 MR. PLOCKER: I will say for the record, DEP 21 does consider that when issuing stormwater permits. 22 They look to see if there's any net positive runoff. 23 The point is the stormwater system is designed, again, 24 I'm not an engineer, to have a net negative runoff, 25 meaning that the runoff would be less after development	91 1 granted, that was a 20 month period. 2 THE PUBLIC: Was it this development, this 3 actual development? 4 MR. PLOCKER: Yes, it was. And, again, I am 5 not the site engineer, I am an attorney so I would never 6 pretend to be an engineer unless I slept in a Holiday 7 Inn Express last night but I always wanted to try that 8 one. 9 THE PUBLIC: Thank you. 10 CHAIRMAN BAGOFF: Thank you. 11 Do any other members of the public have 12 questions for Mr. Gallagher about his testimony? Seeing 13 none. Thank you very much. 14 Thank you Mr. Gallagher. 15 I'm sorry, Mayor. 16 MAYOR MCCARTNEY: No. 17 CHAIRMAN BAGOFF: Okay. 18 Since, Mr. Afran, Mr. Plocker, we have the 19 management conference, we would like to see to an end 20 with all the information. 21 Mr. Afran, are there any other people that 22 you need to present to the Board, because we are trying 23 to get summer dates and we are competing with other 24 agencies in town, so we want to have as many dates as we 25 can. We do have two dates in July.
90 1 than it is in it's current condition. The DEP approved 2 that design. 3 MR. AFRAN: And this of course in a sense is 4 a legal question that we'll have to address at the 5 appropriate time. 6 CHAIRMAN BAGOFF: Thank you. 7 Any other members of the public have 8 questions for Mr. Gallagher? Please come up. 9 THE PUBLIC: Peter Gaurino, West Orange. 10 Someone mentioned that the DEP permit has been in 11 process for 20 months? 12 CHAIRMAN BAGOFF: Mr. Gallagher. 13 MR. AFRAN: Mr. Plocker raised an objection. 14 CHAIRMAN BAGOFF: The question is for Mr. 15 Gallagher. If Mr. Gallagher doesn't know the answer he 16 can't answer, but if he does know the answer than he can 17 answer. 18 THE WITNESS: I don't know the answer. 19 THE PUBLIC: Okay. Anybody know the answer? 20 MR. PLOCKER: I will make it clear for the 21 record, since I did mention it before. From the time my 22 client initially applied for the DEP permits in 23 connection with this site plan application pursuant to 24 the current ordinance and the settlement agreement, from 25 time we applied, from the time the approvals were	92 1 MS. McGOVERN: June 23 and June 30, 2 Monday's, here in person starting at 6:30. 3 MR. AFRAN: Right. I am available both 4 days. We have a planner who would be available on the 5 30th, not the 23rd. So I don't know whether we'll have 6 witnesses on the 23rd. Let me take a couple days 7 because there are some community witnesses who plan to 8 testify and if I can possibly have them ready for the 9 23rd I can do that. I wouldn't want to waste a night 10 but I don't want people to come here and we don't have 11 anything to do. 12 CHAIRMAN BAGOFF: We're trying to bring this 13 to a conclusion. 14 MR. AFRAN: One issue of course is when the 15 applicant brings the supplemental geotechnical report 16 because that will potentially most likely cause us to 17 bring an engineer in. So unless, I am not saying they 18 should know yet and I am not criticizing them, that's a 19 factor that will affect all this. If that report comes 20 in three weeks then the staff needs time go over it and 21 ten days notice has to be given then we need time to get 22 an engineer for hearing testimony. So impossible to 23 really predict that much at this moment. 24 CHAIRMAN BAGOFF: The Board is trying to 25 have this adjudicated in August.

93 1 MR. AFRAN: I have no objection to that. 2 CHAIRMAN BAGOFF: Work towards that. 3 MR. AFRAN: I would like to and depends in 4 part on when that engineering information comes in. If 5 it comes in July 15, I don't see how that could happen. 6 CHAIRMAN BAGOFF: We are going to work 7 towards that. 8 MR. AFRAN: Mr. Chair, you had mentioned, to 9 me anyway, that at one point you might consider a 10 working session with counsel and the Board, I don't know 11 if that's -- 12 CHAIRMAN BAGOFF: Not counsel. 13 MR. AFRAN: The Board, I'm sorry. 14 CHAIRMAN BAGOFF: And we will. That's one 15 of the first sessions, when everybody's done testifying 16 the Board will review all the information and pick out 17 information that our experts feel are relevant. We are 18 going to look over the law, we are going to look over 19 the ordinances and then we will come to decisions on 20 what we hear and what we use and we may want to have 21 additional testimony or read backs. 22 MR. AFRAN: And when we spoke you mentioned 23 counsel would be there with the Board. 24 CHAIRMAN BAGOFF: No. 25 MR. AFRAN: Oh, that's what I understood you	95 1 I will presumably give our closing arguments? 2 CHAIRMAN BAGOFF: Yes. 3 MR. AFRAN: Thank you. 4 There's also -- 5 MAYOR McCARTNEY: I have a question. 6 MR. AFRAN: I'm sorry. 7 CHAIRMAN BAGOFF: Mr. Afran. One second. 8 MR. AFRAN: And somewhere in that time 9 period the community gets their chance to testify? 10 CHAIRMAN BAGOFF: Yes. 11 MAYOR McCARTNEY: I have a question of our 12 engineer. We just heard there is a fundamental concern 13 with the design as it relates to the water table, in 14 your review did you discover any concerns? 15 CHAIRMAN BAGOFF: Did you get a chance to 16 look at the Princeton Hydro first report and this 17 report? If you looked at both of them, in your expert 18 opinion, go right ahead. 19 MR. MacNEILL: I looked at both of them. So 20 the applicant submitted soil testing reports signed by a 21 geotechnical engineer. So I did note some similar 22 discrepancies as Mr. Gallagher has noted but the 23 geotechnical engineers licensed in the State of New 24 Jersey and he is identifying the seasonal high water 25 table at the elevation in his report. On top of that,
94 1 to say. 2 CHAIRMAN BAGOFF: Counsel will do whatever 3 counsel wishes, but this is purely Board review. 4 MR. AFRAN: Now, would that occur before or 5 after closing arguments? 6 CHAIRMAN BAGOFF: After. Everybody's going 7 to be finished, then the Board will decide if they need 8 to hear something again, otherwise it's going to go 9 through all the information. It's been a long and 10 meticulous process, we want to make sure we get all the 11 information in our hands. 12 MR. AFRAN: I want to understand how you 13 anticipate that working. And that would be, Diane 14 mentioned August 6 as a possible cutoff, do you mean the 15 hearings by then and the Board will have that meeting or 16 where does that date work? 17 CHAIRMAN BAGOFF: That would be first work 18 session. 19 MR. AFRAN: August 6? 20 MS. McGOVERN: That's our regular meeting. 21 MR. AFRAN: Thank you. I wanted to 22 understand that. And then after that the Board would 23 have public deliberation? 24 CHAIRMAN BAGOFF: Yes. 25 MR. AFRAN: But before that Mr. Plocker and	96 1 the BPM manual from DEP requires post construction soil 2 testing for any infiltration system. So during really 3 post construction -- during construction the applicant 4 will be required to ensure the seasonal high water table 5 and the permeability rates in those geotechnical reports 6 are still current during and after construction. That's 7 all outlined in the NJ DEP manual Chapter 12 regarding 8 soil testing. So that will be a requirement for any 9 potential -- as a potential condition of approval that 10 the applicant will have to comply with those soil 11 testing requirements during and post construction. And 12 if there's an issue with that seasonal high water table 13 that has been identified it will have to be remediated 14 by the applicant. Essentially redesigning the basin. 15 Additional fill may be required, but all that will be 16 reconfirmed twice, once during construction and also 17 post construction. 18 MAYOR McCARTNEY: And that's under the 19 purview of the DEP not this Board? 20 MR. MacNEILL: But our stormwater code 21 refers back to the BMP manual. The Township will 22 enforce those requirements. 23 CHAIRMAN BAGOFF: Thank you. 24 Okay. 25 MR. AFRAN: Our position legally is yet to

97 1 be said on this question in terms of what the engineer 2 just said in terms of whether there's any other role for 3 the Board to play other than post approval condition. 4 We are going to look into that and maybe address that 5 later on before August 6, but I don't want to be seen 6 necessarily as agreeing. We are going to consider this 7 issue. 8 CHAIRMAN BAGOFF: Thank you. 9 The next -- 10 MR. AFRAN: There's one issue, I'm so sorry. 11 My client raised an issue with me. This is not a 12 criticism at all, we know some minutes are not yet ready 13 and we wonder what role that will play in terms of work 14 session, final approval if the minutes are not yet 15 available? One of them is because of me because I have 16 to get exhibits. But there are other meetings and it's 17 been raised -- 18 CHAIRMAN BAGOFF: We are going to work 19 together to make this happen in the public interest. 20 MR. AFRAN: So the issue was raised to me by 21 several clients. 22 CHAIRMAN BAGOFF: We have communication, the 23 Board will not terminate this application until the 24 public hear's -- the Board hear's all information. 25 Objectors have the right to speak to the public, the	99 1 And Mr. Plocker. 2 MR. PLOCKER: Yeah. In the same vain as 3 reading of the, you know, transcript or watching the 4 meeting. I know we have a new member with us tonight 5 who heard testimony, I am assuming he needs a few hours 6 to get up to speed. 7 CHAIRMAN BAGOFF: He will either catch up on 8 everything, unless there's questions, but we will state 9 that for the record prior to vetting on the application. 10 MR. PLOCKER: Thank you. 11 MR. AFRAN: I have a question, to what 12 extent are the transcripts -- have they been provided 13 regularly to the Board? The new member could read them. 14 I don't know whether they're actually going to the Board 15 or not. 16 CHAIRMAN BAGOFF: I don't know the answer to 17 that. 18 MS. McGOVERN: Well, Jamilet. 19 MS. VITE: The transcripts are on the 20 website. 21 MR. AFRAN: Great. Transcripts, except for 22 tonight, are available. So the new members or those who 23 aren't here could read it. 24 MS. VITE: And the minutes are also on the 25 website. Minutes missing right now ARE the April 30,
98 1 applicant has the right to refute things, our experts 2 have the right to have their peace and then the Board's 3 findings and I hoping we are trying to work towards 4 that. 5 MR. AFRAN: Right. And the only thing I'm 6 raising is it's been raised several times there's a 7 viewpoint that the minutes should be available before 8 there is a final decision. So I am raising that because 9 I know we are a bit behind, understandably so, there's a 10 lot going on. 11 CHAIRMAN BAGOFF: We are working towards 12 that end. Thank you. 13 So just for the record, I want to state that 14 Council Person Susan Scarpa, who sits on the Planning 15 Board was unable to come this evening, she has listened 16 to the whole meeting on Zoom. She was not able to 17 participate in the meeting, she will sign that she was 18 Zoom present, and present that to our counsel. 19 The next special meeting for this 20 application, West Essex Highlands PB 24-01, Lot 179 Lot 21 32 in the IH-1 zone will be on June 23, Monday, at 6:30 22 PM in person and it would be available on Zoom for 23 watching only. No comments. And Monday, June 30 at 24 6:30 PM in counsel chambers in person and available on 25 Zoom, no comments.	100 1 which are probably going to be adopted the next meeting. 2 MR. AFRAN: And the one we need to provide 3 the exhibit for. 4 MS. VITE: So only two are missing. 5 MR. AFRAN: Thank you. 6 CHAIRMAN BAGOFF: Thank you. 7 I would like to also personally thank Mr. 8 Joe Fagan, our Zoomist, for working with us so 9 diligently and, Jamilet, our board secretary, for being 10 amazing and the zoning official who is here with us all 11 the time. Upstairs on the second floor is where she 12 lives. Thank her very much. 13 (Hearing concludes at 9:30 PM.) 14 15 16 17 18 19 20 21 22 23 24 25

1 C E R T I F I C A T E

2 I, ERIC S. FISHMAN, a Shorthand Reporter
3 and Notary Public of the State of New Jersey do hereby
4 certify that the foregoing is a true and accurate
5 transcript of the testimony as taken stenographically by
6 and before me at the time, place and on the date
7 hereinbefore set forth, to the best of my ability.

8 I DO FURTHER CERTIFY that I am neither a
9 relative nor employee nor attorney nor counsel of any of
10 the parties to the action; and that I am neither a
11 relative nor employee of such attorney or counsel; and
12 that I am not financially interested in the action.

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ERIC S. FISHMAN, S.R.

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20 Dated: 6/20/2025

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