

1 1 TOWNSHIP OF WEST ORANGE 2 DEPARTMENT OF PLANNING AND DEVELOPMENT 3 MONDAY, JUNE 30, 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 SUSAN SCARPA, Council Person 14 WILLIAM WILKES 15 LORI KAPFERER 16 JOHN CARDOZA 17 RYAN MacNEILL, Engineer 18 GERARD HAIZEL, Planner 19 JAMILET BAQUERIZO VITE, Board Secretary 20 GENIECE GARY-ADAMS, Zoning Official 21 JOSEPH FAGAN, Zoom Moderator 22 23 WITNESSES: 24 MARK SEEL, Geotechnical Engineer 25 MAYOR EDWARD DAVIS MAREA DePALMA RACHEL KLEIN 26 27 FISHMAN COURT REPORTING AGENCY 28 89 HEADQUARTERS PLAZA NORTH 29 4 SPEEDWELL AVENUE, SUITE 1440 30 MORRISTOWN, NEW JERSEY 07960 31 (973) 285-5331 - FAX - (732) 605-9391	3 1 2 INDEX OF EXHIBITS 3 EXHIBIT DESCRIPTION 4 0-15 TRACTENBERG MAP 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
2 1 APPEARANCES: 2 HUTT, SHIMANOWITZ & PLOCKER, ESQS. 3 BY BRYAN D. PLOCKER, ESQ. 4 Bplocker@huttshim.com 5 459 AMBOY AVENUE 6 WOODBRIDGE, NEW JERSEY 07095 7 Appearing on behalf of the Applicant 8 9 10 GACCIONE & POMACO, ESQS. 11 BY DIANA P. MCGOVERN, ESQ. 12 ONE BOLAND DRIVE, SUITE 102 13 WEST ORANGE, NEW JERSEY 07052 14 Appearing on behalf of the Board 15 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: PB-24-01 West Essex 2 Highlands, Inc, Block 179 Lot 32 Zone IH-1. Warner 3 Road. 4 The applicant is proposing to develop a 496 unit 5 inclusionary multifamily residential development on a 6 vacant 120 acre property in the northwest corner of the 7 Township. 8 For the applicant, Mr. Plocker. 9 MR. PLOCKER: Good evening everybody. Bryan 10 Plocker on behalf of the applicant, West Essex 11 Highlands, Inc. 12 Do we have any housekeeping business to 13 discuss? 14 MR. AFRAN: Yes, a little bit. 15 MR. PLOCKER: July meetings. 16 MR. AFRAN: Right. 17 MS. MCGOVERN: Oh, you want to do that now? 18 MR. PLOCKER: It's up to the Chairman. 19 CHAIRMAN BAGOFF: That's fine. You all have 20 dates? 21 MS. MCGOVERN: So we have suggested another 22 special meeting, I have not -- we haven't polled the 23 board members to see their availability, but I'm trying 24 to find out from the applicant's attorney, Mr. Afran -- 25 MR. AFRAN: Objector's attorney.

5 1 MS. McGOVERN: Objectors attorney. To what 2 dates would be available for those Wednesday's, because 3 we do have a temporary, I think, reservation on this 4 room so we can continue to do them. 5 I know Mr. Plocker, you told me every 6 Wednesday is good for you. All of them? 7 MR. PLOCKER: That's correct. Beginning 8 July 9 through July 30. 9 MS. McGOVERN: And Mr. Afran? 10 MR. AFRAN: I could do every Wednesday, but 11 I don't think, I can't -- I've been trying to ascertain 12 the dates when our experts are coming in and there's the 13 traffic engineer, the planner and potentially after he 14 hears this gentleman's testimony, a geophysics response. 15 So I am trying to get dates together and I don't have 16 them, unfortunately. I would hope -- I would, I'm free 17 any Wednesday. I would almost rather not meet next 18 Wednesday only so we get a break because frankly, it's 19 not for vacations purposes, I have briefs to write. But 20 I would, I am free any Wednesday but I prefer to have a 21 little gap between now and the 16th. I am trying to get 22 dates. Now, I am thinking by the 16th I might be able 23 to do that. I will probably know more tomorrow or 24 Thursday. 25 CHAIRMAN BAGOFF: Mr. Afran, how many more	7 1 hour and then we're done. 2 MS. McGOVERN: We need another night to 3 preserve the notice. 4 MR. AFRAN: I would certainly say the 16th. 5 Wednesday, July 16. 6 MR. PLOCKER: That would work. Can we just 7 ascertain, Chairman Bagoff, are there any objector 8 witnesses here tonight to testify? 9 MR. AFRAN: Yes. 10 MR. PLOCKER: Okay. Who is that? 11 MR. AFRAN: Paul Tractenberg, Rachel Klein, 12 Mayor Ed Davis and Marea DePalma. 13 MR. PLOCKER: Okay. And my understanding 14 was that the planner was coming tonight, I believe that 15 was represented. 16 MR. AFRAN: That's what I was originally 17 told but he can't. So that's one of the ones that's up 18 in the air. 19 CHAIRMAN BAGOFF: Okay. Let's get the last 20 two Wednesday's, the 16th and the following Wednesday 21 and finish it up. 22 MR. AFRAN: There's three Wednesday's in 23 July. 24 CHAIRMAN BAGOFF: 16th and 23rd. 25 MR. KLEIN: Five Wednesdays in July.
6 1 people do you want to have present before the Planning 2 Board? 3 MR. AFRAN: There's definitely three 4 experts, there's possible a fourth. I've been trying to 5 ascertain that from one of my clients. 6 CHAIRMAN BAGOFF: Can they all be here on 7 one night? 8 MR. AFRAN: I hear a voice that's telling me 9 no way. So based on the voice I have to say no. I 10 really can't evaluate yet. I mean, you know, a traffic 11 engineer, a planner, the geotechnical response, if 12 there's any, probably won't be that long, I imagine. 13 CHAIRMAN BAGOFF: We can't have a meeting 14 that goes for an hour and a half. We need to use the 15 full evening. 16 MR. AFRAN: I think, I know we will use the 17 full evening when the experts are here, I don't think it 18 would be done in one night. So when I get that date 19 ascertained we will be here the whole night. I just -- 20 I don't want to do one hour and a half either. Frankly 21 it's very, I sympathize with all of you when you do all 22 these meetings all year. It's very difficult, 23 especially balancing other cases. So when we get those 24 experts dates ascertained it will be a whole night and 25 probably still spillover. But it's not going to be an	8 1 MR. AFRAN: Well, I meant after that. 2 CHAIRMAN BAGOFF: Use those two to finish up 3 the case, please. That's what we're going to work on. 4 MR. AFRAN: I couldn't hear you. 5 MS. McGOVERN: All right. So we're 6 tentatively looking for July 16 and July 23. I have to 7 find out from the board if we have a quorum from those 8 who are here. 9 MR. AFRAN: Can I step out for one minute, 10 I'm sorry, I want to clarify this. 11 CHAIRMAN BAGOFF: Go right ahead. 12 (Whereupon, a short recess is taken.) 13 MR. AFRAN: I'm trying to ascertain when 14 these experts will be here. I believe -- 15 CHAIRMAN BAGOFF: One second. 16 Back on the record. 17 MR. AFRAN: I believe shooting for the 16th 18 as the next meeting will be productive in that respect. 19 I do not know whether these experts or all our witnesses 20 will finish in two nights. There are two additional 21 individuals who are expected to testify. They won't be 22 massively long but I don't know we'll be finished in two 23 nights. So I would suggest within the next two days I'm 24 going to try and get commitments from the experts I've 25 been talking to on what dates they will be here and

9 1 hopefully that will be July 16 and I should be able in 2 two days or so. I'm hoping to communicate with Diana 3 with more specific information but I would look to the 4 16th as a date when at least two experts will be here. 5 I'm hoping the geotechnical engineer, who is listening 6 tonight, is going to testify and will be ready because I 7 think he'll be, engineers are usually efficient. So I 8 think that will work. So I would expect we'll have 9 people on the 16th but I am not saying we can finish in 10 two nights. 11 MS. McGOVERN: I'm going to make the 12 recommendation we notify the newspapers that we're 13 having two special meetings Jamilet, both the 16th and 14 the 23rd. 15 MR. AFRAN: Let me ask a question, if I can. 16 When does the community commentary fit in the schedule? 17 You might as well say the 30th too, since there's going 18 to have to be at least a night for their commentary. 19 CHAIRMAN BAGOFF: Yes. 20 MAYOR McCARTNEY: So seems to me that so 21 many people are not available on the 23rd, can we move 22 it to the 30th? 23 CHAIRMAN BAGOFF: We have a quorum for the 24 23rd? 25 MR. KLEIN: We have it for the 16th.	11 1 MR. AFRAN: I didn't mean to presume, sorry. 2 MS. McGOVERN: So let's -- that's four 3 meetings in July. People go on vacation, that's a lot. 4 So you have the regular meeting on Wednesday. 5 MAYOR McCARTNEY: The 16th and the 30th. 6 MS. McGOVERN: Okay. This is -- so what 7 we're going to do is notice for all three meetings. On 8 the 16th we'll figure out whether it's going to be the 9 23rd or the 30th, but we'll have that part done and 10 we'll preserve your notice, Mr. Plocker, one way or 11 another. Whether we're going to the 23rd or we're going 12 to the 30th. 13 MR. PLOCKER: Thank you. Appreciate that. 14 MR. AFRAN: I had a question. We talked 15 about the board holding a work session. Did the Chair 16 envision that would be before we had final arguments? 17 CHAIRMAN BAGOFF: No, after final arguments. 18 MR. AFRAN: Okay. 19 CHAIRMAN BAGOFF: The board has do a little 20 homework. 21 MR. PLOCKER: When you say, work session, do 22 you mean deliberation? 23 CHAIRMAN BAGOFF: Deliberation. 24 MS. McGOVERN: Not work session. 25 MR. AFRAN: That was Mr. Bagoff's phrase, so
10 1 CHAIRMAN BAGOFF: The 16th. We have a 2 quorum for both? 3 MR. PLOCKER: Applicant is good for the 30th 4 as well. 5 MR. AFRAN: Can I mention one thing, it's 6 been made known to me that it's difficult for many 7 people to hear back here and I am actually having 8 trouble hearing. 9 MAYOR McCARTNEY: I was suggesting moving 10 the 23rd to the 30th if more people would be available. 11 MR. AFRAN: That certainly works for me. 12 I'd like to be able to get all these witnesses in and 13 I'm sure we will. I'm happy with that, to skip the 23rd 14 and do the 16th and the 30th. But then we would need, I 15 am sure, a full night for the community statements, then 16 we need to have closing arguments and board 17 deliberations. So those, at least a night for the 18 community, I don't know how long it will take, and then 19 we have to do final arguments. 20 And there was one question I had for the 21 Chair. I'd say announce the 30th at the same time. 22 MS. McGOVERN: All right. We'll do the 23 announcement also for 30th, right. The applicants free. 24 That doesn't -- we didn't ask the board if they're 25 available for the 30th.	12 1 I used his phrase. 2 CHAIRMAN BAGOFF: It would be public meeting 3 deliberation. 4 MR. AFRAN: So looks like we're going to 5 need at least two nights after the 30th to fit all that 6 in, community, closing arguments and deliberation. 7 CHAIRMAN BAGOFF: Let's see how it goes. 8 MR. AFRAN: Let's see how it goes. Okay. 9 I had one other matter of housekeeping I was 10 asked to raise. I know it's very difficult actually to 11 keep up with it, Jamilet has a big burden, we notice 12 there aren't regular minutes on this case and the 13 transcript isn't posted. I think the transcripts after 14 January may not have yet been posted, but no minutes as 15 well. So some people depend on the minutes, not the 16 lawyers, but some people depend on those. I was asked 17 to bring that to the boards attention that since there 18 are no minutes being posted at the moment, no 19 transcripts, people have no ability to follow up at this 20 stage. 21 MS. McGOVERN: They can listen to the 22 meeting, the video is right on the website. 23 MR. AFRAN: No, I understand but there is a 24 legal duty about minutes at some point. 25 MS. McGOVERN: Understood. And Jamilet is

13 1 working on it. 2 MR. AFRAN: I am not complaining, I am just 3 pointing out I was asked to raise the issue. 4 MS. McGOVERN: Nobody is foreclosed from 5 watching the meeting from beginning to end. It's posted 6 on the website. 7 MR. AFRAN: Mr. Plocker, are there other 8 transcripts outstanding? 9 MR. PLOCKER: Except for last Monday, I 10 believe all of them were sent in to the board. 11 MR. AFRAN: Okay. Great. 12 MR. PLOCKER: I'm just not making a 13 representation definitely, but we can certainly go back 14 and check. 15 MR. AFRAN: Thank you. Thank you. 16 MR. PLOCKER: Okay. 17 CHAIRMAN BAGOFF: Mr. Plocker. 18 MR. PLOCKER: Thank you. 19 The applicant would like to call Mark Seel 20 and he has testified before, if you would like to 21 reswear him in. 22 CHAIRMAN BAGOFF: Yes, let's reswear him. 23 MS. McGOVERN: Do you swear or affirm to 24 tell the truth the whole truth nothing but the truth. 25 THE WITNESS: I do.	15 1 landslides, stability, things of that nature. 2 I am a licensed engineer in New Jersey as well as 3 a licensed professional geologist in three states. 4 Q. And your license in New Jersey is currently good 5 and in good standing? 6 A. Yes, it is. 7 Q. Okay. 8 Originally in this case I believe you issued or 9 your company issued a report dated January 14, 2025? 10 A. That's correct. 11 Q. And you testified at the January 29 meeting about 12 the findings in that report, correct? 13 A. Correct. 14 Q. And after that meeting or during that meeting it 15 was suggested that perhaps additional testing should be 16 performed. Do you recall that? 17 A. Yes. 18 Q. And you performed additional testing? 19 A. Correct. 20 Q. And you issued a revised report from this month, 21 June of 2025? 22 A. Correct. 18th of June. 23 Q. Okay. 24 Could you please explain to the board and 25 everybody in the room about the additional testing that
14 1 MS. McGOVERN: Please state you full name, 2 spelling your last name for the record. 3 THE WITNESS: Mark Seel, S-E-E-L. 4 M A R K S E E L, having been duly sworn 5 testifies as follows: 6 Q. And Mr. Seel, you testified in this public 7 hearing before, I believe it was on January 29, is that 8 correct? 9 A. That's correct. 10 Q. Why don't we just have him quickly go over his 11 qualifications for the benefit of the board and 12 everybody else in the room. 13 Mr. Seel, could you just state who your employer 14 is, your background, licenses, what you do, we'll start 15 with that? 16 A. Sure. I'm employed with Langan Engineering and 17 Environmental Services. I've got over 30 years of 18 experience in geotechnical and geological engineering. 19 I have a bachelor's degree in geological engineering and 20 a master's in engineering from Stevens Institute of 21 Technology in civil environmental. 22 For the last 30 years I've primarily focused on a 23 combination of commercial and residential and retail 24 projects throughout the country and rural and focused on 25 a lot of, primarily on geological rock falls,	16 1 was done and what your conclusions were? 2 A. Yes. So the additional testing we did was 3 focused on the area of the slope north of the proposed 4 Building D between the proposed Building E and Howell 5 Drive. The nature of the investigation was a handful of 6 borings, it was a total of four soil borings into rock 7 as well as additional test pits that were in the slope. 8 The intent was, once again, to characterize the nature 9 of the materials and evaluate the stability of that 10 slope with respect to the construction of the proposed 11 Building D. And what we found was that the rock, 12 generally speaking, was shallower to the north of 13 Building D. The rock mass appeared strong, very hard. 14 The materials, the soils, overburden materials, the 15 soils are very typically dense. They're very dense and 16 the stability was -- the slopes are stable both with 17 respect to existing conditions as well as proposed 18 conditions to do the development. 19 MR. PLOCKER: I have nothing further. 20 CHAIRMAN BAGOFF: Okay. 21 Mayor McCartney, do you have any questions 22 for the witness on his testimony? 23 MAYOR McCARTNEY: I guess my only question 24 would be, so if and when the plan was presented and they 25 were looking at where the test sites were and you did

17 1 additional testing were the test sites, did you do 2 similar to what they had suggested by the objectors? 3 THE WITNESS: Yes, I believe the proposed 4 borings and test pit locations were consistent with what 5 was being asked as well as what I felt was 6 professionally expected. 7 MR. PLOCKER: Can I just clarify. 8 Mr. Seel, did you review your testimony from 9 the prior meeting? 10 THE WITNESS: Yes, I did. 11 MR. PLOCKER: Thank you. 12 MR. AFRAN: Yeah, Mr. Chairman, I am not 13 sure it was an objector who requested it. I didn't make 14 any request, I am not sure where the request came from. 15 I thought it came from the board or the board staff. So 16 I just want to clarify, I don't recall the objectors 17 making any request. I think Mayor McCartney might have 18 misspoke on that point. 19 MR. PLOCKER: I think -- 20 MS. McGOVERN: It was a Princeton Hydro 21 person. 22 MR. AFRAN: Okay. You're referring to the 23 expert who spoke. 24 MAYOR McCARTNEY: Yes. 25 MR. AFRAN: Thank you.	19 1 similar to Mr. Alper's question. So you didn't do any 2 analysis related to groundwater or anything like that? 3 You were strictly focused on the stability, is that 4 correct? 5 THE WITNESS: Well, we looked at 6 groundwater, anything below the ground. All conditions, 7 soil, rock, water conditions. 8 MS. KAPFERER: And what did you find related 9 to groundwater? 10 THE WITNESS: We did not see groundwater 11 table in any borings. We did borings and test pits from 12 this last round closer to the end of the wet season as 13 is defined by the DEP and we found no groundwater in the 14 borings. 15 MS. KAPFERER: And did you do any mottling? 16 THE WITNESS: We looked for it, we didn't 17 notice any mottling shown in the test pit log. 18 MS. KAPFERER: Okay. That's it for my 19 questions. 20 CHAIRMAN BAGOFF: Mr. MacNeill? 21 MR. MacNEILL: Just one question. Is it 22 common to not find mottling in your soil borings or test 23 pits? 24 THE WITNESS: Mottling is not always 25 present. It's indicative of changes in the water table
18 1 CHAIRMAN BAGOFF: Anymore questions? 2 MAYOR McCARTNEY: No. Thank you. 3 CHAIRMAN BAGOFF: Mr. Klein? 4 MR. KLEIN: No questions. 5 CHAIRMAN BAGOFF: Vice Chair Guarino? 6 VICE CHAIRMAN GUARINO: No questions, Mr. 7 Chairman. 8 CHAIRMAN BAGOFF: Mr. Alper? 9 MR. ALPER: Possibly. 10 On the 25th of February the Planning Board 11 heard from Princeton Hydro, John Walsh, are you familiar 12 with that testimony? 13 THE WITNESS: On February -- no, I was not. 14 MR. ALPER: Okay. 15 So no matter what's in -- is anything that's 16 in the new report in response to the claims that were 17 made by the Princeton Hydro report, the presentation 18 that came after the initial reports? 19 THE WITNESS: Firstly, I don't know if I 20 reviewed that. 21 MR. ALPER: Okay. Thank you. 22 CHAIRMAN BAGOFF: Mr. Cardoza? 23 MR. CARDOZA: No questions. 24 CHAIRMAN BAGOFF: Ms. Kapferer? 25 MS. KAPFERER: Quick question, I think	20 1 and that's one of the reasons that often it's required 2 for the stormwater world, but it's not always found. It 3 can be done, depending on soil conditions. 4 MR. MacNEILL: Okay. So in your experience 5 there are instances where the mottling has not been 6 found? 7 THE WITNESS: Often, yes. 8 MR. MacNEILL: That's all I have. 9 CHAIRMAN BAGOFF: Mr. Haizel, any questions? 10 MR. HAIZEL: No questions at this point. 11 CHAIRMAN BAGOFF: Mr. Afran. 12 MR. AFRAN: Thank you. 13 Q. Mr. Seel, were you doing these tests in your 14 understanding in response to Mr. Walsh's report or in 15 response to some other stimulation? 16 A. I don't know who Mr. Walsh is, so. 17 Q. He is from Princeton Hydro. 18 CHAIRMAN BAGOFF: One second. I forgot 19 Council Person Scarpa. My fault. 20 COUNCIL PERSON SCARPA: I have no questions. 21 I was going to remind you, but I don't have any 22 questions. 23 CHAIRMAN BAGOFF: Thank you. 24 MR. AFRAN: Good to hear your voice. 25 CHAIRMAN BAGOFF: Mr. Plocker.

21 1 MR. PLOCKER: I want to, hopefully we can 2 just make a clear record, Mr. Afran. I believe that not 3 the objector group but a comment made by an individual 4 or individual members of the public who made comments or 5 asked Mr. Seel questions on January 29 prompted 6 questions whether the applicant would consider extra 7 additional geological testing. After the meeting we did 8 get back to the board, I believe I did it through Ms. 9 McGovern, and we said that we were willing to perform 10 additional testing. That testing was performed and it 11 resulted in the revised report that Mr. Seel's firm 12 issued this month. So I just wanted to make that clear 13 for the record. 14 CHAIRMAN BAGOFF: Thank you. 15 Mr. Afran. 16 MR. AFRAN: Thank you. 17 Q. Did you, I am not asking this by way of 18 criticism, I am really trying to lay a background. Did 19 you read Princeton Hydro's report? 20 A. I have not seen it. 21 Q. Okay. 22 And you didn't hear Mr. Walsh from Princeton 23 Hydro, Mr. Gallagher, testify? 24 A. I did not. 25 Q. So what you did hear was not necessarily	23 1 but I don't want to burden the board with questions and 2 any across that I don't really have expert knowledge in. 3 CHAIRMAN BAGOFF: Okay. 4 Do any members of the public have any questions 5 for Mr. Seel on his latest presentation and report, June 6 13, 2025? 7 State you name for the record. 8 THE PUBLIC: Deborah Butensky, Rappleye 9 Court, West Orange. 10 Any way I can get a map to see where the 11 borings were done, because I'm totally unclear where 12 they were done? 13 MR. FAGAN: What map would you be looking 14 for? 15 THE WITNESS: Go to Figure 1 in our report. 16 MR. FAGAN: I don't have your report. 17 MR. AFRAN: Could I just ask while we're 18 waiting. People really brought to my attention they 19 can't really hear because of the air-conditioning, which 20 we need. So if any people who can't hear can move 21 forward, but when people talk, I'll try and keep my 22 voice up. It was really brought up that people are 23 having trouble hearing. So I just want to stress now 24 that the air is back on if people could talk up, because 25 it keeps being brought to my attention. I know my voice
22 1 responding to what they were talking about? 2 A. I did not respond, I wasn't aware of any of their 3 comments. 4 Q. Okay. 5 So when there was questions about, asked from the 6 board whether this related to the mottling that 7 Princeton Hydro spoke to, that wasn't really what you 8 were looking for, was it? 9 A. I had no knowledge of Princeton Hydro's report, 10 so I couldn't respond to it. It's something that we do 11 normally as part of our investigation. 12 Q. And you don't know where he was referring to in 13 terms of what he said was incorrect measurements or lack 14 of proper measurements? 15 A. I have no idea what he was referring to. I did 16 not see his report. 17 Q. Okay. 18 So we can't say what you did is necessarily 19 responsive to what he was saying? 20 A. I can't say that. 21 Q. Okay. I wanted to clarify that. 22 I am going to hold off on any questions because I 23 am not an expert and we have a geotechnical engineer 24 listening in and we may call him or her, I am not sure 25 who it is, and they will testify if we feel the need,	24 1 breaks all the time, so I'm not guilty, but if we could 2 try. 3 MR. CARDOZA: Feel free to move the mic 4 closer to your mouth, Mr. Afran. 5 CHAIRMAN BAGOFF: Can you identify this 6 report, please? 7 MR. AFRAN: Could we zoom in a little bit 8 more. 9 MR. PLOCKER: Joe, that's not you. 10 MR. AFRAN: Mr. Seel, is that -- 11 THE WITNESS: Yes, that looks like the one. 12 MR. AFRAN: That would be the Investigation 13 Plan with the number 1 on it. 14 MR. FAGAN: Is that it here? 15 MR. PLOCKER: Bruce, do you have a PDF page? 16 THE WITNESS: Yes, that's it. Yeah. 17 MR. AFRAN: PDF page -- oh, he's got it. 18 That's it. 19 THE PUBLIC: Does anybody have a laser 20 pointer? 21 Can you delineate the borings? Can you 22 please delineate, perhaps he has a laser pointer, where 23 the new borings were done, where the borings were made? 24 MS. MCGOVERN: So Council Person Scarpa, can 25 you see the laser pointer? Because if not, I am going

25 1 to ask you to also describe what you're pointing at on 2 the figure. 3 THE WITNESS: Sure. 4 MS. McGOVERN: Thank you. 5 THE WITNESS: I'll describe it as this, so 6 this is the area here. These two pink lines, A and B. 7 These are the areas that we focused on initially and if 8 you scroll up to the north. Up to here. These are the 9 additional investigations that were done as part in May 10 of this year. 11 MS. McGOVERN: Those are C and D pink lines? 12 THE WITNESS: Correct, C and D lines. This 13 is Howell Drive over here. There's 13, 15 Howell. This 14 is the entrance into the access road into the 15 development, Building D, and we show our property and 16 rock, some bolder's and some supplemental test pits. 17 This is the majority of the work that was being 18 described in this report. 19 THE PUBLIC: How many borings did you do? 20 THE WITNESS: There's four borings. Two on 21 the C line, two on the B line -- D line, excuse me. And 22 then there's an additional five test pits through here 23 and there's additional test pits that were done a little 24 further to the south. 25 THE PUBLIC: How deep do you go?	27 1 THE PUBLIC: So overall what's your 2 impression of what your findings were from the borings? 3 THE WITNESS: That this area up -- or this 4 areas a very, it's a dense soil profile over hard rock. 5 It's a condition that is favorable for slope stability 6 and that the, our analysis indicated that slopes are 7 stable now and would be after the development. 8 THE PUBLIC: And how -- what's the depth of 9 the bedrock? 10 THE WITNESS: The bedrock vary from about 11 10-feet here. You can see here -- well, this shows an 12 elevation and a depth. That's the depth of rock that 13 was encountered in the boring. 14 THE PUBLIC: That's good. 15 THE WITNESS: And then similarly, so there 16 was rock around six and half feet shown here. I think 17 that was -- it was probably broken rock and as we went 18 further to the south, NLB-4, it was 12-feet and as you 19 to scroll into this area here. It shows it was deeper 20 than 11, but, again, it's weathered rock and broken 21 profile below 11-feet. 22 THE PUBLIC: So I am trying to understand, 23 when you got bedrock you said 22-feet as you have there, 24 that means the bedrock went down, your borings were 25 22-feet, but how deep was the actual bedrock?
26 1 THE WITNESS: These vary, but the test pits 2 were typically 5-feet or less. And the borings went 3 variable depths, at least typically about 20-feet. We 4 took them into the rock. 5 THE PUBLIC: Can you just remind us, why did 6 you have to go back or what was the indication to do 7 more borings? 8 THE WITNESS: Well, it was brought up during 9 the, during the January 29 meeting, the question was 10 raised about what about this area here, that there 11 wasn't date that was further here that we were going to 12 use for that, so we went back and did the additional 13 investigation up in this area to the north. 14 THE PUBLIC: And did you find any noticeable 15 difference? 16 THE WITNESS: Yes. One noticeable 17 difference was that the rock was generally shallower to 18 the north. So in this area here rock was about 10-feet 19 deep, 10 or 12 and the same here. I think it was also 20 10-feet here and dropped to about 20-feet over here. 21 And then rock through this cross section A was a little 22 bit deeper. So relatively thin as you went from, or 23 shallow rather, as you went from north and south and I 24 think, but the soils themselves were very -- showed very 25 dense soil profile.	28 1 THE WITNESS: So for example, right here 2 this is telling us the depth of this boring, it is 3 telling us the depth is below ground surface at which 4 the top of rock is encountered. So 10-feet below ground 5 surface we encountered rock. 6 THE PUBLIC: So what constitutes the minimum 7 requirements for a stable -- 8 THE WITNESS: Well, stability is a function 9 of materials, strength of properties. So in rock like 10 this it's very, we look at density of the soil, number 11 one. Then we look at the rock properties, rock quality, 12 strength of material and we enter those values into our 13 model and that helps inform us of the overall stability 14 of the material. 15 THE PUBLIC: So the last question is 16 regarding water flow, stormwater over bedrock down into 17 that area. As a geologist, can you explain what your 18 findings are to me as a layperson? 19 THE WITNESS: Well, we found in our borings 20 that we are not seeing groundwater, so when you look at, 21 I will say from a precipitation event, there's an 22 approximate peak or high point or elevation on this site 23 that runs right about through this area. So everything 24 to the right of that, any stormwater that hits will tend 25 to flow overland in this direction and overland in this

29 1 direction from that high point. Not all that water for 2 instance seeps into the ground. Some runs over 3 naturally and is collected in a storm system. Some of 4 it may seep into the ground, may or may not form much of 5 a groundwater table only to the fact there's a 6 relatively small area between the high point and this 7 area here which water can be concentrated in the form of 8 groundwater table. 9 THE PUBLIC: Okay. Thank you. 10 CHAIRMAN BAGOFF: Okay. 11 Please state your name for the record? 12 THE PUBLIC: Good evening. Seth Weisleder. 13 Good evening, Mr. Seel. I have a question 14 to just maybe refresh, I guess, everyone's memory from 15 back in January. It's a long time ago, more like 16 yesterday. But what was the main purpose for checking 17 the stability of the slopes that we see where all the 18 borings were done? What was like the main purpose of 19 it. 20 THE WITNESS: The purpose of a stability 21 assessment is to determine whether or not the slope is 22 currently stable and whether it would be stable after, 23 certainly, construction activity. 24 THE PUBLIC: Okay. 25 Can you go more into that construction	31 1 THE PUBLIC: And based on the new ones that 2 you found, what kind of rock was that? What kind of 3 soil, I think there was some more specifics in your 4 report. 5 THE WITNESS: Yeah, the report described 6 soils that were encountered, very similar to what was 7 found elsewhere on-site which generally speaking is very 8 dense soil, combination of sand, silt and gravel. Some 9 varying amounts of clay. And the rock itself is a fine, 10 relatively fine-grained igneous rock that tends to be 11 very hard and ashy. 12 THE PUBLIC: So could there possibly be risk 13 in the surrounding area because basalt is dense and 14 transmits energy efficiently like shock waves and 15 blasting, couldn't that travel further based on what the 16 basalt is? 17 THE WITNESS: I'm sorry, when you're 18 referring, specifically to an activity? 19 THE PUBLIC: Since there will be some 20 blasting for Building D does the rock basalt, that is a 21 dense rock, correct? 22 THE WITNESS: Yes, it is. 23 THE PUBLIC: And it transmits energy 24 efficiently, so couldn't those shock waves from the 25 blasting travel further?
30 1 activity, would that include blasting? 2 THE WITNESS: Well, it would be, it's really 3 not so much about blasting, it's really mostly 4 construction. So we look at the loading from the 5 building, is what we look at. So we got a slope that we 6 look at, then we ask them to redraw the lines to 7 determine where the building is going to be going to 8 load this slope and we enter that and put that 9 information into a model. 10 THE PUBLIC: Okay. 11 That could include blasting, correct? 12 MR. PLOCKER: I believe Mr. Seel testified 13 extensively to blasting the last time when questions 14 were brought up. It is in the transcript and it's not 15 part of this report. 16 THE PUBLIC: He said construction activity, 17 I want to clarify specifically what construction 18 activities, and does that include blasting. 19 THE WITNESS: Well, let me rephrase it then. 20 The stability analysis is run based on the existing 21 conditions and then if conditions change during 22 construction. So it's not the activity of construction, 23 it is whether changing or adding -- adding grading or 24 you're adding filling or cutting slopes and you're 25 adding load to it. That's what --	32 1 THE WITNESS: So blasting is a science that 2 is a little, it's very complex. So, yes, it is. I 3 testified in the past that if they do excavate here due 4 to rock issues, there's controlled blasting techniques 5 to minimize the amount of energy that is transferred to 6 the rock capacity and beyond the property. And when we 7 do that, if it's done properly, like blasting rock 8 immediately adjacent to a four story buildings without 9 incident. 10 THE PUBLIC: So could there be potential 11 slope destabilization if blasting from, especially atop 12 Preakness Basalt that kind of rock? I mean, we're 13 talking about a specific kind of rock which you're 14 familiar with, couldn't there be potential 15 destabilization on that slope? 16 THE WITNESS: I've not encountered that 17 rock. This type of rock is very hard. It has a 18 relatively high sheer weight and these types of, if 19 they're blasting for example, those waves pass very 20 quickly through the rock and it's when they slow down 21 and hit material that's much softer that the material 22 could tend to disturb ground. It's less likely in very 23 hard rock like this. Especially unlikely in the event 24 that these controlled blasting techniques are put into 25 place.

33 1 THE PUBLIC: Will there be any pre-blast 2 surveys or monitoring in place due to the hardness and 3 unpredictability of fracturing the basalt? 4 THE WITNESS: Well, I understand that there 5 will be, that's a owner decision, but that has been our 6 recommendation and I believe the owner is intending to 7 perform that, but I can't speak for them. 8 THE PUBLIC: So you're suggesting to the 9 developer that they conduct seismic monitoring and 10 pre-blast surveys in nearby structures and vibration 11 control measures? 12 THE WITNESS: That's a common recommendation 13 I make for any development project or request. 14 THE PUBLIC: Would you say that basalt 15 blasting is typically louder and more destructive than 16 blasting in soft rock or soil? 17 THE WITNESS: I would say that's a relative 18 term, because it depends on a person's perception of 19 sound and vibration. 20 THE PUBLIC: And what concerns do you have 21 for residents and for environmental protection in that 22 area, do you have any concerns? 23 THE WITNESS: If the excavation is done 24 properly under the guidance of a qualified professional, 25 then I expect everything would be done properly and that	35 1 THE WITNESS: Well, with any rock if, where 2 the energy's introduced, it could introduce breakage. 3 But if properly implemented, design and implemented 4 controlled blasting techniques are used that amount of 5 energy is significantly reduced, if not eliminated 6 beyond that hole. So at periphery air cushion that's 7 created by the control blasting techniques. 8 THE PUBLIC: And when you destabilize a 9 slope or possible destabilization, what risk, what other 10 risks could be there, like what would that cause? 11 THE WITNESS: I'm sorry, I'm not -- could 12 you rephrase it. 13 THE PUBLIC: Sure. So if you, if this slope 14 does come destabilized because of the fractures, 15 potential fractures, weak points, what other risks could 16 that cause where we checked out the stabilization? 17 THE WITNESS: Well, that's somewhat 18 speculative. I guess I would -- 19 CHAIRMAN BAGOFF: I'm sorry, I'm going to 20 stop that. He didn't testify to that, but there are 21 state ordinances and there will be post blasting testing 22 done by the ordinance and by state rules on how blasting 23 is done. If there's an issue that has to be addressed 24 through the state and the local government will ensure 25 stability and that covers that.
34 1 risk would be mitigated. 2 CHAIRMAN BAGOFF: I believe the zoning 3 ordinance has protections in the building department for 4 blasting. It's sent down from the state and the 5 township. We have had this before with blasting, so 6 there are guard rails. 7 Mr. Plocker. 8 MR. PLOCKER: Yeah. And if I may add, 9 looking at a portion of the January 29 transcript, I am 10 not going to read it line by line but Pages 14 to 15 11 this was discussed and I believe, I won't quote you, and 12 I think it's going to be up to the building department 13 once they get the documents, they will work with the 14 engineering firm to ensure that everything is within 15 code and within state regulations and I am skipping a 16 few lines and I went on to make a representation on 17 behalf of my client -- yeah, I said that "It's standard 18 procedure of my client throughout this process and any 19 period of compliance will be working with the towns 20 professionals in connections with that as I expect to 21 many others as well." 22 CHAIRMAN BAGOFF: Thank you. 23 THE PUBLIC: With regard specifically to 24 basalt that you found, could blasting introduce new 25 fractures and weak points on the slope?	36 1 MR. AFRAN: May I. 2 CHAIRMAN BAGOFF: Mr. Afran. 3 MR. AFRAN: I would respectfully disagree 4 with the Chairs position on that. Because the question 5 of risk is inherent in the testimony as to stability. 6 And since the witness testified that this is a stable 7 structure, I think the question of risk associated with 8 it is within the scope of his testimony. So I 9 respectfully disagree with -- 10 CHAIRMAN BAGOFF: He wants to know 11 afterwards if it happens. He wasn't talking about risk, 12 he was saying if this happens what next. 13 So then rephrase the question. Ask 14 specifically about risk as opposed to what happens 15 afterwards because that's what he was asking. 16 MR. AFRAN: I heard the question concerning 17 the question of risk, I thought it was relevant. If 18 that's not what the speaker is asking, that's a 19 different issue. 20 CHAIRMAN BAGOFF: The speaker asked what 21 happens afterwards, so that's where we went. Okay. I 22 have no problem with that. 23 THE PUBLIC: I guess what is that potential 24 risk? I will rephrase -- 25 THE WITNESS: Yeah, if you don't mind,

37 1 rephrase the question. 2 THE PUBLIC: So what are the potential risks 3 when the slope becomes destabilized? 4 THE WITNESS: Well, I have not been involved 5 in a rock mass basalt that has become destabilized as a 6 result of blasting. So it's hard for me to speculate on 7 what would happen. But as I have testified and provided 8 that the safeguards are in place, that is a controlled 9 blasting program is in place, I'm not expecting there -- 10 that risk becomes incredibly low, if not all together 11 zero with the indication of controlled blasting 12 techniques. So then as the amount of charge is put in 13 the hole and blasted the energy is reduced and if there 14 is an air cushion between, let's say the face of the 15 excavation and down slope, then there's no -- the risk 16 is mitigated by that method. 17 THE PUBLIC: Okay. 18 You talked a little bit about -- you said 19 you found Preakness Basalt, hard rock, but I did a 20 little research, I mean, I'm not a, you know, geologist 21 but Preakness Basalt stores a lot of natural geological 22 stress to begin with, correct? 23 THE WITNESS: Certainly at a depth -- 24 MR. AFRAN: Mr. Seel. 25 THE WITNESS: Oh, I'm sorry. So when rock	39 1 a residential area. 2 THE PUBLIC: Do you know if this slope 3 contains subsurface water channels? 4 THE WITNESS: Well, we look for ground 5 water. 6 THE PUBLIC: I guess how far would you have 7 to go to see or know if there was subsurface water? I 8 mean, could it be if you went down, what, 20-feet? 9 THE WITNESS: 20 or 40 feet. 10 THE PUBLIC: 20 or 40. Okay. 11 So in your professional opinion blasting on 12 or above Preakness Basalt ridge line is, is it risky? 13 One being low and ten being high on a scale of one to 14 ten. 15 MR. PLOCKER: I'm going to object. 16 CHAIRMAN BAGOFF: Sir, he hasn't testified 17 anything about this. 18 THE PUBLIC: About what? 19 CHAIRMAN BAGOFF: We're going too far off 20 the hypotheticals. 21 THE PUBLIC: Okay. 22 CHAIRMAN BAGOFF: It's just a different 23 flavor vanilla. 24 THE PUBLIC: Well, I was asking for a 25 professional opinion for blasting on, which we're
38 1 is exposed to the ground surface it tends to dilate 2 slightly, especially on the lead face. There's a 3 certain amount of findings that exist in the rock mass, 4 especially with the depth with burial, the depth of good 5 rock and the face very gradually starts to de-stress and 6 open up. So the -- so materials, they were, the 7 materials you see today are what we would expect to see 8 after blasting, provided those controlled techniques are 9 put in place. 10 THE PUBLIC: So considering if blasting was 11 to be done correctly, properly, according to ordinances, 12 all those other things, laws, etc., couldn't blasting 13 trigger release of some of that stress causing 14 unexpected cracking, more mass movement? 15 THE WITNESS: I'm struggling to find a case 16 where I've seen something like that happen. You're 17 talking about stress fields in rock, you're talking 18 about large scale stresses, these are relatively smaller 19 that we're seeing in outcrops and I would expect that, 20 I've not seen where uncontrolled blasting has been done 21 in an instance relative to neighboring homes. In one 22 instance I've seen where it was used in a quarry and if 23 it does, it can be destructive, but that was -- those 24 cases are very -- they're not relative to what we're 25 seeing or what we expect to see here in a development in	40 1 building on Preakness Basalt. 2 CHAIRMAN BAGOFF: You asked for the risks. 3 THE PUBLIC: Okay. 4 CHAIRMAN BAGOFF: But move on. 5 THE PUBLIC: Okay. 6 Will your firm be assisting on the blasting 7 guidelines or is this just specifically for, I guess I 8 have to ask something that you testified on, I 9 apologize. 10 I think I'm okay for now. 11 CHAIRMAN BAGOFF: Would any other member of 12 the public have any questions for Mr. Seel on his 13 testimony? Please come up and state your name for the 14 record. 15 THE PUBLIC: Yes, hello. My name is Leigh 16 Masci. I have a question for Mr. Seel. 17 MS. McGOVERN: Did you say Clair? 18 THE PUBLIC: Leigh. 19 MS. McGOVERN: Leigh. 20 THE PUBLIC: Yes. 21 Mr. Seel, in your professional opinion what 22 do you think might be some of the effects of blasting on 23 the walls of the houses closest to and directly across 24 from this site? 25 MR. PLOCKER: Again, this wasn't in his

41 1 report. 2 CHAIRMAN BAGOFF: He didn't testify to that. 3 THE PUBLIC: Thank you. 4 CHAIRMAN BAGOFF: Thank you. 5 Do any another members of the public -- come 6 right up. State your name for the record, please. 7 THE PUBLIC: Hi. Thank you. I'm Susan 8 Pannullo and I'm within the 200-foot zone. I have a 9 quick question for something you testified to a few 10 minutes ago. If I understood correctly you were saying 11 that there is no way to measure the difference in the 12 blasting of different materials, and my understanding is 13 there's objective measures to measure that. There are 14 decibels, I think it's called, that would help us to 15 determine whether the blasting is different in terms of 16 sound volume and impact on people around there. 17 THE WITNESS: So can we read that back 18 because I don't recall saying anything like that, at 19 least not intending to. 20 MR. PLOCKER: Again, this subject matter is 21 not in the purview of the board, it's not in his report, 22 he didn't testify and just for the record, I just want 23 to confirm that Mrs. Pannullo is an Essex Fells 24 resident? 25 THE PUBLIC: Yes.	43 1 THE WITNESS: Yes, there are. 2 THE PUBLIC: Thank you. 3 MR. PLOCKER: Again, I'm going to object to 4 the line of questioning. The decibels or the sound or 5 whatever effects of blasting, as the Chairman dully 6 stated, they are controlled by ordinances. There are 7 state regulations possibly and my client will work with 8 the town and follow those guidelines and listen to it's 9 own professionals in that regard. 10 THE PUBLIC: So I guess my question -- go 11 ahead, please. 12 MR. AFRAN: Well, I think it's relevant for 13 the members of the community to go into this subject. 14 It may well be that the applicant intends to adhere to 15 zoning codes and rules, but that doesn't mean the 16 information about the extent of sound and blasting 17 noises is not relevant to the application. Certainly is 18 and it's certainly within the scope of the testimony in 19 general. The witness says he's aware of those objective 20 measures, so clearly it's within the scope of his 21 knowledge and it relates. 22 CHAIRMAN BAGOFF: Nobody's arguing except 23 that I asked her to ask her question. If he can answer 24 the question he'll answer the question. 25 MR. AFRAN: No, I'm just responding to Mr.
42 1 MR. PLOCKER: Okay. I believed so, I just 2 didn't hear you say that. 3 THE PUBLIC: Yes, Essex Fells. Thank you. 4 CHAIRMAN BAGOFF: He didn't testify to that. 5 THE PUBLIC: It was a few minutes ago, your 6 question was whether there was basalt or other materials 7 for volume, I think was the word or something like that. 8 You did not use the word decibels that came from me. 9 CHAIRMAN BAGOFF: Okay. 10 THE PUBLIC: Yes, thank you. 11 CHAIRMAN BAGOFF: Let him answer. 12 If you can, you can answer. 13 THE WITNESS: I don't recall specifically 14 what I said. 15 THE PUBLIC: I recall. Do want to read it 16 back. 17 CHAIRMAN BAGOFF: No, he can't do that. 18 MS. McGOVERN: Okay. 19 CHAIRMAN BAGOFF: Why don't you ask the 20 question and if he can answer the question, he will go 21 ahead and answer the question. 22 THE PUBLIC: So the question that I asked 23 was, are there objective measures, as you alluded to, to 24 quantify how that blasting is for people that are within 25 earshot of the property?	44 1 Plocker's position. They may adhere to every rule but 2 still relevant subject for the members of the community. 3 CHAIRMAN BAGOFF: I'm asking him to answer 4 the question. If he can't answer, he can't. If he can, 5 he will. 6 MR. AFRAN: Okay. 7 CHAIRMAN BAGOFF: Thank you. 8 Go right ahead. 9 THE PUBLIC: Thank you. 10 So is this within your area of expertise? 11 MR. PLOCKER: Is what? 12 THE PUBLIC: Is the sound of blasting within 13 your area of expertise? 14 THE WITNESS: I believe so. You can ask a 15 question and I will answer it. 16 THE PUBLIC: So now the next question is, 17 are there objective measures of the amount of noise 18 that's made for the people that live in the community 19 surrounding the development? 20 THE WITNESS: There are -- there are sound 21 levels which are measured in decibels and some of them 22 are nuisance levels, some of them are threshold levels 23 or beyond which it becomes a nuisance. 24 THE PUBLIC: Okay. 25 And are there objective measures, you know,

45 1 I'm a neuroscientist, so bear with me for a minute. Are 2 there objective measures for the impact of various 3 decibel levels on the human brain? 4 THE WITNESS: I can't speak to the science 5 behind it but there are levels above which you hear 6 things or that are harmful to the human ear. 7 THE PUBLIC: So are you aware of studies 8 within your expertise, we'll stay with that, are you 9 aware of studies that actually quantify the amount of 10 sound that qualifies as nuisance or threshold levels? 11 THE WITNESS: I am aware of studies and I 12 can't cite the exact levels, but I am aware of the 13 different levels that relate to various thresholds of 14 harm or nuisance. 15 THE PUBLIC: Got it. Thank you. 16 Are there experts in that field that can 17 testify perhaps to specifics regarding the effects of 18 sound upon humans living within particular areas of 19 nuisances like blasting? 20 THE WITNESS: I suppose there are. I would 21 imagine there are. I don't personally know any, but I 22 am sure there is someone with the proper training and 23 education that can speak to that. 24 THE PUBLIC: Okay. 25 And I think we're okay for now.	47 1 be an intrusion -- 2 MR. PLOCKER: Because every board meeting I 3 go to people are required to give addresses. I can look 4 up my notices. 5 MR. AFRAN: There's absolutely no law that 6 says a citizen coming here or any other municipal held 7 meeting must do that. 8 CHAIRMAN BAGOFF: Mr. Plocker can look it 9 up. 10 MS. MCGOVERN: Okay. There is some rational 11 for asking people their address, because there is the 12 presumption of whether you have standing to object to 13 something. It's granted that you have standing if you 14 are in the 200-foot radius. There are other reasons why 15 you might have standing, but it is germane to the issues 16 to find out where somebody lives if it's been requested. 17 MR. AFRAN: I must respectfully disagree. 18 And the reason is very simply that there is no 19 requirement as an -- to be an objector that one must 20 live within the 200-foot range. I'm not sure where, Ms. 21 McGovern, you get that from. Anyone in the community 22 can stand as an objector. Our standing rules are 23 extremely broad. 24 CHAIRMAN BAGOFF: We're not arguing. 25 MR. AFRAN: My point though is, that the
46 1 Thank you very much. 2 MR. PLOCKER: For the record, could we get 3 Mrs. Pannullo's address? 4 THE PUBLIC: I'm sorry. 5 MR. PLOCKER: Your address. It's a 6 legitimate question. 7 THE WITNESS: I don't think -- am I allowed 8 -- 9 MR. PLOCKER: I can look it up the deed, but 10 I -- 11 CHAIRMAN BAGOFF: Are you within 200 feet? 12 MR. PLOCKER: I'd would like to know the 13 address, because I'd like to show where Mrs. Pannullo 14 lives. 15 THE PUBLIC: I'm in the 200-foot notice 16 area, if that's what you would like to know. 17 MR. PLOCKER: I can look up my notice, but I 18 think I want, for the record, where Mrs. Pannullo lives 19 in relationship to Building D. 20 MR. AFRAN: Well, wait a second. The member 21 of the community wasn't speaking necessarily only for 22 herself. 23 MR. PLOCKER: I didn't say she was. 24 MR. AFRAN: She's entitled to raise -- so 25 why does it matter where she lives and it seems to me to	48 1 question was asked as a general matter of the impact of 2 the project and it doesn't matter whether this witness 3 lives near where the blasting will be or not. She's 4 asking a question about the impact on the community. To 5 start focusing on where people live is intrusive and 6 certainly suggests some people have more rights than 7 others and that would be wrong. 8 CHAIRMAN BAGOFF: Mr. Afran, she stated 9 herself she lives within 200-feet of the area. It 10 wasn't that anybody's putting it upon her. 11 MR. AFRAN: Whether she said that or not 12 doesn't mean it's relevant to ask where people live when 13 they asked a question. The entire community is 14 concerned with these issues. 15 CHAIRMAN BAGOFF: It may be relevant, she 16 brought it up as a matter of fact, but I am not arguing 17 the point. We are going to move on. 18 I am going to say one thing for the record. 19 That blasting and safe operations are covered by MSHA 20 and OSHA and the township will make sure that the 21 decibel levels fall within the prescribed guidelines. 22 Can you hear me? 23 THE PUBLIC: Now we can. 24 CHAIRMAN BAGOFF: Blasting is covered by the 25 guidelines and will be monitored by the applicant and by

49 1 the township to ensure that it doesn't achieve a higher 2 level than prescribed in the ordinance. So just for the 3 public's edification. 4 MR. PLOCKER: May I, Chairman Bagoff. 5 CHAIRMAN BAGOFF: May I have your name and 6 address, please? 7 THE PUBLIC: Gilda Paul and I live at 61 8 Howell Drive, which is right across the cul-de-sac from 9 the development. 10 For some reason none of the maps show where 11 I live, they show the block under me. I am not sure 12 why, but I would like to ask the same question about the 13 -- 14 CHAIRMAN BAGOFF: I'm sorry, doesn't the map 15 show Howell Drive? 16 THE PUBLIC: They're always going to 13 17 Howell Drive. Some reason they don't show my house, I 18 don't know why. I am right across the cul-de-sac from 19 the development. 20 MR. KLEIN: Further away? 21 THE PUBLIC: Closer. Right on the 22 cul-de-sac. 23 MR. KLEIN: This over here? 24 THE PUBLIC: No, 13 and 11, I'm below them. 25 Right across there. That's a whole street below me.	51 1 if you want to address them or feel like you already 2 addressed them, but if you're concerned with where 3 people live in terms of the blasting, I just wanted to 4 raise my concerns as well. 5 CHAIRMAN BAGOFF: Thank you. 6 Any other members of the public have any 7 questions for Mr. Seel on his testimony? 8 Please, go right ahead. 9 THE PUBLIC: Seth Weisleder, 17 Howell 10 Drive. 11 So question, did you study whether the rock, 12 the new borings was cracked or weakened already? 13 THE WITNESS: We studied the -- we when 14 drilled the borings we drilled them to rock and when we 15 hit refusal then we core the rock and we evaluate, 16 called rock quality segregation, so that is the measure 17 of the relative fracturedness of the rock. 18 THE PUBLIC: So in your expert opinion, how 19 close is too close to the blasting of homes like ours 20 that are only 150, 200 feet away? 21 MR. PLOCKER: Again, I'm going to object to, 22 respectfully Mr. Weisleder, object to his line of 23 questioning. We have covered blasting, we covered what 24 it's governed by. It's not governed by this board. My 25 client said they will follow all the rules and
50 1 MR. KLEIN: To the left? 2 THE PUBLIC: No, right underneath it. 3 MR. KLEIN: All the way down the right? 4 THE PUBLIC: No, below. For some reason I'm 5 not on there. 6 MR. KLEIN: 11. Where's 61? 7 THE PUBLIC: 61 is, there's a cul-de-sac and 8 61 is on the cul-de-sac. 9 CHAIRMAN BAGOFF: The cul-de-sac that faces 10 the golf course? 11 THE PUBLIC: Yeah, faces the golf course. I 12 am right on that cul-de-sac and for some reason I am not 13 on any of your maps. 14 MR. KLEIN: Right there. There's the 15 cul-de-sac. 16 THE PUBLIC: Right. I'm right above it, but 17 you don't seem to show it. 18 MR. KLEIN: Where the number three is? That 19 little number three on the page. 20 THE PUBLIC: Some reason you're talking 21 about numbers. 22 CHAIRMAN BAGOFF: Because it's blown up and 23 more information is on that side. 24 THE PUBLIC: Okay. So I am number three. 25 So I share the concerns about blasting and I don't know	52 1 regulations and work with the Township of West Orange 2 and their professionals in that regard. 3 CHAIRMAN BAGOFF: I have to agree with that. 4 We're done with blasting. 5 THE PUBLIC: Okay. Maybe our professionals 6 can comment on that later. 7 All right. That's my last question. Thank 8 you. 9 CHAIRMAN BAGOFF: You're welcome. 10 Come right up and state your name. 11 THE PUBLIC: Debbie Butensky. 12 In general when blasting is done on a 13 surface like this, what's the usual decibel level? 14 CHAIRMAN BAGOFF: He didn't testify to 15 decibel levels. There's a standard, there's a standard, 16 there's a standard set by the state and federal 17 government. 18 THE PUBLIC: He's a geologist. I am asking 19 -- 20 CHAIRMAN BAGOFF: I'm not arguing. So the 21 noise of something, that is set. It can't go higher 22 than certain decibel levels. So you want him to just 23 say what the decibel level is? 24 MR. AFRAN: Mr. Chairman, I must 25 respectfully object. I believe in your good intentions

53 1 you're effectually testifying that -- if I can explain. 2 Not intentionally. It's having the effect of testifying 3 that the controls and zoning rules and construction 4 rulings that exist in the state or municipally will 5 protect the public. Now, that's the viewpoint you're 6 holding and it presumes the rules are good enough and 7 the people will adhere to them and enforce them, but I 8 think it's a relevant question and the public has a 9 right to inquire into these areas and I think when you 10 repeatedly say, despite your good intensions, that 11 everything will be all right because the rules protect 12 people, you're offering your viewpoint it has an impact 13 of prejudicing the effect in the room. I don't think 14 it's the boards role at this stage to say those things 15 will protect the public. The public has the right to 16 raise their concerns. So I respectfully would object to 17 the characterizing these rules as protective. 18 CHAIRMAN BAGOFF: I think the public has the 19 right to also know that there are guidelines in place 20 and the town does monitor, the applicant is required to 21 monitor, so both sides of that coin. I will allow the 22 question, but the public has the right to know there are 23 other monitoring agencies, it doesn't go willy-nilly 24 that the applicant can just do what they wish. 25 MR. AFRAN: Well, I think it's true that	55 1 MR. AFRAN: Then witness himself can speak 2 to that, I don't think it's the Chair's role to take 3 that position at this stage. 4 CHAIRMAN BAGOFF: Well, it wasn't brought 5 out and the public does know -- 6 MR. AFRAN: Well, if the witness doesn't 7 bring it out, he's an expert, that might demonstrate the 8 point that I'm raising, that the professional doesn't 9 necessarily always take sukur in the existence of the 10 rules. 11 CHAIRMAN BAGOFF: We do. 12 MR. AFRAN: I do too. I hope they are 13 carried out. 14 CHAIRMAN BAGOFF: Okay. 15 MR. AFRAN: Thank you. 16 CHAIRMAN BAGOFF: In any case, go right 17 ahead, ask your question. 18 THE PUBLIC: So to repeat the question, 19 what's the decibel level, the maximum decibel level that 20 you believe the public who are listening to this, who 21 live in range where this is happening, what are you 22 expecting -- what should we be expecting? 23 THE WITNESS: You should expect, very 24 reasonably expect that the blasting program is designed 25 to meet the standards that are set for this development.
54 1 there monitoring agencies, but I don't think it's really 2 appropriate for the Chair to be assuring the public that 3 there's no problem because those rules exist. We all 4 know rules can be improperly enforced, incorrectly 5 applied and things of that nature. 6 MR. PLOCKER: That's speculation. 7 MR. AFRAN: It's not speculation, it's 8 reality of the world. 9 CHAIRMAN BAGOFF: Well, the question is, are 10 you representing that you have information that the 11 rules in the Township have ever not been followed? 12 MR. AFRAN: I think that's a dogmatic point 13 that you're raising and to defeat what's obvious. That 14 the quality of any rule and any enforcement depends how 15 it is carried out and enforced. Merely because a rule 16 exists does not mean the public should necessarily 17 accept that a project is safe. They have the right to 18 inquire and I don't think that, I don't think the Chair, 19 respectfully, should be giving that constant assurance 20 because it biases those members of the board who hear it 21 and it biases the public who then become intimidated by 22 not raising their concerns. 23 CHAIRMAN BAGOFF: I didn't say that. The 24 public has a right to know that this is in fact a 25 standard. However, she can ask the question.	56 1 That is both in terms of the vibration level, in terms 2 of velocity and the noise level. So each program has to 3 be designed properly and there's many factors that can 4 change that effect the noise that's generated on a 5 blast, the vibration levels that's generated on blasting 6 and the distance that they promulgate. That has to be 7 designed and that has not been done yet. We've have 8 not, Langan has not done any design with respect to this 9 or any testimony related to that. These are questions 10 on the speculation side. What you should reasonably 11 expect is that the design is done properly so that all 12 the noise and velocity and the vibration levels do 13 comply with safe standards. 14 THE PUBLIC: So I am getting very specific. 15 I would like to know, you have done this before, you're 16 the geologist, when this type of construction is done 17 how high have decibel levels gone? 18 THE WITNESS: I don't know. I don't recall 19 how high they go. But what I think the important thing 20 here, to help answer your question and help you 21 understand how it works, when this program is designed 22 these programs are designed, they are designed with 23 different multitude of factors, all of which impact the 24 amount of noise or vibration energy that's created. So 25 it's incumbent upon the blaster to design and implement

57 1 it so that it does not exceed the safe standards that 2 are available for this project. 3 THE PUBLIC: Well, what I'm trying to get at 4 -- 5 THE WITNESS: I understand. You're asking 6 me to speculate. I don't know. 7 THE PUBLIC: We're trying to get across to 8 you, see I'm not an expert in construction, you are the 9 expert in geology, you see there are four buildings, you 10 just said it's on the bedrock, the basalt which is very 11 dense. How many weeks are we going to hear the 12 blasting? What's the level of blasting? Are you aware 13 that there are standards that are about, actually the 14 Mayor should be interested, for children what's toxic. 15 And there are new standards that are coming out which 16 are more and more stringent. We got kids living around 17 the neighborhood, even light noise machines continually 18 -- 19 CHAIRMAN BAGOFF: You're testifying. Ask a 20 question. 21 THE PUBLIC: I asked. I'm not getting -- 22 THE WITNESS: I don't have an answer. I 23 tried to explain that, with all due respect, that the 24 amount of noise that's created and vibration due to the 25 function of the blasting itself, which I am not doing,	59 1 -- the allowable noise decibels based on the Township 2 and the state code. 3 CHAIRMAN BAGOFF: That was in the January 4 meeting. 5 MR. PLOCKER: That was acceptable to the 6 applicant then and it is now. 7 CHAIRMAN BAGOFF: And Mr. Afran. 8 MR. AFRAN: Obviously there's nothing wrong 9 with such a condition if the project is approved. But 10 with great respect, all that says is that the applicant 11 has to obey the law. So it doesn't add any additional 12 layer of protection. It does not actually add any layer 13 of protection. Simply says the applicant agrees to obey 14 the law, which I assume he will have to in any case to 15 the best of its ability. But that does not address the 16 question of the harm potentially arising from it. 17 Simply says you will adhere to the conditions of the -- 18 that exist. So while it is admirable to have the 19 applicant say he will adhere to the law, that doesn't 20 add anything. I want to make that point. It looks like 21 it does, but it does not. 22 CHAIRMAN BAGOFF: We'll have Mr. MacNeill 23 come up with a solution and brief the applicant for the 24 next meeting and that will end the layer of protection. 25 MR. AFRAN: We'll see. Thank you.
58 1 so. 2 THE PUBLIC: But you looked -- certainly you 3 looked at a project like this and the scope of the 4 project and the amount of blast, how many blasts, how 5 many weeks are we going to expect to have this in our 6 neighborhood? That's the question. And you're saying 7 you can't estimate. 8 CHAIRMAN BAGOFF: That's the answer at this 9 time. He doesn't know. 10 THE WITNESS: I don't know. 11 THE PUBLIC: So there's the concern as the 12 resident that lives in the neighborhood, what am I going 13 to be encountering should this project be permitted and 14 all the kids that live in this neighborhood? 15 MR. MacNEILL: Mr. Chair, if I could jump 16 in. If I could offer this. 17 Making it a condition of potential approval 18 that the applicant, any construction activity on-site 19 would have to comply with Township, state and federal 20 regulations for that construction activity should, I 21 recommend, be made a potential condition on the 22 approval. 23 CHAIRMAN BAGOFF: Okay. 24 MR. MacNEILL: It will ease the residents to 25 ensure that all construction work would follow the noise	60 1 CHAIRMAN BAGOFF: Thank you. 2 Next. 3 MR. KLEIN: So -- 4 THE PUBLIC: Rachel Klein -- 5 CHAIRMAN BAGOFF: First Mr. Klein. 6 MR. KLEIN: So Mr. Seel, is there a way to 7 design the blast to control the decibels at a certain 8 distance at the property line let's say? Is it the same 9 noise rules that we have for all kinds of other noises 10 at the property line? 11 THE WITNESS: Correct. There are methods 12 that are available for contractors to use to limit the 13 amount of noise and amount of vibration. 14 MR. KLEIN: Do you design it and show it to 15 someone and someone says, okay, if I'm looking at the 16 calculation this is the proper way to do it and it looks 17 like you're going to be below this decibel level at this 18 location and if not they can look and say you got to 19 take away some dynamite to make it quieter because it's 20 like going to violate this noise rule? 21 THE WITNESS: Certainly for the vibration 22 end, yes, that's the case. And if -- I can't speak to 23 the sound aspect of it. How that's dealt with, if it's 24 calculated for, you know, to reach those certain levels, 25 but they're, within the blasting there has to be

61 1 guidance helps them through the development of those. 2 MR. KLEIN: There are programs that an 3 engineer or a blast specialist would use based on the 4 type of soil, type of rock, distance, do they model 5 something? 6 THE WITNESS: Correct. 7 MR. KLEIN: They model something that says 8 this is where the blast will go based on what rock needs 9 to be removed and this is what we can expect the 10 vibration, you can dampen that vibration somehow. You 11 can do smaller blasts as opposed to one big one, all 12 that kind of stuff? 13 THE WITNESS: Correct. There are a number 14 of different parameters that can be adjusted to limit 15 the amount of energy that's released and resulting in 16 the amount of noise. 17 MR. KLEIN: So it's not just we are going to 18 blast, somebody complains about noise, we're going to 19 stop blasting and try and figure it out. You're going 20 to know before the blasting starts that they have met 21 the vibration amounts, the levels and they dampened it a 22 certain way or whatever they do to make it work to get 23 the rock out but not to be vibrating so far away that it 24 effects the neighbors? 25 THE WITNESS: That's generally the way it	63 1 from your experience, and so what's the, what if, what 2 if it goes higher, you know, the project starts and 3 we're stuck? 4 MR. PLOCKER: I don't know what the question 5 is. 6 CHAIRMAN BAGOFF: I do. I think she's 7 asking for the monitor and make sure that everything, 8 indifference to Mr. Afran's -- 9 THE PUBLIC: You said you would get 10 measurements. 11 CHAIRMAN BAGOFF: There are layers of 12 standards that the applicant will have to live with and 13 so will the Township and we do believe the Township will 14 make sure that these things are monitored and the public 15 also will be notified before any blasting is done by 16 standard and if there's an issue they will contact the 17 Township immediately. 18 MR. PLOCKER: Mr. Chairman, if may I add, 19 and I don't know the specific provision right now, so I 20 do apologize. But in the settlement agreement there is 21 an obligation from my client to not only inform the town 22 but to maintain a website about ongoing construction 23 activities, including blasting. 24 THE PUBLIC: Okay. Thank you. 25 CHAIRMAN BAGOFF: Thank you, ma'am.
62 1 works. To make sure that they achieve the goals of the 2 design. 3 MR. KLEIN: So they'll put some sort of 4 vibration monitor at 15 or 13 Howell, maybe 61 Howell, 5 to see what the vibrations are when the first set of 6 blasts go off and if there's a problem they'll, oop, 7 let's shut this down. We have to recalculate? 8 THE WITNESS: Correct. The seismographs are 9 placed in various locations and they monitor it in real 10 time. 11 MR. KLEIN: Okay. 12 CHAIRMAN BAGOFF: Mr. Seel, is it true that 13 a plan has to be presented to the town for approval for 14 blasting and where monitors would be? 15 THE WITNESS: That has typically been my 16 experience. That a blasting plan is developed and 17 presented to the Township for approval. 18 CHAIRMAN BAGOFF: Go ahead. 19 THE PUBLIC: But the question is, since none 20 of us are experts on the actual toxic level of decibels, 21 so you got a monitor there, what if it does exceed your 22 theoretical, because I can tell you, 85 decibels is 23 toxic. You haven't given me a single even hypothetical 24 about what one set of blasting charge in your experience 25 elicits and that's what I'm trying to get. A baseline	64 1 Ma'am. 2 THE PUBLIC: Rachel Klein, Howell Drive. 3 CHAIRMAN BAGOFF: Thank you. 4 THE PUBLIC: I guess my first question, to 5 piggyback on the controlling of the sound and blasting, 6 are we, for those who live below it, is there going to 7 be an excessive amount of dust or is there a way you 8 have to control that to keep it from our properties? 9 MR. PLOCKER: Again, I think this is outside 10 the scope of his testimony. I think that's the 11 construction building department. 12 MR. AFRAN: Could I ask the member of the 13 community to repeat the question again. 14 THE PUBLIC: About if there are controls 15 when they're blasting, if there would be a way to 16 control dust and debris from our properties, since we 17 live directly below it. 18 MR. AFRAN: Sounds like -- sounds to me as 19 though that's something that's not outside the witnesses 20 scope of expertise. An engineer, geotechnical engineer 21 is not limited to only sound and energy input, certain 22 effects of the blasting is something that he must have 23 expertise and experience in, that would include the 24 spread of blasting particularly. So I don't think it's 25 outside his scope at all.

65 1 CHAIRMAN BAGOFF: But he didn't testify to 2 that in his report. 3 MR. AFRAN: Well, maybe the witness is 4 suggesting -- the community member suggesting that it 5 was not addressed but needs to be a part of the report 6 and that's why she's raising it. 7 CHAIRMAN BAGOFF: She asked the question, 8 let's see if the witness can answer it. 9 THE WITNESS: So the question, if I may 10 paraphrase, are there techniques available during 11 construction to suppress dust. Is the question, is 12 during construction are there methods available to 13 suppress dust? 14 THE PUBLIC: Yes, specifically the downhill 15 flow of it. Because we're directly below, some of us 16 are directly below where the buildings going to go and 17 when they're blasting -- 18 THE WITNESS: Sure, I understand. So dust is 19 airborne. 20 THE PUBLIC: Airborne and things come 21 tumbling down the mountain. 22 THE WITNESS: It goes up and comes down 23 under gravity. So there are methods available for 24 contractors to suppress dust during blasting, yes. 25 They're masked with water for example.	67 1 whether it has relevance later in the proceeding is 2 another issue. The witness shouldn't be denied to 3 answer the question. 4 CHAIRMAN BAGOFF: That has absolutely 5 nothing to do with the Planning Boards, any information 6 leading about that project. I believe it's in 7 litigation that project and the Planning Board has 8 nothing to do with the Seton Hall project. 9 MR. AFRAN: No, the Planning Board may not 10 but the professional geotech engineer may very well. 11 And in the course of studying that project and problems 12 it may be that the expert has knowledge from that. 13 That's relevant to the general opinion, that's why the 14 community member was asking the question. Now, if he 15 didn't compare it and doesn't know anything about it, 16 he's quite capable of saying so. It isn't the Chairs 17 role to essentially block the witness and that's not 18 appropriate. 19 CHAIRMAN BAGOFF: It's the Chairs role to 20 make sure we focus on the application here and not 21 something else. You can ask the question, he may have 22 an answer, but the board -- 23 MR. AFRAN: I have done my job to raise my 24 objection to that position. 25 CHAIRMAN BAGOFF: Go ahead.
66 1 THE PUBLIC: And then on a different note. 2 Did you compare the slope stability here with the slope 3 stability when the Seton Hall sports complex was 4 approved? 5 MR. PLOCKER: Objection. That's clearly not 6 in his report. 7 CHAIRMAN BAGOFF: Can you say that again. 8 THE PUBLIC: Did you compare the slope 9 stability here to the slope stability when the Seton 10 Hall sports complex was approved? I believe you worked 11 on both, that's why. 12 CHAIRMAN BAGOFF: Two different things. 13 That's out of the scope of the Planning Board right now. 14 THE PUBLIC: Okay. Thank you. 15 MR. AFRAN: Wait, wait. Mr. Chairman -- 16 MR. PLOCKER: Bruce, let's continue. This 17 is getting obstructive. 18 MR. AFRAN: No, no, no. Excuse me, the 19 Chair continues to interject opinions. 20 CHAIRMAN BAGOFF: The Seton Hall project is 21 not part of this application, nor are we going to 22 compare and contrast anything. 23 MR. AFRAN: Well, I agree it's not part of 24 the application. But the witness was simply asked a 25 question, he's capable of answering whether he did. So	68 1 MR. AFRAN: It is my job to do that, so I 2 have done it. 3 CHAIRMAN BAGOFF: Okay. 4 THE PUBLIC: Seth Weisleder. I will be 5 quick. 6 I guess a question is, which is more 7 important, decibels or vibration levels? So it's come 8 up several times, I am curious which it is. Seems like 9 people are concerned with decibels versus vibration, are 10 they equally important? 11 THE WITNESS: They effect different things. 12 So they effect different things. Noise or decibels 13 effect human hearing and it's a function of perception 14 largely, but also natural impact. Where as vibrations 15 typically people can feel them but they tend to, 16 depending of the level of them, may have an impact on 17 structures. 18 THE PUBLIC: So if it could have an impact 19 on structure of homes that are within 200 to 150 feet of 20 the blasting zone or did you come across any other 21 critical structure, could that cause critical failure to 22 other structures like sewer, methane gas lines, anything 23 in that area? 24 THE WITNESS: Typically buildings are most 25 susceptible. Utilities tend to be more resilient to

69 1 vibration energy. 2 THE PUBLIC: So is there a factor safety for 3 this blasting that could effect this slope and anything 4 that's there that might be affected? 5 THE WITNESS: I'm sorry, could you repeat 6 that. 7 THE PUBLIC: Sure. So is there a factor of 8 safety that is taken into consideration and are there 9 any critical infrastructures on the slope? 10 THE WITNESS: Well, there's a utility in the 11 slope and then the street sewers. 12 THE PUBLIC: If it's an older sewer line 13 could vibration cause damage problems? 14 THE WITNESS: Potentially. 15 THE PUBLIC: So last question. When doing 16 blasting, I know things have to be presented, they'll be 17 governed by the laws, the statutes and all those things, 18 is in it your normal or could there be pretesting done 19 to determine the safety factors? Is that recommended 20 before just going into full on blasting after what you 21 presented, do you do any pretests beyond the soil 22 samples? 23 THE WITNESS: Yes, so there's -- one of the 24 things I've already testified is recommended pre and 25 post blasting surveys where the threshold goes into	71 1 MR. PLOCKER: -- clear record. 2 THE PUBLIC: You don't think there will be 3 dust? 4 CHAIRMAN BAGOFF: Let him answer. 5 THE PUBLIC: I find the attorneys 6 supposition that there will be no dust or debris -- 7 CHAIRMAN BAGOFF: Ma'am. 8 MR. PLOCKER: I didn't say there wouldn't be 9 any. I just said, would there necessarily be any. 10 THE WITNESS: So let me try to -- 11 MR. PLOCKER: Everybody here is laughing but 12 it's a legitimate question. I know they would like this 13 to drag on and on, but let's get to an answer. 14 CHAIRMAN BAGOFF: Okay, ma'am. Go ahead and 15 ask the question. 16 THE PUBLIC: Well, Mr. Plocker just asked a 17 very relevant question. 18 THE WITNESS: So let me try to get some 19 context of the blasting question. This building has a 20 certain area and then rock within that building is maybe 21 roughly 28 or so the extent of the entire building. So 22 it's somewhere between a quarter and a third of the 23 entire building and the amount of excavation that we're 24 seeing based of what the proposed elevations are of the 25 building, is anywhere from 3-feet of rock excavation to
70 1 homes or adjacent, someone inspects the outside, the 2 exterior facade of potential sensitive receptor and 3 writes a report with recommendations for protecting the 4 structures. 5 THE PUBLIC: Is that something that can be 6 taken up by the Planning Board, not just as a 7 recommendation, but a condition? 8 CHAIRMAN BAGOFF: It was a condition in the 9 first meeting. 10 THE PUBLIC: It was. I am double checking, 11 it's hard to keep track. 12 CHAIRMAN BAGOFF: Okay. Absolutely. Thank 13 you. 14 Do any other members of the public have any 15 questions? 16 Come up. 17 THE PUBLIC: Debbie Butensky. 18 So my colleague brought up a question 19 regarding a particular matter and the air pollution. 20 What type of mitigation is expected on your end? 21 MR. PLOCKER: I'm just going to object. I 22 think that the question is assuming that there's going 23 to be particular spread, that isn't necessarily the 24 case. I think for a -- 25 THE PUBLIC: Absolutely.	72 1 in one case upwards of 20, I think 22-feet where there's 2 a larger amount. And that's the extent of blasting. 3 The remainder of it would be excavation of soils, which 4 is, depending on the time of year, it can be dusty, but 5 the contractor can suppress or make attempts to suppress 6 any dust locally with water. And same thing would be 7 done, I would expect, with blasting. 8 THE PUBLIC: So we can multiply that times 9 four because there are four buildings being proposed, is 10 that what you're saying? 11 MR. PLOCKER: Objection. 12 THE WITNESS: I'm not saying that. I am 13 only -- 14 THE PUBLIC: I'm trying to understand what 15 the process is when the buildings in those 30 acres, 16 that's what I'm trying to understand. 17 MR. PLOCKER: Respectfully, we could have 18 three hearings on the process of blasting and I think 19 we've exhausted -- 20 THE PUBLIC: Not just the blasting, it's in 21 his domain. Explain to me about mitigation or air 22 hazard, the pollution that's going to ensue? 23 THE WITNESS: I would expect that the 24 contractor will make every effort to suppress dust 25 through the blasting process, through the excavation

73 1 process, the hauling process. 2 MR. PLOCKER: Is your company the blasting 3 contractor? 4 THE WITNESS: No, they're not. 5 CHAIRMAN BAGOFF: Do you have any other 6 questions? 7 Okay. Do any other members of the public 8 have questions? Please come up, name for the record. 9 THE PUBLIC: Robert Sharenow, 10 S-H-A-R-E-N-O-W. 11 A rather simple question. Let's talk about 12 vibration. Based on soil that you found, the rocks that 13 you found, do you have any idea on the average blasting 14 that would take place as to how far, how, many feet or 15 yards does your vibration carry? 16 THE WITNESS: Well, as I testified we are 17 recommending controlled blasting techniques. So if that 18 is properly implemented the distance, rather than the 19 magnitude, is truncated. Distance to which something is 20 felt can vary depending, it's solely on the function of 21 the linear distance and the amount of charge. 22 THE PUBLIC: Give me an idea of linear 23 distance, 200-feet, 500-feet? 24 THE WITNESS: It'll vary by the amount of 25 charge.	75 1 THE WITNESS: Correct, yeah. But he 2 mentioned sound. 3 MR. AFRAN: I'm sorry. Sound also is a 4 factor of the multitude of things, is that correct? 5 THE WITNESS: To some extent, yeah. 6 Absolutely. 7 MR. AFRAN: Now, if you can't identify the 8 linear projection because it depends on the amount of 9 charge, then how could this board know or any member of 10 the community know ahead of time what the expected 11 impacts are? 12 THE WITNESS: There would be a blasting 13 plan, in that blasting plan there's a formula that will 14 ascribe the amount of charge that the plan would use. 15 MR. AFRAN: Would you repeat that. 16 THE WITNESS: Yeah. So what I was saying is, 17 within the blasting plan that we prepared in advance of 18 this construction, there is a formula that would be 19 presented that describes what I just testified to. I 20 just don't have that number. But that's how it would 21 work. There would be, the blasting contractor would 22 prepare that and they would show how he intends to limit 23 the amount of vibration energy. 24 Q. Is there any reason that you're aware of that 25 plan cannot be prepared in advance of the decision on
74 1 THE PUBLIC: But it could carry a long 2 distance, could they not? 3 THE WITNESS: It depends on how it's 4 supplied. 5 THE PUBLIC: The reason I'm saying this, I 6 live in the third house from the ridge line, when they 7 built 280 back in 1969 we had to take everything off of 8 the walls and off the shelves with the blasting that 9 took place then. Thank you. 10 CHAIRMAN BAGOFF: Thank you. 11 Any other member of the public have any 12 questions for Mr. Seel? Please come up and be 13 identified. Seeing none. 14 Thank you, Mr. Seel. 15 Mr. Afran. 16 MR. AFRAN: The questions did prompt a few 17 questions from me. 18 In answer to the last set of questions, the 19 linear movement of sound and energy depends on a 20 multitude of factors, is that correct. 21 THE WITNESS: Referring to this last 22 question, I was speaking to vibration. I wasn't -- 23 MR. AFRAN: Right. Well, the vibrations are 24 a factor of the movement of energy through the rock and 25 ground?	76 1 this application? I don't mean in terms of time, is 2 there any technical reason why that plan cannot be 3 prepared now as a part of the application? 4 THE WITNESS: Well, typically in my 5 experience contractors are not yet engaged to do that. 6 That would be the primary reason. 7 MR. PLOCKER: And, again, it's a 8 construction issue. It's not an issue for this board. 9 MR. AFRAN: Well, I'm glad Mr. Plocker is 10 testifying as an expert as to what is a construction 11 issue and what is not. He's a lawyer here, he's not 12 supposed to be testifying. 13 MR. PLOCKER: And that's not what I was 14 doing, Mr. Afran. 15 MR. AFRAN: I think it is, but we'll move 16 on. 17 MR. PLOCKER: It is not. 18 MR. AFRAN: Is there any reason you're aware 19 of -- strike that. 20 So in other words, it's often done or 21 typically done that a contractor is retained later, 22 after approval, but no reason why that blasting plan 23 could not be prepared in advance, is there? 24 THE WITNESS: I don't know of any reason why 25 or why not. It's just typically the process works

77 1 approvals are given first with the understanding that 2 all these other provisions on safety will be put into 3 place effectively approved by the Township, the 4 municipality and then implemented and monitored. 5 MR. AFRAN: You've answered my question, 6 there's no reason why it couldn't be done now for 7 example? 8 THE WITNESS: I don't know. I don't speak 9 for the owner. 10 MR. AFRAN: Are you aware of any reasons why 11 a blasting plan could not be prepared in advance of 12 construction and in advance of the decision on this 13 application? 14 THE WITNESS: I don't know of any. 15 MR. AFRAN: Okay. 16 Now, you mentioned -- 17 MR. PLOCKER: Because it's not an ordinance 18 requirement. 19 MR. AFRAN: There's a lot of things that are 20 not ordinance requirements and there's an environmental 21 review for example and all of this leads to questions 22 that do relate to broader problems. If we don't even 23 know how far the linear impact will be it's relevant. 24 CHAIRMAN BAGOFF: Mr. Afran. 25 MR. AFRAN: I'm not arguing with Bryan.	79 1 MR. AFRAN: I'm posing a leading question 2 because that's the job of the cross examiner. 3 CHAIRMAN BAGOFF: You have to ask him what's 4 the impact. Let him answer the question. 5 MR. AFRAN: No, I don't have to ask him 6 what's the impact. I can pose a proposition to him, 7 that's cross examination. Ms. McGovern will agree with 8 that point. 9 MS. MCGOVERN: Leading questions are 10 permitted on cross examination. 11 MR. AFRAN: That's the whole point. To put 12 a proposition to the witness. Ask him to agree or 13 disagree. 14 MS. MCGOVERN: If the question is outside of 15 what his expertise is, then that is a problem. 16 MR. AFRAN: Most certainly is not in this 17 instance. 18 CHAIRMAN BAGOFF: Well, let him answer what 19 his expertise is. 20 MR. AFRAN: When you said there would be 21 impacts or could be impacts, what kind of impacts on 22 human beings were you thinking of? 23 THE WITNESS: Common impacts are nuisance, 24 bothersome noise levels. Impacts to hearing, if a noise 25 is so incredibly loud that it somehow impacts hearing,
78 1 CHAIRMAN BAGOFF: I'm waiting for you to ask 2 a question. 3 MR. AFRAN: Thank you. 4 Now, you mentioned a few minutes ago in 5 response to one of the last questions that there are 6 impacts on human beings from blasting noise or 7 vibration, is that correct? 8 THE WITNESS: I'm sorry, could you repeat 9 that. 10 MR. AFRAN: I'm sorry. I believe you 11 mentioned a little while ago that there are impacts from 12 blasting noise or vibrations potentially on human 13 beings, is that correct? 14 THE WITNESS: That is the reason those 15 conditions exist, because of the potential for impact on 16 people and dwellings. 17 MR. AFRAN: Now I couldn't hear you. 18 THE WITNESS: Potential for some form of 19 impact on humans or on dwellings. 20 MR. AFRAN: Now, what impacts would 21 typically be seen -- by those impacts you mean potential 22 neurological impacts for example? 23 CHAIRMAN BAGOFF: Don't testify as to -- 24 MR. PLOCKER: Objection. I don't think he 25 qualifies as a neurological expert.	80 1 that's not something I'm qualified to testify to, but 2 just in general. 3 And then with buildings, it could be minor 4 shaking of things off walls, cracking of sheetrock, 5 dislocation of joints or something like that. Door 6 jams, that kind of -- those kinds of impacts that are 7 not uncommon or not uncommonly monitored in this 8 instance. 9 MR. AFRAN: When Dr. Pannullo was asking you 10 questions, she's the individual who said she's a 11 neuroscientist. I believe you said impacts to hearing 12 are known to be among hazards from blasting noise? 13 THE WITNESS: I don't know that I said 14 known, but I know it's one of the things that are 15 monitored. That's a concern, that someone's hearing 16 could be impacted in general terms. 17 MR. AFRAN: Thank you. That's all I was 18 asking. 19 Thank you. That's all I have. 20 CHAIRMAN BAGOFF: Thank you. 21 MR. PLOCKER: May I. 22 MR. AFRAN: Thank you. 23 CHAIRMAN BAGOFF: Mr. Plocker. 24 MR. PLOCKER: I'm not going to say it, but I 25 just want to say for the record, that all 200-foot

81 1 property owner addresses that were obtained were filed 2 with the board and they are made public as part of the 3 application materials. So I would just ask that this 4 board take notice that in evaluating the testimony and 5 any comments made by Mrs. Pannullo, see what her address 6 is in relation to the development. 7 MR. AFRAN: I have to interject very 8 strongly. There is not a slightest basis for inquiring 9 where someone lives. The only time that matters is 10 whether they're entitled to statutory notice as a 11 200-foot owner. Anyone in this community or neighboring 12 community can come up here and raise these concerns. 13 His suggestion we need to check where she lives is 14 ridiculous and to some people, to some people, not to 15 Mr. Plocker and I who are used to abusing each other in 16 courtrooms and things of that nature, but to some people 17 it's intimidating and it should not be continuously 18 raised. 19 CHAIRMAN BAGOFF: I appreciate that and the 20 board listens to everybody equally wherever they live. 21 MR. AFRAN: Thank you. So let's ignore the 22 address. 23 MR. PLOCKER: No, I don't think we should 24 ignore it, with all due respect. Many boards require 25 street addresses of every person who does appear.	83 1 owners not within the 200-foot radius" and that's under 2 Section 18-3.5 and I agree, members that are not within 3 the 200-foot radius have the absolute right to come up 4 here and ask questions and make comments. But, again, 5 there's a prioritization, that the board should know 6 what members of the public are within that 200-foot 7 radius, because it gives extra weight to their comments 8 and to their questions. 9 MR. AFRAN: I don't think that's the reason 10 the court said that. The court said that because those 11 who live closer to the project may have a greater 12 interest in it. But that doesn't mean the board should 13 give greater weight to their remarks. A person -- 14 excuse me. I'm very troubled by this, there i not the 15 slightest shred in our laws that would suggest the board 16 should give greater weight to someone who lives within 17 200-feet as opposed to someone who does not. If that's 18 what you're going to be governed by you're violating the 19 due process right and left. There's nothing -- the 20 court was not referring to giving greater weight. The 21 court was simply saying, because we may have a long line 22 of people and people may leave because they have to go 23 home, those who live within the notice period can be 24 given a priority so they get heard because they have an 25 absolute statutory notice right. It was never saying
82 1 I just want to state that for the record. 2 MR. AFRAN: And they may do that but it's 3 not in the law and it's not proper to demand it. And 4 it's intimidating to the community. 5 MS. McGOVERN: So I'm just looking at Cox, 6 Section 18-3.4, Testimony of Objectors. "Objectors may 7 appear individually and ask questions" blah, blah, blah. 8 And then it says, "It must be -- it had been suggested 9 that Boards would be most interested in hearing from 10 those objectors who would be most effected if the site 11 is developed as planned." And the MLUL recognizes this 12 part and then it cites the case DeMaria v. Jet Brook, 13 LLC, 372 N.J. Super, "The court appointed applicant and 14 the MLUL has recognized this by requiring individual 15 notice be given to those properties within 200-foot. 16 The court suggested that a Board would well be within 17 it's right to hear comments from those objectors who 18 live near the subject property before others are given 19 an opportunity to speak." So there is some, there are, 20 there is some case law that weighs those people who live 21 within a 200-foot radius more so than somebody outside. 22 So it is very relevant. 23 MR. AFRAN: Only in terms -- 24 MS. McGOVERN: Excuse me. 25 Then there's another suggestion, "That	84 1 the board should give greater weight and I don't know 2 where you're getting that from. 3 MR. PLOCKER: I agree with Mr. Afran. 4 MS. McGOVERN: I'm not saying that they give 5 greater weight. 6 MR. AFRAN: You just did. 7 MS. McGOVERN: I said prioritization. 8 MR. AFRAN: And you said the board's 9 entitled to give greater weight to their comments and 10 that's what I'm reacting to. 11 CHAIRMAN BAGOFF: You're asking the board to 12 weigh each person with the same weight based on their 13 information that they provided wherever they live. 14 We've always done that and that's been our history and 15 the way we operate. So each member of the public, 16 wherever they come from, will receive the weight of 17 their information based on the entirety of the project. 18 MR. AFRAN: I think Ms. McGovern may have 19 misspoke when she said the board shall give greater 20 weight. 21 CHAIRMAN BAGOFF: I understand what the law 22 is. I agree with her and the methodology of who can 23 speak, but overall we listen to everybody equally. 24 MR. AFRAN: Right. This board does not 25 maintain the practice of asking the 200-foot notice

85 1 person to come first. And since the board hasn't, 2 there's no reason to start inquiring into addresses. 3 MS. McGOVERN: There's a question as to the 4 motivation of people. If they're within the 200-foot 5 radius, it says it right here, I'm looking it. It says, 6 "To some extent the motivation of an objector must be 7 considered" and it cites the case Exxon Company v. 8 Bernard Hill. So there are reasons why a board member 9 or members of this board would want to know an address. 10 MR. AFRAN: It's not referring though to the 11 200-foot zone in that case, it's referring to a personal 12 interest an objector may have that's different from 13 other people. 14 MS. McGOVERN: Understood. But there are a 15 variety of reasons why it is relevant for a persons 16 address and Mr. Plocker is correct, people within the 17 200-foot radius, we have them, that's there. So I don't 18 understand what the objection is. 19 MR. AFRAN: The issue is asking for Dr. 20 Panullo's address targets her for some reason, which I 21 don't understand. Our concerns would apply to anyone in 22 the community and I am reacting to the fact that a 23 member of the community comes here in good faith, raises 24 important issues with her scope of expertise, as a 25 matter of fact, and now she's being challenged as to	87 1 and we can hash it out if it happens. 2 MR. PLOCKER: Just as a predicate Bruce, can 3 we just confirm Mr. Tractenberg is an officer of We 4 Care? 5 MR. AFRAN: Yes. 6 MR. PLOCKER: Okay. Thank you. 7 CHAIRMAN BAGOFF: What's the difference 8 between public comment and what he's going to present? 9 For the boards edification. 10 MR. AFRAN: I think we have to wait until 11 Mr. Tractenberg speaks. I can't answer that, except I 12 know generally what he plans to do, but I couldn't 13 really say, but more importantly he's an officer of We 14 Care. We Care is the objector. There is no other 15 objector. All though the community has a lot to say, 16 there's no other formal objectors and I think the 17 objector has the right to testify through one of it's 18 officers to explain why it's here and what its position 19 is and, you know, obviously there may be things that Mr. 20 Plocker may object to as we move forward and we can deal 21 with those as they arise. 22 CHAIRMAN BAGOFF: What we're going to do is 23 cautiously and slowly, because we have to determine what 24 is public comment and -- we have to determine what is 25 public comment and what is true testimony. So public
86 1 where she lives. This is a problem and I don't 2 understand why you're entertaining it in any way. 3 CHAIRMAN BAGOFF: Two things you said. One, 4 she's not targeted. B -- 5 MR. AFRAN: Sounds that way. To a member of 6 the community it sounds that way. 7 CHAIRMAN BAGOFF: Nobody's targeting her. 8 And number two, there was a question and answer, like 9 anybody else here and he said no, I'm not going do this 10 and that's okay too. It was asked and answered. 11 We appreciate the colloquy, but at this 12 moment we are going to take a ten-minute break so our 13 court reporter can rest his fingers. 14 (Whereupon, a short recess is taken.) 15 CHAIRMAN BAGOFF: Back on the record. 16 Mr. Afran, you have the floor. 17 MR. AFRAN: Thank you, Mr. Chairman. 18 We have several witnesses who are going to 19 be called. First we call Lee Tractenberg who is, if I 20 may, make a presentation on several issues, in part of 21 which will be presenting, will be explaining We Cares 22 position and reasons for objecting in this matter. 23 Mr. Plocker and I were discussing some 24 issues, he indicated there are one or two areas he might 25 find cause to raise an objection on so that may happen	88 1 comment can be testimony, so the board has to 2 differentiate exactly what Mr. Tractenberg is speaking 3 about, so. 4 MR. AFRAN: Only way to do that is to let 5 him speak and see what happens. 6 CHAIRMAN BAGOFF: Exactly right. 7 Ms. McGovern. 8 MS. McGOVERN: Since he's represented by 9 counsel you should be asking him questions. 10 MR. AFRAN: I don't necessarily have to do 11 that. I have a witness who can make a presentation. 12 Applicants come in all the time, they have witnesses 13 make a presentation. They have even developers who own 14 the company make a presentation, they're not asked 15 questions necessarily. I'm not obligated to ask him 16 questions. 17 MS. McGOVERN: I'm looking at Section 18 18-3.4, Testimony of Objectors and says, "Objectors may 19 appear by an attorney at law and if such is the case all 20 questions must be put by the attorney. If any testimony 21 given the objector should be given in response to the 22 questions presented by his attorney." 23 MR. AFRAN: I don't think that's intended to 24 say that the only way an objector witness can speak is 25 by being questioned. What I think it's meaning to say

89 1 is that the person who questions the objector witness is 2 to be their attorney. I don't think it means that's the 3 only way an objector can present evidence. 4 MS. McGOVERN: Well, I'm going to say, I 5 will just reiterate what Dr. Bagoff said, what is the 6 difference between public comment, like what you're 7 proposing right now, versus, you had represented earlier 8 that you had witnesses that you wanted to put forth as 9 representatives of We Care to provide factual testimony. 10 And -- 11 MR. AFRAN: That is correct, in part. Yes. 12 MS. McGOVERN: Okay. So there's -- we're 13 back and forth here. I don't know, I'm going to leave 14 it to the Chairman to decide how the meeting is going to 15 go forward, but that is a concern. 16 MR. AFRAN: I think that -- well, I don't 17 know why it's that much of a concern. Nobody's ever 18 been poisoned by hearing words. If it's objectionable 19 well then the chair will make a ruling. I mean, I don't 20 see why it's that necessary to raise it right now before 21 he said one word. I would say that I don't think 22 there's any rule that says an objector representative of 23 an organized objector, an organization or objector, has 24 to be questioned only line by line rather than stating 25 the position of the objector organization. I'm not	91 1 you say that Mr. Tractenberg has that has not been 2 brought forth by any of the experts that would impact 3 the boards decision? 4 MR. AFRAN: I am sure he has information 5 that could impact the boards decision. But also Ms. 6 McGovern just got through telling us that the board 7 should consider the motivation of an objector. Now 8 you're telling me when the objector representative 9 explains the reasons why the objector group is here 10 somehow that's public comment. Now, it can't be both 11 ways. Can't take a position that the board can inquire 12 into the motivation of an objector and then say the 13 objector representative can't explain his motivation. 14 CHAIRMAN BAGOFF: Motivation is, whatever 15 his motivation we'll find that out shortly, but we have 16 to be careful not to have public comment, because then 17 public comment becomes testimony, and we do not -- 18 MR. AFRAN: Public comment is testimony, 19 that is the whole point. At this phase the public is 20 questioning witnesses, as you've made a point repeatedly 21 on and the public, later in public comment, gives its 22 own information or viewpoints. So public comment is a 23 form of testimony as opposed to the questions that are 24 being posed to witnesses now which is in the nature of 25 cross examination by the public. You have made the
90 1 aware of any rule or case that even says that. And what 2 you cited with respect doesn't -- it's not exclusive. 3 CHAIRMAN BAGOFF: We're getting into 4 legalese, so in order to pull ourselves up and to make 5 it clear, we're going to ask -- the Chair asks Mr. Afran 6 to ask a question of Mr. Tractenberg, Mr. Tractenberg 7 can answer the question and we'll go slowly. If we find 8 that he is testifying -- he is not testifying and 9 providing I know, I saw, I want, let me show you, that 10 is factual, that is more public comment. We'll rule on 11 it in that fashion and Mr. Plocker has the opportunity 12 of providing his comment along the way. 13 MR. AFRAN: I have to disagree that there's 14 somehow a distinction between public comment and a 15 commentary by an objector witness during the objector 16 case. Public comment is for people who are not 17 objectors and have an interest in the case. That 18 doesn't mean an objector representative can't give their 19 own narrative of the position of the objector group. I 20 think you're establishing a false distinction. 21 CHAIRMAN BAGOFF: Well, the objector group 22 has been heard from and in many ways by your experts. 23 MR. AFRAN: That's correct, but not 24 entirely. 25 CHAIRMAN BAGOFF: Is there information that	92 1 point and made the distinction. 2 CHAIRMAN BAGOFF: Well, the distinction is 3 public comment is at the end of all these meetings and 4 testimony is during the proceedings, usually by experts. 5 So -- 6 MR. AFRAN: No, that is -- no, there is no 7 law or rule that says commentary during the proceeding 8 is only by experts. There have been many instances when 9 objectors speak factually or speak of their reasons and 10 concerns and they are not limited to being members of 11 the public. In fact the opposite applies. My officers 12 can't speak during public comment. Now, you can't have 13 it both ways. You can't say the officers of We Care 14 have a motivation and it should be reviewed by the board 15 but can't explain their motivation in the narrative and 16 you can't say at the same time they can't speak during 17 your public comment and at the same time say they can't 18 speak during the case. 19 CHAIRMAN BAGOFF: Hold on a second, Mr. 20 Afran. 21 Okay. Let's hear Mr. Tractenberg -- 22 MS. McGOVERN: I just -- 23 CHAIRMAN BAGOFF: I'm sorry. 24 Ms. McGovern, on the record. 25 MS. McGOVERN: I'm going to cite the statute

93 1 N.J.S.A. 40:55D-10. Hearings. Section D. "The 2 testimony of all witnesses relating to an application 3 for development shall be taken under oath or affirmation 4 by the presiding officer, and the right of 5 cross-examination shall be permitted to all interested 6 parties through their attorneys, if represented, or 7 directly, if not represented, subject to the discretion 8 of the presiding officer and to reasonable limitations 9 as to time and number of witnesses." 10 All right. So -- 11 MR. AFRAN: I don't have that in front of 12 me. May I see a copy for a moment. 13 MS. McGOVERN: The statute? 14 MR. AFRAN: Yeah. 15 MS. McGOVERN: This the Cox Book but it's 16 the statute at the back, NJA-40:55D-10, Hearings. And 17 Section D. 18 CHAIRMAN BAGOFF: We're going to take 19 minutes for Mr. Afran to take a look at this. 20 MR. AFRAN: I am not sure I understand. It 21 says, The testimony of all witness relating to --" 22 CHAIRMAN BAGOFF: Mr. Afran, please speak 23 into the microphone. 24 MR. AFRAN: It says, Subsection D, 25 40:55-10D, as in David. "The testimony of all witnesses	95 1 designate shall have power to administer oaths and issue 2 subpoenas to compel the attendance of witnesses and the 3 production of relevant evidence." 4 It is the board Chairman's discretion as to 5 the method of the meeting and the order of the meeting. 6 And if the board Chair wants public comment at the 7 conclusion that's when it's going to be. And that's 8 what we're trying to determine here. You're 9 representing a group, you already introduced individuals 10 to give testimony on your case, therefore in a court, in 11 this hearing, which is quasi judicial, this is typically 12 the way the procedure that, I've been doing this for 13 over 20 years and I'm sure you've been doing this just 14 as long if not longer. That is the standard procedure. 15 MR. AFRAN: All it says is that the 16 presiding officer controls the meeting. That doesn't 17 mean that power can be used to stop a witness. 18 CHAIRMAN BAGOFF: Mr. Afran. 19 MS. McGOVERN: We're not stopping him. 20 MR. AFRAN: Well, doesn't mean the power -- 21 MS. McGOVERN: Just keeping the order of the 22 proceeding. 23 MR. AFRAN: There's nothing that prevents an 24 objector representative from giving the objector 25 organizations viewpoint as to why it's here. If you
94 1 relating to an application for development shall be 2 taken under oath or affirmation by the presiding 3 officer. And the right of cross examination shall be 4 permitted to all interested parties through their 5 attorneys, if represented, or directly if not 6 represented, subject to the discretion of the presiding 7 officer." It doesn't say that an objector 8 representative can only testify through questions from 9 counsel. What it says in that respect is that 10 cross-examination of witnesses will take place by their 11 attorneys, if represented, or directly by the cross 12 examiner if there's no attorney. Nowhere does it say 13 the attorney has to question the objector witness. 14 MS. McGOVERN: I'm going to disagree. 15 MR. AFRAN: I'm reading the exact words. 16 MS. McGOVERN: I don't have it in front of 17 me. 18 MR. AFRAN: Now you do. 19 MS. McGOVERN: The officer -- there's a 20 variety of sections that talk about the way a hearing 21 proceeds. 22 MR. AFRAN: Well, you were citing D and I'm 23 reading D. 24 MS. McGOVERN: Right above it, "The officer 25 presiding at the hearing or such person as he may	96 1 want to block that, block it. I'm saying he has the 2 right to do it. 3 MS. McGOVERN: That's not what I'm saying. 4 CHAIRMAN BAGOFF: Mr. Afran, we're going to 5 let him testify. We'll make sure to the best of our 6 ability that this is testimony and not public comment. 7 MR. AFRAN: And I would submit there's no 8 distinction but I understand your concern. 9 CHAIRMAN BAGOFF: Mr. Plocker. 10 MR. PLOCKER: Just for the record, we have 11 no prolem with Mr. Afran calling Mr. Tractenberg. 12 Obviously he's an officer of We Care organization and I 13 believe before the public hearings even started last 14 July, coming upon a year, Mr. Tractenberg, while he was 15 identified as an officer along with other individuals, 16 those people have not, and I respect that they have not 17 asked questions to the witnesses. We do not dispute 18 that Mr. Tractenberg as an officer of We Care, even if 19 he was not an officer, that he has the right to be 20 called, but it is within the board -- the Chairman's 21 discretion to hear, you know, what type of testimony he 22 is offering and I believe that it's reasonable to let 23 him begin whatever he's going to say. I would argue 24 that if he has factual observations regarding the site, 25 the area, conditions, things relevant to what this board

97 1 is tasked with, that's perfectly fine. If it goes 2 outside of there or matters outside the scope of this 3 board, I may object. 4 CHAIRMAN BAGOFF: Okay. 5 MR. AFRAN: I think we're in agreement that 6 he should go forward and I point out also he is a lawyer 7 and officer of the court and a retired law professor of 8 Rutgers, he does understand the procedure. 9 CHAIRMAN BAGOFF: Mr. Tractenberg's 10 well-known to the Planning Board. 11 MR. AFRAN: I have a feeling there will be 12 areas Mr. Plocker will raise objections to, I am not 13 denying that. 14 CHAIRMAN BAGOFF: I know Mr. Tractenberg 15 knows how to do this. 16 MR. AFRAN: I didn't mean that 17 sarcastically. We talked and I believe there will be 18 areas he objects to. 19 MS. McGOVERN: Okay. 20 MR. AFRAN: We call the now infamous Paul 21 Tractenberg. 22 CHAIRMAN BAGOFF: Thank you. 23 MS. McGOVERN: Would you please raise your 24 right-hand. 25 Do you swear or affirm to tell the truth the	99 1 neighbors who live nearby as well as on the broader West 2 Orange community and neighboring communities. In that 3 connection I cannot imagine many applications this board 4 has considered over the years that have provoked the 5 kind of broad interest this one has and the 6 participation of a number of adjoining municipalities 7 and a number of environmental commissions, including the 8 one in this town, West Orange, and the one in our 9 county, the Essex County Environmental Commission. 10 Because the applicants effort to develop Block 179 Lot 11 32 has been proceeding for so long, substantially more 12 than 20 years, I believe testimony to the Planning Board 13 that briefly puts the current deliberations in context 14 could help you to make a reasoned decision and I know 15 you're committed to exactly that result, a reasoned 16 decision. 17 Chairman Bagoff and Mayor McCartney, among 18 others, have personal experiences for much, if not that 19 entire time, but others have not. 20 I also want to testify about my personal 21 experiences as a long time resident of West Orange and 22 of the West Orange West Essex Highlands condo community 23 that are directly relevant to the issues before you. 24 After all, to treat this just as a dispute among experts 25 retained to testify before you tends, in my view, to
98 1 whole truth nothing but the truth. 2 THE WITNESS: I do. 3 MS. McGOVERN: Will you please state your 4 full name and spell you last name. 5 THE WITNESS: Paul Tractenberg, 6 T-R-A-C-T-E-N-B-E-R-G. I live currently at 96 Sullivan 7 Drive in West Orange. Previously, as I will explain, I 8 lived for 18 years at 11 Meadows Bluff Lane in West 9 Orange, a condominium property that's directly adjacent 10 to the subject property. The property that's the 11 subject of the application before the board. 12 P A U L T R A C T E N B E R G, having been 13 duly sworn testifies as follows: 14 THE PUBLIC: I want to thank Chairman Bagoff 15 and members of the Planning Board, I appreciate the 16 opportunity to present this testimony. 17 As I have indicated, I am a long time, 27 18 plus years, resident of West Orange. I have been 19 immediately adjacent to or in close proximity to the 20 subject property for those years. I believe actually 21 that I am the first witness who is from the affected 22 community not an expert retained by the applicant or the 23 objector and I have to say a word about that. That has 24 enabled me to observe, evaluate firsthand the impact the 25 development you are considering would have on your	100 1 minimize or even eliminate a crucial dimension how your 2 decision will effect the daily lives and the health, 3 safety and well-being of many residents of West Orange 4 and adjoining communities. So with your forbearance I 5 will proceed as a resident and fact witness not as an 6 expert. I don't claim expertise in many of the areas 7 before you. 8 MR. AFRAN: Could I just have one second. 9 Just checking on timing. 10 MR. PLOCKER: Can I make a statement before 11 Mr. Tractenberg begins. 12 CHAIRMAN BAGOFF: Mr. Plocker. 13 MR. PLOCKER: Based upon Mr. Tractenberg's 14 introduction, it seems he intends to produce evidence 15 regarding prior proceedings and he even alluded to that 16 certain people on the board had personal experience. So 17 to the extent that that's the case, I think this boards 18 mission is to focus on the application, all of the 19 application materials submitted. This is a particular 20 application under a particular zoning ordinance and 21 anything that happened before this board in the past is 22 not relevant to this application or the boards decision. 23 MR. AFRAN: Well, with respect, number one, 24 that's not true because board decisions that deny 25 applications actually can have a res judicata effect.

101 1 Meaning they bind the case for future incarnations of it 2 that contain similar elements. 3 MR. PLOCKER: I disagree. 4 MR. AFRAN: You can disagree with the law if 5 you want, but Planning Board decisions can have res 6 judicata effects, therefore what happened in the prior 7 application does have relevance, especially since 8 there's some elements that are in common and therefore 9 it is a relevant subject to go into. What weight the 10 board gives, is the boards business, and what dispute 11 the applicant takes to that and what rebuttal it gives 12 is his business. But this is relevant and it is within 13 the scope of what we would call the res judicata effect 14 potentially of prior applications. So what happened 15 there does have relevance. It depends of course on what 16 the witness says, but things that were addressed, 17 rejected, known to cause potential issues that are in 18 common today or closely related today are relevant. We 19 don't close our eyes and ears and minds and pretend 20 something didn't happen before this very board. So it 21 is relevant. I think we should let him speak and then 22 objections or strikes could be made. 23 MR. PLOCKER: Respectfully Chairman Bagoff, 24 I believe that the doctrine of res judicata can apply to 25 a land use hearing, but it is to prevent the	103 1 common elements to this application and the application 2 that was presented to the Planning Board some 17, 18 3 years ago and how the decision was made then does it 4 impact on the decision now. 5 Ms. McGovern, I know my feelings on it but I 6 am going to ask -- 7 MS. McGOVERN: So the elements required to 8 establish a res judicata applies are that in order for 9 the doctrine or res judicata to be applicable it must be 10 shown that the second applications is substantially 11 similar to the first. The same parties or their privies 12 are involved. There must be no substantial change to 13 the application itself or conditions surrounding the 14 property. There must have been an adjudication on the 15 merits in the first case. Both applications must 16 involve the same cause of action. 17 MR. AFRAN: You're reading a judicial res 18 judicata. 19 MS. McGOVERN: Yes, and that's applicable to 20 land use and it goes into -- the case law on land use 21 applications are, you've gone before a board, for 22 example looking to build a building that's to close to 23 the property line, you're looking for a variance for 24 that and the board denies you. And you come back with 25 the same type of application but instead of it being
102 1 re-litigation or rehearing in front of a board of 2 identical, very similar applications. Here I don't 3 think anybody in this room would dispute that any prior 4 application regarding this block and lot was a very 5 different proposal under a very different ordinance, 6 under very different circumstances. So to the extent 7 that certain decisions or rulings were made with respect 8 to those therein different applications, they're highly 9 irrelevant to these proceedings and highly prejudicial. 10 MR. AFRAN: Well, first thing, you can't say 11 somethings prejudicial until you've heard the testimony. 12 Secondly, res judicata can apply to elements of two 13 plans that are closely related. If the board denied the 14 plan because of certain aspects of it and if those 15 aspects are seen again here, even though this is now 16 three and half times larger, those common elements could 17 be subject to res judicata. So why don't we let the 18 witness speak and then the board can decide how it wants 19 to go. 20 CHAIRMAN BAGOFF: So ladies and gentlemen 21 here in the public and on zoom, res judicata means, 22 correct me if I'm wrong, that -- 23 MR. AFRAN: The thing has been decided. 24 CHAIRMAN BAGOFF: -- it has been decided and 25 is a matter of judgement. So the question is, are there	104 1 three stories tall, it's two stories tall, but it's 2 still close to the property line. That's not 3 substantially different. The board isn't going to hear 4 it. They've already denied it. So I don't know the 5 circumstances, I wasn't around back when that was going 6 on, but I will leave it to whatever proffers are going 7 to be made as to why this is a substantially similar 8 application for res judicata to apply. I don't think 9 that's what you're saying, I don't think it was similar, 10 from what I understand, but if it was, that would be 11 relevant. 12 MR. AFRAN: Well, there are elements that 13 are similar. I don't know if any members of the board 14 were here on the board then, I don't think so. There 15 are elements that are similar -- I'm sorry. There are 16 elements that were similar and the plan is different in 17 that it is a multifamily set of buildings rather than 18 single family buildings and it is three and half times 19 more units. So to the extent there were safety issues 20 by the common elements such as roadways, access roads 21 that are very similar to the current plan, the fact that 22 it is different only means it's even more dense, but 23 those safety issues would still be common questions. 24 And if the board ruled against the plan when it was 25 smaller because the access roads and roadways weren't

105 1 sufficient, that is a res judicata question, even though 2 the plan now has three and half times more units. It's 3 worse now than it was then in that respect. So res 4 judicata does not, is not eliminated here simply because 5 they made it more dense. If the underlying arteries, 6 access roads, emergency points are the same, and they 7 were ruled on by the board, just because you added three 8 and a half times more people doesn't mean it is not res 9 judicata on those issues. 10 CHAIRMAN BAGOFF: There are a number of 11 issues that we spoke about in the original plan. So the 12 things that are the same, the applicant is the same, the 13 units are different, there's now a different zone plan, 14 entirely different zone plan for this property. The -- 15 there are other elements that preserve many more trees 16 than were going to be removed in the first plan and 17 there was also an issue of a waterway in the first plan. 18 There was issues with -- 19 MR. AFRAN: Could you repeat that last part, 20 I'm sorry. I couldn't hear the last part. 21 CHAIRMAN BAGOFF: There was issues with the 22 waterway, there was issues with the dividing roadway. 23 So there were many issues that are not similar in this 24 plan. So the only issue that is similar is the issue of 25 the roadway. One roadway, not all. So the amount of	107 1 judicata, there's another doctrine closely related and 2 that's issue preclusion. And so even though there are 3 different elements, obviously there are some, there are 4 issues that are in common. And so those issues that are 5 the same, if having been adjudicated by this board in 6 the smaller plan, if they remain the same today, even 7 though it's a larger plan, issue preclusion would still 8 be a relevant question for the board. So even though 9 there are elements of this plan that are obviously 10 different, it's got multifamily buildings and three and 11 a half times more people. If there's issues then that 12 are still here today, such as access roads for example, 13 those issues, if decided against the applicant, then are 14 subject to issue preclusion today. Therefore it's a 15 relevant question. What the board decides to do 16 ultimately is another issue, but the testimony is 17 relevant. 18 CHAIRMAN BAGOFF: The issues were brought up 19 during testimony by the experts. So pulling out pieces 20 of a previous application not before this board at large 21 here, in my mind, could only color the boards decision. 22 Mr. Afran, the application we have here, the zone plan 23 and the experts from both sides that have presented and 24 members of the public, so to that end the -- there's one 25 issue that is similar, again similar, from the first
106 1 things that are different are greater than the amount of 2 things that are the same. The issue that caused the 3 board to make a decision that it did at the time were 4 there a number of issues that were not able to be 5 resolved to the boards satisfaction. So to that end, 6 unless the Mayor, who also sat on the board with me, has 7 any other comment, I would -- 8 MR. AFRAN: I could respond on this point 9 though. 10 CHAIRMAN BAGOFF: Almost done. 11 MR. AFRAN: The board has issued -- I'm 12 sorry. 13 CHAIRMAN BAGOFF: So to that end in the law 14 there are enough things in my mind that is different in 15 this application that, I would say that all things 16 relative to that application should not be heard here. 17 We have heard issues of forestry, we've heard issues of 18 animal husbandry. We've heard issues of ornithology and 19 all those things make sense. However, going back over 20 something that was not approved 15 years ago doesn't 21 enlighten the board and issues that were presented at 22 that time have been brought out over time through this 23 application. 24 Mr. Afran, you want to respond. 25 MR. AFRAN: Yes. In addition to res	108 1 application, other than that -- 2 MR. AFRAN: I think that's what he meant. 3 CHAIRMAN BAGOFF: I understand that. And 4 that can be brought out and it has been, but to bring 5 out pieces of why or why not and the thought process of 6 the previous board, all members of the previous board 7 are not here to bring out their thought process, so I 8 think that would color a board and the public. So we 9 should hear this application legally on it's own merits 10 and I'm going to ask Mr. Plocker. 11 MR. PLOCKER: Yeah, thank you very much, Mr. 12 Chairman. And I agree with everything you said. I 13 think especially because this is a very different zoning 14 ordinance that applies to the property, a different 15 Master Plan, but most importantly, the objector group 16 would like to argue certain issues in the way this board 17 treated them 15, 18 years ago, whatever it was, my 18 partner handled that application, my now partner, I did 19 not, but then it's just as important to tell the board 20 and inform them all about the Prerogative Writ Act 21 decided in my clients favor after that denial. I don't 22 want to go there, I don't think that's this boards job. 23 CHAIRMAN BAGOFF: I think the objector can 24 bring up issues without identifying what was or was not 25 brought out in that previous application and it has been

109 1 done. As opposed to pointing to something in the past. 2 Mr. Klein, you want to say something. 3 MR. KLEIN: How do you know they're three 4 times as many people? 5 MR. AFRAN: Because there are 500 units as 6 opposed to 136. 7 MR. KLEIN: How many bedrooms were in 136 8 and how many bedrooms total now? 9 MR. AFRAN: Obviously it's not an exact 10 figure. 11 MR. KLEIN: Well, then how could you give us 12 these facts? 13 MR. AFRAN: I didn't say he was giving you 14 the facts. 15 MR. KLEIN: No, no. I mean -- 16 MR. AFRAN: I was simply stating as a 17 proposition we have a larger plan -- well, if it's the 18 same number of people physically then it's very close 19 actually to the actual plan. 20 MR. KLEIN: Well, that's what I'm saying. I 21 don't know if it's the same number of people. We heard 22 from their traffic engineer level of service were fine, 23 it operates fine. 24 MR. AFRAN: I was just saying as a general 25 proposition when you're 500 units versus 136 you're	111 1 on. We're not going to refer to the previous 2 application in its entirety or in specific pieces 3 because if there are things in this application that the 4 objectors have issue with they can bring them up. Let's 5 move on. 6 Mr. Tractenberg, you have the floor, sir. 7 THE PUBLIC: Appreciate the opportunity to 8 testify, all though it's been truncated, I think. 9 Nonetheless, I want to speak to two things that I think 10 are germane. One is the history of this process, this 11 development process, this development effort, not 12 necessarily in terms of what the board did previously 13 but how it evolved and how it continues to be strongly 14 contested. And I do think that is germane. 15 I moved into West Orange in 1998. I do not 16 have an expert map, I don't know whether Mr. Fagan can 17 put it up there. I have copies for you, but it's the 18 best I could do and it tries to suggest both where I 19 live and the relationship between Warner Road and Kuzik 20 Drive. 21 CHAIRMAN BAGOFF: Mr. Fagan, you have Mr. 22 Tractenberg's -- 23 MR. FAGAN: I'm getting it up. 24 MR. PLOCKER: Bruce, can we confirm that 25 this was not previously filed with the board?
110 1 obviously getting many more people. 2 MR. KLEIN: 136 single family homes with 3 maybe four bedrooms versus 2 -- 1 and 2 bedroom units. 4 MR. AFRAN: Still getting more people. 5 MR. KLEIN: More but not three times as 6 many. 7 MR. AFRAN: I wasn't stating it as a 8 mathematical -- 9 MR. KLEIN: You said it like three times. 10 Three times as many people. I would like to know where 11 you came up with the number, that's all. 12 MR. AFRAN: It's just a general proposition. 13 You got 500 living units, you have 136, you're going to 14 get more people and I was simply saying because we have 15 three times more we're probably getting three times more 16 people. That's all. 17 CHAIRMAN BAGOFF: Okay. 18 MR. AFRAN: I wasn't really -- I was meaning 19 it as a point of legal argument that just because it's 20 bigger doesn't mean the issues weren't the same in part. 21 That's all I meant. I wasn't trying to testify about 22 the numbers. I was simply pointing out just because 23 it's bigger it doesn't mean we don't have issues in 24 common. 25 CHAIRMAN BAGOFF: Okay. We're going to move	112 1 MR. AFRAN: Oh, yeah, yeah. 2 CHAIRMAN BAGOFF: All right. 3 Mr. Tractenberg. 4 MS. McGOVERN: It's going to be number O-15. 5 THE PUBLIC: Okay. 6 CHAIRMAN BAGOFF: Could you identify what 7 this is? 8 THE PUBLIC: The lines at the very top 9 differentiates Block 179 Lot 32. 10 CHAIRMAN BAGOFF: 32. 11 THE PUBLIC: So 11 Luff Lane is where I 12 lived for 18 years. It's directly, it is directly 13 adjacent to Block 179 Lot 32. Warner Road intersects 14 with that property and runs down until it connects, it 15 connects to Warner Road which eventually connects to 16 Eagle Rock Avenue. Eagle Rocks the first public road. 17 I'm familiar with this having lived there all those 18 years. This is Kuzik Drive, which is not proposed for 19 general access but is a possible fallback and from 20 having lived in that neighborhood I just want to point 21 out that Kuzik runs for far less than a half a mile. It 22 lines up a tenth of a mile down Warner Road from where 23 Warner Road intersects with Block 179 Lot 32. So to the 24 extent one would consider opening up Kuzik, all it does 25 is run by some residential buildings and connect about a

113 1 tenth of a mile down Warner Road. The rest of Warner 2 Road and Oval Road would be unchanged by opening up the 3 second access. And by the way, an agreement in 2004, 4 which was entered into between the original We Care 5 organization and the developers assigned by Zygmunt Wilf 6 -- 7 MR. PLOCKER: I'm going to object to any 8 reference to any prior agreements, litigations, we're 9 not denying that they do not exist, but this board is 10 not the proper forum for them. 11 MR. AFRAN: Well, it does relate to the 12 question if the applicant had given away rights in land, 13 then the applicants standing as a proprietary interest 14 in the application is effected, and therefore it is 15 relevant. 16 CHAIRMAN BAGOFF: But Mr. Afran, we don't 17 have a copy of that for the board to judge. So this is 18 hearsay testimony. We don't know the extent or anything 19 about that, so we're going to pass on that. 20 MR. PLOCKER: And I'll just add for the 21 record, whatever lawsuit you may file if there is an 22 approval you can raise any and all of these arguments 23 and we'll be more than prepared to address them. We 24 believe any prior agreements do not apply to the current 25 situation. But, again, that's not for this board.	115 1 bound by their agreement with the developer from 2 challenging any development proposal. But they pointed 3 out that individual unit owners were free to object. 4 That led several of us to create the organization which 5 became We Care, which included a lot of individual unit 6 owners of the Highlands, some residents of the Grand, 7 residents of Howell and adjoining neighborhoods and we 8 became the objectors before the board in the first go 9 round and it resulted in a denial, I won't go into the 10 details, I won't argue the relevance, but it resulted in 11 a denial. 12 There was an effort, which I think is 13 germane in my case to this, between 2006 and 2008 to 14 preserve this property as open space. It was then part 15 of the Master Plan of the town and the open space plan 16 that that was a high priority property to preserve as 17 open space. The effort fell apart when the economy fell 18 apart in 2008 and a lot of money was off the table for 19 acquisition. Just as a matter of personal privilege, 20 the township council did propose and agreed to pay for 21 two appraisals of the property because there was some 22 dispute about its value. 23 MR. PLOCKER: I'm going to object to 24 whatever actions that town council may have or may not 25 have historically enacted or any studies that may have
114 1 CHAIRMAN BAGOFF: Agreed. 2 MR. AFRAN: May I just have one moment. I'm 3 sorry. 4 The point is -- well, if the Chair thinks 5 it's hearsay at this point the agreements not before us, 6 we'll address it later but we maintain its relevance. 7 CHAIRMAN BAGOFF: Okay. We're not going to 8 hear this right now. 9 MR. AFRAN: Not right now. 10 CHAIRMAN BAGOFF: Okay. Good. 11 Mr. Tractenberg, you have the floor, sir. 12 THE PUBLIC: Since I was one of the ones who 13 complained about how hard it is to hear, I apologize to 14 the board and to the public for not talking directly 15 into the microphone. 16 So back to my arrival in West Essex 17 Highlands. Within a short time of my arrival I was told 18 for the first time, I bought from the original owner 19 that there would be shovels in the ground by the spring. 20 That would have been the spring of 1999. At that point 21 many of us in the community were very upset about the 22 prospect of a major development adjoining us. We went 23 to the West Essex Highlands condo board and requested 24 its assistance in objecting to it. They claimed at that 25 time, I think wrongly, but they claimed that they were	116 1 been conducted. We're here to deal with this 2 application, this development, this zoning ordinance. 3 CHAIRMAN BAGOFF: I'm going to let you do 4 this, because it's a little history, so I have no 5 problem with that. 6 I'm sorry, go right ahead. 7 THE PUBLIC: The township council in it's 8 infinite wisdom chose not to make public the results of 9 the appraisal after they were submitted. It led me to 10 threaten and then bring in a lawsuit to seek those 11 appraisals. We eventually won in the Appellate 12 Division, I got the appraisals, the appraised value was 13 much less than John McKeon, then the Mayor, was 14 publically indicating would be the value of the property 15 and that really jump started the preservation effort. 16 It was aborted by the financial collapse in 2008 17 however. Mr. Plocker mentioned earlier that the 18 developer was, during this time, also attempting to 19 through the courts to overturn the Planning Boards 20 denial. 21 CHAIRMAN BAGOFF: Let's move on from all 22 denials and get to more facts about the case. 23 THE PUBLIC: Okay. 24 Fast forward to the period of 2015-'17 and 25 on to 2020, which was, I think, the period where

117 1 affordable housing entered the picture and became a key 2 to the current proposal before the board. The key 3 events surrounding that were really in 2020 when, among 4 other things, there was a settlement, two settlement 5 agreements entered into. There was a Judicial Fairness 6 Hearing and there was an ordinance adopted by the 7 council which was the ordinance that Mr. Plocker has 8 made clear is at the heart of his argument to the 9 Planning Board. As an involved citizen for many years I 10 have to say that 2020 was the heart of COVID. 11 MR. PLOCKER: I'm going to object to the 12 extent that any of the actions regarding the towns 13 filing of it's Declaratory Judgment action, the 14 mediations which ensued, the settlement of that action, 15 the fairness hearing, the rezoning of the property and 16 the judicially noticed compliance hearing, that any of 17 that should be looked upon negatively because it 18 happened lawfully during the COVID-19 pandemic and that 19 it should be completely disregarded by this board. 20 CHAIRMAN BAGOFF: We're going to move 21 through all the legalese and get to the land. 22 THE PUBLIC: I will move onto another 23 dimension which is both my observation as a long time 24 resident and I think I speak as you've heard from the 25 questions from the public, on behalf of a lot of people	119 1 CHAIRMAN BAGOFF: Mr. Tractenberg. 2 Mr. Afran. 3 MR. AFRAN: If I may. The motivation of an 4 objector, Ms. McGovern pointed out, is relevant. And 5 the concern of an organized group of safety and health 6 issues is a relevant part of the reason they're in the 7 case. Perfectly relevant for him to explain We Care's 8 general concerns. That is not improper. It's 9 absolutely necessary. 10 CHAIRMAN BAGOFF: Continue Mr. Tractenberg. 11 THE PUBLIC: Okay. 12 Which brings me to my next observation based 13 on both personal experience and long exposure to this 14 process ongoing before the Planning Board. I think 15 there are deep concerns, and I share them on the 16 dangers, not only to the surrounding neighbors and 17 neighborhoods and communities of the single way in and 18 single way out of this property, but I think it 19 represents a real danger to anybody who might inhabit 20 apartments developed under this proposal. And you will 21 hear, I think, from some other community witnesses who 22 have suffered through some of the dislocations when Oval 23 Road or Warner Road has been closed and they've been 24 trapped in their houses or unable to access their 25 houses. So I think that's a major concern.
118 1 in the public who have deep concerns about how this 2 development will effect them, their health and safety 3 and well-being and I hope and believe those are concerns 4 that the Planning Board will take seriously and weigh in 5 your decisions. It's not, I think a mechanical decision 6 you have to make whether this application simply falls 7 within the four corners of the ordinance, but the 8 broader concerns about public health and safety. I was 9 struck as a matter of fact when I looked at the Vision 10 Zero report for West Orange that Mayor McCartney had 11 indicated that her primary concern as a Mayor was the 12 safety and well-being of all the residents of West 13 Orange. And I think that issues directly or indirectly 14 before this Planning Board. 15 MR. PLOCKER: And I'm going of object. Mr. 16 Tractenberg is an officer of the objector group, they 17 have an attorney, a very capable one in Mr. Afran. 18 These are legal arguments that I'm sure Mr. Afran will 19 make on his summation and he's tried to elicit through 20 testimony. So to the extent that he, as an officer of 21 the objector organization, these are legal arguments. 22 These aren't factual observations. These aren't 23 comments regarding what he sees on the property 24 regarding proposed development or current conditions. 25 So I would ask that the board have him move on, please.	120 1 We're also concerned, I think, by the things 2 in the application process that remain unaddressed 3 despite the Planning Boards engineers reports that 4 required them. Things like water, potable water 5 connection, sewer connection. 6 MR. PLOCKER: Again, this is expert 7 testimony. These are items best left to the 8 professionals and I believe there are professionals on 9 both sides did testify as to these things. 10 CHAIRMAN BAGOFF: Yes, they have. 11 Go ahead. 12 THE PUBLIC: Yes. 13 There is no real tree plan, there are many 14 things that I think are problematic about this process 15 and things that your own consulting engineer had said 16 should be weighed in on before the board, not as 17 conditions to approval after you decide. And I think 18 there's very keen concern in the community and that I 19 feel as a resident to those things. 20 Let me just, a few more things. 21 I want to address for a moment the concerns 22 and I am, as some of you know, a career long advocate 23 for the rights of low income people and students and 24 minorities, so I'm the last to oppose affordable housing 25 and indeed we have tried to communicate to the Fair

121 1 Share Housing Center that there are much preferable 2 sites in West Orange. 3 MR. PLOCKER: Again, this is going to the 4 heart of the litigation that took place over about a 5 five-year period. 6 CHAIRMAN BAGOFF: Move on, please. 7 MR. AFRAN: Well, it goes really to the 8 motivation. He's trying to dispel the idea we're not -- 9 CHAIRMAN BAGOFF: The board understands. 10 Heard this already. 11 THE PUBLIC: I would just refer the Planning 12 Board to one document, I hope you have seen it, the Fair 13 Share Housing Center published in December 2024, a 14 publication entitled, Developing Effective Housing Plans 15 In The Fourth Round. A Guide for Municipalities, 16 Planners, Developers, Non Profits and Advocates. It 17 provides, I think, very important and relevant guidance 18 as to what is a suitable location. 19 MR. PLOCKER: Okay. Again, I'm going to 20 object. That's a document that was prepared, allegedly 21 issued by the Fair Share Housing Center who, for 22 everyone here, is the public advocate and nonprofit 23 organization that seeks to enforce the Mount Laurel 24 doctrine. But one, it was put out, I believe, correct 25 me if I'm wrong Mr. Tractenberg, 2024 regarding the	123 1 CHAIRMAN BAGOFF: Any other members of the 2 public want to testify? I'm sorry. Wait one second. 3 Don't go away. 4 Members of the board have questions? 5 Mayor McCartney. 6 MAYOR McCARTNEY: I don't have any 7 questions, just a couple things that Mr. Tractenberg did 8 say, the only comment that I want to make is that I do 9 remember from the -- the only comment that I do remember 10 from the original application was the road egress and 11 ingress and the township in the process of developing 12 the fourth round affordable housing -- 13 THE PUBLIC: With all due respect, I have a 14 copy of your resolution and there were a number of 15 concerns. 16 CHAIRMAN BAGOFF: Mr. Tractenberg, we're not 17 going to -- 18 THE PUBLIC: I thought the Mayor raised a 19 question and I was trying to respond. 20 MS. McGOVERN: I was talking about the 21 fourth round. 22 CHAIRMAN BAGOFF: One commonality that was 23 the roadway, we agree to that. 24 MAYOR McCARTNEY: And I think what I do 25 recall is talking about trying to preserve the land.
122 1 fourth round, Fair Share Housing Center was a party to a 2 companion settlement agreement in the towns third round 3 Declaratory Judgement action. I think it's -- it's not 4 relevant and I'm sure it's -- I'll leave it at that. 5 CHAIRMAN BAGOFF: Thank you. 6 Move on. 7 THE PUBLIC: Well, I know and lots of 8 residents think that finding a suitable and appropriate 9 location for affordable housing is a top priority. It 10 may be that Fair Share Housing Center entered into an 11 agreement, they're active conversations going on as to 12 whether -- 13 CHAIRMAN BAGOFF: It's not us. We're not 14 part of that. 15 THE PUBLIC: Right. I assume part of the 16 Planning Boards concern and effort is to ensure, not 17 only that the units are built, but they are built in a 18 suitable location and that I think is -- 19 CHAIRMAN BAGOFF: Yes, so we have a zone. 20 THE PUBLIC: I think with that I am 21 finished. I am happy to answer any questions. 22 CHAIRMAN BAGOFF: I want to thank you very 23 much. 24 MR. PLOCKER: Thank you, Mr. Tractenberg. 25 THE PUBLIC: You're welcome.	124 1 That it was never for sale, so as I remember actually 2 asking that during the hearing at that time and we have, 3 we were told numerous times the property was not for 4 sale. 5 THE PUBLIC: Well, I don't think that's 6 entirely accurate. We were in serious discussions with 7 the developer -- 8 CHAIRMAN BAGOFF: Mr. Tractenberg, it's the 9 way she remembers it. This is the way she remembers. 10 This is the way she remembers. 11 MR. AFRAN: So I do think if, I do think 12 with great respect, I do think that if the Mayor raised 13 her own recollection it was not for sale then I know the 14 witness, who also was involved with these things at the 15 time, does have a right to give his actual recollection. 16 MR. PLOCKER: It's not relevant whether the 17 property was for sale or not. 18 CHAIRMAN BAGOFF: He did. He talked about 19 what happened. So he had his recollection, the Mayor 20 has her recollection. 21 MR. AFRAN: Okay. That's fair. 22 CHAIRMAN BAGOFF: Thank you. 23 THE PUBLIC: Just one thing that's not a 24 matter of recollection but of record. The Township 25 actually submitted in 2010 a Green Acres proposal to

125 1 fund the acquisition and preservation of this property. 2 MR. PLOCKER: Okay. I'm going to object. 3 It's irrelevant to this application. 4 CHAIRMAN BAGOFF: Mr. Klein? 5 MR. KLEIN: I have no questions. 6 CHAIRMAN BAGOFF: Ms. Kapferer? 7 MS. KAPFERER: No questions. 8 CHAIRMAN BAGOFF: Vice Chairman Guarino? 9 VICE CHAIRMAN GUARINO: No questions at this 10 time. 11 CHAIRMAN BAGOFF: Mr. Alper? 12 MR. ALPER: No, thank you. 13 CHAIRMAN BAGOFF: Mr. Cardoza? 14 MR. CARDOZA: No questions. 15 CHAIRMAN BAGOFF: Mr. MacNeill? 16 MR. MacNEILL: No questions. 17 CHAIRMAN BAGOFF: Mr. Haizel? 18 MR. HAZEL: No questions. 19 CHAIRMAN BAGOFF: Do any member of the 20 public have any questions for Mr. Tractenberg on his 21 testimony? 22 Seeing none. 23 Thank you very much, Mr. Tractenberg. 24 Council Person Scarpa, do you have any 25 questions for Mr. Tractenberg on his testimony?	127 1 Mr. Plocker? 2 Mr. Afran. 3 MR. AFRAN: Thank you. Thank you for 4 hearing Professor Tractenberg and we appreciate the time 5 you gave him. 6 Our next witness would be Mayor Ed Davis of 7 Essex Fells. 8 CHAIRMAN BAGOFF: Thank you. 9 MR. AFRAN: I am going to -- Mayor Davis 10 will give a presentation, I may interject with a 11 question or two, but I will leave it to the Mayor. 12 CHAIRMAN BAGOFF: Sure. Welcome. 13 THE PUBLIC: Thank you, Mr. Chairman. 14 CHAIRMAN BAGOFF: Please raise your 15 right-hand. 16 MS. McGOVERN: Do you swear or affirm to 17 tell the truth the whole truth nothing but the truth. 18 THE WITNESS: I do. 19 MS. McGOVERN: Please give us your full 20 name, spell your last name and address, please. 21 THE PUBLIC: My name is Edward Davis, 22 D-A-V-I-S. I'm the Mayor of Essex Fells. My address in 23 that capacity is 255 Roseland Avenue, Essex fells. 24 M A Y O R E D W A R D D A V I S, having 25 been duly sworn testifies as follows:
126 1 COUNCIL PERSON SCARPA: No. 2 CHAIRMAN BAGOFF: Thank you. 3 MR. PLOCKER: I think she's still trying to 4 talk. 5 COUNCIL PERSON SCARPA: I don't have 6 anything for Mr. Tractenberg but I did have a concern 7 about the residents related to the blasting and I'm 8 taking their comments seriously. You know, we did state 9 that the Township has a responsibility, perhaps more of 10 a question of who at the Township would be tasked with 11 monitoring decibel levels, blasting and what procedure 12 they would be required to use? 13 CHAIRMAN BAGOFF: Mr. MacNeill. 14 MR. MacNEILL: So typically, and I'll have 15 to confirm after review of the code, but typically it 16 would be on the building department for inspections as 17 well as any site inspectors for the Township to review 18 the site improvements for the project. So typically, 19 based on my experience, it's either the building 20 department that would be in charge of inspections 21 on-site or, and maybe on top of, having separate 22 inspectors to review and inspect the site improvements 23 separately. 24 CHAIRMAN BAGOFF: Thank you, Mr. MacNeill. 25 Okay. Any other members of the public?	128 1 CHAIRMAN BAGOFF: Go right ahead, sir. 2 THE PUBLIC: Thank you Mr. Chairman. Thank 3 you fellow board members for the opportunity to speak 4 this evening. I've been before you with isolated 5 comments here and there, but my purpose in speaking 6 tonight is really on factual matters, not just to 7 provide general commentary on the proposal. 8 I have personal knowledge of conditions 9 downhill from West Orange. As you all know Essex Fells 10 is nearly to your west. In addition it's important to 11 understand that the Borough of Essex Fells owns just 12 under 17 acres, most people view that on the grounds of 13 Essex Fells Country Club, but we're actually the 14 property owners. We lease that plan to the country 15 club, but for public purposes we have maintained that 16 property since 1920 as a well field for community 17 drinking water. Currently that drinking water is 18 provided to Essex fells residents, Roseland, North 19 Caldwell and Caldwell. But it is also important to 20 remember that's just the situation today. Historically 21 we provided water to other towns, including West 22 Caldwell, tends to shift over time as community 23 resources and community demands fluctuate. So while 24 we're serving four towns and 22,000 residents in the 25 area, that can certainly change as the area continues to

129 1 develop, not just West Orange but all the towns I 2 mentioned are basically developing, and populations are 3 growing. So the 17 acres are important not just for 4 Essex Fells but of everybody, including perhaps in the 5 future West Orange. It's a resource that is vital to us 6 all, our customers. 7 And physically, so you understand the 8 property I'm talking about, the land that we own and use 9 as a well field is right along the Canoe Brook and 10 basically we own currently the well that's operated on 11 that well field, the well is actually in West Orange. 12 Most of the property we own is in West Orange. It is 13 owned by the municipality of Essex Fells. We own a 14 little bit of land in Essex Fells on the other side of 15 the Canoe Brook. In addition we own what's currently 16 storage facility, it's about 50 yards from the well that 17 I just described, but we are currently building two 18 water treatment plants, I am sure members of the public, 19 members of the community are familiar with the 20 initiative nationwide and the New Jersey laws have 21 changed, we're required to sort of deliver water. Essex 22 Fells as a result is building that well and really more 23 importantly the aquifer under West Orange and Essex 24 Fells and other areas, the well under that is 25 contaminated due to PFOA which restricts that water. We	131 1 about and multiple times a year the Canoe Brook 2 currently overflows its banks. The amount that 3 overflows the bank is significant. If you haven't seen 4 it, we can supply evidence of that, but basically the 5 flooding, and from my view personally looking at these 6 storms when I go down, I get residential complaints, I 7 get photos sent to me every time there's flooding. 8 You're talking about 150 yard wide flood waters. The 9 brooks normally, I'm going to estimate, probably about 10 ten to 15 feet. Right. So that's significant. That's 11 under conditions today. What it does is basically that 12 goes right up to our buildings, goes right up to our 13 well house and we are concerned of the impact going 14 forward on those structures that are in the process of 15 being approved. You know, we don't have an option, in 16 terms of we cannot just not provide drinking water. So 17 if there's flooding that gets materially worse based on 18 this condition, it's going to cost us a significant 19 amount of money and it's going to harm our buildings, 20 more importantly drinking water to the public. Not just 21 our residents but residents of the area. 22 In addition, all though Oval Road at the 23 border of Essex Fells and West Orange has been vacated, 24 meaning it's owned by the residents at this point for 25 the last 20 to 30 years, estimation, we are required,
130 1 are investing millions of dollars right now to basically 2 improve that area so we can deliver clean drinking water 3 for the next generation to residents in the area. 4 So in terms of overall dollar number, we're 5 sort expecting that project is going to budget 2.7 6 million dollars. Our loans could get to 5 million 7 dollars, just to have one site for one-way. 8 In terms of, I have personal experience just 9 as my 18 years as Mayor I have seen a lot of stormwater 10 issues. Mayor, I know you and every other Mayor in the 11 borough council has seen this issue in New Jersey, that 12 area in particular is low lying land makes sense, that's 13 why the wells there, right. Water collects in that area 14 today and really from the entirety of my eight years as 15 Mayor and three to five of those on the borough council 16 that area floods regularly. The flooding conditions 17 have gotten significantly worse in the last five years 18 and my concern in part is that you be aware of existing 19 conditions. My expectation that if this application is 20 approved, it's not that the conditions are not going to 21 get better, they're going to get material worse. At a 22 minimum I'd like you to put into that question. If you 23 look at the Canoe Brook, the headwaters on this project 24 site, but the Canoe Brook runs right through borough 25 property. Right through the well field I'm talking	132 1 the borough, to maintain the infrastructure. Right. So 2 currently there's a sewer uplift station right on Oval 3 Road near the border of West Orange in the same low 4 lying area. There's also a stormwater infrastructure, 5 there's a culvert right at the border of Essex Fells and 6 West Orange. Currently both those infrastructure items 7 that I mentioned are stressed. We had to replace the 8 culvert roughly three years ago. The sewer uplift 9 station we're probably going to have to spend about 10 \$200,000 in the next year to improve it, to harden it 11 against the water damage that's being caused by overflow 12 from West Orange and a little bit from Essex Fells 13 that's collecting in that area. So, again, we cannot 14 provide sewer service for our residences. If the water 15 gets worse we're going to have to significantly improve 16 the area and nobody is even looking at that question 17 from our perspective. 18 In addition, and it should be Mayor, you 19 know, I don't know, how did you become the Mayor. Well, 20 I'm an 18 year member of the Essex Fells Fire 21 Department, I'm known as the Mayor and as a fireman that 22 right now we maintain emergency access to West Orange on 23 Oval Road. There's a, not temporary, but a wooden gate 24 there that basically you could drive-through there if 25 the fire engine needs to, but it has a lock on it

133 1 maintained by Essex Fells. The road is closed except 2 when it's necessary for us to assist West Orange for 3 police or fire activity. We actually had an, in April 4 of this year a need to get to West Orange, we got a fire 5 call basically in the fire department, they came in as 6 fire EMS Essex Fells on Oval Road, it turned out it was 7 actually in West Orange on Oval Road so we had to get 8 through that gate, provide mutual aid to West Orange, 9 eventually turn that scene over to West Orange. Because 10 the road is blocked we couldn't access it that way, West 11 Orange Fire Department came from Eagle Rock Avenue, the 12 other side of Oval Road. My concern, given the flood 13 water impact I see today in that area, is if that area 14 is washed out, if it's, if all of a sudden it's a storm 15 and the water continues to collect and it gets worse we 16 will not have the ability to provide mutual aid to West 17 Orange, unless we go all the way around. We're going to 18 take a significant amount of time, it's not good for us, 19 not good for West Orange. You're eliminating an 20 emergency access that's there for a reason. 21 I can only talk about Essex Fells residents, 22 we're the immediate neighbor as I mentioned, down hill, 23 down the stream from you, my view is certainly this 24 board, you should look into this. You should consider 25 what you're doing and what you're sending our way. If	135 1 MR. AFRAN: The witness is not limited to 2 only his municipality. He's a Mayor and in that 3 capacity has interactions with Mayor's and governing 4 body's of all sorts of communities. Just as it's 5 relevant under the MLUL that there would be impact on 6 Essex Fells, he has knowledge of impacts on other 7 neighboring communities, that's relevant to this plan. 8 It's exactly what the legislation wanted when it created 9 that provision in the MLUL. That we need to take into 10 account when we zone and when we consider applications 11 under the zoning ordinance the impact on neighboring 12 municipalities. It's directly relevant. 13 CHAIRMAN BAGOFF: I think it's directly 14 relevant to the Mayor of Essex Fells. He should speak 15 to Essex Fells and if there are Mayor's for other 16 communities they can also testify, but we're moving 17 outside the scope of expertise of the Mayor, so I would 18 ask you to just focus on Essex Fells. 19 THE PUBLIC: I was going to say one thing, 20 I'm not testifying as an expert on Caldwell or other 21 towns, I'm testifying in general, but we're all public 22 officials, right. We have an obligation to understand 23 the reality. I have heard, I sat through most of these 24 meetings, I have heard repeatedly reference to 25 stormwater, that's the DEP problem. The reality is,
134 1 you look in the area there are examples, including 2 Verona, North Caldwell, The Hill Top Development on 3 Bloomfield Avenue, look how Bloomfield Avenue floods 4 today. Right. When that property was improved nobody 5 did adequate investigation to protect residents from the 6 flooding. So what goes on. Well, that entire area now 7 has to be redeveloped by Caldwell. Right. Flood 8 protection -- 9 MR. PLOCKER: I'm going to object. He's 10 referencing off-site properties. We have this 11 application, we have a stormwater plan, we have 12 professionals testify, We Care had professionals 13 testify, but I think we're getting kind of outside the 14 scope of this application. 15 MR. AFRAN: Actually, we're not. The 16 applicants planner last week, Mr. McDonough, 17 acknowledged that the MLUL requires analysis in land use 18 matters of impacts on neighboring municipalities and the 19 gentleman, being a Mayor of the neighboring 20 municipality, is doing exactly what the MLUL want's, so 21 it's relevant. 22 MR. PLOCKER: And he's testifying about how 23 he thinks this job may impact Essex Fells. Now we're 24 talking about other jobs. Past situations outside of 25 Essex Fells, outside this property.	136 1 yes, in part the DEP has responsibility, my point to you 2 as is the same thing I would do if I was uphill from 3 West Orange and you guys were coming before me, I would 4 not say, I wouldn't have to consider it. What I'm 5 saying is, do not assume that basically someone else is 6 going to look at what I'm talking about and the impact 7 on the public, including me. Right. As the one Morris 8 community. I understand we're not West Orange 9 residents, I'm not a West Orange resident, but the 10 impact has to be taken into account on our residents, so 11 what I'm saying is do not ignore this. Do not off-load 12 this to the DEP because we have seen plenty of examples 13 as public officials where the DEP is not going to save 14 anybody in two years once this thing gets built, so 15 that's your job, right. That's my job in my community, 16 that's your job here. So all I'm asking is that you 17 take notice of that, you make this applicant prove to 18 you to your satisfaction that these things are taken 19 into account and there will not be an impact of a 20 negative nature. It's a problem today. You know the 21 problems going to get worse. Hold this applicant to 22 that test and please protect my community and your own 23 community, as well as Verona and other neighbors, 24 adequately. You know the problem exists. Thank you. 25 CHAIRMAN BAGOFF: Thank you, Mayor.

137 1 MR. AFRAN: I have one question. I have one 2 quick question. One or two questions. 3 When you attended the scene at Oval Road 4 when the tree blocked the road, I believe that was the 5 incident, how long, in your knowledge as a member of the 6 public, how long did the road remain blocked until that 7 incident cleared? 8 THE PUBLIC: Roughly, I was personally at 9 the scene, I was on the first engine that was there, I 10 was there about half an hour. From my understanding 11 after I left, the scene, there was a fire, brush fire 12 caused by wires coming down and a tree coming down, so I 13 believe it was approximately two hours is what I was 14 told until that scene was opened by PSE&G. There could 15 have been additional work, that's how long it took 16 minimum for traffic to get through. 17 MR. AFRAN: Thank you. 18 That's all I have. 19 CHAIRMAN BAGOFF: Thank you. 20 MR. AFRAN: Thank you, Mayor. 21 THE PUBLIC: Thank you. 22 CHAIRMAN BAGOFF: Mayor, do you have any 23 questions? 24 MAYOR McCARTNEY: Not at the moment -- yes, 25 I do.	139 1 worse, and you talked about water. 2 THE PUBLIC: I'm talking about stormwater 3 primarily, but I'm also talking about indirect effects 4 on current drinking water and that concern that we all 5 draw from. 6 MR. KLEIN: What do you base your opinion on 7 that it's going to materially be worse? 8 THE PUBLIC: Well, because I'm downhill and 9 water runs downhill. It's bad now, basically the 10 infrastructure that's there both in West Essex and West 11 Orange, by the way, I've seen both sides of the 12 detention pond, I believe it was when the condos were 13 developed in West Orange. That infrastructure, that 14 amount of water coming from West Orange alone is at the 15 top of the culvert, right. I mean, there's zero excess 16 capacity in addition the water from Essex Fells is 17 coming down Oval Road and drains to the Canoe Brook in 18 the other direction, that's hitting a wall of water 19 that's coming from West Orange. Everything is backing 20 up in Essex Fells. That's what's taking out our sewer 21 uplift station. So right now, as I mentioned, three 22 years ago one set of improvements already under existing 23 conditions, stormwater impact is so great that the 24 existing infrastructure is inadequate. 25 Second improvement is budgeted, we haven't
138 1 Thank you, Mayor Davis. The one about 2 emergency access, we discussed the emergency access on 3 Howell Drive, but have not necessarily discussed this 4 emergency access, this is the first hearing about the 5 emergency access in Canoe Brook. 6 THE PUBLIC: Yeah. 7 MAYOR McCARTNEY: I'm not familiar with any 8 other emergency access. 9 MR. PLOCKER: I can represent it's been 10 there for quite some time and it's not part of this 11 application. 12 CHAIRMAN BAGOFF: By the golf course over to 13 Essex Fells. 14 MAYOR McCARTNEY: Is that -- 15 CHAIRMAN BAGOFF: I'm sorry. 16 MAYOR McCARTNEY: -- emergency access that 17 Mayor Davis brought up? This was the first time I'm 18 hearing that. I didn't realize it's not part of this 19 application. But is that something that we should as a 20 board consider? 21 CHAIRMAN BAGOFF: We'll talk about that. 22 MAYOR McCARTNEY: Thank you. 23 CHAIRMAN BAGOFF: Mr. Klein? 24 MR. KLEIN: So Mr. Davis -- Mayor Davis, you 25 said a couple times, conditions will get materially	140 1 done the work yet, but we need to reenforce, that's the 2 \$200,000 figure I mentioned to you, the existing 3 infrastructure because back up the water from West 4 Orange. There is nobody, and I'd be happy to kind of 5 talk through whatever expert you have, there's nobody on 6 this dais or in Essex Fells that doesn't expect that 7 water to get worse. You can put impervious coverage, 8 you're cutting down massive amounts for forest, the 9 stormwater and you had expert testimony before you, the 10 stormwater is going to materially worse. I can't give 11 you an exact figure, but come on. Look at Hill Top, 12 look around us. Look at the hill and the topography 13 where we are located. Stormwater's overflowing the 14 banks 150 yards today, what do think it's going to be 15 when you put this up there. 16 MR. KLEIN: So Mr. MacNeill, I'm going to 17 ask you. Does that statement make sense to you, that 18 the drainage, the stormwater conditions will be 19 materially worse after this development is built? 20 MR. MacNEILL: So that is definitely, I 21 think, subjective a bit. So I will say this. The 22 applicant, from our review as well as DEP's review, has 23 complied with the four major prongs of stormwater 24 management as outlined in N.J.A.C. 7.8, which is the 25 state code for stormwater management and that's runoff

141 1 quantity, runoff quality, groundwater recharge as well 2 as drain infrastructure. So they have met the standard 3 for water and quality. So for quantity they have to 4 reduce to each point of analysis. The design has been, 5 it has been prepared to meet the runoff quantity as 6 outlined by DEP under N.J.A.C. 7.8. 7 MR. KLEIN: So things will get slightly 8 better if not stay the same? 9 MR. MacNEILL: What they will do is they'll 10 mitigate the impact by reducing their peak runoff. 11 MR. KLEIN: Okay. 12 MR. MacNEILL: So really what happens in 13 stormwater is, with the impact of additional impervious 14 coverage, there will be more volume. But what the state 15 puts out in their regulations, the basins on-site slows 16 the rate of runoff. So they hold water on this site and 17 let it leave the site at 50 percent rate of the two year 18 storm, 75 percent of the 10-year storm, and 80 percent 19 of the 100-year storm. So really what that's saying is 20 if in current conditions you're at 10 cubic feet per 21 second in the two year storm, they are required to hold 22 that back to 5 cubic feet per second, which based on our 23 review it appears they have complied with that 24 requirement. 25 MR. KLEIN: Okay.	143 1 CHAIRMAN BAGOFF: Mr. Afran, for the public, 2 the board heard all parties and we will take all sources 3 into consideration, including all the experts testimony. 4 Thank you. 5 THE PUBLIC: I would in response to the 6 engineers comments, I keep hearing the same reference to 7 many hearings which you guys were patient enough to sit 8 through about the applicants met the burden under the 9 law. I disagree and the burden, you know, can anybody 10 on this dais explain, and I told you the existing 11 conditions, right. You could give me credit, whatever 12 credibility you'd like. 150 year storm today you're 13 going tell me that what's the impact is going to be 14 reduced. Really. Is that credible from your own 15 engineer. If not how much worse is it going to get? 16 That's a great question. That's something that you 17 should get your own experts or get the developer to 18 testify to precisely and, again, do not outsource this 19 to the DEP, assuming they did their job, because my 20 belief based on personal experience, what I have done 21 through the DEP and what I've seen here, the answer is 22 they have not discharged that obligation. You have 23 independent obligations to the DEP you should satisfy. 24 MR. KLEIN: Are you an engineer? 25 THE PUBLIC: I am not testifying as an
142 1 So I think you sent a letter in a long time 2 ago, the beginning of this, that your engineer looked at 3 this and didn't agree with that? 4 THE PUBLIC: You're referring to something 5 else. 6 MR. AFRAN: Our engineer testified and with 7 respect to your engineer said that the applicant is 8 wrong and they calculated incorrectly and there will be 9 flooding. Now, I realize DEP has done it's end of it as 10 the engineer said, but you evidence before you from an 11 expert who says they have not calculated it correctly 12 and here are the reasons and Mr. Walsh was very detailed 13 and so you are not obligated necessarily to rubber stamp 14 it because he said something. You have an expert who 15 gave very, very detailed and considered explanations as 16 to why flooding will get worse. 17 MR. PLOCKER: We're getting into legal 18 argument here. The neighbor testified this is his 19 observation. 20 MR. AFRAN: I'm not required to sit here 21 like a wallflower when the engineer refers to DEP -- 22 CHAIRMAN BAGOFF: You, never do. 23 MR. AFRAN: Well, that's my point. The 24 point is, if the engineer says DEP said this, I am 25 entitled to remind you of the evidence.	144 1 expert. I made that very clear. 2 MR. KLEIN: You said they don't meet -- our 3 engineer said they're going to reduce the runoff for the 4 two year by 50 percent, 75 percent for the 5 and you're 5 saying no. 6 THE PUBLIC: He's saying that's the rule. 7 MR. KLEIN: And they met the four prongs and 8 they met the rule on your review, not DEPs review, your 9 review? 10 MR. MacNEILL: Yes, on my review. On our 11 letter we did have concerns about some of the soil 12 testing that Princeton Hydro brought up, but to mitigate 13 that and something we discussed previously at one of 14 these meetings was they're required to do soil testing 15 during and post construction to verify the submitted 16 soil testing that we had reviewed. So what they 17 submitted was the seasonal high water table is 10-feet 18 higher than what their geotechnical engineer certified, 19 then they will have to address that in construction. 20 They will have a stop work order for construction and if 21 the seasonal high water table is 10-feet higher than 22 their design they will have to stop and address it with 23 -- by stormwater design that would have to be approved 24 by DEP as well as our office. So if at this point all 25 we could do is review soil testing. Right. Everything

145 1 that I have reviewed on the soil testing, yes, I do have 2 similar concerns with the discrepancy that Princeton 3 Hydro indicated. But on top of that it would be 4 reverified again in construction as well as post 5 construction. And if there are any issues with that 6 certified testing it will be addressed by the applicant 7 during construction as well as verified again post 8 construction. 9 MR. PLOCKER: And we agree with that. 10 CHAIRMAN BAGOFF: So Mr. MacNeill, you are 11 saying on the record that there are milestones that will 12 be observed in order to make sure that not only Essex 13 Fells but Vernona remains safe and that these issues the 14 Mayor brought up are mitigated? 15 MR. MacNEILL: Exactly. So after board 16 approval during construction you still have to comply 17 with all local state and federal regulations for 18 construction. And one of the big parts of that is the 19 construction of the stormwater BMPs. And you will see 20 in any municipality there's failing basins. Right. So 21 DEP has required the soil testing to avoid failures in 22 basins. This will be reviewed multiple times in 23 construction and after construction. We will have site 24 inspectors on-site while they're excavating, while 25 they're backfilling, while they're placing infiltration	147 1 MR. AFRAN: Does that manual anticipate a 2 situation where the board's engineer agrees with the 3 objectors engineer that more testing should have been 4 done? 5 MR. PLOCKER: Objection. The permits have 6 been appealed. The objector group has lodged an appeal 7 in addition to a couple other organizations. That rests 8 within the jurisdiction of Superior Court Appellate 9 Division. Let them hear it, let them decide. It's not 10 an issue for this board. The way Mr. MacNeill, the 11 engineer, characterized it, that is acceptable to the 12 applicant as a condition of approval during 13 construction. So to waste time on this when clearly it 14 is an issue that they have raised by the way of 15 Princeton Hydro and over 200 objectors voiced their 16 concerns during the approximately 18 month process that 17 these permits sat at the DEP. So let it be in the 18 jurisdiction where it's supposed to be. 19 CHAIRMAN BAGOFF: Okay. Before -- 20 MR. AFRAN: Our position is this board does 21 have jurisdiction over this aspect of the plan, so we 22 respectfully disagree. 23 CHAIRMAN BAGOFF: We're going to, as a 24 condition, evaluate everything that's presented before 25 the board and we'll come up with a reasonable decision
146 1 basins in the sand layer, while they're compacting. 2 There is multiple levels of soil testing as well as soil 3 testing inspections that will be completed to ensure the 4 initial design is followed in construction and post 5 construction. 6 CHAIRMAN BAGOFF: Mr. Afran. 7 MR. AFRAN: Can I ask the engineer a 8 question. 9 If you have concerns similar to that of 10 Princeton Hydro, at this stage wouldn't it be prudent 11 for these tests to be done before the board approves the 12 plan, rather than waiting until after significant work 13 has been done with intangible outcomes? 14 MR. MacNEILL: I will reiterate, DEP 15 reviewed all submitted soil testing and, again, DEP 16 writes these regulations for soil testing requirements. 17 DEP has reviewed everything that has been submitted and 18 has issued permits to the applicant. 19 MR. AFRAN: I understand that, but as an 20 engineer you are equally capable. 21 MR. MacNEILL: I am comfortable, as the 22 board engineer, allowing the applicant to move forward 23 in construction and completing soil construction during 24 post construction which complies with Chapter 12 NJ BMP 25 manual prepared by the NJ DEP.	148 1 based on everybody's testimony. 2 MR. KLEIN: One more question. 3 So Mayor, you talked about, you said 10-foot 4 -- the Canoe Brook is roughly 10-feet wide but can get 5 as wide 150 yards wide when this flooding situation 6 occurs. Do you have some sort of mapping that shows 7 that? Is there some kind aerial photograph that you can 8 document that? 9 THE PUBLIC: Yes. Personal experience on 10 this golf course so it's we'll marked. Right. So I 11 have seen water. I also know because we own the water 12 utility building exactly on that property. So I have 13 seen surveys, I've seen property owners, I've seen when 14 it rains. What I'm describing is 150 yards wide, that's 15 basically looking at a regular storm, which I've seen 16 multiple times from impacting the building in Essex 17 Fells on the western side of the bank of Canoe Brook. 18 Right. Water starts there, that's the flooding. Water 19 on the other side of this ponding, this is just in that 20 one area is basically before there's a golf hole there 21 that I think is the first hole of the Essex Fells 22 Country Club and basically it goes right up to that 23 Green. So that distance, which I both observed, I know 24 is the 150 yard marker next to it, so I know that. In 25 addition I know through experience, I got a Google Maps

149 1 sort of measurement of those two points which are 2 actually, it's more than 150 yards. 150 yards is 3 actually a conservative number. It could be 175 yards 4 and, again, the point I'm referencing with that width is 5 just kind of in the middle of the golf course but the 6 flooding is at various breaths from Oval Road in West 7 Orange, Essex Fells, Eagle Rock Avenue. So that entire 8 width of the Canoe Brook the floodplain overflows. 9 In addition I know from being a builder 10 effectively, as the Mayor, the CEO of the water 11 department, I know the wetlands in that area. They get 12 basically -- I also know the wetlands in West Orange at 13 this site, as you guys know. All these wetlands, 14 everything, I have been told by experts that we employ 15 is basically that is critical to maintaining our 16 drinking waters. 17 MR. PLOCKER: I'm going to object. He's 18 basically saying what his own experts have concluded. I 19 believe that would be improper. 20 CHAIRMAN BAGOFF: Okay. This is -- 21 MR. KLEIN: And the improvement, what is it, 22 the \$200,000 culvert improvement, that's going on Eagle 23 Rock Avenue, the other end? 24 THE PUBLIC: \$200,000 figure is an estimate 25 that we have done in our budget to basically budgeted	151 1 specifically saying, we'll work it out. If there's more 2 flooding than we expect, we'll make more demands. Well, 3 look at the West Essex Condominium Association, the 4 development. Your existing infrastructure you put in 5 there 30 years ago is insufficient. What are you doing 6 about it. Nothing. 7 CHAIRMAN BAGOFF: You're testifying. 8 THE PUBLIC: I'm asking a question. I'm 9 saying to you guys in response to your question to me, 10 I'm not an expert, I'm not pretending to be an expert. 11 The facts are right before you. All I'm saying is look 12 at them, don't ignore them and investigate to your 13 satisfaction. Do not outsource it. 14 CHAIRMAN BAGOFF: Mayor, thank you. 15 Don't go away. 16 Ms. Kapferer. 17 MS. KAPFERER: Thank you Mayor for your 18 testimony. And I am actually okay. I want to ask Mr. 19 MacNeill a question. 20 If there's soil testing and at that point 21 it's determined the high groundwater is higher than what 22 we've seen thus far in reports and what the, you know, 23 what the stormwater design is based on, how is it 24 addressed at that time? 25 MR. MacNEILL: So they would immediately be
150 1 for this. It's called Sewer Uplift Station. It's 2 basically just a, it's a Sewer Uplift system. It's a 3 pump -- 4 CHAIRMAN BAGOFF: This is beyond -- 5 MR. KLEIN: That's storm or sanitary? 6 THE PUBLIC: Sanitary. And in addition the 7 other reference, the culvert that I mentioned, that 8 storm was the -- 9 MR. KLEIN: Stormwater on Oval Road or the 10 other end? 11 THE PUBLIC: Right. Border of East Orange 12 and Essex Fells on Oval Road. Basically where the gate 13 is. Again, to be precise, there's two culverts -- 14 MR. KLEIN: Where the Canoe Brook goes under 15 Oval Road? 16 THE PUBLIC: Where the Canoe Brook goes 17 under Oval Road there's an access point to the Country 18 Club where we can access our wells. In addition I could 19 only presume it was built when the condos were 20 developed. Right. So the detention basins there and 21 the culvert. Again, part of the reason that's relevant, 22 the existing conditions in West Orange, and I want you 23 to understand and I'm begging you guys, think of this on 24 a practical level. I understand all the legal 25 arguments, let the lawyers do that, but your engineers	152 1 issued a stop work order and their -- the applicants 2 engineer would have to work with our office to come up 3 with a plan that is now compliant with the stormwater 4 regulations. So essentially they have to now raise the 5 basin bottom by 10-feet. That will have impacts 6 potentially to upstream on the development. So it will 7 be back to the applicants engineer to resolve the 8 issues, not the Township. The Township would 9 essentially say the groundwater that you have certified 10 under your geotechnical report is incorrect based on our 11 inspections and our field investigations. If that is 12 the, becomes -- if that happens then it would be a stop 13 work order and the applicants engineer would have to 14 resolve it with revised plans that show the resolution 15 at issue. 16 MS. KAPFERER: And that's my question then, 17 what happens? And then we go back to permitting? 18 MR. MacNEILL: So typically handled, and 19 every project is different, right. So there's something 20 like this to happen but one, it's either handled as a 21 field change. They just need to raise the basin 2-feet 22 to comply with the regulations. That's all handled, 23 that's a field change or administrative approval 24 potentially. If the situation happens were it's 15-feet 25 higher than what they're saying in their geotechnical

153 1 report and they have to raise their basin 15-feet, which 2 then has impacts of building and stream, then that's an 3 amended approval that they have to come back to the 4 Planning Board for review. So if it's something very 5 minor of its now 6-inches higher, than you have to raise 6 your basin another 6-inches to comply with the 7 regulations and then any upstream impacts you'll have to 8 address as well. 9 MR. KLEIN: Can I just follow up real quick. 10 So what do they build first? When they're 11 going to clear the site and clear the 30 acres, they're 12 going to build the drainage system first and detention 13 basin then the roads? 14 MR. MacNEILL: Typically -- yeah. Typically 15 -- 16 MR. KLEIN: Before they even start blasting 17 rock? 18 MR. MacNEILL: And that's all outlined and 19 really defined in pre-construction meeting. So 20 typically they're working on their BMPs, their subbase 21 for their roadways. They're really focused more on 22 rough grading for the pads, right. Doing their building 23 pads then doing the roadways and the basin work before 24 they're really coming back for anything with the 25 building.	155 1 high is higher than a nearby wetland area. But on top 2 of that the geotechnical engineer who prepared the 3 report reviewed his test pit and the soil composition 4 and certified the seasonal high water table. It's -- 5 from a reviewing side you could have, maybe this doesn't 6 look right, maybe that doesn't look right, but when a 7 geotechnical engineer is signing that this is the 8 seasonal high water table, we typically take that 9 signature and take his license as him certifying to that 10 seasonal high water table. Which is why soil testing, 11 it's the hardest part of construction, in my opinion, 12 for stormwater management. One geotechnical engineer 13 could go out and call a seasonal water high table 1-foot 14 higher and another geotechnical can go out and say it's 15 4-feet lower. So geotechnical is almost subjective. I 16 will say that is why DEP came out with the additional 17 requirements during and post construction, because they 18 know that initials just an idea of here's a rough 19 seasonal high water table, this needs to be refined 20 every step of the way to ensure compliance. 21 CHAIRMAN BAGOFF: Thank you. 22 Mayor McCartney? No. 23 Vice Chair Guarino? 24 VICE CHAIRMAN GUARINO: No questions. 25 CHAIRMAN BAGOFF: Mr. Alper?
154 1 MR. KLEIN: So sorry to get into the weeds 2 but should they hold off on doing the building pads 3 because the buildings might have to change elevation or 4 change location? 5 MR. MacNEILL: Yeah. I mean, that really 6 will be on them to dictate on how they want to schedule 7 their construction and taking that risk of if they do 8 set a foundation and set a finished floor elevation and 9 the basin is 10-feet higher than they would have to 10 remove and elevate the building. 11 MR. KLEIN: Okay. And what's the best time 12 to get the most accurate elevation of the groundwater? 13 MR. MacNEILL: So the wet season in the 14 State of New Jersey is January through April. 15 MR. KLEIN: And when did he do their -- 16 MR. MacNEILL: They have multiple testing 17 done, I believe the report from Langan today they had 18 testing done in April of this year. Again, they have 19 borings that went 20-feet deep without ground water 20 impound. 21 And going back to the discrepancy that 22 Princeton Hydro put out, so they essentially said 23 there's no mottling found in a test pit that is adjacent 24 to a wetland area. I do agree that it seems weird, 25 right, that there's no mottling there and the seasonal	156 1 MR. ALPER: Sure. 2 Mayor, how many times has the 17 acre well 3 field had flooding, say in the past five years? 4 THE PUBLIC: I would say it's over a dozen. 5 Not all 150 feet are in the floodplain but, and I would 6 say it's definitely skewed towards the last five years 7 in particular. Our experience with stormwater I think 8 is similar to what West Orange experiences and the other 9 towns in northern New Jersey, that's why regulations 10 have been tightened. And so we are technically seeing 11 heavier rainfall more frequent, significant rainfall 12 events and we are seeing that on the ground and so as a 13 result we are seeing some cases three times significant 14 flooding where what I mentioned the one, it helps the 15 board with a perspective of what I'm describing flooding 16 of the buildings and floodplains. I do have, we could 17 put on the board the video from December 2023 showing 18 roughly like 150 yard breath of what I'm describing and 19 sort of see Canoe Brook and see the property I'm talking 20 about and how I got that, I'm told by some folks here 21 they could give it to you guys. 22 MR. FAGAN: You have to e-mail it to me and 23 I have to have his permission. 24 THE PUBLIC: Okay. We can do this manually 25 if it helps the board see visually better than

157 1 describing it. 2 MR. ALPER: Have any of those floods caused 3 your water pump to actually stop or slow by flooding so 4 far? 5 THE PUBLIC: So far, no. But it's a tough 6 question because that pump currently is off. The pump 7 is off since 2021 because it's contaminated by the 8 PFOAs. The aquifer is contaminated basically. So as a 9 result we're not allowed to deliver that water, so we 10 have been using other wells that we own in the area. So 11 as a result I would say the visual I'll show you, I'll 12 submit it supplementally, will show you, I'll point out 13 where the pump is and where the well is. You know, it's 14 only about 50-feet deep but basically you'll see the 15 water at the foundation of this well. If it goes above 16 a certain level it's in the door of that facility. 17 Basically then it's in the well, then we have to shut it 18 down. So it would contaminate that particular well. 19 We'd have to shut it down and look for guidance from the 20 regulator, DEP. 21 MR. ALPER: What about the road, part of 22 Oval Road that comes close to, if not goes into Essex 23 Fells, has that flooded? 24 THE PUBLIC: Yes. 25 MR. ALPER: How many times has Oval Road	159 1 does it flood to the extent it interferes with the cars, 2 the traffic? 3 THE PUBLIC: Well, the roads closed between 4 Essex Fells and West Orange. There's no flow through 5 traffic. So it's emergency access only. The only one 6 allowed to use the road, and again, I think came up in 7 some questions, been this way for 30 years. This is not 8 related to this application but the only people that go 9 through that gate are pedestrians, are police and fire, 10 mutual aid. 11 MR. ALPER: Okay. Thank you. 12 CHAIRMAN BAGOFF: Mr. Cardoza? 13 MR. CARDOZA: Thank you for the informative 14 testimony. My colleagues on the board asked all my 15 questions. 16 CHAIRMAN BAGOFF: Council Person Scarpa? 17 COUNCIL PERSON SCARPA: Thank you, Mayor. 18 No questions. I have concerns about stormwater and Oval 19 Road safety and the ordinance as well as our 20 responsibility as public officials, what specific plans 21 would you like the developer and West Orange to provide 22 to make sure that we are, your town is protected and I 23 would like to see the video. I would like it to be put 24 up at our next meeting so we can explore the 25 knowledgeable concerns.
158 1 flooded there? 2 THE PUBLIC: It's similar, not as frequent 3 as just the Canoe Brook flooding because the road itself 4 is a little bit higher, but not much. So I would say 5 it's over a dozen times in general flooding. Oval Roads 6 flooded at least five times. I am not there every 7 storm, I am there frequently. When I get a resident 8 concern I go out there because I like to see it for 9 myself and yeah, I would estimate five or so for the 10 road. 11 In addition though part of the issue is 12 greater than that, if you talk about -- talk about the 13 Sewer Uplift Station, that's a little further, it's 14 along Oval Road, it's in a culvert along the Country 15 Club. There's a concrete channel in there basically 16 that's necessary for the property of this sanitary sewer 17 facility. Right. That concrete is basically 18 compromised. The wall basically needs to reenforce the 19 foundation, so that is not five storms worth of 20 flooding. That is basically every time it rains there's 21 a backup into that channel and basically it's slowly 22 over long periods of time eroded the concrete. And so 23 that's why it needs to be replaced. That's why we 24 budgeted for it this year. 25 MR. ALPER: And in terms of past flooding,	160 1 THE PUBLIC: My immediate request is 2 respectfully, I understand this is West Orange. Right. 3 So it's up to this board to protect us and the West 4 Orange residents and fellow community members. I 5 believe you need to do more due diligence than you have 6 done to date. I think specifically you demand this 7 application provide you answers that have been raised by 8 the public and by yourself over the days. Right. So 9 for instance to me, despite the reference from the 10 Borough engineer, I disagree basically that you 11 discharge that obligation legally. The reality is 12 nobody from West Orange has looked at the property just 13 downhill in Essex Fells, Borough of Essex Fells and the 14 water department owns. You can come any time you want. 15 We'll arrange access when it rains, I will bring 16 umbrellas, you can see it with me. I think that's 17 required, as a public official that's required of me and 18 I think that's a reasonable expectation for all of you 19 and your experts. And by all means, I don't know what 20 the result of that expert analysis is going to be, but 21 do the work. That's my request of you guys. 22 CHAIRMAN BAGOFF: Okay. Thank you. 23 I think we are getting redundant, but we 24 hear you. 25 You have anything to say?

161 1 MR. MacNEILL: No questions. 2 CHAIRMAN BAGOFF: Mr. Haizel? 3 MR. HAIZEL: No questions. 4 MR. PLOCKER: I have one. 5 CHAIRMAN BAGOFF: Mayor McCartney first. 6 MAYOR McCARTNEY: So after listening, Mayor 7 Davis compelled me to go back into my notes and back in 8 April when we were listening to the Princeton Hydro 9 testimony, there was, actually I asked the question 10 about should the basins go deeper or wider. Do you 11 recall. And now Mr. MacNeill, we are talking about when 12 does that decision get made? We didn't really talk 13 about specifically Verona or Essex Fells, we just talked 14 in general about these basins. Are you saying that 15 happens during construction or should that decision be 16 made right now? 17 MR. MacNEILL: So the decision has been made 18 with their current design. So all the things I brought 19 up are if the soil testing that they submitted is 20 incorrect and the seasonal high water table that they 21 have identified ends up being incorrect and way off of 22 what their geotechnical engineer has testified, if 23 that's the case then we're going back to a revision and 24 then amended approval at the board level. But, again, 25 that's all at this point speculative on what potentially	163 1 of your basin, like the ground surface. It's the bottom 2 of the sand layer. Or if there's an underground 3 infiltration at the bottom of the stone bed it's 4 technically the bottom. So you need 2-feet to the 5 seasonal high water. 6 MR. KLEIN: That's how they designed it now? 7 MR. MacNEILL: Yeah. 8 MR. KLEIN: And if they were to come up a 9 foot? 10 MR. MacNEILL: Then they're noncompliant 11 with their BMP requirements and have to address that in 12 the field as a field change. Now you have to pick it up 13 6-inches then if they are way off on the submitted soil 14 testing then it would be a stop work, come back to the 15 board and have a completely new redesign on the 16 stormwater. 17 MR. KLEIN: Which may not be detention, it 18 could be storage or whatever? 19 MR. MacNEILL: New underground infill. 20 Maybe that's more impervious pavement that would be open 21 to just using BMPs that are approved by DEP. 22 MR. KLEIN: Correct. And that could hold up 23 construction and this project could take forever? 24 MR. MacNEILL: And really in my review the 25 Princeton Hydro report soil testing was the major
162 1 could happen with the additional soil testing that will 2 be performed during any potential construction. But 3 right now the applicant is moving forward with the 4 current design for the stormwater basin. The current 5 sizes you currently see on the plans will be moved 6 forward with into construction and then be verified 7 during and post construction. To -- really can't 8 confirm, design the seasonal high is regulated where 9 they said it is, you're going to go with this basin 10 design or no, based on our inspection now you have to 11 address a higher seasonal high water table. 12 MAYOR McCARTNEY: That's your concern, 13 that's what you're saying? 14 MR. MacNEILL: Yeah, that, again, this is 15 what will happen. We'll be inspecting during and post 16 construction to ensure all the soil testing is 17 reverifying what we already submitted and reviewed. 18 CHAIRMAN BAGOFF: Mr. Klein? 19 MR. KLEIN: I don't know how to word this. 20 Is there a seasonal high water table level where you 21 just can't have a detention basin and infiltration? 22 MR. MacNEILL: So you only did -- state 23 standard you only need 2-feet from the seasonal high 24 water table to the bottom of your BMP. That gets 25 confusing because the bottoms not necessarily the bottom	164 1 comment that they had that could have a major impact in 2 the field. So that is why in my letter we have them 3 adding those notes to their plans before construction, 4 that they have to verify this during and post 5 construction. If the applicant submitted false 6 information from their geotechnical engineer, they have 7 the burden to address that. 8 MR. KLEIN: Thank you. 9 CHAIRMAN BAGOFF: Thank you. 10 Mr. Haizel? 11 MR. HAIZEL: I'm good. 12 CHAIRMAN BAGOFF: Okay. 13 Mr. Plocker. 14 MR. PLOCKER: Just very briefly. Thank you, 15 Mr. -- Mayor Davis. 16 Thank you for your comments. I just wanted 17 to confirm since you acknowledge you are not a 18 professional engineer you are not qualified to review 19 the proposed stormwater management system as part of 20 this application, correct? 21 THE PUBLIC: Correct. 22 MR. PLOCKER: Okay. 23 So you don't know whether that stormwater 24 system in your personal mind would reduce, increase or 25 have a net negative effect on the well water?

165 1 THE PUBLIC: My own personal mind, I do know 2 based on the testimony -- 3 THE PUBLIC: Based on the stormwater design 4 are you qualified to opine? 5 THE PUBLIC: I am not an engineer, no. 6 CHAIRMAN BAGOFF: Council Person Scarpa. 7 COUNCIL PERSON SCARPA: I have a comment. I 8 would like Mayor Davis, please call me next time it 9 rains because I would really like to see. 10 THE PUBLIC: I think we might have company. 11 You are more than welcome. Thank you. 12 Thank you board members. 13 CHAIRMAN BAGOFF: Thank you very much for 14 your time. Any other questions -- sir, this is not the 15 time for public questions. You can ask him a question 16 of his testimony. 17 THE PUBLIC: Victor Misarti. 18 CHAIRMAN BAGOFF: Sir. 19 THE PUBLIC: I am from West Orange on 20 Mayfair Drive. 21 CHAIRMAN BAGOFF: Thank you. 22 THE PUBLIC: Sir, I had a question. So 23 Mayor, I guess this is a question of the town engineer. 24 MR. MacNEILL: Board engineer. 25 THE PUBLIC: So the Mayor stated that we	167 1 that. I'm just saying where we are right now. You guys 2 can have at it later on. 3 MR. AFRAN: I know it's 10:30, we have two 4 other people, there's one person who will be about three 5 minutes, if it's the board's pleasure to continue. 6 MR. PLOCKER: Let's go. 7 MR. AFRAN: We call Marea DePalma. 8 MS. McGOVERN: Do you swear or affirm to 9 tell the truth the whole truth nothing but the truth. 10 THE PUBLIC: Yes, I do. 11 MS. McGOVERN: Please state your name for the 12 record and spell your last name. 13 THE PUBLIC: Marea DePalma, D-E-P-A-L-M-A. 14 MS. McGOVERN: Your address. 15 THE PUBLIC: 67 Lapis Circle. 16 M A R E A D E P A L M A, having been duly 17 sworn testifies as follows: 18 CHAIRMAN BAGOFF: Go right ahead. 19 THE PUBLIC: Good evening everyone. I am a 20 resident of West Essex Highlands since 1992. Recently 21 when the fire broke out I was trapped. My mother called 22 me with a medical emergency and I could not get out. 23 They wouldn't let me walk out either way. I took a 24 photo of the whole thing and from what I recall when I 25 first started to try to get out it was at least two, two
166 1 have this flooding every time it rains and it's getting 2 worse and the question is like, and so your answer was 3 that this application would meet the DEP requirements. 4 I just have a question, I think it was stated earlier 5 that the applicant got some kind of a waiver that they 6 don't have to meet this requirement? 7 MR. PLOCKER: Objection. 8 CHAIRMAN BAGOFF: Sir. 9 MR. PLOCKER: That's not accurate. 10 CHAIRMAN BAGOFF: Sir, you can't hypothesize 11 what happened. The applicant doesn't have a waiver. 12 They applied, our expert looked at it and it is 13 compliant with DEP regulations. 14 THE PUBLIC: Okay. But my question is, it's 15 not a statement it's a question. I thought it was an 16 older version not the newest version? 17 CHAIRMAN BAGOFF: Whatever DEP approved. 18 The township's viewing everything. 19 Mr. Afran. 20 MR. AFRAN: In fairness to the applicant, 21 that is one of the legal issues that's in the Appellate 22 Division, whether they should have used the old or the 23 new, but our contention -- 24 MR. PLOCKER: Okay. That's enough. 25 CHAIRMAN BAGOFF: Okay. We're not arguing	168 1 and a half hours. I had no one to go to my mom's house, 2 she is 93 years old. She's still working full-time but 3 she wasn't feeling well and she only lives in West 4 Caldwell but she depends on me being so close. So I 5 couldn't even go out by foot. They would not let me 6 pass the fire which was the entire block. I videoed it 7 all. All he told me was, ma'am, get back. There was a 8 fire engine on the golf course and the wind was blowing 9 that day and you could not even see, it was completely a 10 white cloud and I panicked and my mom panicked. Neither 11 of her neighbors were home and I was panicked. So I was 12 stuck and it's not a good feeling being stuck, not being 13 able to get out of where you live, and I couldn't get 14 out. And the fire was from one end to the other and I 15 know that the tree knocked the wires down and caused the 16 brush, but the flames at times from what I saw were at 17 least this high. So I was stuck home for two, two and a 18 half hours until they cleared for anyone to go out. It 19 was blocked off with tape and I was trapped and it was 20 not a nice feeling at all. And if anything happened to 21 my mom, I don't know how I would have lived with that. 22 So that's all I wanted to say about that. I have a 23 video of the fire if anybody wants to see it. It's very 24 vivid and I commented as I was told what to do, to go 25 back and I could not leave. It was not a good feeling.

169 1 CHAIRMAN BAGOFF: Thank you. Thank you for 2 your testimony. Okay. 3 MR. AFRAN: There's one -- we have one more 4 but probably -- there was one more witness tonight, I 5 don't know whether you were doing other matters right 6 now. 7 CHAIRMAN BAGOFF: Three minutes. 8 MR. AFRAN: Three minutes but not more than 9 a few minutes. 10 Rachel Klein and that would be the last 11 person from us. 12 MS. McGOVERN: Is she in your group? 13 THE PUBLIC: No, I am not. 14 MS. McGOVERN: Oh, I thought she was part of 15 your group of people. 16 THE PUBLIC: I'm not an officer. 17 MR. AFRAN: We didn't say we are only doing 18 our group of people. I said that Paul, as a 19 representative of the organization, is speaking. We 20 have fact witnesses. That's the point of Marea for 21 example. 22 CHAIRMAN BAGOFF: Okay. Go ahead. 23 MS. McGOVERN: I misunderstood. 24 CHAIRMAN BAGOFF: Come on guys. 25 MS. McGOVERN: No, it's fine.	171 1 with the town, the Health Department, with county DEP 2 representatives we pretty much narrowed it down that the 3 sewer line that runs from West Essex Highlands through 4 the woods there it's admitting a horrible odor all the 5 time. And just imagine having a barbecue for Father's 6 Day and the wind turns and sitting in the backyard 7 entertaining family and it's like having a porta potty 8 just dumped on your property. It's a horrific smell. 9 It always smells. The developer is aware of it because 10 he was made to come out and smell it, but no one is 11 dealing with it. The town is under the impression that 12 it can only be dealt with by the owner of the property 13 because the owner of the property owns the sewer line. 14 The county just says to me come out whenever you smell 15 it. So I'm literally chasing phantoms, chasing smells 16 and this is what I'm living with all the time. My 17 children, it's really hard to enjoy the backyard and to 18 know that there is no plan right now for where you're 19 planning to put this sewer line for 500 more homes, is 20 this sewer line going to -- 21 MR. PLOCKER: I'm going to object. I 22 believe that's a mischaracterization of the testimony. 23 There is a sewer plan for this job. It's part of site 24 plan set. So the fact that repeatedly people keep 25 saying that there is no sewer plan, that is not
170 1 MR. AFRAN: Ms. Klein is going to describe a 2 certain condition. 3 MS. McGOVERN: It's not public comment? 4 MR. AFRAN: She's discussing a condition. 5 MS. McGOVERN: Do you swear or affirm to 6 tell the truth the whole truth nothing but the truth. 7 THE PUBLIC: Yes. 8 MS. McGOVERN: Please state you name and 9 spell you last name and give us your address. 10 THE PUBLIC: Rachel Klein, K-L-E-I-N. 13 11 Howell Drive, West orange. 12 R A C H E L K L E I N, having been duly 13 sworn testifies as follows: 14 THE PUBLIC: I wanted the board to be aware 15 of a sewer issue, especially since no one has brought up 16 exactly how the sewer lines are going to be dealt with, 17 with the proposed development. There's currently a 18 sewer line that goes through the property, goes from the 19 West Essex Highlands all the way through and connects to 20 the sewer line on Howell Drive. I moved into my 21 property November 1, 2016 and immediately I noticed a 22 smell, I didn't know what the smell was. I had assumed 23 it was a swimming pool because I never owned one before. 24 I was informed that it's actually the sewer line and 25 it's been smelling for years. And upon investigation	172 1 accurate. 2 MR. AFRAN: Well, there's no way to get the 3 sewage from the building to any output. That's the lack 4 of a sewer plan. 5 MR. PLOCKER: That's not accurate. 6 CHAIRMAN BAGOFF: Okay. 7 MR. AFRAN: Well, then I'd like to see -- 8 last time we had this discussion I said, show me the 9 sewer plan. I don't see a sewer plan. I don't see a 10 potable water plan. 11 THE PUBLIC: I'll just say one other thing, 12 as a resident of this town I have a major trust issue 13 with an owner and a developer who I have been dealing 14 with as a neighbor to my property who is just leaving us 15 with this awful awful thing to deal with. I am going to 16 trust him to put a basin above my property, I am going 17 to trust him to blast above my property. I have a major 18 trust issue and something that you should all be aware 19 of. Come stand in my backyard, smell it and ask 20 yourself, is this something I would live with and then 21 is this someone I would ever trust. Tell me all your 22 plans. DEP said this, I don't care. I am smelling raw 23 sewage all the time because of this developer. Thank 24 you. 25 CHAIRMAN BAGOFF: Thank you. We are done.

1 We are done.
 2 Council Person Scarpa.
 3 COUNCIL PERSON SCARPA: I want to comment on
 4 Ms. DePalma's testimony. I am concerned about the
 5 safety issues raised and am interested in the video as
 6 well.
 7 MR. AFRAN: I will ask for that and arrange
 8 to get it to --
 9 THE PUBLIC: I can't hear.
 10 MR. AFRAN: Oh, I'm sorry. Member Scarpa
 11 said that she's, I'll paraphrase, is concerned about the
 12 safety issues raised by Marea DePalma and would like to
 13 see the video. And so I was saying that I will make
 14 arrangements to get it. I don't think I've seen it.
 15 I'll arrange to get it and forward it to the board
 16 staff.
 17 I believe I am interpreting that correctly,
 18 right?
 19 COUNCIL PERSON SCARPA: Yes. That's exactly
 20 what I wanted to say.
 21 MR. AFRAN: Thank you.
 22 CHAIRMAN BAGOFF: Thank you.
 23 MR. FAGAN: I would like to point out that
 24 if anybody is going to forward a video it has to be MP
 25 format in order for me to show it on the screen.

1 CHAIRMAN BAGOFF: Okay. Thank you all
 2 members of the public and people who are here and the
 3 next Planning Board regular meeting will be on
 4 Wednesday, July 2, 2025. 7:30 PM via zoom. And the
 5 next special meeting of the Planning Board will be July
 6 16, 2025 and 6:30 PM in council chambers.
 7 (Hearing concludes at 10:38 PM.)
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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.



16 ERIC S. FISHMAN, S.R.

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 19 Dated: 8/7/2025
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