

1 1 TOWNSHIP OF WEST ORANGE 2 DEPARTMENT OF PLANNING AND DEVELOPMENT 3 WEDNESDAY, JULY 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 JERRY GUARINO, Vice Chairman 11 KEN ALPER 12 LORI KAPFERER 13 JOHN CARDOZA 14 WILLIAM WILKES 15 SUSAN SCARPA, Council Person 16 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 GREGORY MASCERA, ESQ. 25 WILLIAM GREEN, Engineer JESSICA PEARSON FISHMAN COURT REPORTING AGENCY 89 HEADQUARTERS PLAZA NORTH 4 SPEEDWELL AVENUE, SUITE 1440 MORRISTOWN, NEW JERSEY 07960 (973) 285-5331 - FAX - (732) 605-9391	3 1 2 INDEX OF EXHIBITS 3 4 EXHIBIT DESCRIPTION 5 O-1 VERONA ENVIRONMENTAL COMMISSION 6 RESOLUTION 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 BRUCE I. AFRAN, ESQ. 10 BRAEBRUN DRIVE PRINCETON, NEW JERSEY 08540 Appearing on behalf of the Objector, We Care NJ Corp.	4 1 VICE CHAIRMAN GUARINO: PB-24-01 West Essex 2 Highlands, Incorporated. Block 179 Lot 32 Zone IH-1, 3 Warner Road. The applicant is proposing to develop a 4 496 unit inclusionary multifamily residential 5 development on a vacant 120 acre property in the 6 northwest corner of the Township. 7 For the applicant, Mr. Plocker. 8 MR. PLOCKER: Good evening everybody. Bryan 9 Plocker, Hutt, Shimanowitz & Plocker on behalf of the 10 applicant, West Essex Highlands, Inc. 11 MS. McGOVERN: I believe that we were 12 continuing with Mr. Afran. I know that there is another 13 attorney who wanted to make a statement, I don't know if 14 you want to move to him. 15 MR. GUARINO: Mr. Afran, good evening, sir. 16 MR. AFRAN: Good evening everyone. 17 We have, unfortunately, I let Ms. McGovern 18 know, our traffic -- 19 MS. McGOVERN: Let the record reflect Dr. 20 Bagoff is here. 21 CHAIRMAN BAGOFF: Welcome ladies and 22 gentleman and those on zoom. We're back on the record. 23 Let the record show Council Person Scarpa is 24 watching and speaking on zoom. 25 MR. AFRAN: Mr. Chairman, we could not hear

5 1 what you said. 2 CHAIRMAN BAGOFF: Welcome ladies and 3 gentleman. Thank you for the couple of moments. 4 Council Person Scarpa is with us on zoom. 5 Mr. Afran. 6 MS. McGOVERN: Counselwoman Scarpa is 7 visible on the screen and she's available by phone when 8 she speaks. We will be holding the phone up to the 9 microphone. If you can't hear raise your hand and I'll 10 ask her to speak up. 11 MR. AFRAN: But if we assume that the others 12 on zoom still can't hear, is that correct? 13 MS. McGOVERN: Yeah. But we can go forward 14 because our notice clearly said we're going forward 15 regardless whether zoom is working or not, after our 16 last problem. 17 CHAIRMAN BAGOFF: Mr. Afran, you have the 18 floor. 19 MR. AFRAN: Thank you. 20 Good evening again. Glad we have voiced for 21 council member. 22 If anyone can't hear me, please let me know, 23 I am trying to speak as loud as possible without 24 shouting. 25 We lost our traffic engineer temporarily	7 1 this board not allow this application as it has been 2 presented. The application should not be approved and 3 the basis of that goes way back. It's a historic basis. 4 On September 25, 1980 the predecessor to the property 5 owner or the applicant applied to Verona Planning Board 6 for preliminary site plan approval. Was granted that 7 preliminary site plan approval and subsequently got 8 final site plan approval on July 28, 1983. And at that 9 time the developer agreed to place deed restrictions on 10 the property that is partially part of the property that 11 is the subject of this development. And the developer 12 agreed to do that as a condition of the approval of the 13 Verona Planning Board. I had provided Jamilet earlier 14 today with copies of the 19 -- September 25, 1980 15 resolution and the July, 28, 1983 resolution. And I 16 just want to -- 17 CHAIRMAN BAGOFF: I'm going to interrupt for 18 a second. Was the Township of West Orange, the West 19 Orange Planning Board a signatory or involved in this 20 agreement? 21 MR. MASCERA: Yes. Congenitally absolutely. 22 Because they were incorporated by reference that the 23 applicant needed final site plan approval from the 24 Township of West Orange. 25 CHAIRMAN BAGOFF: Was the Township of West
6 1 tonight, Mr. Litwornia had an accident and is in the 2 hospital, so I'm sorry to hear that. I hope he'll be 3 available shortly. 4 THE PUBLIC: Couldn't hear that. 5 I said, good evening. And while we had our 6 traffic engineer scheduled for tonight, unfortunately he 7 had an accident and he's in the hospital. He will be 8 out of the hospital soon, but I don't know what day he 9 will be available, but he certainly can't be here today. 10 In the interim however, we do have one expert 11 witness, Bill Green from Litwornia Associates, to speak 12 on utility issues and completeness in that respect. 13 However, I do know there are two independent witnesses 14 tonight, I'll just, as a curtesy, introduce them. 15 I know Greg Mascera, who is the township 16 counsel for Verona is here and Jessica Pearson 17 independently is here for Verona Environmental 18 Commission. So if I may just call up Greg Mascera, 19 who's not one of my clients witnesses but is here. 20 CHAIRMAN BAGOFF: Welcome, Mr. Mascera. 21 MR. MASCERA: Thank you, Dr. Bagoff. 22 Chairman and members of the board, my name is Gregory 23 Mascera, I'm with Bannon, Rawding, McDonald & Mascera in 24 Verona. I'm here tonight to represent the Township of 25 Verona. And it's the Township of Verona's request that	8 1 Orange and the Planning Board of West Orange involved in 2 this specific agreement where we participated, a working 3 participant, in the methodology used to create that 4 agreement? 5 MR. PLOCKER: It's a resolution. I'm sorry 6 for interrupting. 7 MR. MASCERA: No, but it is my understanding 8 that they presented the same plan and had those 9 conditions because it is referenced in the 1983 10 resolution. In fact it's more complex than that. 11 CHAIRMAN BAGOFF: Whose resolution? 12 MR. MASCERA: It's Verona's resolution. 13 CHAIRMAN BAGOFF: Verona's resolution. 14 MR. MASCERA: But it was subject to -- there 15 was also litigation and there was also a -- 16 CHAIRMAN BAGOFF: So was the Township of 17 West Orange and the Planning Board of West Orange 18 obligated in any way, except through resolution between 19 the Township of Verona and the applicant -- 20 MR. MASCERA: Well, they're obligated to 21 provide sewer through this resolution, yes. There's a, 22 like I said, it's more complex than, that what, 23 respectfully, you're suggesting. Part of the 24 application was that Verona was to supply sewer to -- 25 sewer services to the lots that were in West Orange and

9 1 this subdivision, which includes part of this applicants 2 property. 3 CHAIRMAN BAGOFF: Just For the record, 4 you're speaking about the High Tor subdivision? 5 MR. AFRAN: Mr. Chairman, you have to speak 6 up. We can't hear you. 7 CHAIRMAN BAGOFF: I'm sorry. 8 Were you talking about the High Tor 9 subdivision? 10 MR. MASCERA: The High Tor Estates which 11 include Howell Drive and Slayback Terrace. 12 CHAIRMAN BAGOFF: I want to be clear because 13 I think we're going a little left of center here. So 14 the High Tor is a, is a project that was completed that 15 has, that was approved in part by Verona, in part by 16 West Orange. As I recall from the previous application, 17 there was no access to the High Tor from West Essex 18 Highlands into Verona. 19 MR. MASCERA: Correct. 20 CHAIRMAN BAGOFF: Correct. So this is a 21 different application -- 22 MR. MASCERA: Correct. 23 CHAIRMAN BAGOFF: -- And is this application 24 in any way noted in that resolution? 25 MR. MASCERA: Did this application start?	11 1 development as contemplated in the contract entered into 2 between the Township of Verona dated December 20, 1982 3 and the resolution of the Township of West Orange dated 4 December 21, 1982. Respectfully, I think it would be 5 disingenuous to say West Orange can wash it's hands of 6 the terms of this resolution. 7 CHAIRMAN BAGOFF: I didn't say that. I'm 8 trying to get information to see how this -- this 9 resolution specifically, I don't have it yet, is for the 10 High Tor -- 11 MR. MASCERA: And part of this application 12 has -- proposes a cut through to the High Tor section. 13 One of the lots is proposing a cut through was in this 14 High Tor subdivision. 15 And going now to the deed restriction aspect 16 of it, the owner, Paragraph 9 of the preliminary site 17 plan approval says, that a "Restrictive covenant be 18 placed in a deed of each individual lot in the entire 19 development against any use other than one family home." 20 So a cut through -- a road is not a one family home. 21 They would be violating the terms of the resolution. As 22 a board member, they did not file the restriction, the 23 deed restrictions, so they are in violation of the terms 24 of these resolutions. 25 Now, what you're alluding to I believe is
10 1 CHAIRMAN BAGOFF: No, in that resolution. 2 MR. AFRAN: Well, that resolutions from 3 1980, so. 4 MR. PLOCKER: Does he represent him or not? 5 MR. MASCERA: No, but -- 6 MR. AFRAN: No, but -- excuse. But I am 7 entitled to raise, as objectors counsel, an objection to 8 the nature of the question, even though I don't 9 represent Mr. Mascera. 10 MR. PLOCKER: I have a lot of objections, 11 Mr. Afran, but I'm staying quiet for right now. 12 MR. AFRAN: Well, that may be, but I don't 13 necessarily follow that philosophy. 14 MR. PLOCKER: Apparently not. 15 CHAIRMAN BAGOFF: The goal is that the board 16 -- the goal is that the board understands what our 17 obligation is. If A, under this resolution of the 18 Township of Verona, because I imagine that's why Mr. 19 Mascera is speaking to us. So Mr. Mascera -- 20 MR. MASCERA: Thank you, Doctor. 21 Doctor, one of -- Paragraph 5 of the 1983 22 resolution provides that the Township of Verona supply 23 water to the proposed development and sewage connections 24 to it's present sewage facilities to those homes 25 constructed within the West Orange part of the	12 1 that this Planning Board has no obligation to honor the 2 terms of this resolution. That is the prevailing law, 3 there is no obligation. However, in this circumstance 4 where West Orange and Verona had a contract between them 5 and two resolutions approving this development, that, 6 even though there is no legal obligation, there is an 7 obligation as a neighboring town to honor the commitment 8 of a previous -- of a developer pursuant to the 9 approval. 10 CHAIRMAN BAGOFF: Mr. Mascera, you just said 11 that West Orange and Verona had a contract between them? 12 MR. MASCERA: Correct. 13 CHAIRMAN BAGOFF: So the Township of West 14 Orange council signed some contract with the Township of 15 Verona, is that what you're saying? 16 MR. MASCERA: That's what I just read, 17 Paragraph 5 of the resolution. There was a contract 18 resulting from this development. 19 CHAIRMAN BAGOFF: Would you provide the 20 contract. 21 MR. MASCERA: I will try in the archives, 22 but it's referenced in the resolution. 23 MR. PLOCKER: The contract regards -- excuse 24 me, may I Mr. Chairman. 25 Paragraph 5 of the resolution, what Mr.

13 1 Mascera is referring to, is referencing a contract, it 2 looks like to provide water and sewage to the single 3 family homes. So I don't see how that, one it seems 4 like it's a separate legal issue that may be better 5 raised in another forum. 6 But two, it has nothing to do with this 7 specific application. I understand Mr. Mascera's 8 argument. He is saying that the emergency access 9 through two of the currently undeveloped single family 10 lots is not permitted. We take a very different view. 11 But, again, this Planning Board in West Orange is not 12 the forum to litigate that. 13 CHAIRMAN BAGOFF: Thank you. 14 Mr. Mascera, I'm going to say this and Mr. 15 Afran can object, but we understand what you're saying. 16 I recommend that we get a copy of the agreement to Ms. 17 McGovern so she could look at it, so we could see what 18 the operative parts are, and one of the things is the 19 Planning Board will take notice of it or the other thing 20 is we may recommend you seek another judicial authority 21 to take reference to it and we may have no standing. 22 We're an innocent bystander so to speak, so until we 23 have that information and can make a better decision, 24 you can finish what you have to say. 25 MR. MASCERA: Dr. Chairman, thank you.	15 1 are intentionally doing that and suggesting that they do 2 not apply to this application and we take issue with 3 that. Respectfully. 4 CHAIRMAN BAGOFF: I have that and the Verona 5 Planning Board always has stance, legal stance on their 6 own. We will see where we sit with this. 7 MR. MASCERA: And one further request would 8 be -- 9 CHAIRMAN BAGOFF: Go right ahead, sir. 10 MR. MASCERA: If the board chooses to 11 approve this application, Verona respectfully requests 12 that it be subject to appearing before the Verona 13 Planning Board to review the conditions in the Verona 14 Planning Board resolution. 15 CHAIRMAN BAGOFF: I will also take that 16 under advisement. We've never done that before and I 17 don't know that we have the authority to do that. So we 18 only want to do things that are in our ordinance and the 19 prevailing law, but I thank you very much. 20 MR. MASCERA: Thank you for hearing me 21 tonight. 22 CHAIRMAN BAGOFF: Thank you. 23 MR. PLOCKER: May I, Mr. Chairman, for the 24 record. 25 CHAIRMAN BAGOFF: Mr. Plocker.
14 1 Going back, and I just wanted to highlight one other 2 paragraph in the September 25, 1980 preliminary site 3 plan approval. Paragraph 16 says -- 4 CHAIRMAN BAGOFF: Is this from Verona or 5 West Orange? 6 MR. MASCERA: This is from Verona. 7 CHAIRMAN BAGOFF: This is from Verona. 8 MR. MASCERA: That any change in the West 9 Orange portion, West Orange portion of this tract with 10 regard to lot arrangement, road layout, utility easement 11 and storm drainage not specifically approved by this 12 board will void this approval. 13 CHAIRMAN BAGOFF: And that is something for 14 higher legal authority to adjudicate, not us. I 15 understand what you're saying and we take notice of it. 16 So we would like to see the original resolution and 17 understand and then Ms. McGovern will weigh in on it 18 and, again, we'll make a decision how we take that 19 information. 20 MR. MASCERA: Okay. Dr. Chairman, thank 21 you. We respectfully request that you do take that into 22 account as a good neighbor. And then you keep in mind 23 that this developer, the successor to the owner, is 24 trying to take actions that violate the approval 25 conditions adopted by the Verona Planning Board and they	16 1 MR. PLOCKER: It is the applicants position 2 that if this board were to approve the application and 3 grant emergency access through the proposed, the two 4 single family lots as proposed, that it would not 5 violate any prior approval from Verona or anywhere else. 6 I just wanted to make that clear for the record. 7 CHAIRMAN BAGOFF: Thank you, Mr. Plocker. 8 Mr. Afran. 9 MR. AFRAN: And it is the objectors position 10 that on a separate aspect of that question that the 11 access road in Lots 8 and 9, which is in a single family 12 residential zoning district, is improper and illegal 13 because it's an accessory use only to the single family 14 residences, it could be built on Lots 8 and 9. It is 15 not a valid accessory use to serve another zoning 16 district such as this multifamily zoning district, and 17 therefore the application is not complete because a use 18 variance is first required to run a road through Lots 8 19 and 9, because it's not an accessory use to serve 20 another zoning district. And therefore regardless of 21 the resolution, I respect Mr. Mascera's testimony, there 22 is a completely separate question dealing with the same 23 set of facts. That there is no use variance applied 24 for. This board can't grant it and it is not a valid 25 accessory use because it's an accessory use in another

17 1 zoning district and you can't divide accessory uses from 2 one zoning district to another. A use variance is 3 required to run that road through the single family 4 residential district in Lots 8 and 9. Therefore this 5 application is not complete. 6 CHAIRMAN BAGOFF: Mr. Plocker. 7 MR. PLOCKER: Yes. I think Mr. Afran's 8 characterization of the imposing emergency access to be 9 used in emergencies only. I think it's a very much of a 10 stretch to call that an accessory use. We can agree to 11 disagree on the record here, but it is not an accessory 12 use and it should not prohibit this board from approving 13 the application with the approval of that emergency 14 access. Thank you. 15 CHAIRMAN BAGOFF: Mr. Afran. 16 MR. AFRAN: Our position is obviously 17 there's nothing in the law that says an access road that 18 is for emergency use somehow gets exempt from the zoning 19 rules or from the need to get a use variance. There's 20 absolutely no support in the MLUL or anywhere else to 21 say that just because you're going to use it for 22 emergency use you don't need the proper zoning or use 23 variance. And if this becomes a legal issue we'll 24 debate this later in this case or in court, but it 25 requires a use variance, it's absolutely no exception	19 1 MR. AFRAN: It's a statement, it's not my 2 witness, but she's reading a statement from the 3 Environmental Commission. 4 MS. McGOVERN: Isn't it public comment? 5 MS. PEARSON: No, I sent it to the Mayor, to 6 this board and I did note that last week, last meeting, 7 last meeting the Essex County Environmental Commission 8 read their's into the record. This was a resolution 9 passed by the Verona Environmental Commission and -- 10 CHAIRMAN BAGOFF: Okay. Go ahead. 11 MS. PEARSON: You don't want a copy of it? 12 CHAIRMAN BAGOFF: Jamilet, you need a copy? 13 MS. McGOVERN: So the next -- 14 MR. AFRAN: Jamilet now has a copy. 15 MS. PEARSON: I did e-mail it to you as 16 well. 17 MS. McGOVERN: So Jamilet, I want to 18 confirm, it's O-20? 19 MS. PEARSON: Okay. 20 MR. FAGAN: Excuse me. 21 (Whereupon, a short recess is taken.) 22 CHAIRMAN BAGOFF: Go right ahead. 23 MS. PEARSON: Okay. Jessica Pearson, 24 Verona, New Jersey. I am the chair of the Verona 25 Environmental Commission. Been serving on the
18 1 just because it's intended for emergency access. In 2 fact that renders it even more compelling a problem 3 because emergency access means through the single family 4 zone you're going to be running fire trucks, ambulances 5 and possibly dozens or hundreds of cars leaving the site 6 during an emergency. That's directly contrary to the 7 notion of single family uses in that zone. So it 8 requires a use variance, this is not a complete 9 application and it never has been for this very reason. 10 CHAIRMAN BAGOFF: Thank you. 11 Good to see you Mr. Mascera. 12 MR. MASCERA: Thank you, Doctor. Appreciate 13 it. 14 CHAIRMAN BAGOFF: Mr. Afran. 15 MR. AFRAN: Thank you, Mr. Chairman. I know 16 there's another independent witness, Jessica Pearson, 17 from the Verona Environmental Commission. So I will 18 turn the microphone over to Ms. Pearson. 19 Ms. Pearson's asking me to deliver to you a 20 copy of what she's going to read. I don't know how you 21 want to mark it. Maybe it should be Verona 22 Environmental Commission-1. I don't know. 23 MR. PLOCKER: Can I see it. 24 MS. McGOVERN: What's the proffer, what's 25 the purpose of it?	20 1 commission since 2013, so around about 12 years. And, 2 yes, this resolution was drafted by myself. 3 This is a resolution entitled, Resolution 4 Urging Township of West Orange to Preserve the 120 Acre 5 Forest at the Second Watchung Mountain and Ridge. 6 MS. McGOVERN: Are you going to be taking 7 questions or making any other comments, then I would 8 have to swear you in or are you just reading this? 9 THE PUBLIC: If -- 10 MS. McGOVERN: Do you swear or affirm to 11 tell the truth only. 12 MS. PEARSON: Nothing but the truth. 13 I do. 14 MS. McGOVERN: Thank you. 15 J E S S I C A P E A R S O N, having been 16 duly sworn under oath testifies as follows: 17 MS. PEARSON: Okay. 18 "WHEREAS, the 120-acre property at Block 19 179, Lot 32, known as the "West Essex. 20 Highlands" is a core forest; a critical environmental 21 facet of Essex County, New Jersey providing essential 22 habitat and water resources; and 23 WHEREAS, residential neighborhoods surrounding and 24 adjacent to the core forest are flood prone, experience 25 repeated flooding events, and exist in the 0.2% annual

21 1 chance (500-year) FEMA floodplain; and 2 WHEREAS, open space properties and parklands 3 downstream from this property contain floodways, and or 4 exist in the 1% annual chance (100-year) FEMA 5 floodplain, and experience repeated flood events; and 6 WHEREAS urban flooding can occur in places that are 7 well outside of mapped floodplains and can be caused by 8 rain falling on increased amounts of impervious surface 9 overwhelming the capacity of drainage systems; and 10 WHEREAS, this forest contains tens of thousands of 11 trees, providing green infrastructure for stormwater 12 management as well as providing for the absorption of 13 carbon dioxide, the production of oxygen and relief from 14 heat island effect and essential ecological habitat; and 15 WHEREAS, the proposed removal of untold numbers of 16 trees will exacerbate flooding, degrade the core forest 17 and displace hundreds of native species; and 18 WHEREAS, the applicant is not adhering to the most 19 current stormwater rules and as such are not planning 20 onsite stormwater management that would act to better 21 protect all surrounding properties; and 22 WHEREAS, waters from this forested land feed the 23 Canoe Brook tributary and replenish critical aquifers 24 that contribute to the NJ American Water, providing 25 drinking water for 2.9 million	23 1 CHAIRMAN BAGOFF: Mr. Cardoza. 2 MR. CARDOZA: No questions, Mr. Chairman. 3 CHAIRMAN BAGOFF: Mr. MacNeill. 4 MR. MacNEILL: No questions. Thank you. 5 CHAIRMAN BAGOFF: Councilwoman Scarpa. 6 COUNCILWOMAN SCARPA: No questions. 7 CHAIRMAN BAGOFF: Thank you. 8 Mr. Haizel. 9 MR. HAIZEL: No questions at this time. 10 CHAIRMAN BAGOFF: Do any members of the 11 public have any questions, please raise your hand and be 12 identified? 13 Come right up. 14 THE PUBLIC: My name is Lisa Saladino and I 15 have question for you Jessica. I am not, I am not very 16 knowledgeable about the environmental use of the forest 17 for drinking water and I am just wondering if you could 18 explain that a little more. Like what's an aquifer -- 19 CHAIRMAN BAGOFF: I'm sorry. She's not an 20 expert in drinking water, she can't answer that. 21 THE PUBLIC: No, how it was helping the 22 drinking water for the millions of people in the State 23 of New Jersey. I just want a little more detail of what 24 that forest is doing. 25 CHAIRMAN BAGOFF: She's not an expert in
22 1 New Jersey residents, in more than 190 communities. 2 NOW THEREFORE, BE IT RESOLVED that the Verona 3 Environmental Commission does hereby urge the Township 4 of West Orange to reject the proposed 496-unit 5 development on said lands and to preserve the 120 acres 6 of forested land in perpetuity. 7 BE IT FURTHER RESOLVED that a copy of this resolution 8 shall be sent to the Township of West Orange Mayor 9 McCartney and Council, Verona Township Mayor Tamburro, 10 Verona Town Council members, and Township Manager 11 O'Sullivan." 12 CHAIRMAN BAGOFF: Thank you very much. 13 We'll go around the board. Any members of the board 14 have any questions? 15 Ms. Kapferer. 16 MS. KAPFERER: I don't have any questions. 17 Thank you. 18 CHAIRMAN BAGOFF: Mr. Wilkes. 19 MR. WILKES: No questions, Dr. Bagoff. 20 CHAIRMAN BAGOFF: Vice chairman. 21 VICE CHAIRMAN GUARINO: No questions, Mr. 22 Chairman. 23 CHAIRMAN BAGOFF: Mr. Alper. 24 MR. ALPER: I have no questions. Thank you, 25 Mr. Chairman.	24 1 drinking water in the State of New Jersey. She can't 2 answer that. 3 THE PUBLIC: Even though she referenced it 4 in her resolution? 5 CHAIRMAN BAGOFF: She can reference it but 6 she's not -- she needs to be an expert. 7 THE PUBLIC: Okay. Can she explain aquifer 8 forest. I don't know what they are. 9 CHAIRMAN BAGOFF: Can you explain aquifer? 10 MS. PEARSON: An aquifer -- 11 THE PUBLIC: Aquifer? 12 MS. PEARSON: Yeah. 13 THE PUBLIC: Okay. 14 MS. PEARSON: Is basically a basin where 15 water collects after it infiltrates into the ground. 16 THE PUBLIC: Okay. 17 MS. PEARSON: And it's held there basically 18 and it actually gets cleaned as it runs over root 19 forests, the wetlands and it gets filtered through that 20 and filtered as it runs into the ground and that's where 21 it sits. So it's never going to get polluted. 22 THE PUBLIC: Okay. 23 So nature is how this earth stays alive. 24 That's basically what I get from you essentially. 25 CHAIRMAN BAGOFF: Thank you.

25 1 Any other member of the public. Come up and 2 state your name. 3 THE PUBLIC: I thought I heard you say 4 something about the American Water Company. 5 MS. PEARSON: Yes. 6 THE PUBLIC: I didn't catch what you said, 7 so my question is, you may not know the answer, but do 8 they have stake in this or they not speaking up about 9 this? 10 MS. PEARSON: I don't know what their 11 position is at all. I just -- I do know that the 12 aquifers from this forest that run into the Canoe Brook 13 are utilized by that company. 14 THE PUBLIC: Thank you. 15 CHAIRMAN BAGOFF: Any other members of the 16 public have any questions? 17 Seeing none. Thank you very much. 18 Mr. Afran. 19 MR. AFRAN: Thank you, Mr. Chairman. 20 Our next witness is Bill Green, who's a 21 professional engineer from Litwornia Associates. I'm 22 just trying to figure out where he'll stand to testify. 23 He could go here and I could go to the podium. I don't 24 know the best way. 25 Bill, you want to go to the podium or do you	27 1 Q. And I assume your license is in good standing? 2 A. Yes. 3 Q. And you, from what I understand, are with 4 Litwornia Associates? 5 A. Yes. 6 Q. And how long have you been a licensed 7 professional engineer? 8 A. Since around '85. 9 Q. '85. 10 And have you -- 11 A. That's an estimate. I can't remember. It's 12 written on my card somewhere. 13 Q. That's all right. 14 Have you had an opportunity to testify before 15 boards or agencies before? 16 A. Yes, Litwornia Associates sits on planning boards 17 in South Jersey, right now we're in Pemberton Township, 18 which is rather large. And in fact we have in the 19 neighborhood of four million square feet of warehousing 20 and another probably seven, eight hundred single family 21 homes being proposed in two separate subdivisions in the 22 township. We reviewed all those, all those applications 23 and advise the board as to, you know, whether they 24 should be approved or not on the basic -- mainly 25 traffic.
26 1 prefer here? 2 Q. Good evening, Mr. Green. 3 MS. McGOVERN: Mr. Green has to be sworn in. 4 MR. AFRAN: Oh, yes. I'm sorry. 5 CHAIRMAN BAGOFF: Raise your right hand, 6 sir. 7 MS. McGOVERN: Do you swear or affirm to tell the 8 truth the whole truth nothing but the truth. 9 THE WITNESS: I will. 10 MS. McGOVERN: Do we have your complete 11 spelling of your name? Is it G R E E N or G R E E N E? 12 THE WITNESS: Like the color. 13 MS. McGOVERN: Like the color. 14 THE WITNESS: William H. Green, III. 15 MS. McGOVERN: Okay. My family goes all the 16 way back to the revolutionary war. I have an ancestor 17 who served under George Washington. Okay. Then I grew 18 up in West Paterson, which they changed the name of. 19 W I L L I A M G R E E N, having been duly 20 sworn under oath testifies as follows: 21 MR. AFRAN: I don't know if Mr. Green can be 22 heard unless he's holding -- would you rather use that? 23 Q. Mr. Green, I understand you're a licensed 24 professional engineer? 25 A. Yes. New Jersey, Pennsylvania and Florida.	28 1 MR. AFRAN: I would like to propose Mr. 2 Litwornia -- I'm sorry. Mr. Green as a expert witness 3 in the field of civil engineering. 4 CHAIRMAN BAGOFF: Any member of the board 5 have any questions? 6 Mr. Green, your license in the State of New 7 Jersey is still active, sir. Is that correct? 8 THE WITNESS: Yes. 9 CHAIRMAN BAGOFF: Thank you. Go right, 10 ahead sir. We accept you as a licensed engineer in the 11 State of New Jersey. 12 MR. AFRAN: The way we're set up, Mr. Green 13 is looking at me but not at the board. Perhaps if I go 14 to the podium perhaps it would be better if he was 15 facing the board. 16 CHAIRMAN BAGOFF: That's okay. I think 17 everybody can hear him. 18 MR. AFRAN: Okay, great. Thank you. 19 Q. Mr. Green, I understand you have analyzed the 20 site plan application here, is that correct? 21 A. Thoroughly, yes. 22 Q. Okay. 23 And with respect to the -- strike that. 24 I'm going to ask you questions about different 25 aspects of the plan that I know you have reviewed and

29 1 discussed with my clients. 2 With regard to the water supply, have you 3 analyzed the site plan application? 4 A. Yes, I have. The RSIS has a section in it that 5 requires the applicant to deal with water supply for the 6 residential development. We did not see any details 7 about water supply in the 66 pages engineering documents 8 that were supplied to us. And so I took a look at it 9 and referencing the RSIS gives of factors on how to 10 estimate how much water will be required in that 11 division. That residential area. 12 MR. AFRAN: Can the board hear, because Mr. 13 Green's very soft spoken and the air-conditioning just 14 kicked on. I'm afraid no ones going to be able to hear 15 him. 16 CHAIRMAN BAGOFF: Mr. Green, hold the mic 17 very close to your mouth, sir. 18 THE WITNESS: I guess I got to shout. 19 MR. AFRAN: If Mr. Green's wearing this mic 20 in a fixed position would that be better or not? 21 Q. Mr. Green, please be like a singer on stage, hold 22 that mic right next to your mouth. 23 THE WITNESS: All right. I'm not a good 24 singer. 25 CHAIRMAN BAGOFF: Whatever you do don't drop	31 1 look at it in the future. Well, I looked at it in the 2 present and discovered that they will need 900 gallons a 3 minute in the peak hours in the morning and evening 4 when, you know, people are getting up and getting ready 5 to go somewhere. And I also calculated the daily usage 6 and had to ask a question, where is all this water 7 coming from. And there's nothing, nothing in the 8 application indicating that. So that's a major issue. 9 It has to be addressed in the application for it to be 10 complete. 11 Q. Is there any source of water supply identified in 12 the application? 13 A. No. I did a little inquiring and found out that 14 this creek on-site is used for make up water to a 15 treatment plant that then pumps the water back to some 16 of the residents, I guess to the south of the site. I 17 guess 300, I don't know what they are, condominiums, 18 apartments or whatever they might be, I guess on the 19 south side of Oval. Some of you might live there, I 20 don't know. But anyhow, all of that water goes back to 21 those, to that development and that's tapped out, from 22 what I understand. 23 Q. What do you base that understanding on? 24 A. Basically Joe who, you know, assigned us this 25 job, indicated that that was the information that he had
30 1 the mic. 2 MR. AFRAN: Unless, I hate to say, shut the 3 air, but. 4 CHAIRMAN BAGOFF: No, we've got to leave the 5 air on. 6 MR. AFRAN: It's very hard, I can't even 7 hear, to be honest. 8 CHAIRMAN BAGOFF: Tell you what, let's turn 9 the air off for this testimony. 10 A. Let me reiterate. I looked at the requirements 11 -- 12 MR. AFRAN: Hang on a second. We're going 13 to shut the air so we can hear. 14 THE WITNESS: Don't do that. 15 MR. AFRAN: I can't hear. 16 A. Again, the RSIS requires -- 17 MR. AFRAN: Wait one second. 18 CHAIRMAN BAGOFF: Okay. Thank you. 19 MR. AFRAN: Thank you. 20 Q. Mr. Green, continue please. 21 A. Again, the RSIS, which is a governing document in 22 the state on how these residential applications are 23 supposed to be handled and what they should cover and 24 one of those things is domestic water. There was 25 nothing in the applicants drawings, other than to say,	32 1 obtained and he can attest to that later on when he 2 speaks. 3 Q. Okay. 4 So assuming that there's no capacity from that 5 water source, are there any other sources of water 6 supply known by you based on your review of the 7 application seen by you? 8 A. Nothing currently available. There's always a 9 possibility of drilling a well, but they didn't bring 10 that up and that's not an easy thing to get done. 11 Q. Okay. 12 So is there any provision in the site plan -- 13 A. Nothing -- 14 Q. -- for a well? 15 A. No. 16 Q. Or for well water? 17 A. No. 18 Q. Now, other than the -- you mentioned the brook, 19 are you referring to the Canoe Brook? 20 A. I believe that's what it is, yeah. 21 Q. Okay. 22 A. Not living in the neighborhood, I don't know all 23 the names of things. 24 Q. Okay. That's fine. 25 Now, in addition to water supply for domestic

33 1 use, is water needed for fire suppression purposes? 2 A. Oh, absolutely. 3 Q. Now, have you considered this site plan 4 application in the engineering report with respect to 5 fire suppression and water? 6 A. There were no provisions. 7 Q. When you say, no provisions, no provisions for 8 what? 9 A. Well, there should be a sprinkler system, fire 10 hydrants. There was nothing shown anywhere that I could 11 find. 12 Q. Is there any source for water for fire 13 suppression shown in the plans? 14 A. No. 15 Q. Now, what role does a water tower play typically 16 in fire suppression? 17 A. It provides you with a period of time when a fire 18 is discovered we're you're assured of having enough line 19 to quench the fire. You could have an issue where 20 electric goes down because the fire was started by let's 21 say lightning and it knocks out the power, now you can't 22 get any water pressure without pumps. So now with the 23 tower you got, let's say a good hour worth of, or more, 24 depending on how big the tower is, I didn't get into, 25 you know, exactly how big the tower has to be, but	35 1 CHAIRMAN BAGOFF: Are you representing he's 2 an expert or has expertise in fire suppression? 3 MR. AFRAN: Well, he's a civil engineer 4 who's -- 5 CHAIRMAN BAGOFF: I'm asking the civil 6 engineer -- 7 THE WITNESS: No, I'm not claiming to be an 8 expert in fire protection. No. 9 CHAIRMAN BAGOFF: Okay. So you have no 10 expertise in fire suppression? 11 THE WITNESS: But I know enough about it to 12 tell you that they didn't, they don't have anything to 13 address the problem. 14 MR. AFRAN: Fire suppression -- 15 CHAIRMAN BAGOFF: That's what I asked. I 16 asked, is he an expert in fire suppression and he said 17 he's not. 18 MR. AFRAN: Yes, but he's an expert in civil 19 engineering. 20 CHAIRMAN BAGOFF: Right. 21 MR. AFRAN: And civil engineering requires, 22 under the New Jersey law and case law is very clear, 23 including POP Franklin Township, for example, which has 24 been cited many times with approval, which is an 25 Appellate Division decision from 1983. That all
34 1 that's a whole other study that they should have done. 2 But the tower gives you assurance that you got water 3 pressure from the hydraulic or from the height of the -- 4 the height of the tower gives you water pressure. Okay. 5 Without a pump. Now, you got to pump it up to get it 6 into the tower and you maintain a level in the tower. 7 So when you need that water it's available. It's also 8 available during that peak hour, peak hours everyday 9 when everybody's, you know, waking up and using water. 10 Q. You mean it's available not from the fire 11 suppression tower but from the normal supply? 12 A. Well -- 13 Q. Or you mean from the tower? 14 A. The tower can provide water for all purposes. 15 Q. So aside from -- 16 A. It has to be designed for that. I didn't attempt 17 to do that. I'm just saying it's not there, something 18 has to be done to address all those issues, including 19 all the fire protection rules. There's a lot of them. 20 Q. Do you have a minimum estimate or conservative 21 estimate for how many gallons would formally be required 22 in the fire suppression tower? 23 CHAIRMAN BAGOFF: Is he an expert in fire 24 suppression? 25 THE WITNESS: No.	36 1 fundamental elements of a development must be included 2 in detail and specification in the site plan. 3 CHAIRMAN BAGOFF: That's what I asked. 4 MR. AFRAN: No, but allow me to continue. 5 CHAIRMAN BAGOFF: Go right ahead. 6 MR. AFRAN: Therefor, even though he's not a 7 so-called fire suppression expert, he's not a sewer 8 expert, he's not a water expert either. He's an expert 9 in civil engineering and civil engineering in our state 10 under the MLUL requires that in a site plan for a 11 development the fundamental elements of the plan must be 12 presented to the Planning Board. 13 CHAIRMAN BAGOFF: Agreed. 14 MR. AFRAN: And these fundamental areas are 15 not there. That's all he's testifying to. 16 CHAIRMAN BAGOFF: No, he's also talking 17 about how much water is the fire in a tower -- 18 MR. AFRAN: I'll withdraw the question. 19 CHAIRMAN BAGOFF: Thank you. 20 MR. AFRAN: I'm scanning my notes just to 21 avoid a problem. 22 CHAIRMAN BAGOFF: No problem. 23 Q. Now, assuming the Canoe Brook, you referred to 24 the brook, but accept my representation that you're 25 referring to the Canoe Brook.

37 1 A. Yes. 2 Q. Assuming the Canoe Brook facility were to be a 3 source for water, assuming that were available and there 4 was sufficient surplus available in that plan, are there 5 any additional facilities by way of entrances in the 6 piping system or other physical facilities that would be 7 needed? Do you understand my question? 8 A. Yeah, my understanding is that the -- that water 9 is captured and conveyed to a treatment facility 10 somewhere seven miles away and then after it's treated 11 it's pumped back in an aided line to that neighborhood 12 in that area. 13 Q. Those are the 300 or so houses? 14 A. Yes, that neighborhood. 15 Q. Now, is there anything in the site plan, in the 16 site plan application or the engineering report that 17 provides for transfer of the water from that plant to 18 this new development? 19 A. No, it's not their's to take. 20 Q. I'm sorry, I couldn't hear you. 21 A. That water, that water is all accounted for. 22 Q. No, assuming for the sake of argument that the 23 applicant were to say, we're going to use that facility, 24 in your review of the site plan application, are there 25 any connection facilities proposed to allow that water	39 1 evaporates, never get's to the sewer. For the most part 2 that's what it is. So 73,900 goes to a sewer. They 3 didn't tell us what sewer was going to take all that 4 water. 5 Q. Now, in your view of the site plan application 6 and engineering reports, is there any connection from 7 this development to any aspect of the local or regional 8 sewer services? 9 A. I didn't see anything. 10 Q. Now, you mentioned 73,900 gallons. Where does 11 that figure come from? How is that derived. 12 A. That's the amount of water that comes into the 13 facility for domestic water use. 14 Q. No, but how did you come up with that particular 15 figure? 16 A. The RSIS gives a factor based on number of units 17 and comes up to that. 18 Q. So that figure comes from the RSIS? 19 A. Oh, yeah. They tell you that's what you're 20 supposed to be providing for. That's the point of that 21 section of the RSIS. They're not leaving it for 22 guesswork or your judgment. Here's what we use. 23 Q. Is there any sewer pipe going across the site in 24 these plans that connect to any external sewer service? 25 A. There's one existing line that runs all the way
38 1 to come to this development? 2 A. I didn't see any of that. But what my analysis 3 showed that they need an eight-inch, full capacity 4 eight-inch line which is what they have at the 300 unit 5 development already being used. It's all used up. 6 Q. Is there any provision -- 7 A. They need another line like that completely to 8 service this new facility. 9 Q. Is there any line indicated in the site plan 10 application? 11 A. No. 12 Q. Okay. 13 A. I didn't see any. 14 Q. With respect to sewer service, this development, 15 have you analyzed the site plan application and 16 engineering reports? 17 A. Yes, I did. 18 Q. And do you have any comments as to the status of 19 the reports of the application with respect to sewage 20 service? 21 A. Okay. I just -- in looking at the water I 22 discovered that 73,900 gallons a day going into domestic 23 water use and typically the sewage authority assumes 24 what goes in comes out, which generally the case, except 25 if you got water being dumped into the yard and it	40 1 up from top to the bottom but it's -- they're not 2 tapping into. That's already accounted for. 3 Q. So other than -- so that line is not accounted 4 for in these plans? 5 A. No, that's not part of their plan, it's just 6 there. In fact they may have to try and cross that line 7 somehow to get to where you might have to go, but none 8 of that's been identified. 9 MR. PLOCKER: I'm going to object to this 10 testimony. The plans speak for themselves and the 11 testimony is not reflecting what's in the site plan at 12 all. 13 MR. AFRAN: Well, that's for rebuttal by the 14 applicant if it can demonstrate that it somehow can move 15 all of this vast amount of sewage off the site. But the 16 point of this testimony is the lack of completeness of 17 the plan. 18 CHAIRMAN BAGOFF: Okay. So go right ahead, 19 Mr. Green. 20 THE WITNESS: Thank you. 21 Q. I'm sorry, were you in the middle of an answer? 22 A. No, no, I was done. 23 Q. I don't object to Mr. Plocker's objection, that's 24 our job. I'm just saying, are you in the middle of 25 anything.

41 1 Now, when -- strike that. 2 Let me just clarify this specifically. In 3 reviewing the site plan application and the engineering 4 reports, is there any connection built into these plans 5 to move the sewage from this development into some 6 municipal sewer system anywhere? Do you see any 7 connection. 8 A. I didn't see anything. 9 Q. Now, turning to the question of -- well, strike 10 that. 11 Did you analyze the grade of this development and 12 the grade of the site for this development in terms of 13 your review? 14 A. Yeah, we looked at that. 15 Q. And how does that bare into the question say of 16 water supply for example? 17 A. Well, that's a really good question. Some of the 18 waters not going to get into the basins because it's 19 going to rush down the hill way to fast. Another 20 problem with that is that the water coming down the hill 21 with all the pavement and parking lots and such it's 22 going to pick up oil from the automobiles. You got oil 23 spots in your driveway and that's going to get washed 24 out. Now currently there's nothing but trees and 25 shrubbery and whatever. Now that water is going to get	43 1 to have another 50-foot to get the proper amount of head 2 to get water pressure basically. Because you need 3 enough water pressure to service everything, otherwise 4 the water won't flow. 5 Q. Now, in terms of the pumping station you referred 6 to, what role would they play in the system? 7 A. Well -- 8 Q. Assuming it was designed. 9 A. -- they would constantly fill a water tower tank 10 which would provide assurance that you, you have reserve 11 water and water pressure all the time. 12 Q. Now, are the pumping -- 13 A. You have a water tower right on up on this next 14 hill, I believe, I was driving over here. So it's not 15 uncommon. 16 Q. Now, do you see any provision in the site plan 17 application or the engineering reports for any pumping 18 stations? 19 A. Not for that purpose, no. 20 Q. Did you see it for any purpose? 21 A. There's two stations on there, I think they're 22 for sewage. I'm not sure where they're pumping it to 23 because it doesn't show that. 24 Q. But in terms of water supply -- 25 A. There would have to be a whole little building
42 1 into the creek and the creek water is going down to your 2 treatment facility. The treatment facility was not, 3 probably not designed for oil. Probably designed for 4 whatever contaminants are in the ground or in the sewer 5 storm, comes out of the ground and mountain, trickles 6 down, you know, pick it up and use it. It's a good idea 7 and currently working. I'm afraid it's going to get 8 contaminated. It doesn't take a whole lot of oil to 9 contaminate a lot of water. 10 Q. Now, looking at the reverse problem. 11 A. I'm sorry, the what problem? 12 Q. Looking at the reverse, instead of the water 13 moving downward, stormwater. In terms of bringing the 14 water supply in, up the grade, have you considered that 15 question in terms of your analysis? 16 A. Well, yeah. You're going to need some kind of 17 pumping station. 18 Q. Now, what is the approximate grade that you 19 analyzed and you concluded from the site? 20 A. Well, there's a 211 foot grade difference from 21 the southern boundary to the high northern boundary on 22 the ones I saw and now you got to consider that. On top 23 of that, you got a 40, 50-foot tall building, a four 24 story apartment building and if you want to get enough 25 head to service all the faucets and facilities you got	44 1 just for, you know, water supply pumping. 2 Q. You're not an expert in designing those, correct? 3 A. I'm -- I've got a lot of experience. I have a 4 relationship with a company in industrial water 5 treatment. So, yeah. 6 Q. So -- 7 A. Aside from what I do with Mr. Litwornia, I have 8 other activities that are -- 9 Q. So in other words that, in your professional 10 opinion, would you need pumping stations based on this 11 211 foot grade in order to adequately bring water into 12 this development? 13 A. Absolutely. 14 Q. And do you see them built in anywhere for 15 purposes of supplying domestic water? 16 A. There's nothing in the plans to cover that. 17 Q. And -- 18 A. This is like, this is like picture a high-rise 19 building in Manhattan. Okay. They got pumping in the 20 basement, nobody could see it. You go in the building, 21 it's all pristine, it looks great, but in the basement 22 they got pumps, they got tanks on top of the building 23 and that's keeping water pressure throughout the 24 building for the same reason I'm bringing it up here. 25 Q. And is there any provision inside the structures

45 1 that you were able to observe that provides for this 2 pumping function? 3 A. Absolutely not. 4 Q. And is there any provision outside the structures 5 on the site for pumping structures to provide this? 6 A. I saw nothing. 7 Q. Now, in terms of electrical power, did you do -- 8 strike that. 9 In terms of supply of electrical power, did you 10 do any analysis? 11 A. I just looked at what I believe the load would 12 be. It's a, you know, a rough number, I came up with 13 six megawatts which would probably require some kind of 14 substation near the site. 15 Q. Was there any provisions in the plans for a 16 substation? 17 A. No, nothing. 18 Q. Was there any provision for transmission of this 19 power by any other means built into the plans? 20 A. I didn't see any electrical plans as far as that 21 goes. 22 Q. With respect to HVAC function, did you do any 23 analysis of the plans? 24 A. Yeah, I looked at it because there wasn't 25 anything and I thought well, let me see, how would it be	47 1 Major problem. 2 MR. AFRAN: May I have one moment please, 3 Mr. Chairman. 4 (Whereupon, a short recess is taken.) 5 MR. AFRAN: Mr. Chairman, I just need one 6 moment. 7 CHAIRMAN BAGOFF: Sure. 8 (Whereupon, a short recess is taken.) 9 Q. With regard to cooling towers -- strike that. 10 I'm sorry. 11 With regard to water towers, say fire suppression 12 or other domestic water usage, how high would they have 13 to be relative to the height of the proposed buildings? 14 A. My opinion they need to be about 50-feet above 15 the top floor. 16 Q. Oh, that was that extra 50 feet you referred to 17 earlier? 18 A. Yeah, that gives you enough hydraulic head to 19 provide the amount of pressure you would need for the 20 water going through all the pipes to all the units. A 21 little more than the first floor. You got to deal with 22 the fourth floor, that's the big problem. 23 Q. So if fire suppression towers are used, that 24 would obviously add to the height of the structures 25 beyond what we know now from the plans?
46 1 done. And I've seen many, many, many buildings in my 2 other activity that I mentioned involved in water 3 treatment, these pumps would be very likely method of 4 getting heating and cooling into every unit. Now, 5 there's other possible ways, but that's a pretty 6 economical way of doing it. But in order to do that you 7 need hydraulic water supply which circulates throughout 8 the building and generally has to be cooled, especially 9 in the summer. That would entail the need for a cooling 10 tower or several cooling towers, which I know a lot 11 about. And then there's -- none of that discussed in 12 any way, shape or form in the plan. So I just wanted to 13 bring that up. Something needs to be disclosed and 14 committed to as far as how they're going to heat and 15 cool all these 496 units. They're not putting window 16 air-conditioning in, so. 17 Q. Do you see anything in the site plan application 18 or the engineering reports that provides for heat or 19 cooling? 20 A. Nothing. 21 Q. In your opinion as a professional civil engineer, 22 is this application complete without these missing 23 elements? 24 A. Absolutely not. RSIS requires all these elements 25 and many others that I haven't even discussed yet.	48 1 A. It would add volume. I don't know what that 2 volume would be. That all depended on a whole other 3 study by somebody who does that all the time. And it's 4 also dependent upon how rapidly the tower can be 5 replenished. That's another engineering decision that 6 somebody else should be working on, not me. But I know 7 about all these things, but none of that was done. 8 That's my point. 9 MR. AFRAN: Thank you, Mr. Chairman. That's 10 all I have at the moment. 11 CHAIRMAN BAGOFF: Thank you. 12 Okay. Mr. Plocker. 13 MR. PLOCKER: Let the board go first or -- 14 CHAIRMAN BAGOFF: No, no. You. 15 CROSS-EXAMINATION BY MR. PLOCKER: 16 Q. Mr. Green, it's your testimony that you reviewed 17 the entire site plan set, is that correct? 18 A. 66 pages. 19 Q. Okay. 20 And there's no utility described in the site plan 21 at all? 22 MR. AFRAN: With respect -- he didn't say 23 that. 24 MR. PLOCKER: Let him answer the question. 25 MR. AFRAN: No, no, no. Mr. Plocker makes a

49 1 great habit of saying no, no, no, they didn't say that. 2 Now Mr. Plocker is doing the same thing. 3 Q. Is it your testimony there were no water lines on 4 the plans? 5 MR. AFRAN: He never said that, Mr. 6 Chairman. This is nonsense. 7 CHAIRMAN BAGOFF: He did. I'm sorry, he 8 did. 9 MR. PLOCKER: He did. 10 MR. AFRAN: Waterlines -- 11 CHAIRMAN BAGOFF: He did say there were no 12 waterlines. 13 MR. AFRAN: He never said that. 14 THE WITNESS: I saw sewer lines, I didn't 15 see waterlines. 16 MR. AFRAN: Water supply. 17 Q. Maybe you missed them? 18 A. I could have. 19 Q. Okay. 20 MR. AFRAN: Is counsel prepared to show that 21 he's wrong on his cross or -- 22 MR. PLOCKER: I can -- 23 MR. AFRAN: Excuse me. Let me finish my 24 question. 25 MR. PLOCKER: I can cross him in any manner	51 1 in his mind, in his expert opinion, there is none. 2 MR. AFRAN: No, Mr. Chairman. He said he 3 examined the plans and saw no connections of those 4 nature. He did not speculate, he said specifically as a 5 civil engineer I have examined those plans and those 6 connections are not on the plans. That is not 7 speculation. 8 CHAIRMAN BAGOFF: He also speculated about a 9 water tower. There's no water tower. He speculated 10 about the need for a water tower and pumping of the 11 water tower. So there was some speculation in his 12 testimony. 13 MR. AFRAN: Mr. Chairman, you're 14 characterizing a witnesses professional statement that 15 you need some fire suppression in a development plan as 16 speculation. That's not speculation. He said there's 17 no evidence -- excuse me. He said there's no evidence 18 in these plans of a fire suppression system by a way of 19 sprinklers or otherwise or a fire suppression tower. He 20 did not speculate, he said they're not there. I don't 21 -- I resent frankly the Chair of the board suggesting a 22 witness is speculating when he said he read the plans 23 and it's not there. It's not speculation. 24 CHAIRMAN BAGOFF: You talked to him about 25 pumping stations, he spoke about pumping into the water
50 1 I want. 2 MR. AFRAN: Let me finish my -- no, you 3 can't. There are rules. Is counsel prepared to show -- 4 excuse me. 5 CHAIRMAN BAGOFF: Excuse me gentlemen. 6 Okay. Mr. Afran and then Mr. Plocker. 7 MR. AFRAN: Is counsel prepared to show the 8 witness plans that show water source supply pipelines or 9 is counsel simply asking the board to assume somehow 10 that they magically exist so the board can have an 11 impression left without any support. 12 MR. PLOCKER: Which is exactly what your 13 witnesses have been doing. 14 MR. AFRAN: Excuse me. Cross-examination 15 requires more than just inviting speculation. Is Mr. 16 Plocker prepared to show this witness that he missed 17 this. 18 CHAIRMAN BAGOFF: Well, you said in your 19 statement for the question and he, Mr. Green, involved 20 himself in speculation also. 21 MR. AFRAN: When did he do that, Mr. 22 Chairman? 23 CHAIRMAN BAGOFF: He said that there's no 24 evidence of any water supply. There's no evidence of 25 any connection to the sewer system. So he's saying that	52 1 tower. I'm sitting here listening to him, that's what 2 he said. 3 MR. AFRAN: He said these things don't 4 exist. He's not speculating that they don't exist. He 5 said he examined the plans and they are not there. 6 That's not speculation. It's improper to suggest that. 7 CHAIRMAN BAGOFF: He also covered what would 8 be needed. That was the question, would this be needed. 9 He said, yes. Yes, this would be needed. 10 MR. AFRAN: That's not speculation. That's 11 a statement of a civil engineer who says these things 12 are needed in a development plan. I don't know why 13 you're calling this witnesses testimony speculative. 14 CHAIRMAN BAGOFF: Is that the only thing 15 that is possible for fire suppression or it's an 16 alternative for fire suppression? 17 MR. AFRAN: He specifically stated there's 18 no evidence of a sprinkler or other suppression system 19 and no evidence of a fire suppression tower to provide 20 water when a fire suppression system fails due to 21 electric failure. He was not speculating. He gave very 22 specific testimony. Now, if Mr. Plocker want's to say 23 and demonstrate that that's not necessary, that's fine. 24 But to say this man speculated is improper. 25 CHAIRMAN BAGOFF: So you're telling us his

53 1 opinion is this project needs a water tower for fire 2 suppression? 3 MR. AFRAN: He said that unless you have 4 evidence of supplying water to a project of this nature 5 and unless you have evidence of showing how you are 6 going to supply water in an emergency when the pumping 7 station, which he also said were not on the plans, 8 should fail, you would need a water suppression tower as 9 a measure in an emergency. That's not speculation. He 10 said those are not there and in his professional opinion 11 those are required. 12 Now, how come other witnesses have stood 13 here and given statements and you never said their 14 professional opinions were speculation. You are 15 prejudicing this case. 16 CHAIRMAN BAGOFF: I am asking. I'm just 17 asking. So the board should take this information he 18 says, again, his professional opinion is that this 19 project overall needs a water tower as part of the fire 20 suppression system. 21 MR. AFRAN: That's not speculation. He's 22 giving you an opinion of what he thinks is needed. 23 CHAIRMAN BAGOFF: That's what I want the 24 board to know. It is his opinion. 25 MR. AFRAN: Before you said the gentleman	55 1 MR. PLOCKER: We're not getting anywhere. 2 MR. AFRAN: That's not proper 3 cross-examination. 4 MS. McGOVERN: Why don't you let him ask the 5 question. 6 MR. AFRAN: I let him ask the question and 7 he's assuming and the board is going to take the 8 impression that this gentleman admitted he missed 9 evidence. He never said that. 10 MS. McGOVERN: I think that we're getting to 11 that, I'm assuming. 12 MR. AFRAN: I don't think we are. I think 13 we're seeing inference upon inference. 14 CHAIRMAN BAGOFF: We're listening to 15 everybody. 16 MR. AFRAN: Okay. 17 Q. Did you review the testimony from the applicants 18 engineer when he testified? 19 A. Some of it. 20 Q. But not all of it? 21 A. I was provided stuff. 22 Q. All right. What stuff were you provided? 23 A. I have it in my bag. I don't have it in my head. 24 Q. But you clearly testified you made certain 25 conclusions, you're now saying you were provided with
54 1 was speculating, now you're getting back to the proper 2 text. 3 CHAIRMAN BAGOFF: I'm asking if that's his 4 opinion, if that's his opinion then and that's what the 5 board is interested in. 6 MR. AFRAN: That's fair enough. But I'm 7 just stating it's not appropriate to call it 8 speculation. 9 CHAIRMAN BAGOFF: Are you ready? Okay. 10 Mr. Plocker, go right ahead. 11 MR. PLOCKER: Thank you. 12 Q. Mr. Green, is it your testimony, I just want to 13 confirm, that there were no fire hydrants provided on 14 this site plan? 15 A. There were none shown. 16 Q. Are you sure? 17 A. I looked for them, I couldn't find them. 18 Q. Well, maybe you missed them again? 19 MR. AFRAN: Excuse me. He never said he 20 missed anything. That's improper. 21 MR. PLOCKER: He said it's possible. He 22 said it was possible. 23 MR. AFRAN: He never said he missed 24 anything. So to say maybe you missed them again 25 suggests he admitted he missed them.	56 1 certain "stuff." What was that stuff? 2 A. Most of what I got was traffic related and this 3 testimony today is not related to traffic. 4 Q. So I'm going to ask you again. What stuff was 5 your testimony based upon? 6 A. What I reviewed in the drawings. The 66 pages. 7 Q. So you only -- your testimony is that you only 8 reviewed the site plan? 9 A. The engineering plans, yes. The 66 pages of it. 10 Q. You didn't review anything else? 11 A. No. 12 Q. Okay. 13 Who's the water utility for this property? Who 14 services this area. 15 MR. AFRAN: Wait. Wait. The area or the 16 property? Those are two different things. There's 17 nothing on the property so are you asking about the 18 water service in the area or the property? 19 Q. What water utility services the area? 20 A. I believe it's American Water. 21 Q. New Jersey American Water? 22 A. Yeah. 23 Q. All right. 24 In connection with your testimony did you contact 25 New Jersey American Water?

57 1 A. No, I didn't. 2 Q. Okay. 3 So you didn't ask them about their flow, about 4 their capacity? 5 A. No, I didn't have time to do that. That all 6 needs to be looked at. 7 Q. Okay. 8 Who ultimately approves water and sewer. You 9 could take them one at a time. Does the applicant have 10 to go to the DEP? 11 MR. AFRAN: Objection. That's a vague 12 question. Do you go to the DEP about water and sewer, 13 did he testify about that. 14 Q. What approvals, what third-party approvals-- does 15 the applicant need to connect for water service and 16 sewer service, separate questions? 17 A. Well, the water is going to have to go to 18 American Water. 19 Q. Okay. 20 And you didn't contact them, correct? 21 A. No. 22 Q. Okay. 23 What about sewer, what third-party approvals does 24 the applicant need to connect to sewer? 25 A. He has to go to the local sewer authority. I	59 1 from the apartments. There's a pipe shown -- 2 MR. PLOCKER: Now he's testifying. 3 MR. AFRAN: No, I am summarizing. And this 4 is all -- 5 MR. PLOCKER: And I cannot cross -- 6 MR. AFRAN: This has also been acknowledged 7 by the applicants own engineer, which Mr. Plocker seems 8 to conveniently forget. The testimony from this witness 9 was the absence of these things in the plans. He's not 10 testifying as to what post plan regulatory aspects are 11 needed. This is beyond the scope of direct. 12 CHAIRMAN BAGOFF: Go ahead, Mr. Plocker. 13 MR. PLOCKER: Mr. Chairman, the testimony 14 was very general. Mr. Afran is referring to off-site 15 sewer conditions, which this witness did not 16 specifically testify to. He said there was no sewer 17 plan. He said he doesn't know where it was going. So 18 I'm going to ask the witness, do the plans show a sewer 19 connection to a manhole in Bakley Terrace? 20 A. I did not see such a thing. 21 CHAIRMAN BAGOFF: Okay. That's the answer. 22 Q. Okay. 23 MR. PLOCKER: I have no further questions at 24 this time. 25 CHAIRMAN BAGOFF: Thank you.
58 1 believe it's in the county. 2 Q. Does the DEP have any role in that process? 3 A. Who? 4 Q. The Department of Environmental Protection, do 5 they have a role in the process? 6 MR. AFRAN: In the process of approving the 7 connection or in the process of what? 8 A. I don't think they have any in that particular 9 area. They have a lot of role in what the sewer 10 authority does with the water. 11 Q. Would the applicant need to obtain a treatment 12 works approval known as a TWA? 13 A. This is something I'm not familiar with. 14 MR. AFRAN: Mr. Chairman, I wonder if this 15 has anything to do with the absence of any connection 16 between the waste system from the buildings and any 17 other system. 18 MR. PLOCKER: I'm asking him my questions, 19 Mr. Chairman. 20 MR. AFRAN: Well, because I'm objecting on 21 relevance grounds. If crossing -- excuse me. The 22 testimony on direct was that there's nothing in the 23 plans showing any connection between the sewage removal 24 in these 500 apartments and the ability to move it to 25 anywhere else. In other words, we have sewage coming	60 1 Ms. Kapferer. 2 MS. KAPFERER: Thank you Mr. Green for 3 your testimony. 4 Chairman, may I ask a question of Mr. MacNeill at 5 this time or related to this. Is that not appropriate? 6 CHAIRMAN BAGOFF: Let's get around the board 7 and come back. 8 MS. KAPFERER: Okay. Yeah, that sounds 9 good. 10 That's all I really have then. 11 CHAIRMAN BAGOFF: Mr. Wilkes. 12 MR. WILKES: No questions. 13 CHAIRMAN BAGOFF: Vice Chairman Guarino. 14 VICE CHAIRMAN GUARINO: Yes, thank you Mr. 15 Chairman. 16 Mr. Green, thank you for being here this evening. 17 Sir, can I ask you, did you personally review the 18 applicants site, the physical site? Have you been to 19 the site. 20 THE WITNESS: Actually, I was there today. 21 VICE CHAIRMAN GUARINO: How long ago? 22 THE WITNESS: I was there today. It's a 23 very large site. So definitely did not survey the site. 24 VICE CHAIRMAN GUARINO: So you haven't been 25 to the site physically?

61 1 THE WITNESS: Not physically, no. I looked 2 at all kinds of plans and grades and so forth. 3 VICE CHAIRMAN GUARINO: So -- 4 THE WITNESS: And I went on Google Earth and 5 I looked at it there. 6 VICE CHAIRMAN GUARINO: Okay. 7 THE WITNESS: You get a pretty good view 8 there. I use that quite often. 9 VICE CHAIRMAN GUARINO: Okay. 10 If I may ask you sir, so basically all of 11 your statements, your assumptions, your conclusions are 12 all based upon reviewing the site plan, the paper site 13 plan and not actually being at the site to see the 14 actual physical conditions of the site plan, the site as 15 it exists today? 16 THE WITNESS: Yeah, that's correct. 17 VICE CHAIRMAN GUARINO: Okay. 18 So basically everything you've done is 19 basically from the site plan, from the paperwork, from 20 reports, so you're developing everything, no criticism, 21 I'm just asking that -- so you're basing all of your 22 conclusions and your testimony based upon written 23 documentation, is that correct sir? 24 THE WITNESS: Yes. 25 VICE CHAIRMAN GUARINO: Okay.	63 1 equipment and methodology to take oil out as opposed to 2 calcium, let's say, or magnesium or any other element 3 that gets in the water in ionic form. 4 MR. ALPER: Okay. 5 THE WITNESS: And I understand -- and I know 6 a lot about this because I was involved in wastewater 7 treatment facilities in design, built and operated 8 through another association that I had years ago and 9 actually still have to some degree. But yeah, that's my 10 concern, that the waters going to be contaminated. Now, 11 it remains to be seen, maybe they have something down 12 there at the treatment plant that will take care of it, 13 I didn't have a chance to look into that. I'm just 14 raising the question that the applicant and the board 15 needs to consider in this regard. 16 MR. ALPER: Thank you. Appreciate it. 17 THE WITNESS: Okay. 18 CHAIRMAN BAGOFF: Council Person Scarpa, do 19 you have any questions for Mr. Green on his testimony? 20 COUNCILWOMAN SCARPA: Yes sir, I do. I 21 would like to thank Mr. Green for your testimony and I 22 appreciate your thoroughness in trying to help us 23 understand this level of water. We talked about RSIS 24 standards and the line that is used, we have a lot of 25 conversations that were scrolled in and around and I
62 1 Thank you, Mr. Chairman. 2 Thank you, Mr. Green. 3 THE WITNESS: You're welcome. 4 CHAIRMAN BAGOFF: Mr. Alper. 5 MR. ALPER: Sure. 6 Can you talk a little more about what you 7 were saying about oil washing into the Canoe Brook from 8 the site. Do you have a sense -- 9 THE WITNESS: Yeah, roads all have oils 10 dropped on them from the vehicles and it gets washed 11 into the stormwater. In this case the stormwater basins 12 are dumping into the creek. That's what -- I did read 13 that report on stormwater, it was 500 pages long. 14 They're saying that water's going there. Well, some of 15 that water's never going to get there because it's going 16 to rundown faster than the inlets can take it. But 17 that's another problem, other people can talk about 18 that. But, yeah, there will be some oil getting into 19 that creek water and that's not what the -- the 20 treatment plant would not be designed for that because 21 it's pristine water coming off the -- well, it did have 22 some contamination in it, I'm not sure what it was. But 23 the treatment plant would have been design for whatever 24 that element is, elements are in the water. When you 25 add oil to it you need a wholly additional piece of	64 1 want to better understand the water flow. You said its 2 kind of captured in a treatment facility and then it 3 comes back. Can you just, for a layperson, talk a 4 little bit about that process. How it works and what 5 your specific concerns were? 6 THE WITNESS: Okay. My understanding is that 7 the water is the creek water is captured and conveyed 8 through a pipe, I'm assuming, down to the treatment 9 facility. The treatment facility will go into a 10 equalization tank generally and then it goes into a 11 series of mixing tanks where they put in coagulants and 12 then flocculents somewhere in the middle of there, they 13 might change the PH to make things work. The last step 14 being the flocculents being added would cause 15 particulates probably to float and be separated in a 16 clarifier and then the clean water would be captured and 17 the particulate, which is the contaminate, would be 18 syphoned off the bottom. So that's where your clean 19 water goes and that goes into another tank and now you 20 got a pumping system taking that back to where -- 21 through that eight inch pipe to distribute to all the 22 homes, the residences up in that neighborhood. That's 23 the process. If there was oil in there they would have 24 to put an oil/water separator in which would be 25 additional piece of equipment in that treatment tank and

65 1 unless they had oils why would they put it in, its an 2 expensive piece of equipment. Especially at the flow 3 rates that we're talking about. So that's my concern. 4 I'm just rasing it for you, for all you folks to 5 consider and realize that nothing, nothing on all these 6 lines was addressed in what I saw in the application. 7 COUNCILWOMAN SCARPA: Thank you very much 8 for clarifying. 9 THE WITNESS: I didn't hear that. 10 CHAIRMAN BAGOFF: Say it again, Counsel 11 Person Scarpa. 12 MR. AFRAN: I think the counsel member was 13 thanking him. 14 COUNCILWOMAN SCARPA: I said thank you. 15 THE WITNESS: You're welcome. 16 CHAIRMAN BAGOFF: Mr. Cardoza. 17 MR. CARDOZA: Yes, thank you Mr. Green. 18 I just want to clarify, the oil, you said 19 they're coming from what, automobiles potentially? 20 THE WITNESS: Any automobile has a 21 transmission in it and motors, they all, you know, they 22 all drop a little oil. 23 MR. CARDOZA: When you're talking oil 24 dropping, are these cars running? 25 THE WITNESS: They're on the street, they're	67 1 THE WITNESS: Yeah. Exactly. This is a new 2 contaminate because all of a sudden this forest has 3 streets on it. 4 MR. CARDOZA: Thank you. Appreciate it. 5 THE WITNESS: No problem. That's a good 6 question. Thank you. 7 CHAIRMAN BAGOFF: Mr. MacNeil. 8 MR. MacNEILL: Thank you, Mr. Green. 9 THE WITNESS: You're welcome. 10 MR. MacNEILL: Did you have a chance to 11 review the stormwater report associated with this 12 application? 13 THE WITNESS: The who report? 14 MR. MacNEILL: The stormwater report. 15 THE WITNESS: Stormwater report. Yes, I 16 looked at it. 17 MR. MacNEILL: Did you review the water 18 quality section regarding the water quality treatment 19 that the basins provide? 20 THE WITNESS: Yeah, they have filters. 21 MR. MacNEILL: Are they designed in 22 accordance with NJ 7.8 as well as the BMP manual? Are 23 you aware of that. 24 THE WITNESS: No, they're really designed to 25 take particulate out. I looked them up.
66 1 in parking lots, they're wherever. The water, you know, 2 water hits them and it gets washed away so that water 3 gets into the creek. 4 MR. CARDOZA: Okay. 5 THE WITNESS: That's all. How much, I can't 6 tell you that. I mean, it's going to get there. It's a 7 nasty contaminate. 8 MR. CARDOZA: And it's not standard practice 9 to have this oil separated as part of a, what are we 10 calling the facility? 11 THE WITNESS: Well, if you're designing it 12 -- if you're designing a plant you usually go and find 13 out what the contaminants are. 14 MR. CARDOZA: Okay. 15 THE WITNESS: In this case it was water 16 coming out of the headwaters of the creek in the 17 mountain. There's no oil there. Okay. There's other 18 elements that you don't want to drink but -- 19 MR. CARDOZA: Okay. So you're saying -- 20 THE WITNESS: -- and those are the ones they 21 would target in this process. No, oil, I wouldn't put 22 an oil separator in if I didn't have any oil. I'm 23 wasting the clients money. 24 MR. CARDOZA: Got it. So you're saying that 25 you're potentially introducing a new contaminate?	68 1 MR. MacNEILL: Okay. That's all the 2 questions -- 3 THE WITNESS: And they're certainly not 4 going to take out any oil. 5 MR. MacNEILL: Okay. 6 THE WITNESS: And the other problem with 7 them I had is that they're going to get plugged in a 8 storm and fall, because the leaves are going to plug 9 them up almost instantly and I don't care what kind of 10 maintenance you think you have on it, you can clean them 11 out today, have a storm overnight and they'll be plugged 12 tomorrow morning and a lot of that water won't bypass 13 and end up flooding the neighborhood down below because 14 it can't get into this. The filters are the inlets, 15 they're part of the inlet system, when I looked at it. 16 MR. MacNEILL: So it sounds like from what 17 I'm hearing, you would recommend an oil/water separator 18 in each inlet prior to discharge into the basin? 19 THE WITNESS: In theory it sounds good, but I 20 don't know how you do it. 21 MR. MacNEILL: Got it. 22 That's all the questions I have. 23 CHAIRMAN BAGOFF: Thank you. 24 Mr. Haizel, do you have any questions for 25 Mr. Green on his testimony.

69 1 MR. HAIZEL: Not at this time. 2 MR. PLOCKER: Can I ask a -- 3 CHAIRMAN BAGOFF: Mr. Plocker. 4 Q. Yeah, Mr. Green, thank you very much. 5 You referenced RSIS, can you confirm which RSIS 6 section you were referring to, for the record? 7 A. All of them. It's 152 pages. 8 Q. Okay, but you were talking about the governing 9 water, correct? 10 A. Yeah. 11 Q. Just which section is that? Just so we're clear 12 so that when the board and their professionals and we 13 can go back, we can see which regulations you were 14 talking about. 15 A. I think it's in my report. 16 CHAIRMAN BAGOFF: Mr. Afran, we don't have a 17 copy of Mr. Green's report. 18 THE WITNESS: Water, water -- 19 MR. AFRAN: That was a report to my client. 20 I'm not sure if it's a final version, but I'll look 21 intro it. 22 MR. PLOCKER: He just referenced it. 23 CHAIRMAN BAGOFF: He just referenced his 24 report. 25 MS. McGOVERN: He's looking at a report	71 1 THE WITNESS: No, it doesn't specifically 2 call out water towers. It tells you how much water you 3 have to plan for supplying the residences and I 4 calculated what it told me was a peak value and a daily 5 amount. 6 Q. My question was -- 7 A. And there is nothing in your application that 8 mentioned either of those that I could find. 9 Q. My question was about water towers. Does the 10 RSIS section mention water towers? 11 A. No. No, it doesn't. 12 Q. Okay. 13 Thank you. 14 A. It doesn't. That's my engineering judgment and 15 opinion as to how you could deliver the water probably 16 to these facilities. From my experience. 17 MR. PLOCKER: Nothing further. 18 CHAIRMAN BAGOFF: Thank you, Mr. Green. 19 MR. AFRAN: I have one follow-up question. 20 CHAIRMAN BAGOFF: Mr. Afran. 21 Q. Mr. Green, you mentioned two things with respect 22 to the oil contaminant question. In addition to water 23 running into the basin, which have a filter, you 24 mentioned water will bypass the basins in certain 25 storms, is that correct?
70 1 while testifying, we should have a copy of it. 2 MR. AFRAN: I have no problem with that. 3 Let me get a final one that's maybe typed in. 4 MS. McGOVERN: Whatever he's using to assist 5 him when he's testifying tonight is what the board 6 should have. 7 MR. AFRAN: Okay. My only copy has my 8 notes. 9 THE WITNESS: I'm sorry, I did not put that 10 in the report, but the whole section on water. 11 Q. Is that section entitled Water Supply? 12 A. Probably. It's in the back of the RSIS. 13 Q. Okay. 14 A. Near the back. They also discuss sewer in the 15 back. 16 Q. And is it your testimony that the application, 17 that the proposed site plan does not comply with that 18 RSIS section at all? 19 MR. AFRAN: He didn't say at all, he said 20 with specific questions. 21 Q. Okay. 22 Does the RSIS section on water talk about water 23 towers? 24 MR. AFRAN: Wait, we don't have it in front 25 of us. If Mr. Plocker wants to present --	72 1 A. Yes, because the filters are part of the inlet 2 structure. You see the inlets along the side of 3 streets, they mostly don't have any filters on them but 4 these they called out a specific type of filter, I can't 5 remember name of it. But it's only intended to take out 6 particulate. 7 Q. How do you distinguish particulate then from the 8 oil that you referred to? 9 A. I mean, that's pretty obvious. It's totally 10 different, oil is a chemical and particulate is small 11 solids. 12 Q. Thank you. That what was I was asking you. 13 Thank you. 14 A. Okay. 15 Q. And so when -- 16 A. I'll try. It was so obvious to me I couldn't 17 understand why -- 18 Q. Usually lawyers don't do that, but I just took a 19 chance and asked the question. 20 With respect to water that bypasses the basin, 21 even if the basins, as the board engineer asked or 22 suggested in his question, meet the standards in the 23 regulations, if water is bypassing the basins would they 24 address the oil contaminants? 25 A. I'm not sure I understand the question.

73 1 Q. I withdraw it because maybe I don't understand it 2 either. 3 A. Thank you. 4 Q. A question from a board member was asked about 5 you seeing the site itself. I'm not -- I don't mean any 6 criticism about the question, but let me ask you this. 7 When you calculated the 211 foot upgrade, okay. Did you 8 see that -- did you calculate that by physically seeing 9 the property or from some other source? 10 A. Through the drawing that had grades on it. That 11 was done by a surveyor and it listed at the property 12 line an elevation. I don't remember the exact number, 13 and it had another number totally opposite on the high 14 end of the property and another number. And the 15 difference between the two numbers was 211. I do 16 remember that. So that's the elevation difference. 17 Q. Now, when you -- 18 A. That was on the survey, that was on a site survey 19 with grade lines, they're all curvy lines all over the 20 drawing and each one represents a different level 21 contour. The contour of the land, yeah. It's a lot of 22 contour to that land apparently. 23 Q. So when you go to this site you don't see that, 24 you only see that when you look at the written 25 documentation, is that correct?	75 1 the neighborhood of what that would be and now you're 2 adding a building on top of that and you got to get 3 water up there. How you going to do it. 4 Q. And that's derived from the -- I have no further 5 questions. 6 CHAIRMAN BAGOFF: Thank you. 7 (Whereupon, a short recess is taken.) 8 CHAIRMAN BAGOFF: Ladies and gentlemen here 9 and on zoom, we're back on the record. Thank you. 10 Ms. Kapferer has a question for Mr. 11 MacNeill. 12 MS. KAPFERER: Thank you, Chairman. 13 Mr. MacNeill, I'm wondering, are you able to 14 share a bit about what degree of planning or due 15 diligence -- 16 THE PUBLIC: Could you speak louder. 17 MS. KAPFERER: Sure. 18 Just curious if you could provide some 19 information for like a typical, what would be the level 20 of due diligence of planning that would be required for 21 water and sewer? 22 MR. MacNEILL: Yes, absolutely. So 23 typically, every developers different, but typically a 24 good developer would potentially build the stormwater 25 sewer the city would provide. It's not, again, that's
74 1 A. Oh, yeah. Somebody has to survey to get these 2 grades. They got special equipment to do that work. I 3 don't physically do it but I've been involved in having 4 that work done and seeing the result of it many times. 5 Q. So in order to -- so not seeing the site as you 6 were he asked, does not impact your ability to 7 understand the grade, correct? 8 A. Of course not. 9 Q. And similarly does not seeing the site -- 10 A. May I add, if I was at the site I would've never 11 figured out what that elevation difference was. 12 Q. So the question for the need for a pumping 13 station which provides stormwater upgrade would not be 14 addressed by you visually seeing the site? 15 A. "Yes" and "no". I mean, you can -- it's awfully 16 high and you're going to need some help. 17 Q. Not seeing the site physically would not impact 18 that judgement? 19 A. No. No. 20 Q. In other words, you make this judgement from 21 documentation? 22 A. Absolutely. Another professional went there and 23 figured out what the grades were and documented it and I 24 looked at it and simple math. 211 feet. And that's, 25 think about how tall is a high-rise building. That's in	76 1 not a requirement at the board level, but at the board 2 level in most cases applications do not have water and 3 sewer service approvals before a Planning Board hearing. 4 Any potential approvals for a development application 5 would include a condition of approval for outside agency 6 approvals, that would include water and sewer service 7 approval. So that is absolutely going to be any, if we 8 get to that point, would be a condition of approval for 9 this application. That they have to obtain all outside 10 agency approvals prior to getting to resolution 11 compliance. So if the applicant cannot obtain water and 12 sewer service through approval, the resolution would 13 expire in two years and they'd have to come back to the 14 board for either time extension or re-approval of the 15 application. 16 MS. KAPFERER: Thank you. 17 MR. AFRAN: Mr. Chairman, I would just note 18 -- 19 CHAIRMAN BAGOFF: Mr. Afran. 20 MR. AFRAN: I would note as a legal point to 21 the great extent to the boards engineer, obviously it's 22 correct that approvals of other agencies are always a 23 condition of approval. However, the law, and this comes 24 from Field v. Franklin Township and a series of other 25 cases, and we'll get to that at the right point, makes a

77 1 distinction between conditions of approval for -- 2 conditions of approval that require approvals of other 3 agencies and the failure to include the essential 4 elements of the utility water, sewage, etc., in the 5 development application. Even though one needs to get 6 approval from those other agencies as a condition of 7 this approval the law still requires this board must 8 have before it the actual plan for those fundamental 9 functions. And so there's a distinction in the law. 10 Yes, you need to get approval from the sewage authority, 11 DEP, whoever it may be, but the board can't approve an 12 application if it does not have those actual plans laid 13 out. And that's the distinction that comes from Field 14 v. Franklin Township and a series of other cases, and 15 we'll brief it, you know, if necessary, but we'll have 16 more argument on it, but that's our position legally and 17 it is the law. 18 MR. MacNEILL: Mr. Chairman, if I can 19 respond to that. 20 CHAIRMAN BAGOFF: Mr. MacNeill. 21 MR. MacNEILL: The plans -- the last 22 revisions for the plans dated October 28, 2024, do in 23 fact show sewer service lines as well as water service 24 lines as well as a proposed pump station on the plans. 25 They also call out an extension of the water main from	79 1 association system if we have to. You have to show that 2 you can use to those things. That there's sufficient 3 capacity, that there's sufficient capacity in the water 4 system. What source will give you those 73 gallons a -- 5 thousand gallons a day. You can just say well, we think 6 we -- 7 CHAIRMAN BAGOFF: Okay. Get to your point. 8 MR. AFRAN: So that's the point. The 9 feasibility is the clear condition required there. 10 CHAIRMAN BAGOFF: We understand. 11 Mr. Plocker. 12 MR. PLOCKER: Mr. Afran is conflating our 13 engineers testimony with the testimony of the witness 14 here today. There was testimony about what the town 15 system looks like off-site, that is not part of this 16 application. Do we absolutely need to figure that out 17 and get somebody to sign off on our TWA and get approval 18 from the DEP. 100 percent. But he is conflating with 19 what is shown on the site plan with other issues that 20 were testified to previously. 21 MR. AFRAN: Actually, I'm not conflating. 22 It's not enough to say we someday can hook up there we 23 think. 24 MR. PLOCKER: That's not what we're saying. 25 MR. AFRAN: You actually have to show not
78 1 Kuzic Drive. So I would, based on that information, I 2 do believe they have adequate water and sewer design for 3 a board approval decision or board decision I'll say. 4 MR. AFRAN: Actually, I -- the engineer for 5 the applicant made it clear in his testimony that those 6 connections were not known at this time. And in 7 addition it's not enough to do what the engineer just 8 described. The case law requires the feasibility of 9 these plans to be shown to this board. It's not enough 10 to say well, we think we could do a connection up here, 11 someday we'll write that on the plan. One has to show 12 the feasibility of using that connection. For example, 13 if there's no flow capacity left on other pipes you 14 can't just say well, we think we can tie into that, that 15 satisfies our duties. The case laws very clear, the 16 applicant must show the actual feasibility of what he 17 suggested. So with respect, I can't say that I have a 18 photographic memory of the latest version the engineer 19 referred to, but merely showing well, we may be able to 20 hook up here and we may be able to put something here, 21 doesn't address the feasibility. The actual details of 22 how these will work have to be presented and they 23 haven't been. And that's the distinction that the 24 Appellate Division has made, that it's not enough to say 25 well, we think we can hook up here, maybe we'll do the	80 1 that you think you can get approvals later, you have to 2 show this board how it will work. 3 CHAIRMAN BAGOFF: We're going to leave -- 4 MR. AFRAN: Feasibility's the test. 5 CHAIRMAN BAGOFF: -- this to Mr. MacNeil, 6 our engineer, to come back and let us know where on the 7 scale of it is. If it's there or it's not there, where 8 we are with that. 9 MR. AFRAN: We're going to another time and 10 we also will make -- 11 CHAIRMAN BAGOFF: Yes. 12 MR. AFRAN: -- a legal argument when we need 13 to. 14 CHAIRMAN BAGOFF: Yes. Thank you. 15 Public comment -- I'm sorry. Questions. 16 MR. AFRAN: Could I just ask, I'm sorry. 17 Could I just ask Mr. Fagan, I hooked up the witness with 18 the portable mic, I just want to know if it's working. 19 I don't normally hook people up with mics. 20 CHAIRMAN BAGOFF: Do any members of the 21 public have any questions for Mr. Green on his 22 testimony? Please come up and give your name and ask a 23 question. 24 Come up right up. Remember, questions are 25 if, when, what, where, how and it's got to be focused on

81 1 his testimony. 2 Take your time. 3 THE PUBLIC: Hi there. It's Barbara White, 4 I live on Howell Drive and I've come asking for some 5 sympathy. 6 CHAIRMAN BAGOFF: Go right ahead. Would you 7 like to sit down? 8 THE PUBLIC: No. No. 9 CHAIRMAN BAGOFF: Because you can hold the 10 mic while sitting. 11 THE PUBLIC: No. PT says I need exercise. 12 So actually my question is to get a better 13 understanding of the things you talked about. You 14 talked very particularly about the need for water or 15 sewer power and in your professional experience, how do 16 you get things like that to a mountain top? Again, 17 trying to get an understanding from the bare bones, you 18 know, exactly where would the water tower be placed? 19 THE WITNESS: The water tower would be 20 placed as high on the mountain as the engineer sees is 21 feasible. 22 MR. AFRAN: I'm sorry, the complaints are 23 Mr. Green can't be heard. You may want to hold that. 24 THE WITNESS: Is that any better? 25 THE PUBLIC: I can hear you. It's folks	83 1 a house on Howell and I can't take showers with 2 sprinklers or anything else with pressure pumps. 3 THE WITNESS: Exactly. You have what's 4 called a booster pump. 5 THE PUBLIC: Booster pump, eight or nine 6 hours the other day and back, you know, that was with 7 the sprinkler. 8 THE WITNESS: Because they didn't design the 9 water system in your neighborhood well enough. 10 THE PUBLIC: And literally across the woods 11 from the subject property and already have -- 12 THE WITNESS: You just proved my case. 13 THE PUBLIC: Yeah. And the waters supplied 14 by Verona. 15 So I also understand from you, you mentioned 16 cooling towers, and where would they be located? 17 THE WITNESS: Okay. To cool all these -- 18 there's 500 facilities counting the clubhouse and all 19 that, just taking a nominal, let's say two tons per 20 unit, which maybe on the shy side, but you got a 21 thousand tons. A thousand tons to cool, you need a 22 cooling tower which is rather large and it's going to be 23 outside either on top of a building or on top of it's 24 own pedestal with pipes running to and from. Okay. 25 There may be one big tower if they centralize it, maybe
82 1 back there and this side. 2 THE WITNESS: The water has to be pumped up 3 the hill and up to whatever tower tank is designed to 4 take care of water supply. And the reason I say they 5 need a tank, is because you need to have a source of 6 water that's reliable even if the pumps fail. Okay. 7 The pumps could fail, lightning strikes knock out the 8 power to the pumping system and now you're relying on 9 that for pressure, you have nothing. 10 THE PUBLIC: I understand that. Because -- 11 THE WITNESS: Okay. So that's why it, I say 12 -- at least you didn't fall. 13 So that's why I say some kind of a water 14 tank/tower has to be included to provide that safety, 15 for both drinking water and fire protection. You're 16 going to have some kind of system in the building which 17 would be sprinklers most likely and they need pressure. 18 You can't, you need a sufficient amount of pressure for 19 them to work. Okay. And the fire hydrants, and the 20 fire hydrants are going to take a thousand gallons a 21 minute. That's a lot of water. Okay. So we don't take 22 care of this you're going to have another California 23 mess. 24 THE PUBLIC: Okay. 25 So I could relate to that because I live in	84 1 four smaller towers for each building. I don't know, 2 I'm not designing this facility. I'm just saying, in 3 order to heat and cool, these are the things that would 4 need to be provided and I didn't see anything along 5 those lines in the plans. I think that's something that 6 should be addressed. 7 THE PUBLIC: So if we're to understand in 8 your professional opinion it's really the magnitude of 9 things obviously, you know, how big or how tall the 10 tower might be, but you did also mention there was a six 11 megawatt power supply, is that then sort of the standard 12 based on the size? 13 THE WITNESS: I estimated how much power each 14 unit would have and multiplied it by 500 and got six 15 megawatts. I mean, it could be, you know, five, it 16 could be ten. 17 THE PUBLIC: Is that something that's 18 normally done through like one power station or 19 multiple? Again, this is my understanding of how you -- 20 THE WITNESS: Well, you got these big grid 21 lines that's very high voltage. That high voltage comes 22 down a substation which breaks that down with 23 transformers to lower voltage because your house comes 24 in at 240, you know, it doesn't come in at 10,000. So 25 the electrical company puts in a facility to take it

85 1 from 10,000, whatever the high voltage is, down to what 2 the neighborhood needs. There has to be a facility for 3 that somewhere. 4 THE PUBLIC: Okay. 5 So I'm understanding there was a question of 6 would we have the right facilities, would it carry 7 enough power and would we be able have a backup system 8 if this facility gets built so in the event of a power 9 failure that people would still have sufficient water to 10 operate or have fire suppression, etc. 11 THE WITNESS: Well, the electric company 12 takes care of that. I can't, you know, testify to what 13 they might do. You could very well have an outage. We 14 have them all the time. 15 THE PUBLIC: My power was out because of -- 16 CHAIRMAN BAGOFF: Thank you very much. 17 THE PUBLIC: I'm done. Thank you very much. 18 CHAIRMAN BAGOFF: Do any other members of 19 the public have any questions for Mr. Green on his 20 testimony? 21 THE PUBLIC: Good evening. Seth Weisleder, 22 Howell Drive. 23 Mr. Green, thank you for your testimony. I 24 have a question. 25 We're using a lot of acronyms, would you	87 1 than what they have. A lot smaller. And you already 2 got a cul-de-sac there with 300 homes on the same Warner 3 Road which is more than the RSIS allows. So you got a 4 major problem. You got existing traffic and now you're 5 trying to add more traffic. So that's one the major 6 things that governs. 7 THE PUBLIC: Thank you. Sounds like it 8 covers a few things. I guess my question is if it's a 9 standard -- 10 THE WITNESS: It's 152 pages long. 11 THE PUBLIC: So that's a standard that the 12 state has for developers? 13 THE WITNESS: Yes. 14 THE PUBLIC: Does it have to be compliant to 15 a Planning Board before approval or after approval? I 16 mean if -- so these are the standards that the state -- 17 THE WITNESS: It has to be in the application 18 that's being reviewed. The professionals over here 19 should be looking at the application and seeing if the 20 RSIS has been adhered to. I assume they've done that, 21 that's what we do in the townships that we service as 22 engineers. 23 THE PUBLIC: So, yeah. I'm just trying to 24 understand. So applications, again, I'm not a planning 25 board member or -- I'm learning all this sitting here as
86 1 please just tell me what RSIS is and what it means to a 2 project like this? 3 THE WITNESS: It stands for Residential Site 4 Improvement Standards. These were developed by the 5 state for all municipalities, it overrides all the local 6 ordinances that builders were asked to try and figure 7 out how to build here and there. All the towns have 8 their own standards and the builders were clueless as 9 what do without a separate study every time. Now they 10 have one common standard that they have to follow and 11 that's the RSIS. 12 THE PUBLIC: And some of those standards 13 include some of the things you were testifying on this 14 evening? 15 THE WITNESS: Most of the them, yes. 16 THE PUBLIC: What else does it include, can 17 you name a couple other things? 18 THE WITNESS: Yeah, the other testimony my 19 partner Al is going to speak on covers a lot of those 20 and has to do with the design of the roads, the 21 sidewalks, ADA requirements. I'm not sure if that's in 22 there, but there's a lot. There are other requirements 23 mostly -- the traffic requirement speaks to how many 24 units you can put in the neighborhood, which is a 25 cul-de-sac. And it's limited and it's is a lot smaller	88 1 a member of the public. 2 THE WITNESS: Right. 3 THE PUBLIC: So it has to be RSIS compliant 4 before going to a planning board or after? What is the 5 practice, I guess. 6 THE WITNESS: Before. It should be in the 7 plan because the professionals are looking to see if you 8 comply with the thing. With the RSIS. You don't do it 9 later. 10 THE PUBLIC: So if it does -- yeah, if it 11 does are you saying -- 12 THE WITNESS: You don't put promises in the 13 thing and say I'm going to DO this, I'm going to do 14 that. Well, how you going to do it. That's what they 15 need to know. 16 THE PUBLIC: Okay. 17 So is the applicant -- is this compliant to 18 RSIS standards as presented today or not compliant? 19 THE WITNESS: The things I raised, in my 20 opinion, are not compliant. 21 THE PUBLIC: So you're saying there's 22 deficiencies? 23 THE WITNESS: Absolutely. 24 THE PUBLIC: And it's not compliant? 25 THE WITNESS: Yes, not compliant.

89 1 THE PUBLIC: And it shouldn't be in front of 2 a planning board until it is compliant, is that what 3 you're saying? 4 THE WITNESS: Yes. 5 THE PUBLIC: Okay. Thank you. 6 CHAIRMAN BAGOFF: Okay. Your time is up. 7 Thank you very much. 8 Thank you, sir. 9 Any other members of the public have 10 questions? 11 THE PUBLIC: Hi. Good evening. Maxine 12 Bock, Bakley Terrace. 13 So when our homes were built the developer 14 put in the sewer lines that would handle 20 or 21 homes 15 on our street. In your expertise would an additional 16 500 homes that this developer is proposing, would the 17 sewer lines that connect to Bakley be adequate to handle 18 that? 19 CHAIRMAN BAGOFF: I'm sorry, he didn't 20 testify to that and I don't think that his expertise is 21 there. He was talking is there a connection. He's 22 testifying is there a connection or is there not a 23 connection. 24 THE PUBLIC: Well, would the connection be 25 adequate to hold it?	91 1 MR. AFRAN: Thank you. 2 THE PUBLIC: My concern was in addition to 3 that when we first moved in, two days after we moved in 4 our, what would you say, our sewer line collapsed. 5 CHAIRMAN BAGOFF: Ma'am, you're testifying. 6 So you may ask him a question about what he said. 7 THE PUBLIC: My question was, because of 8 that, I am concerned if it's adequate. 9 CHAIRMAN BAGOFF: You can ask him. 10 THE PUBLIC: Okay. I thank we're done. 11 CHAIRMAN BAGOFF: Thank you. 12 Please come up and state your name. Three 13 minutes. 14 THE PUBLIC: Rachel Klein, Howell Drive. 15 I just have a question about you said the 16 use of a water tower is necessary to get water to this 17 development. To these 500 more homes. So my question 18 would be, does the water tower have to be taller than 19 the tallest building or is that something that we don't 20 have to be concerned about? Is that -- I just wanted to 21 get an idea of just how high you're talking about this 22 additional structure now. 23 THE WITNESS: Well, my engineering judgment 24 is that it probably would have to be 90-feet in the air. 25 Up near the top of the mountain. I believe it's going
90 1 CHAIRMAN BAGOFF: That's a different 2 question. He didn't testify to that. 3 THE WITNESS: Somebody has to do that 4 engineering design. I just don't see how it's going to 5 be connected and I looked at the volume, it was like 6 73,000 somewhat gallons and that just comes from how 7 much water goes into the facility they assume that's 8 going out. 9 MR. PLOCKER: Mr. Chairman, he testified he 10 wasn't aware of the connection. 11 MR. AFRAN: No, he said specifically that 12 he's looked at the plans and didn't see one. And I'd 13 appreciate if Mr. Plocker would not editorialize the 14 witnesses statement. 15 MR. PLOCKER: I did not editorialize them. 16 He said he didn't see one. I agree with that, maybe he 17 should have looked closer, Bruce. 18 MR. AFRAN: He didn't see one is not the 19 same as saying he is not aware. The suggestion Mr. 20 Plocker's making is that the witness doesn't know. The 21 witness said he has reviewed the plans and does not see 22 this in the plans. 23 CHAIRMAN BAGOFF: Okay. We're arguing over 24 semantics. He said he greed, he did not see a 25 connection.	92 1 to have to -- the way I looked at it, it would have to 2 be 90 feet in the air. I don't know exactly how big it 3 has to be. That's a whole other study that somebody has 4 to do. I just looked at the fact that there wasn't any 5 provision for how water was going to be supplied up 6 there and what the volumes were going to be. I didn't 7 see anything indicating that that was looked at. Maybe 8 there's another study these guys got that I didn't see, 9 but I didn't see any plans. But that's what I came up 10 with. You got to get it up high enough to get pressure 11 to the upper floor. Everything else below would be 12 fine, it would be more pressure. That's, you know, and 13 this is a passive way of getting pressure in the event 14 that the electrical power goes off and you can't pump it 15 up there to get pressure. That could easily happen, we 16 got plenty of electrical storms. It only take one to 17 knock out the power and you got nothing. An now you 18 need the water for fire protection and I like to take a 19 shower. 20 THE PUBLIC: 100 percent. And 90-feet, 21 that's taller then 75-feet, right? 22 THE WITNESS: What's that? 23 THE PUBLIC: You just said because of the 24 height limit that they have agreed to the 75-feet. 25 90-feet's taller, right?

93 1 THE WITNESS: I know nothing about the 2 height limit. 3 THE PUBLIC: Thank you. 4 CHAIRMAN BAGOFF: Thank you. 5 Are there any other members of the public 6 who have questions for Mr. Green? Please come up and 7 identify yourself. 8 THE PUBLIC: Anne Ricigliano, 9 R-I-C-I-G-L-I-A-N-O. I live in the Highlands right 10 below the property. 11 CHAIRMAN BAGOFF: Speak into the mic louder. 12 THE PUBLIC: I just have a question, might 13 be apparent to everyone. Rachel was talking about the 14 height of these necessary towers and water towers. So 15 I'm thinking of how much water, how high much physical 16 space this is going to be taking in the development. We 17 spend so many hours staring at slides where the 18 buildings will be and so much has been made about the 19 real estate that would be taken up by these buildings. 20 But it sounds like more real estate is going to be taken 21 up with towers, water towers, etc. Pumps, so is that 22 your opinion, this is going to take up more space? 23 THE WITNESS: Of course. 24 THE PUBLIC: Of course. Okay. Well, I just 25 want your opinion.	95 1 THE PUBLIC: I didn't understand what it 2 was. Is flooding, I heard something mentioned about 3 flooding, is that part of the requirement? 4 THE WITNESS: It requires applicants to look 5 into stormwater, yeah. 6 THE PUBLIC: And I didn't catch it. Was 7 that part of what was in the plan or needs to be in the 8 plan? 9 THE WITNESS: They have stormwater plans, 10 yeah. They have basins and inlets. They have a lot of 11 facilities for that. They have a stormwater calculation 12 study that's 500 pages long which I reviewed. Other 13 people are experts in that, I'm not testifying on that, 14 but, you know, yes, that's in there, it's in the RSIS. 15 THE PUBLIC: And is that in the plan that 16 that addresses flooding? 17 THE WITNESS: Well, the whole idea of putting 18 the basins in, the stormwater basin is to collect the 19 water during major storms. They cover, you know, all 20 the way up to 100 year storms which could be quite a lot 21 of water. There's something there, whether it's going 22 to work or not, I can't testify. 23 MR. PLOCKER: He didn't testify to 24 stormwater at all. 25 THE WITNESS: There's other people to talk
94 1 THE WITNESS: I can't tell you exactly -- 2 THE PUBLIC: I don't know how apparent that 3 is. 4 THE WITNESS: I can't tell you exactly what 5 the actual design of what they're going to come up with. 6 That's not my job here. 7 THE PUBLIC: But it's something that should 8 be done? 9 THE WITNESS: I would figure 50-foot diameter 10 circle on the ground -- 11 THE PUBLIC: These are rather large things. 12 Okay. That's all I wanted to ask you. 13 THE WITNESS: -- at least minimum. I mean, 14 it could be much smaller too, I don't know. I'm not 15 designing it. 16 THE PUBLIC: Okay. Thank you. 17 THE PUBLIC: Erin Berry, Nottingham Road. 18 RSIS, I didn't get the acronym exactly, is flood impact 19 part of that? 20 THE WITNESS: Who? 21 THE PUBLIC: Whatever that acronym is, RSIS. 22 CHAIRMAN BAGOFF: For the public, it's the 23 Residential Site Improvement Standard. 24 THE PUBLIC: RSIS. 25 THE WITNESS: It's just an acronym for that.	96 1 about that. 2 THE PUBLIC: Okay. I was just trying to 3 understand if it was part of what was in the plan and if 4 it's required or not. 5 THE WITNESS: Well, it's required by RSIS and 6 other professionals who are experts in that area have 7 addressed it. Okay. There's other people, I 8 understand, who have issues with it, but I don't. 9 THE PUBLIC: Thank you. 10 CHAIRMAN BAGOFF: Thank you. 11 Any other members of the public who have 12 questions for Mr. Green? Please come up. You have 13 three minutes. 14 THE PUBLIC: Kumar Patel, West Orange. So I 15 have a question regarding, based on your professional 16 opinion, right. Sewer line that is designed for 80 to 17 90 single family homes, can they accommodate the 18 capacity of 700 and somewhat gallons that you were 19 talking about that would be required by this applicant? 20 THE WITNESS: It's like 74,000 gallons a 21 day. 22 THE PUBLIC: Yeah, 74,000. 23 THE WITNESS: And it could come down during 24 peak hours at the rate of 900 gallons a minute for an 25 hour, let's say.

97 1 THE PUBLIC: So would that sewer line, if 2 you go 80 to 90 single family homes, accommodate that 3 extra capacity or -- 4 THE WITNESS: I don't know. This 5 application is 496 units in mid height buildings, four 6 story buildings. That's what I looked at. I didn't 7 look at, I didn't look at single family homes. 8 THE PUBLIC: So in your experience 80 to 90 9 single family homes capacity or the discharge that would 10 be coming from that would be approximately how much? 11 THE WITNESS: I have to do the calculation. 12 THE PUBLIC: Okay. It would be less than 13 what -- 14 THE WITNESS: Oh, absolutely. Absolutely 15 less. Yeah. Unless there's ten room houses or 16 something, but if they're normal houses. 17 THE PUBLIC: Three to four rooms? 18 THE WITNESS: Four, five bedrooms. There's 19 some big houses around here. Beautiful big homes. I 20 visited one today. 21 THE PUBLIC: I have a question for the town 22 engineer, Mr. Chair. 23 CHAIRMAN BAGOFF: Mr. Green right now. 24 THE PUBLIC: That was it. 25 CHAIRMAN BAGOFF: Thank you.	99 1 THE PUBLIC: Break the road up. Okay. Got 2 it. Thank you. 3 How many types of utility lines will they 4 need for gas, electric, sanitary lines? Like what are 5 the different kinds of lines that have to get up there? 6 THE WITNESS: All those plus water. 7 THE PUBLIC: Okay. 8 THE WITNESS: I envision you have a 9 eight-inch waterline coming from some source, maybe 10 where the existing water plant is being expanded maybe, 11 if they can do that. I don't know. Now you got an 12 eight inch line going all the way up to this water tower 13 I'm suggesting they need and then from there you're 14 going to have six or eight-inch lines coming back down 15 to each of the separate buildings that go under the 16 street. So you got not just one line going up there you 17 got up and then coming back. 18 THE PUBLIC: And how do they get under the 19 street? 20 THE WITNESS: Up there they're going to have 21 to blast. 22 THE PUBLIC: Blast. Okay. 23 THE WITNESS: It's rock, right. 24 THE PUBLIC: Thank you. 25 All right. And then last question, are
98 1 THE WITNESS: You're welcome. 2 CHAIRMAN BAGOFF: Do any other members of 3 the public have a question for Mr. Green on his 4 testimony? 5 Please come up. 6 THE PUBLIC: Thank you. Susan Pannullo. I 7 live within the 200-foot notification range and I have a 8 few questions, actually leveraging off the prior 9 speaker. 10 Thank you. Where are the utility crossings? 11 How do you get to the mountain top? How does that work. 12 How do the utility crossings get to the mountain top? 13 How do they go. Do they cross existing sewers or is it 14 necessary to rip up Warren Road. How did they get 15 there? 16 THE WITNESS: The water, the sewers going to 17 be separated and under the street somewhere. 18 THE PUBLIC: So do they have to rip up the 19 road in order to get those sewer lines up there? 20 THE WITNESS: Well, I would assume they have 21 to dig trenches before they put the road in. But, you 22 know. 23 THE PUBLIC: Thank you. 24 THE WITNESS: If the roads there they're 25 going to have to break it up.	100 1 sprinkler systems of any use to fight a forest fire? 2 How does that work. 3 THE WITNESS: It will work great if you put 4 the sprinkler all over on the trees. 5 THE PUBLIC: So what would you need to fight 6 a forest fire in terms of water sources? 7 THE WITNESS: You need hydrants every couple 8 hundred feet. 9 THE PUBLIC: And how does that work? Like, 10 how do the hydrants get there. 11 THE WITNESS: You got pipes dedicated to 12 feeding them and they're at least six or eight-inches in 13 diameter. 14 THE PUBLIC: And how do they get to like -- 15 do you have to bust up the road to get those there? 16 THE WITNESS: Yeah, they're going to go 17 parallel with all the other pipes that we talked about. 18 THE PUBLIC: You got to blast? 19 THE WITNESS: Yeah, blast. It's rock. 20 THE PUBLIC: All right. Thank you. 21 THE WITNESS: Probably trap rock. 22 THE PUBLIC: Got it. 23 All right. Thank you, sir. Okay. 24 CHAIRMAN BAGOFF: Thank you very much. 25 Any other member of the public have

101 1 questions for Mr. Green? 2 THE PUBLIC: It's actually one question and 3 one minute. Seth Weisleder, Howell Drive. 4 Does RSIS mention water volume or pressure? 5 THE WITNESS: It tells you how to calculate 6 the water usage which is equivalent to volume. Okay. 7 Pressure -- it doesn't talk about pressure, but for a 8 practical standpoint you got to have 50 PSI for all your 9 fixtures to work. Okay. So they don't have to put that 10 in there, any good mechanical engineering firm would 11 know that and satisfy the needs. 12 THE PUBLIC: Okay. So there's no standard 13 for pressure? 14 THE WITNESS: I said there's engineering 15 experience and practice. 16 THE PUBLIC: Was that included in these 17 plans that were submitted, pressure and the volume or 18 both or one? 19 THE WITNESS: There was no discussion of the 20 volume requirements or anything about how to supply the 21 water to any of those units. Especially not something I 22 would've expected to see. 23 CHAIRMAN BAGOFF: Any other members in the 24 public have any questions for Mr. Green on his 25 testimony?	103 1 sent to, I think, Ms. McGovern, I don't know if there's 2 anything beyond that frankly, I can't speak to that. 3 CHAIRMAN BAGOFF: Providing testimony, 4 providing information about documents that were provided 5 to the board and documents to the board has. So 6 anything else is in the realm of public comment. 7 MR. PLOCKER: Mr. Chairman, may I. 8 CHAIRMAN BAGOFF: Mr. Plocker. 9 MR. PLOCKER: Thank you, Mr. Chairman. 10 Also Mr. Pannullo, as Mr. Afran identified, 11 is the president of the official objector group, who is 12 represented by very capable counsel. 13 Can I -- let me finish. Very capable. So I 14 think, you know, we went through this last time when I 15 think it was Mr. Tractenberg who testified and we let 16 him testify about some things, but I think there needs 17 to be a key distinction drawn, is this going to be 18 factual and saying water gets yea high when it rains 19 outside my house or is he going to be introducing 20 documents that may lead to legal arguments, which Mr. 21 Afran has shown he's very capable of making. Because 22 the objector We Care is represented by counsel I believe 23 it was agreed to at the beginning of this hearing that 24 none of the officers of We Care would be testifying. 25 MR. AFRAN: That was not was agreed to.
102 1 Any member have any questions for Mr. Green 2 on his testimony? 3 Seeing none. Thank you very much, Mr. 4 Green. 5 Mr. Afran. 6 MR. AFRAN: Thank you, Mr. Chairman. 7 The only other witness we have this evening 8 is Joe, Pannullo, who's the president of the board of We 9 Care. I have a presentation, I'm not sure exactly every 10 issue he's going to go into. I know there's some 11 documents he wants to proffer, obviously Ms. McGovern 12 and I had a discussion earlier, there might be some 13 questions from the board whether that's appropriate in 14 testimony, but I just leave that to the board's 15 discretion as we go forward. I'll address it if there's 16 any issues that are raised. 17 CHAIRMAN BAGOFF: So there's a difference 18 between the public comment and expert testimony, as you 19 know. The problem is, is he an expert in any field that 20 we have people to evaluate, our engineer, our planner. 21 MR. AFRAN: He was not planning to offer 22 expert testimony and the documents he's offering were 23 documents previously submitted to the board or its staff 24 from various diocese and I understand he wants to 25 proffer those. He might have -- I saw his memo that he	104 1 What was agreed to was they wouldn't speak in public 2 comment. 3 MR. PLOCKER: And the board didn't agree to 4 that -- 5 CHAIRMAN BAGOFF: One at a time. 6 MR. AFRAN: I expressly reserved the power 7 and right, subject to the board's discretion of course, 8 that members of the board of We Care would, from time to 9 time, offer testimony. I never said they would never 10 speak. I said they would not speak during the public 11 comment portion. 12 MR. PLOCKER: And one more thing. There was 13 a memo that was referred to, I have not seen a copy of 14 that memo. 15 MS. MCGOVERN: I got an e-mail that talks 16 about documents. I know one of them was -- 17 MR. AFRAN: That's what I was referring to. 18 MS. MCGOVERN: Was things that were remedied 19 and are completely removed at this point. 20 MR. PLOCKER: That sounds like legal 21 argument. 22 MR. AFRAN: Let me just suggest the 23 following. Firstly, as far as Mr. Plocker's comment is 24 concerned. I didn't see the e-mail either, until it was 25 copied to me after it was sent. I didn't realize Mr.

105 1 Plocker didn't get it. I would suggest we let Mr. 2 Pannullo begin and if the board Chair or the board 3 itself feels that it's not appropriate the board could 4 rule. That's the only thing I could suggest. 5 MR. PLOCKER: The applicant would ask for a 6 proffer what the testimony's going to be concerning. 7 MS. McGOVERN: Yeah, I agree with that and I 8 think Mr. Afran, you're the one who should give the 9 proffer because you're the attorney for the group. 10 MR. AFRAN: The attorneys don't control all 11 of the world, as Ms. McGovern will acknowledge. 12 MS. McGOVERN: I do understand that. I do. 13 I understand it. I live it. But maybe you want to have 14 a consultation and you could -- you can in your judgment 15 advise the board as to why this is evidence that the 16 board needs at this time. 17 MR. AFRAN: May I suggest that we take a 18 ten-minute break, also because I want to check on one of 19 the experts availability. 20 CHAIRMAN BAGOFF: Before go. Ladies and 21 gentlemen of the public, what we're doing is trying to 22 work within the guidelines of how information is 23 provided to the Planning Board so we can use it to make 24 the judgment on an application. Small application in 25 your backyard or a big application for hundreds of	107 1 CHAIRMAN BAGOFF: Yes, take a five minute 2 break. 3 (Whereupon, a short recess is taken.) 4 CHAIRMAN BAGOFF: Thank you. We're back on 5 the record. 6 Mr. Afran. We're back with Mr. Afran 7 momentarily. 8 Mr. Plocker, there was some information in 9 the New York Times and the National Forestry Service I 10 had read about mini forests, also known as microforests. 11 Small density planted areas designed to mimic a natural 12 forests echo system. It seems that these are coming 13 vogue. They have great biodiversity, lots of good air 14 quality, so on and so forth. We would like to ask that 15 we have funding to speak to Mr. DeFeo, the forester for 16 the Planning Board, to find out more about this and how 17 it is going to help this application. 18 MR. PLOCKER: So is the board making a 19 request of the applicant -- 20 CHAIRMAN BAGOFF: Yes, the board is. 21 MR. PLOCKER: Okay. Yeah, that's fine. 22 MS. McGOVERN: Bruce, I did forward a copy 23 of the e-mail. I know you're probably not looking at 24 that -- 25 MR. PLOCKER: You mean Bryan. You said
106 1 units. The goal is that we all have rules that we have 2 to follow. If we start going left or right of the rules 3 it becomes problematic, because the applicant, the 4 objector and the public doesn't get a fair hearing. 5 Just like in court. This is a quasi judicial body, we 6 have to follow the rules. There are pieces of evidence 7 provided by experts, as you heard this evening, Mr. 8 Green the civil engineer, he has degrees in civil 9 engineering and also holds a license in the State of New 10 Jersey. His testimony is provided based on his 11 licenses, his education and his understanding of the 12 application. On the other hand, the public is allowed 13 to comment at the end of the application about the 14 application and they will have time, you will have time 15 to say what's on your mind, whether in favor, not in 16 favor, ask questions, but mostly for comment on what you 17 feel, how you feel. That's what that part of the 18 application is for. So at this time we're asking for 19 information that is of the highest level provided by 20 experts so the board can understand better how this 21 application fits within the zone plan and all the moving 22 parts you have been listening to over the last 14 or so 23 meetings provided by the applicant, our experts and the 24 objector. So to that end, take five minutes Mr. Afran. 25 MR. AFRAN: Yes, thank you.	108 1 Bruce. 2 MS. McGOVERN: Oh. I'm sorry. I'm looking 3 at Bryan. I did send it to you. 4 MR. PLOCKER: I did receive an e-mail. 5 We'll take a look at it. That's no problem. Thank you. 6 MS. McGOVERN: It's fascinating. I know 7 Lori has toured one, right? 8 MR. AFRAN: I'm sorry, I can't hear. 9 MS. McGOVERN: One of our board members has 10 actually toward one of these microforests. 11 MS. KAPFERER: And there's some that the 12 Environmental Commission planted, they call it a tiny 13 forest. So I think that's what you're referring to. 14 MS. McGOVERN: Yeah. Got some very 15 beneficial qualities to it. Introducing a heat island, 16 creating some real natural habitat, allowing for -- I 17 don't know. 18 MR. AFRAN: Why are we talking about 19 microforests? Has anybody spoke to that. 20 MS. McGOVERN: No, but there we're 21 discussions about the loss of the forest from the 22 environmental person and whether this would be helpful 23 as a substitute for that. 24 MR. AFRAN: Well, none of my experts have 25 spoke to the issues yet. And creating a microforest is

109 1 one thing, degrading an existing full forest is quite 2 another. To create a microforest because you don't have 3 any, that's a different question from destroying one 4 that exists. 5 CHAIRMAN BAGOFF: Actually it was using 6 parts of the forest. Also there's information based on 7 the National Forestry Service about this, how you can 8 upgrade a forest with a microforest. There's many 9 tentacles to this and we would like to find out more 10 about it. 11 MR. AFRAN: I have no objection to finding 12 out through experts. Just suddenly publically just 13 talking about it. 14 CHAIRMAN BAGOFF: It just came to light. 15 MS. McGOVERN: It was just in The New York 16 Times last week and it seemed applicable to a lot of 17 different projects in town. 18 MR. PLOCKER: So Chairman Bagoff, if we 19 could review the article, I'll get in contact with Ms. 20 McGovern. 21 MR. AFRAN: Would you please send me the 22 article. I didn't see it. 23 MS. McGOVERN: Sure. 24 MR. AFRAN: I think it's an open question to 25 relevance but let's review it.	111 1 CHAIRMAN BAGOFF: Let's go forward. We'll 2 see what happens. 3 MR. PLOCKER: Well, what documents are we 4 talking about? 5 MS. McGOVERN: I don't know. 6 MR. AFRAN: He will read them off. 7 CHAIRMAN BAGOFF: We don't know. 8 MR. AFRAN: They're in that e-mail actually. 9 MR. PLOCKER: Which I don't have, for the 10 record. Can I receive -- can I get the e-mail. 11 MS. McGOVERN: The e-mail should have been 12 sent to you. 13 MR. FAGAN: I can put it up on the screen. 14 MR. PLOCKER: Can I see it. 15 MR. AFRAN: Not all of it's relevant to this 16 particular portion. 17 MS. McGOVERN: Let's send the e-mail to Mr. 18 Plocker. 19 CHAIRMAN BAGOFF: Send it to Mr. Plocker. 20 We're not going put it up. 21 Mr. Pannullo. 22 MS. McGOVERN: Please raise your right-hand. 23 Do swear to tell the truth the whole truth nothing but 24 the truth. 25 THE WITNESS: I do.
110 1 CHAIRMAN BAGOFF: Thank you. 2 You're on, sir. 3 MR. AFRAN: Yes, okay. So I did not reach 4 Mr. Goll, but I'll -- we'll talk about that at the end. 5 So Mr. Pannullo wishes to speak to certain issues. My 6 feeling is that I'm not in a position to say you can't. 7 I don't I have that type of control over anybody. He 8 will proffer certain documents, I don't think it matters 9 who proffers them, if the board does not wish him to, 10 Mr. Chairman you can say so, I can proffer them. And he 11 has certain other matters he wishes to address. So I am 12 not in a position of saying yes or no. 13 CHAIRMAN BAGOFF: If it comes as public 14 comment we're going to stop it. 15 MR. AFRAN: I think it relates more to the 16 manner of going forward and procedure and he believes 17 certain things need to be stated in addition to 18 proffering certain documents. 19 CHAIRMAN BAGOFF: The procedure is the 20 function of the board and attorney, so if there's issues 21 of how things should go that's a question for the board 22 attorney. 23 MR. AFRAN: I can only say Mr. Pannullo, 24 after speaking with me, wishes to go forward and I don't 25 have any ability to say to anyone that they --	112 1 MS. McGOVERN: Put your full name on the 2 record, please. 3 THE WITNESS: Joseph Pannullo. 4 MS. McGOVERN: Your address. 5 THE WITNESS: 200-foot notice area. Essex 6 Fells. 7 J O S E P H P A N N U L L O, having been 8 duly sworn under oath testifies as follows: 9 CHAIRMAN BAGOFF: Sir. I said go ahead. 10 THE PUBLIC: Simply the first issue, the 11 documents should already be in the hands of everyone 12 here, because they are a series of e-mails that started 13 prior to today which is the first anniversary of the 14 first hearing, July 30. But we all know there were two 15 hearing dates that were set prior, July 16 and 17th and 16 those dates were cancelled and they were cancelled not 17 on the record anywhere, that's why I'm asking that these 18 be made part of the application. The application was 19 approved June 25, these are just e-mails and 20 correspondence. You already got them. I'm on the 21 e-mails, Bill Potter's on the e-mails, Diana McGovern is 22 on the e-mails, the Planning Boards on the e-mails, even 23 counsels on the e-mail. You got them already. They're 24 just not in evidence in the record in this application 25 prior to the first hearing, but from the date it was

113 1 filed. That's real simple. And I would just like them 2 in the record. You already got them. They're not 3 marked, they're not noticed, they're not even 4 identified. 5 MR. PLOCKER: Again, I'm going to object. 6 If they want documents in the record the objector has 7 counsel. 8 THE PUBLIC: Well, I would like to hear from 9 the Chair and the Planning Board attorney if necessary 10 because they're already on record, they're just not in 11 the record. 12 MS. McGOVERN: So you're talking about the 13 meetings that happened -- that never happened, because 14 it was cancelled. You're talking about meetings that 15 never happened because they were cancelled. So they're 16 not part of the record. 17 MR. AFRAN: We're arguing -- 18 MS. McGOVERN: A whole new notice went out 19 and it was begun, I don't remember the exact date, I 20 don't have my notes. But whatever took place before it 21 never got started, so it's not part of the record. 22 THE PUBLIC: But it should be part of the 23 application filed June 25. 24 MS. McGOVERN: No. No. 25 THE PUBLIC: Why?	115 1 MR. AFRAN: And I can do that at a certain 2 point. 3 MS. McGOVERN: Absolutely. 4 THE PUBLIC: Fine. Thank you. 5 This is an ongoing discussion for some 6 reason, and I'm not sure why. But the last minutes 7 transcripts that were posted in this matter were in 8 January. Our experts didn't begin until February, there 9 are no transcripts. I understand we're supposed to 10 listen to audio, that's great. Some of us are impaired, 11 that's okay. I'm one of them by the way. It's not of 12 any use in this room, because I can't hear anyway. But 13 there are no transcripts released since January. Our 14 experts began testifying in February. Our experts at 15 some point will rely on other experts, there's no 16 minutes in the record, there's no transcripts. 17 As far as minutes are concerned, the 18 Planning Boards own rules and procedures and Municipal 19 Land Use Law call for minutes. This is the only 20 application in town that doesn't have minutes and I 21 pointed out an e-mail which was sent out earlier this 22 week, there's an application here that's got one single 23 family, 75 pages worth of minutes taken at a couple of 24 meetings for one lot. You all must be familiar with it. 25 They're special meetings. We've been here for 16
114 1 CHAIRMAN BAGOFF: Because the application 2 wasn't presented. 3 MS. McGOVERN: At that point -- I know what 4 you're talking about. You're talking about the 5 ordinance that was drafted and approved by the council, 6 they neglected to send it to the county planning board. 7 THE PUBLIC: Right. 8 MS. McGOVERN: And that was corrected and so 9 then this started after that was corrected. So whatever 10 took place before has no relevance to this. 11 THE PUBLIC: Well, then why would it not be 12 part of the application from the date it was filed? 13 MS. McGOVERN: Because it's not relevant. 14 It's got nothing to do with us going forward with this 15 that started last July. 16 THE PUBLIC: Okay. Well, so they won't be 17 marked, they won't be part of the record of these 18 hearings? 19 MS. McGOVERN: Correct. 20 THE PUBLIC: Okay. 21 MR. AFRAN: Let me clarify one thing, if I 22 may. I can profer them and have them marked for 23 identification purposes, even if the board declines to 24 admit them into evidence. 25 MS. McGOVERN: You want to do that, yes.	116 1 meetings, there's no minutes. How is that a proper 2 record in conformance with this the Municipal Land Use 3 Law. I cited it for you, the Planning Boards own rules 4 and procedures. How is that okay, and if it's not okay 5 and this night is going to be different than every other 6 night, I'd like that on the record. That's all. 7 MS. McGOVERN: Let me respond. 8 THE PUBLIC: We would like minutes taken and 9 certified and issued so we can see them. Transcripts 10 are insufficient and they're not timely. 11 MS. McGOVERN: The transcripts are 12 sufficient. 13 THE PUBLIC: Well, they're sufficient -- 14 MS. McGOVERN: Under the statute that 15 requires minutes, N.J.S.A. 40:55D-9 Section C, "Minutes 16 of every regular or special meeting shall be kept and 17 shall include the names of persons appearing and 18 addressing the municipal agency and of the persons 19 appearing by attorney, the action taken by the municipal 20 agency, the findings, if any, made by it and reasons 21 therefor." What the transcript provides is all of that 22 necessary information and then some. And what we have 23 is case law that then goes into interpreting that and in 24 a reported decision, Mahwa Reality Associates v. 25 Township of Mahwa, decided on July 5, 2011 and cited in

117 1 the Cox book which -- with approval, it's cited from the 2 Cox book and it's 420 NY Super 341, which a 3 certification was denied by the Supreme Court. So in 4 other words, they were satisfied with what the Appellate 5 Division ruled. The Cox book reaffirms that you don't 6 have to describe every detail that happens but it 7 specifically said, the fact that -- the fact that -- 8 recognizing that all though the practice of keeping a 9 verbatim record of every everything is of value, it is 10 not required. So we are going above and beyond what is 11 required by the statute when we set forth these 12 transcripts. So we have more than satisfied the 13 requirements from the minutes. There might be a delay 14 in getting them done, the transcripts I believe are -- 15 we have more minutes that are getting approved, I think 16 that take us up to April. Is that right? That are 17 going to get approved at our regular meeting. Our next 18 regular meeting is next week. We are going above and 19 beyond what the statute requires. So I take issue with 20 your description that no minutes have ever been 21 produced. Because they have been produced since last 22 July 2024 through to currently January or February and 23 then the balance of them through April or will be 24 admitted next week. 25 THE PUBLIC: Planning Boards own procedures,	119 1 the hour, these things are expensive, that's fine. But 2 Municipal Land Use Law 4:55D-10.5, the regulations of 3 certain governing review application notwithstanding 4 any provision law from the contrary. Those development 5 regulations in effect of the date, I think it was 9C. 6 40:55D-9C, I can pull it out for you here, but I sent it 7 out to you the other day -- 8 MS. McGOVERN: And I just quoted it to you 9 from 40:55-9C. That was what I just read. 10 THE PUBLIC: -- the cases that applied. 11 So I guess the discretion of the board to 12 conform with any set of rules you would like. This is 13 the largest application in town, it's maybe one of the 14 longest opposed applications unfortunately and the 15 ability for people to hear, to see, to come and be 16 present, our experts, we've got more people to come but 17 we're having a hell of a time trying to keep track 18 what's in the record for our own experts. It's not 19 there. Timely minutes, transcripts at the expense of 20 the developer if you'd like, that's great. But that 21 doesn't replace minutes and it doesn't give a record of 22 the actions of the board. 23 MS. McGOVERN: It does. It replaces minutes 24 and it gives every single action of the board, every 25 objection that was made, every objection that was
118 1 rules and procedures, was this Planning Board 3.02 2 special meetings, special hearing devoted to exclusively 3 to the consideration of the specific application may be 4 requested by an applicant, blah, blah, blah. Such 5 hearing only scheduled at the discretion of the board. 6 Hearing minutes three hours in duration. Special 7 meetings -- I'm sorry. I'm reading from the wrong 8 pages. Section 2.03, Secretary. "Secretary shall, 9 under the direction of the Chair generally perform 10 secretarial work for the board, including but not 11 limited to among other things --" I'm sorry. 4, 12 "Arrange to make a tape recording as a record of the 13 proceedings of each hearing of the board in accordance 14 with the rules and keep minutes of the proceedings of 15 each meeting, including work meetings and hearing held 16 by the board and to enter therein." These minutes are, 17 shall, that's your own procedures. 18 MS. McGOVERN: Yeah, we followed them. 19 That's part of the statute. 20 THE PUBLIC: No, transcripts are not 21 minutes. I'm sorry. They may seem sufficient for 22 appeal in a court, that's great, but they're written 23 four to a page, they're five, six, seven months late, we 24 don't see them. That's not sufficient for our experts 25 to just listen to audio, thank you by the way to bill by	120 1 sustained, every objection that was overruled. Every 2 decision of the board, every person who's testified, 3 who's providing information, that's contained in the 4 transcript. It's better than minutes in a typical sense 5 of the word. 6 THE PUBLIC: So would it be fair to say 7 before this board concludes these hearings and before 8 this boards comes to it's own resolution and 9 disposition, those -- all of those transcripts will have 10 been approved and in the record before that happens? 11 MS. McGOVERN: I am sure that we will have 12 approved as many of the minutes as we can. If the 13 transcript hasn't been provided to us yet, no, we can't 14 approve it. Obviously. 15 THE PUBLIC: So will there be a complete 16 record of these hearings before you come to a decision. 17 MS. McGOVERN: That's not the requirement. 18 The requirement is that we get timely minutes and we are 19 doing that. 20 THE PUBLIC: Okay. So when the hearing is 21 over, it is done, when will we know actually when we're 22 getting a complete record? 23 MS. McGOVERN: If you take an appeal you'll 24 have a complete record. You can make a request for it 25 and we would've already provided it to you.

121 1 THE PUBLIC: Okay. So I appreciate the 2 time. So I'm going to guess that these hearings will 3 not go six or seven more months, I hope, but the 4 transcripts that don't exist in the record from January 5 until what's this week, August, we'll assign and maybe 6 we'll see something. But then before it's all over they 7 will get done. But it's notable the discretion or the 8 difference, the inequity of what we have to deal with 9 and I just want to make sure that's clear now because 10 we're dealing with the complications of it. That's all. 11 MS. McGOVERN: I understand that but, you 12 know, one of the holdups have been we have been waiting 13 for documents that were brought in at the last minute on 14 your end of the case. Objectors side of the case. And 15 they weren't supplied. And we can't post a complete 16 record if we don't have the documents. And they're in 17 your possession, that's why we've asked, yes, you're not 18 subject to the ten-day rule like the applicant, but if 19 you're going to start introducing stuff at the hearing 20 and then we have to wait to have it sent a week, a month 21 or so later, that causes a delay as well. 22 THE PUBLIC: I appreciate that. I learned 23 about that a few weeks ago. I have presented some to 24 Jamilet and she's catching up with it. I didn't know 25 about it. If there's anything missing, I don't see	123 1 using these as minutes, I ain't paying for it. 2 CHAIRMAN BAGOFF: Thank you very much for 3 the comment. Okay. 4 MR. AFRAN: I have one quick question -- 5 CHAIRMAN BAGOFF: Yes, sir. 6 MR. AFRAN: -- concerning what we were 7 discussing earlier. If Mr. Plocker's client is going to 8 commit to funding for any additional expertise 9 concerning forestry, I'd appreciate being copied on any 10 communications simultaneously so I know, you know, what 11 is happening, when, and possibly the extent of the 12 funding being proposed. 13 I would also note I have a series of doubt 14 about the relevance of this question of microforests. I 15 know something about this subject, and they're generally 16 scientific tools designed to study the stresses on -- 17 CHAIRMAN BAGOFF: Let's not testify. 18 MR. AFRAN: No, no. I'm not testifying. 19 MR. PLOCKER: Yes, you are. 20 MR. AFRAN: I'm raising an issue of 21 relevance. Well, then I won't speak of personal 22 knowledge except the following -- 23 CHAIRMAN BAGOFF: Well, then what I'm going 24 to say is, submit your request to the Planning Board, 25 the Planning Board will decide if the information is
122 1 communications, but I'm here certainly enough and I did 2 provide what I could and I do think there's one 3 outstanding. Anyway, I appreciate your forbearance. I 4 do thank you and public comment, I am a fact witness, 5 I'm not an expert, there are things that came out 6 tonight. We're good. I appreciate the good grace. 7 Thank you. 8 MR. PLOCKER: Mr. Chairman. 9 CHAIRMAN BAGOFF: Mr. Plocker. 10 MR. PLOCKER: Mr. Chairman, just for the 11 record, to be clear that, this is our court reporter 12 here and we've had a court reporter every meeting, those 13 transcripts are eventually prepared and sent out to us, 14 when we receive them we do send them into the board 15 secretary. 16 CHAIRMAN BAGOFF: Thank you. 17 Okay. Mr. Afran. 18 MR. AFRAN: You know, I -- following along 19 the lines of that, all though it wouldn't be official, 20 if Mr. Plocker could copy me that would actually allow 21 me to send them to my client quickly and possibly 22 eliminate some of the issue. 23 MR. PLOCKER: Should I send the invoice to 24 you or should my client? 25 MR. AFRAN: It's irrelevant, if the board is	124 1 relevant or not. 2 MR. AFRAN: Well, you had a discussion 3 discussing how it was relevant. I do want to point out 4 why I think it's not and the scientific tools designed 5 to study how to avoid stresses on forests. For example 6 in the Amazon they're sometimes intentionally created to 7 study that question. That is not relevant to the 8 question of the environmental harm from destroying an 9 existing forest and I'll raise a strong objection to 10 offering testimony about studies from microforest 11 experiments in order to evaluate whether we should be 12 destroying -- 13 CHAIRMAN BAGOFF: We're not there. 14 MR. AFRAN: Okay. I'm just rising an issue 15 of relevancy at the earliest opportunity. 16 CHAIRMAN BAGOFF: If it comes up then you 17 can object, I understand that. But we're not there yet, 18 so. 19 MR. AFRAN: I want to make it clear what our 20 position will be. 21 CHAIRMAN BAGOFF: Okay. 22 MR. AFRAN: Okay. 23 CHAIRMAN BAGOFF: Thank you. Appreciate 24 that. 25 MR. AFRAN: We are done for this evening

125 1 with witnesses and I regret Mr. Litwornia's -- 2 CHAIRMAN BAGOFF: We have to do some 3 scheduling before we leave. 4 MS. McGOVERN: So I did poll the board and 5 the two dates that I believe we will have a quorum, 6 Wednesday, August 13. I have yeses from Dr. Bagoff, Mr. 7 Guarino. I don't know what the Mayor's response was. 8 Counselwoman Scarpa, Mr. Alper, Mr. Wilkes and Ms. 9 Kapferer. So we would have a quorum August 13 and we 10 also would have a quorum, as my records show, for August 11 25. That would be Dr. Bagoff, Mr. Guarino, Councilwoman 12 Scarpa, Mr. Alper, Mr. Wilkes, Mr. Cardoza and Ms. 13 Kapferer. So we have two special meetings, one that 14 again, that August 25 date is a Monday, the room is 15 open. I did convey that to both attorneys. I know Mr. 16 Plocker you gave your okay for them. 17 Mr. Afran, you have witnesses for these 18 days? 19 MR. AFRAN: Yeah, I've been trying to figure 20 that out. I believe -- well, I don't know about Mr. 21 Litwornia, I am assuming by the 25th, did you say the 22 25th not the 27th? 23 MS. McGOVERN: 25th and the 13th. 24 MR. AFRAN: Yeah, Monday the 25th. I assume 25 by the 25th, I can't say for sure but I assume he'll be	127 1 input that night. So I assume the board does not mean 2 to do that. Community people have been waiting 3 obviously more than a year, so to do that on the most 4 important vacation week of the year would be unfair. 5 MS. McGOVERN: Okay. I just have to -- can 6 we get our notice in on time? 7 Okay. So the next meeting would be August 8 13 and you have witnesses for that night? 9 MR. AFRAN: Yes. 10 MS. McGOVERN: Okay. 11 And then August 25 hopefully you will wrap 12 it up. 13 MR. AFRAN: Right. We'll do our best to do 14 everything we can. We're talking about our witnesses? 15 MS. McGOVERN: We will have another -- there 16 will be another session for sure. 17 MR. AFRAN: Obviously the applicant may have 18 rebuttal, there would be community participation, there 19 would be closing arguments. But the -- 20 MR. PANNULLO: How late -- will we go to 21 1:00 in the morning? We need to know how late can we 22 go. We want to get it all done. How late will we go? 23 MR. AFRAN: How late does cognition continue 24 an the average human. 25 MS. McGOVERN: We lose our zoom operator at
126 1 all right. We believe we have witnesses. 2 MR. PANNULLO: We'll have witnesses both 3 dates. If you set them we'll have them. 4 MR. AFRAN: I believe we have people lined 5 up. I just can't say about Mr. Litwornia specifically 6 in terms of recovery. 7 MR. McGOVERN: I think we need to use our 8 time efficiently, so can you conclude your case on those 9 two dates? 10 MR. AFRAN: I don't know because I don't 11 know Mr. Litwornia's status. 12 CHAIRMAN BAGOFF: Okay. Well, we're going 13 to have to, since this is going and we can't have like 14 half of a meeting, find somebody else. I can't tell you 15 what to do, but the board needs to be done. We have a 16 lot of information, we've been very, very helpful. 17 You've been very, very helpful, we want to be done. 18 MR. AFRAN: Understood. 19 MS. McGOVERN: Okay. 20 MR. AFRAN: So if I could clarify one issue. 21 The idea is to finish the applicant's -- the objectors 22 case on the 25th. That would not be a night for the 23 community space or obviously rebuttal from the 24 applicant. Because that's the week half the world is on 25 vacation, so that would not be fair to have community	128 1 11:00 o'clock. 11:00 PM. That's it. 2 MR. AFRAN: We will see how it goes. We'll 3 do our best. 4 MS. McGOVERN: Okay. 5 CHAIRMAN BAGOFF: PB-Z-24-01 West Essex 6 Highlands, Block 139, Lot 32, Zone IH-1 Warner Road, 7 will be carried to the Planning Board meeting August 13 8 in person at town hall at 6:00 PM. 9 (Hearing concludes at 10:00 PM.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

C E R T I F I C A T E

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

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any of
the parties to the action; and that I am neither a
relative nor employee of such attorney or counsel; and
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ERIC S. FISHMAN, S.R.

Dated: 9/12/2025

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