

TOWNSHIP OF WEST ORANGE
DEPARTMENT OF PLANNING AND DEVELOPMENT
WEDNESDAY, SEPTEMBER 3, 2025
6:30 P.M.

RE; PB-24-01 WEST ESSEX HIGHLANDS, INC.

BOARD MEMBERS:

ROBERT BAGOFF, Chairman
SUSAN McCARTNEY, Mayor
JERRY GUARINO, Vice Chairman
KEN ALPER
LEE D. KLEIN
JOHN CARDOZA
LORI KAPFERER
FRANK NOBORINO
SUSAN SCARPA, Councilwoman

RYAN MacNEILL, Engineer
GERARD HAIZEL, Planner
JAMILET BAQUERIZO VITE, Board Secretary
GENIECE GARY-ADAMS, Zoning Official
JOSEPH FAGAN, Zoom Moderator

WITNESS:
ALEXANDER LITWORNIA, Traffic Engineer

FISHMAN COURT REPORTING AGENCY
89 HEADQUARTERS PLAZA NORTH
4 SPEEDWELL AVENUE, SUITE 1440
MORRISTOWN, NEW JERSEY 07960
(973) 285-5331 - FAX - (732) 605-9391

1 A P P E A R A N C E S:

2 **HUTT, SHIMANOWITZ & PLOCKER, ESQS.**
3 **BY BRYAN D. PLOCKER, ESQ.**
4 **Bplocker@huttshim.com**
5 459 AMBOY AVENUE
6 WOODBIDGE, NEW JERSEY 07095
7 **Appearing on behalf of the Applicant**

8 **GACCIONE & POMACO, ESQS.**
9 **BY DIANA P. McGOVERN, ESQ.**
10 ONE BOLAND DRIVE, SUITE 102
11 WEST ORANGE, NEW JERSEY 07052
12 **Appearing on behalf of the Board**

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10 **BRUCE I. AFRAN, ESQ.**
11 10 BRAEBRUN DRIVE
12 PRINCETON, NEW JERSEY 08540
13 **Appearing on behalf of the Objector, We Care NJ Corp.**

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I N D E X O F E X H I B I T S

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MR. GREEN'S REPORT AUGUST 22, 2025

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1 CHAIRMAN BAGOFF: PB-24-01 West Essex
2 Highlands, Inc, Block 179, Lot 32 Zone IH-1. Warner
3 Road.

4 The applicant is proposing to develop a 496 unit
5 inclusionary multifamily residential development on a
6 vacant 120 acre property in the northwest corner of the
7 Township.

8 MR. PLOCKER: Good evening. Bryan Plocker
9 on behalf of the applicant.

10 CHAIRMAN BAGOFF: Thank you, Mr. Plocker.

11 Do you have information for counsel for the
12 Planning Board?

13 THE PUBLIC: Thank you. This is a letter
14 dated August 25, 2025. First name is Seth, last name
15 is, Weisleder, 17 Howell Drive. This is from myself to
16 the Township of West Orange Planning Board West
17 Highlands, Inc., PB-24-01.

18 "Dear members of the West Orange Planning
19 Board, I live on Howell Drive and been following the
20 testimony about this steep slope on the eastern end of
21 the property directly below the proposed Building D in
22 the development application. The conflicting reports
23 from Langan Engineering and Geoffrey M. Goll of
24 Princeton Hydro only raise more serious questions. For
25 those of us whose homes sit at the bottom of this slope

1 and already rely on retaining walls the stability of the
2 slope is a major safety issue. I cannot forget what
3 happened a few years ago on Northfield Avenue in West
4 Orange when the rock slide forced families from the Ron
5 Jolyn Apartments. That disaster displaced residents and
6 showed that the risk could have been avoided, that they
7 had been studied and addressed earlier.

8 A report for the Township on nearby
9 properties found conditions conducive to periodic rock
10 fall and recommended immediate and future protections.
11 The report also highlighted the importance of examining
12 surface drainage patterns during normal and extreme
13 rainfall. I am not convinced that this has been fully
14 studied for the slope directly below Building D for this
15 project. We must not repeat that mistake.

16 Given these facts I respectfully request
17 that the Planning Board retain an independent
18 geotechnical engineer to conduct an independent study of
19 the slopes of building and the potential risk to the
20 homes below from blasting and construction of Building
21 D. This study must be performed using the highest
22 recognized professional standards available to assess
23 rock fall, slope failure, flooding hazards and recommend
24 pre and post construction mitigation steps where
25 appropriate. These risks need to be measured and

1 addressed now not after the fact. This will ensure that
2 our homes remain safe in the long-term.

3 On behalf of my neighbors on Howell Drive,
4 we are relying on the Township of the West Orange
5 Planning Board to take every reasonable step to ensure
6 our safety and well-being, making it a top priority.
7 Nothing can override the laws of physics. Let's have
8 all the answers upfront not after the fact when it may
9 be to late.

10 Respectfully, Seth Weisleder of 17 Howell
11 Drive, West Orange, New Jersey."

12 CHAIRMAN BAGOFF: Thank you, sir.

13 Just for your information and the public's
14 information, at our last meeting we asked our engineer
15 to look at both Langan and Princeton Hydro's reports and
16 evaluate both of them and come back to the Planning
17 Board with what they feel is the most rational thing to
18 do. Whether it's to get more geotechnical reports or do
19 they have enough information both sides. So we'll wait
20 to hear from them after they review their reports.

21 MR. PLOCKER: Chairman.

22 CHAIRMAN BAGOFF: Mr. Plocker.

23 MR. PLOCKER: Just on that respect and I do
24 recall that CME was asked to take a look at that. I do
25 have a Langan report responding to Princeton Hydro's

1 testimony. I have it, it's finalized, just between the
2 holiday, a lot of stuff going on in life, I have not yet
3 served it. I will be doing so tomorrow. So I would ask
4 that CME hold off until we get the report in and Mr.
5 Seel can come back on the 17th to testify as to his
6 report.

7 CHAIRMAN BAGOFF: That's fine. Please
8 respond and hand that in. Okay.

9 MR. PLOCKER: Sure. Thank you.

10 MR. AFRAN: So I'm assuming that the next
11 witness will be rebuttal in that way from the applicant.
12 Is that our plan?

13 CHAIRMAN BAGOFF: I don't know yet.

14 MR. AFRAN: Okay.

15 CHAIRMAN BAGOFF: I want to see what our
16 guys have to say.

17 Thank you, Mr. Weisleder.

18 THE PUBLIC: Can I -- all right. Can't
19 talk. Thank you.

20 CHAIRMAN BAGOFF: Thank you.

21 COUNCIL PERSON SCARPA: I have a comment.

22 CHAIRMAN BAGOFF: Council Person Scarpa.

23 COUNCIL PERSON SCARPA: The Planning Board
24 has heard conflicting testimony regarding the threat
25 posed to the homeowners on Howell Drive from the West

1 Essex Highlands and they've requested an independent
2 geotechnical engineer be retained to assess the risk of
3 the properties. You know, applicants are required to
4 establish escrow funds for this purpose. To hire
5 independent experts. And particularly where public
6 safety is at issue there can be no excuse for not
7 retaining a truly independent expert. We cannot task
8 the boards contract engineer with being the arbitrator
9 of opposing experts. I think it's imperative that we
10 have an independent geotechnical engineer.

11 CHAIRMAN BAGOFF: Thank you, Council Person
12 Scarpa.

13 Okay. Do any other members of the board
14 agree?

15 Council Person Scarpa, our engineer and our
16 planner are the towns and our independent expert.
17 That's why we call on them. So -- and they do have, CME
18 does have geotechnical experts, so we will wait to hear
19 back from what they have to say and then the board will
20 decide. If they feel in their estimation that they need
21 other outside help, they will inform the board, but at
22 this moment they are always and has been our independent
23 planning.

24 COUNCIL PERSON SCARPA: I just feel that an
25 unbiased --

1 CHAIRMAN BAGOFF: They are unbiased and
2 that's what the Planning Board uses. But thank you very
3 much for your comment.

4 Okay. Mr. Afran.

5 MR. AFRAN: Thank you. Good evening, Mr.
6 Chairman. Good evening members of the board.

7 We have two witnesses tonight. One is --
8 well, Mr. Litwornia and potentially his associate or
9 partner, Bill Green, who worked with him on this matter.
10 They will be speaking to traffic and engineering and
11 related planning and civil engineering matters,
12 including RSIS issues.

13 In addition we have our planner, Dennis
14 Hudacsko, who will testify after they have completed
15 their work.

16 As I mentioned last week, it's potentially
17 possible that we will have a very brief supplementation
18 by Princeton Hydro in regard to a letter from the
19 engineer that was recently submitted. I don't have
20 confirmation of that yet, but if they do provide that it
21 would be very brief, only probably half hour. Otherwise
22 these are our witnesses, completing our witnesses, with
23 the exception potentially of Princeton Hydro potentially
24 needing to come in and supplement. That would be on the
25 17th, I assume.

1 In addition, as I mentioned, we would
2 reserve our rights to respond by way of expert evidence
3 to the potential independent engineering analysis.

4 Before we begin our evidence, there's one task I
5 have to do, I apologize. We try to keep these as
6 neighborhood and friendly forums, but I do have to make
7 one motion that I'm required to do at the earliest
8 outset. I understand, Mr. Chairman, it's something we
9 may go into later, but I am required to at least
10 introduce it now. It's a matter of recusal of a board
11 member and it's important that we sit as judges in that
12 this is a quasi judicial proceeding, it's necessary when
13 one seeks the recusal one does it prior to the
14 commencement of hearings after we first learn of the
15 meeting. You can't wait two more days after
16 cross-examination happens or things happening and say,
17 now I'm going to seek recusal. We're obligated legally
18 to seek recusal of the judge when we first learn of the
19 issue.

20 Last week an e-mail was sent to me,
21 regretfully this involves the Mayor. An e-mail was sent
22 to me last week by Jonathan Redwine who testified on
23 behalf of the Environmental Commission at the last
24 meeting. You may recall Mr. Plocker made an initial
25 statement that he cautioned Mr. Redwine against

1 testifying because he believed that would violate the
2 Townships settlement agreement and the good faith
3 obligations underlying it. After Mr. Redwine's
4 testimony, Mayor McCartney did e-mail Mr. Redwine
5 himself and copied Justin Goldsmith. And in that e-mail
6 the Mayor expressed her displeasure that he testified
7 for the commission, I'm paraphrasing Mayor, if I'm
8 incorrect you can always correct me, I have it here.
9 And that the Mayor felt it was improper, that they
10 should have heeded the advice of legal counsel. That
11 this matters governed by the settlement agreement and
12 then the Mayor quoted Mr. Plocker's letter from May --
13 excuse me. From May 6, 2025 to the council and various
14 officials. And Mayor McCartney in her letter to Justin
15 -- e-mail to Justin and Jonathan Redwine relied upon Mr.
16 Plocker's advice to the Township in which he said that
17 there should be no criticism or opposition from Township
18 officials to this project because that would be viewed a
19 breach of the settlement agreement. And Mr. Plocker's
20 letter essentially said, directly said, we will consider
21 suing if the Township officials continue to allow
22 comments to be made at Governing Body meetings
23 criticizing this, joined in such comments, failed to
24 criticize such comments, etc. That letter was sent to
25 Ms. McGovern, I don't know if it's on the agenda items

1 of documents, but it is in the boards records from Mr.
2 Plocker. We can go into this in more detail, I can
3 submit a writing supporting the motion, but I'm
4 obligated at this point to move --

5 CHAIRMAN BAGOFF: Submit it in writing and I
6 will review it.

7 MR. AFRAN: Thank you.

8 CHAIRMAN BAGOFF: Submit it in writing and I
9 will review it with our counsel, please.

10 MR. AFRAN: Okay.

11 MR. PLOCKER: And I'd ask that any documents
12 he referred to --

13 MR. AFRAN: Any documents we referred to
14 will be provided, and obviously I mean no disrespect to
15 the Mayor, but I believe it represents a issue that
16 requires recusal. So I'm obligated to raise this now
17 before we go further.

18 CHAIRMAN BAGOFF: Fine. Send me it in
19 writing and we'll take a look at it.

20 MR. AFRAN: Thank you.

21 CHAIRMAN BAGOFF: Mr. Plocker.

22 MR. PLOCKER: Oh, no. I just wanted to make
23 clear that there was some e-mails and communications
24 referenced, I just hope all, everything that Mr. Afran
25 referenced will be produced because I have not seen some

1 of the things.

2 MR. AFRAN: Without question.

3 CHAIRMAN BAGOFF: Okay.

4 MR. AFRAN: I was not a recipient either. I
5 was copied. I was given a copy later.

6 CHAIRMAN BAGOFF: Got you. Okay.

7 Mayor McCartney.

8 MAYOR McCARTNEY: Sir, I did send an e-mail
9 to Jonathan Redwine because I had been a 20 year town
10 council liaison to the Environmental Commission and what
11 my e-mail stated was that I was disappointed that the
12 Environmental Commission on behalf of some of the
13 members of the Environmental Commission, because we
14 haven't finished this application, it's still pending
15 and we haven't heard from our own engineers. So that's
16 what I wrote in the letter and I didn't have Mr.
17 Plocker's letter. The piece that, the excerpt there
18 came from the TAP article. So that was part of it. But
19 our town council has been provided letters from our
20 Legal Department telling the council also not to respond
21 when people come to the podium during council meetings
22 because there is still an application pending. So I'm
23 sorry if you took that backwards. It wasn't that I was
24 defending in any way Mr. Plocker. I cut and pasted a
25 piece from the TAP article which was sent to me and my

1 comment was that I was disappointed because the
2 application is not completed.

3 CHAIRMAN BAGOFF: Okay.

4 MR. AFRAN: I appreciate that and we will
5 certainly look at your comments Mayor in the context of
6 what we submitted. Thank you.

7 CHAIRMAN BAGOFF: Okay. Good. We will take
8 a look at it.

9 Mr. Plocker.

10 MR. PLOCKER: And if I may, and without
11 going back to look at my correspondence, which I'm not
12 going to do now and waste everybody's time, I am not, by
13 staying silent, I'm not agreeing that whatever was
14 quoted or not quoted or not -- or spoken by Mr. Afran is
15 exactly what was in my letter and I would like an
16 opportunity to obviously see --

17 CHAIRMAN BAGOFF: Absolutely.

18 MR. PLOCKER: -- whatever he's going to
19 produce and I could respond.

20 MR. AFRAN: Yeah, no, and I thought I was
21 being clear that I was merely paraphrasing. I was not
22 attempting to quote you nor was I quoting the Mayor's
23 letter. I was paraphrasing.

24 MAYOR McCARTNEY: Thank you.

25 MR. PLOCKER: Thank you, Bruce.

1 CHAIRMAN BAGOFF: We thank you all very
2 much.

3 MR. AFRAN: Thank you.

4 CHAIRMAN BAGOFF: You're up, sir.

5 MR. AFRAN: Okay. We're going to have Mr.
6 Litwornia present his verbal report. We'll qualify him
7 and then they're going to turn to a PDF slide show that
8 Mr. Fagan has. So they won't be using that immediately,
9 that will be used after the verbal report is presented.

10 CHAIRMAN BAGOFF: Sit down -- Mr. Litwornia,
11 please have a seat, sir. And your colleague.
12 Gentlemen, sit down.

13 Go right ahead.

14 MS. McGOVERN: Who's testifying?

15 Mr. Litwornia, please raise your right-hand.
16 Do you swear or affirm to tell the truth the whole truth
17 and nothing but the truth.

18 THE WITNESS: Yes, I do.

19 MS. McGOVERN: Would you please put your
20 full name on the record, spell your last name and give
21 your address.

22 MR. AFRAN: Hang on. You need a mic.

23 THE WITNESS: Litwornia.

24 MR. AFRAN: Al, hang on. You need this.
25 Please talk close to it so you're heard.

1 THE WITNESS: Thank you.

2 Alexander Litwornia. Address is 3 Trading
3 Post Trail, Medford Lakes, New Jersey.

4 MR. AFRAN: Are you able to hear me, by the
5 way?

6 CHAIRMAN BAGOFF: Yeah, I can hear you.

7 MR. AFRAN: We 're going to introduce --
8 I'll ask Mr. Litwornia if he'll just give his
9 qualifications in the field of civil engineering and
10 professional planning.

11 A. Basically I've been doing engineering and traffic
12 transportation planning for over 30 years. As a matter
13 of fact I was -- reviewed one of the previous
14 applications to the board on this very same project.
15 Most recently we worked in --

16 CHAIRMAN BAGOFF: Mr. Litwornia, is your
17 license still good in the State of New Jersey? Is your
18 license active.

19 THE WITNESS: Yes, licensed in New Jersey and
20 Pennsylvania at the present time. Previously --

21 CHAIRMAN BAGOFF: Ladies and gentlemen of
22 the board, Mr. Litwornia has testified before us before.
23 He has esteemed from societies before us so I would
24 recommend we accept him as a traffic engineer.

25 Is that what you're presenting for --

1 THE WITNESS: Yes.

2 CHAIRMAN BAGOFF: -- Mr. Afran?

3 MR. AFRAN: And as -- well, as a planner and
4 civil engineer. There are other aspects to his
5 testimony, for example under the RSIS standards, so it's
6 not limited to traffic, but he would be testifying as a
7 civil engineer, traffic and other engineering fields and
8 as a planner.

9 CHAIRMAN BAGOFF: And your license as a
10 civil engineer and planner is active in the State of New
11 Jersey, is that correct?

12 THE WITNESS: Yes.

13 CHAIRMAN BAGOFF: Yes.

14 Mr. Litwornia?

15 MR. AFRAN: Al, is your license currently
16 active for engineering and planning in the State of New
17 Jersey?

18 THE WITNESS: Yes.

19 CHAIRMAN BAGOFF: Okay. Good.

20 MR. AFRAN: I have one quick question --

21 CHAIRMAN BAGOFF: Any board members have a
22 questions?

23 We'll accept Mr. Litwornia as a civil
24 engineer and traffic engineer.

25 THE WITNESS: And planner.

1 MR. AFRAN: And I just want to establish for
2 the record, Mr. Litwornia alluded to it but I couldn't
3 quite hear.

4 Q. Mr. Litwornia, I understand you were the engineer
5 -- the expert in these fields for We Care in connection
6 with the 2006 proceeding on a different version of
7 development on this site, is that correct?

8 A. Yes.

9 MR. AFRAN: Okay.

10 CHAIRMAN BAGOFF: Traffic engineer.

11 MR. PLOCKER: I'm going to object. I think
12 when you talk about We Care, I thought the We Care
13 objector group that is here today was not the same that
14 existed back then.

15 MR. AFRAN: Okay. There was no corporation
16 then. Let me just say that -- let me rephrase it.

17 Q. Mr. Litwornia, I understand you were the traffic
18 engineer who testified as an expert for the objectors in
19 the 2006 hearings concerning this property, is that
20 correct?

21 A. Yes.

22 MR. AFRAN: Okay. Thank you very much.
23 Please proceed with your presentation.

24 CHAIRMAN BAGOFF: Go right ahead, Mr.
25 Litwornia.

1 THE WITNESS: Basically we had a memo that
2 was presented dated August 22, 2025. The background on
3 this is we looked at this previously, so now we're
4 looking at it again in a new light. There are 496
5 apartments to be put in place versus the smaller
6 development, less than ten. And what we're doing now is
7 we're looking at it under the auspices of the
8 Residential Site Improvement Standards. The standard of
9 New Jersey presently govern residential development in
10 the state. Most people don't realize but their own
11 ordinances now have been taken over by the state RSIS
12 and it requires you to follow that and it's more
13 stringent than the local ordinances are.

14 One of the things that the state and the
15 RSIS has was the problem with the definition of
16 cul-de-sacs. Cul-de-sacs have been mainly restricted by
17 fire hoses in the past. And how long the fire hoses
18 could be with pressure from the engines and the pumper.
19 So that limited basically in addition to single family
20 houses being built on one acre or half acre to an acre
21 of land, limited the length of cul-de-sacs. Just from
22 some safety reasons more than anything else and fire
23 aspects.

24 Now, cul-de-sacs are defined a street
25 without a -- is defined as a street with simple means --

1 single means of ingress and egress and it has a
2 turnaround, the design of which would vary. The design
3 is now just not a bulb of a cul-de-sac but you could
4 have a hammerhead, you could have extra spaces painted
5 so that no one will park in certain spaces. So you have
6 -- the main thing is there's only one way in and one way
7 out of a cul-de-sac.

8 Basically the problem we have at this
9 project is there's only, the whole project as it exists
10 today now is one single point of entry and exit. And
11 since there's only one point of entry and exit it
12 operates as a cul-de-sac.

13 Now, the problem with that is how many cars
14 can you -- how big of a cul-de-sac can you have. The
15 residential Site Improvement Standards people have
16 decided that if you have a sub connection you can use
17 that sub connection to expand, look into it and expand
18 your number of dwelling units that go in and out of the
19 development. The development usually is a large
20 development and comes in with a plan, a general
21 development plan. That general development plan usually
22 shows where the streets are going to go. How the
23 construction traffic will go. How the, how the roadways
24 will be interconnected, how the traffic will affect that
25 and the whole idea is that the plan requires many years

1 to accomplish. So it's not accomplished in a single
2 year. Since it's going to take a couple years those
3 plans will guarantee that the water will be there, the
4 sewage will be there and the roadway connections will be
5 there. This project has been built up but when it was
6 built up it did not follow the rules for a general
7 development plan and the owners of the property decided
8 what they would do is build out one of the sections and
9 the connections and the interconnections were sold off
10 as part of the land, so there was no interconnections in
11 the future. There were no water plans made up. No one
12 knew where the water would come from. That -- the plan
13 was something that will be done later. Well, the RSIS
14 said you're supposed to do all these things now prior to
15 giving preliminary approval.

16 Now, that makes it a lot different. There
17 have been cases that have come out that have indicated
18 that if you have a property and you had interconnection
19 to that property and subdivided off and you didn't
20 maintain control, you did not maintain control of that,
21 those interconnections, then that, then you have a
22 problem, and it's not for the courts to resolve that
23 type of a problem or for the boards to resolve the
24 problem. The developer has to resolve the problem by
25 having interconnections in the future built into his

1 program development. And if it's not done then he has
2 to work it out with the owners of the land. So those
3 owners of the land now have to part of the application
4 because they are agreeing by this application if they
5 are part of it to make and allow the connection. So you
6 have problems with interconnections in this site and you
7 have a project that took many, and is taking many years,
8 but does not have the interconnection. So one of the
9 things if you're going to have, if you're going to have
10 a project that has interconnections, those
11 interconnections have to be made prior to the
12 application. You have to have a sealed survey that
13 shows the, shows the land and it shows all the land with
14 concrete monuments so that everyone knows where the
15 property lines and boundaries are for sure. And in
16 addition to that more importantly where the access is
17 and restrictions that are on that land go and where
18 they're noted. In other words, if you have a, if you
19 have a project and that project calls for a roadway
20 interconnection, that roadway interconnection has to
21 have an agreement with the prior property owner and the
22 new property owner when it's sold. And then when it's
23 part of a subdivision and subdivided off, if you own it
24 all and you subdivide it off you have to maintain
25 access. You can't just go get the access back again

1 when you give it up. You have to barter for it or
2 whatever if you're a landowner. So you can't, because
3 they said they don't feel that they should be bartering
4 and condemning lands to make accesses if in fact the
5 landowner already had control of those accesses but
6 didn't utilize them and maintain those controls in the
7 future.

8 This application is also interesting because
9 there's a number of trips. The number of trips are
10 divided out by the average daily trips. The average
11 daily trips are used to determine the length of
12 cul-de-sacs. If you -- and the type of road go
13 together. So the type of cul-de-sac, how long the
14 cul-de-sac is and how many trips are going to go onto
15 that cul-de-sac. Once you understand how many trips the
16 cul-de-sac can handle then you can see where these trips
17 are going to be going. In this instance all the trips
18 that come into this site have to come out to the
19 intersection of Eagle Rock and Oval Road. So if there's
20 an accident on Oval Road or a tree comes down after
21 being struck by lightning, which recently occurred, and
22 you can't clear it, then there's no way to get in and
23 out.

24 If you have a steep driveway and steep
25 concerns like you do on the cul-de-sac that goes out to

1 another one of the drives, you find that you have a
2 problem there because it's a steep grade. If the grade
3 is -- the grade is limited to a maximum of ten percent
4 in the RSIS standard. They don't really give variances
5 for that. So you have to get a variance for steep slope
6 if you can get one. The steep slope is a problem. Ten
7 percent grade is where the problem starts seriously. At
8 ten percent grade in an icy covered, snow covered
9 roadway or a slushy covered roadway creates a condition
10 that there's no friction, you lose contact with the
11 surface of the road at that time. So what happens is a
12 vehicle coming down a slope of ten degrees can not stop
13 on that ten degree slope. So what has to happen is it
14 has to be a flat spot before -- at the end of that to
15 allow the vehicle to stop. If the cars going down the
16 slope and comes in at a speed there's no way to stop it
17 at the bottom. Now, that has happened in many driveways
18 and many people have tested this. And at one time there
19 was a project in Mahwah where they wanted a driveway put
20 on and three township engineers, traffic engineers
21 testified as to the slope requirement. The slope
22 requirement by the three traffic engineers was ten
23 percent grade with a 100 percent level area before
24 entering the intersection.

25 MR. AFRAN: Mr. Chairman, I'm sorry. It's

1 almost impossible to hear because of the ventilation
2 going on. In this instance, since it's not very hot,
3 could we possibly shut it because I frankly can't hear
4 myself.

5 (Whereupon, a short recess is taken.)

6 A. As I was saying, the slope of ten percent is very
7 critical. And the slope that's out there now is over
8 ten percent, so it has to be redone and it has to
9 maintain that, otherwise we have to get a variance from
10 the state as opposed to getting a variance from this
11 board because this board doesn't have that power
12 anymore. They used to have the power but the power for
13 parking spaces, parking variance, etc., is now switched
14 over to the Residential Site Improvement Standard Board,
15 which is not necessarily the best.

16 Now, the slopes on this site are problematic
17 because you have over ten percent not just at the one
18 cul-de-sac leaving the site, but at, within, within
19 various sections of roadway that we have identified on
20 slides and we can show you. But the main thing to know
21 is that we have access, none of the accesses are
22 present, except the existing Oval Road/Eagle Rock Avenue
23 intersection. That's the only intersection that has
24 access to the outside world we could say because
25 everything else is blocked off. It's either emergency

1 exit only or it's proposed as an exit and none of them
2 are exit -- there are no other exits or entrances. And
3 since there are no other entrances or exits
4 interconnecting to another road out, there has to be
5 something done. One thing is you have to lower the
6 volume that's going to be adjusted.

7 You say well, what's the volume being put out.
8 The average daily trip, which was used to maintain a
9 rural type setting in an area by the Residential Site
10 Improvement Standard people. There are approximately
11 existing 2377 annual daily trips. Average daily trips.
12 And the new trips that are being put in are 2000 -- 5105
13 average daily trips. So we're seeing with the total new
14 trips there's almost, almost double what's there now.
15 So you're doubling the traffic. And there's a traffic
16 signal that was proposed in the previous traffic report.
17 This application does not call for a traffic signal. It
18 doesn't call for any improvements that they're going to
19 do on that intersection. It doesn't say it's going to
20 pay for the traffic -- it says, the traffic signal will
21 be provided but it doesn't say who's going to provide it
22 or what amount would be paid by the developer as opposed
23 to the Township.

24 In addition to that there's an additional signal
25 at Eagle Rock and the next one, that's down further to

1 the west. So Laurel has to be improved as well and
2 there's no, there's no approval for this light at Oval
3 and Eagle Rock. Since there's no approval it has to be
4 approved and there's a question because the distance to
5 Laurel is, from it is not that substantial. And since
6 it's not that substantial there's a question about as to
7 how it would operate. The first thought was it would be
8 operated by putting the roads into coordinated phasing.
9 Coordinated phasing is normally done but if the light is
10 less than a thousand feet from say the next intersection
11 interconnecting those lights is not something that
12 works. So the new manual from, Manual on Uniform
13 Traffic Control Devices, which is supposed to be
14 followed by the RSIS, indicates that if the distance
15 between signals is a thousand feet or less that a signal
16 shouldn't be put in. So now you'd have to get approval
17 from them to breaking the MUTCD rules which are the law
18 of the state by Title 23. They refer that to Title 23
19 that if the -- if it's in the MUTCD it has to be
20 followed as much as possible by the New Jersey state,
21 which includes municipalities as well as the state. So
22 there's a question because Laurel is only 750 feet from
23 the intersection. It serves this entire section, and
24 that traffic is going to double or more. It probably
25 comes out triple as an impact since the numbers of trips

1 that come out are in the new total is 5106, existing is
2 2377. So you could see that that distance, it's almost,
3 it's almost triple the traffic at that intersection at
4 Oval Road. Since it's almost triple the traffic and
5 there's no indication that a traffic signal is
6 acceptable or has approval from the state or from the
7 MUTCD by the RSIS, there's a question whether that
8 intersection will be able to handle the traffic.

9 Now, the question that comes up is well, the RSIS
10 says in the interpretation that if the intersection --
11 if an intersection has a subconnection or a connection
12 that goes to another street and you put it in you don't
13 have to count the existing traffic. Well, that works
14 fine for small intersections. If you have a cul-de-sac
15 with five or six houses and you add it and make it seven
16 houses, you don't really need any, or eight houses or
17 nine houses, you don't have any problems with one
18 intersection. One cul-de-sac with one bulb on it and
19 you make a small change. But if you have something that
20 creates a substantial input and a substantial, see what
21 the wording is exactly, if it has a substantial impact
22 then you have to include the existing traffic into that
23 traffic to see what the input would be. This was not
24 done on this application. The volumes were almost
25 tripled and yet since -- while they were tripled, input

1 was not gathered on all of them. And what they did was
2 they indicated what the input would be for the project
3 with the volume but not with the volume plus the
4 existing volume. But just the proposed volume alone and
5 you need to look at the proposed volume as well as the
6 existing to see what the input -- impact is for the
7 changes and that has to be done yet.

8 And in addition there are numerous site problems.
9 Site distance problems caused by the slope, the steep
10 hills and the curves. You have cars that are parked on
11 a curve, that are parked perpendicular to the curb on
12 some of project coming into the building. You have
13 slopes that go into the garage that are in excess of ten
14 percent. You have a major problem with sidewalks.
15 Well, sidewalk problem is one because the driveway have
16 such steep slopes on them and the roads have steep
17 slopes on them that the driveway have, and the areas
18 where the interconnections are, the roadways itself are
19 over ten percent in grade and if the roads are ten
20 percent in grade the question is, what do you do with
21 the sidewalk. You can't put it at ten percent because
22 the maximum ADA allows you is five percent. So if ADA
23 calls for five and RSIS gets ten, you have a problem.
24 You need sidewalk on both sides of the street, according
25 to the RSIS guidelines. But the RSIS guidelines are the

1 rule not the guidelines anymore. So instead of just
2 getting a variance or design waiver from the
3 municipality you have to go to the RSIS Board with your
4 changes, which makes it a little different. As opposed
5 to the power the board had previously you could just,
6 you can give them a variance or you could give out a
7 parking variance, you can't give out parking variances
8 anymore. The variances are for -- the parking variances
9 are not supposed to be given by the municipality. They
10 have to be given by the Residential Site Improvement
11 Board. And we'll quote some of that on the screen for
12 you so you get a look at the exact wording. Because
13 most people have not coped with the fact that you have
14 to have certain water allowances. Certain light
15 allowances. There's no light studies that are done on
16 this to determine if lighting was needed or not.

17 But couple -- there are numerous locations also
18 that guide rails required because of the steepness. The
19 idea to put guide rails in the residential zone is
20 unusual and it doesn't usually occur, except in large
21 drainage basins with parking lots nearby. In this
22 instance we have a requirement for guide rails in
23 numerous locations which is over a 4 foot drop from the
24 edge of the road it requires guide rails.

25 You just go back a minute to the left-turn lane

1 on Eagle Rock and Oval. There's a requirement for left
2 turn on Eagle Rock as well as on Oval. Separate left
3 turn lanes are required. The roadway is amply -- has
4 ample width to provide them, but there's nothing in the
5 development that calls for it. Except in the analysis
6 that was made in the traffic report put them in, but
7 they weren't called for on the plan. So the applicant
8 is required -- requested to put in -- was requested by
9 his own traffic people to put it in, not exactly, but he
10 just made that analysis and put those improvements in to
11 show better levels of service, but that better level of
12 service doesn't exist unless those plans are put in.
13 Because the plans that are there now without the signal,
14 without a left turn lane on both Oval and on Eagle Rock,
15 without those turning lanes available this project shows
16 a complete degrading of level of service. But that
17 doesn't happen when you make the improvement. But the
18 improvements are made in the drafters report but they're
19 not made on the site plan and they're not made in any
20 developers agreement, which is what -- probably should
21 be provided. If there's a developer's agreement between
22 the Township and the applicant that would almost bypass
23 the Residential Site Improvement people.

24 A lot of the traffic that exists -- all of the
25 traffic that exists is going to have to go down through

1 the existing development to get to the intersection of
2 Oval and Eagle Rock. There's no other way to go.
3 There's -- another place is shown on the plan, but
4 they're not applicants, and they're not co-applicants
5 and they have not deeded or conveyed any access to their
6 property to this applicant, so they can't have access to
7 anything else. And when they do put in the traffic the
8 way it is so that one, one road going out, there is a
9 requirement for traffic calming measures and there's a
10 problem because in that area when you get into the older
11 development there were no sidewalks provided and no
12 parking on the road. So there's a lack of parking once
13 you come into that. There will be a lack of parking and
14 a lack of, lack of sidewalk.

15 There -- the sidewalks are interesting. And
16 they're interesting because in the proposal sidewalks
17 are required by ADA. The sidewalk width by ADA have to
18 be five foot every 200 feet to allow wheelchairs to
19 pass. This -- sidewalks are not that -- were not taken
20 care of on both sides of the street and they were also
21 not enough to complete with the ADA guidelines.

22 The ADA guidelines also call for an accessible
23 route from the room to the garage and to, this is
24 interesting. The ADA calls for it to be, calls for it
25 to be between, an accessible route between the persons

1 room and every other facility on the site. Which means
2 that you have to have ADA compliant routes from the
3 apartment to all the other apartments. As well as to
4 the dog kennel and the garage.

5 The garage is interesting, because it calls for,
6 to meet the garage parking requirement tandem parking
7 was put in. No where in the Residential Site
8 Improvement Standards is tandem parking called for. The
9 only place, the only mention was in the Residential Site
10 Improvement Standard have that refer to any parking
11 space size is 9 foot by 18 foot. They don't call for
12 tandem, they don't call for anything else. Tandem
13 itself, we usually recommend if there's valet parking,
14 if there's not valet parking it's very difficult to
15 handle electric vehicle parking, which is required by
16 another statute in the New Jersey DOT -- New Jersey,
17 which is on -- I don't recall the name of that statute,
18 but it's mentioned by your board engineer as well, which
19 was a good point, that it's not -- it's called for by
20 statute, but it's not called for on the plan. So that
21 has to be included in. So basically what we have now is
22 a plan that has no access to the outside, except through
23 one roadway at, which exits at Eagle Rock Avenue.

24 There's no construction circulation plan. Now,
25 if there was a plan, a guidance plan, a development

1 plan, whatever you want to call it, it would call for
2 and have a construction circulation plan, a regular
3 circulation plan, a water and sewer circulation plan.
4 It would have all these different plans that would be --
5 the reason for that is that the developer would know and
6 when he's -- what he's going to be required to be put in
7 and these off track contributions that he would have to
8 make to upgrade anything so that development could be
9 handled. But more importantly than that, it not only
10 guaranties that the plan is workable by both the
11 developer and by the municipality, the municipality
12 can't be called on at the last minute to say they need
13 to float a big bond to get water supply for another
14 project that should've been provided in the beginning
15 phases.

16 The next thing we were doing is looking at the
17 street width. Most of the street width -- most of the
18 street width called for a 24 foot travel width with no
19 parking. Some places where they have parking, it's
20 perpendicular parking, which we don't recommend at all
21 on a curve especially. Not on a main corridor. And
22 they're there in a couple of places.

23 Another thing is sight triangles. The reason
24 that sight triangles is to make sure that there's enough
25 sight distance for persons to pull out of a garage or

1 driveway, because of that, and because of the necessity
2 of it sight triangles are called for in the completion
3 list. Usually boards give variances or design waivers
4 on a site plan, usually that's given and say that's a
5 condition of preliminary. So the Residential Site
6 Improvement Standard calls for a application to be a
7 complete application with everything in it so that it
8 can be just approved or disapproved. And there's no --
9 nowhere did I see anything on some of the things that
10 are required that I see, like sight distances and sight
11 triangles and anything go to the Residential Site
12 Improvement Board for approval for -- because that's not
13 a de minimis exception.

14 Well, let's get to de minimis exceptions. De
15 minimis exceptions are noted in relief letters. Those
16 de minimis -- first de minimis. De minimis means very
17 small. Legally it's a legal term that says it's less
18 than one tenth of a penny, which is not very large, is
19 the legal term that is defined in some of the law books.
20 However, they give examples of de minimis exceptions in
21 interpretation documents that come in and that includes
22 things like type of curb, type of piping, whether you're
23 going to use concrete or PVC. Things like that. It
24 doesn't include major things, it doesn't include
25 something like leaving out a traffic signal or leaving

1 out a guide rail. Those things are not de minimis.
2 They're errors because they're just not there and that's
3 not supplied.

4 There was no air quality study performed.
5 Usually with a parking garage over 100 cars being parked
6 require air quality analysis in the Environmental Impact
7 Statement, but I didn't see anything like that here.

8 Let me sort of wrap this up a bit before we go to
9 the slides.

10 In conclusion the traffic from the cul-de-sac
11 roadways is excessive traffic. We're adding double
12 what's there now. So we're talking about triple the
13 traffic. And tripling the traffic out of one exit, it's
14 always problematic and with no other exits, approved
15 exits, we have a problem.

16 The intersection of Eagle Rock and Oval Road has
17 to be signalized and it has to be included as an
18 individual item, preferably with plans in a report that
19 indicates that a signal is warranted at that
20 intersection. And that should be done, otherwise
21 larger, even larger geometric improvements may be
22 required. And the road itself has, at Eagle Rock,
23 everything comes down to Eagle Rock and that one
24 intersection. And that intersection has to be
25 signalized. Oval Road -- Oval Road has to be signalized

1 and it has to be included with a water analysis and a
2 funding plan, because who's going to pay for it. It's
3 indicated -- in the first traffic study it was indicated
4 that it was warranted, but that warrant never addressed
5 the thousand foot proximity rule that it's in the MUTCD,
6 which was passed I think in December of last year. So
7 that was not looked at.

8 In addition all the through traffic was not taken
9 into consideration with improvements that can be made
10 for sidewalks. Some of the sidewalk improvements that
11 are not called for and the applicant has put in a road
12 that we think is deficient in width.

13 Places where a fire could breakout should be
14 addressed. The preponderance of fire, forest fires in
15 the state recently, and we had a problem here at this
16 site, not with a forest fire but with a lightning strike
17 of a tree that closed Oval Road for a couple hours and
18 there was no way to get in and out.

19 Now, that's an important thing. I approved once
20 a project that had only one way in and out and there was
21 an accident at that intersection and it was only nine, I
22 think it was nine to ten single family dwelling units,
23 but even though there was only nine or ten the accident
24 occurred at the street, blocking the bulb of that
25 intersection, blocking the intersection so that nobody

1 could drive in or out with emergency vehicles. The
2 resident from that place came out and when he came out
3 he saw the accident result and his daughter was in the
4 car in an accident. He immediately had a heart attack
5 and emergency sources could not get in to the site and
6 since they couldn't get in to the site he died and his
7 daughter lived with minor injuries. But there's always
8 a need once in a while for an emergency that you can't
9 control, forest fire, a collision. You're going to
10 triple the volume, you're going to have a problem with
11 more accidents because the more turns and the more
12 inferences -- interference between vehicles you have,
13 the more traffic accidents you have. It's just a proven
14 study.

15 The road slopes are higher than the Residential
16 Site Improvement Standards allow. Now, the road slopes
17 in the whole area are problematic. When it rains the
18 roads act as open ditches and the water doesn't go into
19 the catch basins but goes by them because of the slope.
20 If you have a slope of ten percent going down the road
21 and the cross slope is 2 percent, the volume is going
22 down as opposed to over into the catch basin. So when
23 you get to the bottom of the hill the catch basin stops
24 but the water keeps going and it creates flooding
25 conditions. So you have to handle that. One of the

1 ways to handle it is to have the road that goes down
2 have a level spot in it. And the level spot is almost
3 like a swale across the road to lower it and also work
4 with the cross slope. Have a higher cross slope than
5 the normal two and a half percent, which is the
6 standard, standard cross slope with the DOT and local
7 roads. So you have to have that modified to help remove
8 the flooding that is occurring now. And if you go to
9 Upton Road you can see that it's a 40-foot paved roadway
10 with minimal cross slopes. So that road in that area
11 creates a lot of flooding. And the slopes are quite
12 obviously a problem when you see some residential homes
13 in Verona have guide rails and have to have -- have to
14 go back and forth across the front lawn to get up to
15 their garage and they have guide rail on front lawns.
16 I've never seen that before in a residential house.
17 Where you have guide rails in the front lawn to keep
18 people from falling off the driveway as they go into
19 their garage.

20 The important point to make is that the slopes
21 are so severe that some additional design has to be put
22 in to the roadways and the designs have to be modified
23 all over and they have to be done to meet RSIS standards
24 and ADA standards and FHWA standards. And there are no
25 -- and other standards for the electric vehicle charging

1 stations that have to be input as part of the
2 application. So all these things are missing and if
3 they're missing the board can't really give them a vote
4 to say that this is an acceptable thing. You have to
5 really go through ADA on some of them and they don't
6 give variances in the ADA for sidewalk locations and
7 that. And they're not there. The sidewalks are called
8 for in RSIS on both sides of the street because of the
9 density. And the density is medium to heavy, depending
10 upon the amount of land that's going to be dedicated as
11 open space. So it's the open space area in the,
12 minimized in dedication. Creates a medium density but
13 if -- but the sidewalks are so short and comply that it
14 doesn't make any difference, they still need the same
15 amount of sidewalk on the medium density for the roadway
16 width as you do normally. So it doesn't really say that
17 it's going to give you a way out by having a medium or
18 high density.

19 And back in the memo I wrote down under
20 attachment B a list of discrepancies from where there
21 are problems where the RSIS is not met. The RSIS
22 requirements are not met. And to tell you truth in all
23 honesty in the all years that I've been practicing, I've
24 never seen an application so incomplete before. Missing
25 so many things for completion where there's no, there's

1 no excuse. There's no sight triangle, there's no
2 pollution, there's no indication where the waters going
3 to come from. There's no letter that says that water is
4 available. There's no applicant agreeing with their
5 accesses. The access points that are random access
6 points to a degree because there's no -- the developer
7 doesn't control any of access points and in places he
8 does control some of the access the neighboring towns or
9 neighboring -- or owners have restricted it and have not
10 allowed it. And it does say in the RSIS that if in fact
11 an application does not, does not, does not have
12 everything you need it shouldn't be deemed complete.
13 But the more important thing is the Residential Site
14 Improvement take away the we'll do it later on at the
15 final or preliminary approval. We'll do it under the
16 preliminary approval. We'll do it as a condition of
17 preliminary. Those things are not there now. You have
18 to go in for a preliminary if you want to get an
19 application approved and you don't want to follow RSIS,
20 then you're going to have to go and, go to Trenton and
21 make an application, and it's not under a de minimis
22 exception. All these things are not de minimis
23 exceptions. There's so many problems that I mentioned
24 more than a dozen and there's more than a dozen I have
25 left. I have pages of things that are still open items.

1 And the entire road system has to be redesigned.
2 It's going to lead to flooding the way it is now and
3 it's going to flood across and down through the existing
4 roads and the adjoining development because there's no
5 indication that anybody's changing the site -- the
6 grades.

7 Maybe you can go to the slides now.

8 MR. AFRAN: Can I just have one moment,
9 please.

10 CHAIRMAN BAGOFF: Sure.

11 (Whereupon, a short recess is taken.)

12 CHAIRMAN BAGOFF: Back on the record. Thank
13 you.

14 Mr. Afran.

15 MR. AFRAN: Thank you. There is, part of
16 the report is a PDF slideshow. However, as it turns out
17 Mr. Litwornia gave his verbal report first, which he was
18 using and following along his written report. The PDF
19 was illustrative, and going through it at your request
20 Mr. Chairman, I realized we really didn't need to use it
21 specifically. They're useful exhibits they highlight
22 the different parts, we don't need go into now.

23 Q. So let me just ask Mr. Litwornia, there's a PDF
24 presentation presented along with your report, is that
25 correct?

1 A. Yes.

2 MR. FAGAN: You have to talk into the
3 microphone.

4 THE WITNESS: Yes.

5 Q. And did you and your firm create that PDF
6 presentation?

7 A. Yes.

8 Q. And is that PDF presentation illustrative of the
9 elements of your written report that you discussed in
10 your testimony?

11 A. Yes, it does.

12 Q. Okay. Thank you.

13 MR. AFRAN: All Right Mr. Chairman, so we
14 will be offering --

15 CHAIRMAN BAGOFF: Wait. Wait.

16 MS. McGOVERN: So you want the slide show to
17 be labeled the next exhibit?

18 MR. AFRAN: No, I think it should be the
19 last of this series.

20 MS. McGOVERN: Okay. All right.

21 MR. AFRAN: So I think we should go into
22 that right now before any other questions or cross. So
23 we just identified the report.

24 So Mr. Litwornia -- I'm sorry.

25 MS. McGOVERN: Let me just say something for

1 the record. We did mark Mr. Weisleder's letter as O-27.
2 So our next exhibit marking will be O-28. And tell us
3 what you would like it to be?

4 MR. AFRAN: Okay. So O-28 I'm thinking we
5 should have O-28A, B, C, D, etc., Just for clarity.
6 Now, if you want it a different way that's fine. What I
7 see here is a main report dated August 22, 2025. And
8 that consists of a total of 31 pages.

9 MS. McGOVERN: Okay.

10 Q. Now, Mr. Litwornia, is that your initial
11 document? I'll show you what I have. This is the main
12 report, is that correct? This document.

13 A. Correct.

14 Q. Okay.

15 MR. FAGAN: He has to speak into the
16 microphone.

17 MR. AFRAN: He said correct.

18 I'd like to offer -- I'm good. I'd like to offer
19 the initial report of 31 pages, that's one document, as
20 Exhibit O-28.

21 Now, I want to be certain, there is a slide show
22 and I think that should be O-28B.

23 MS. McGOVERN: O-28B.

24 MR. AFRAN: I'm sorry, A. A.

25 MS. McGOVERN: Okay.

1 MR. AFRAN: And so that would go into
2 evidence as O-28A as in apple.

3 Now, yeah. No, I think I did send one to
4 you in error. The document we just marked O-28 does not
5 say draft.

6 CHAIRMAN BAGOFF: Let's be sure. Take a
7 look at the report, see what you want to be posted,
8 what's not to be posted so we get everything right.

9 Okay. Thank you very much everybody for
10 your indulgence here at this meeting and on zoom. We
11 had some administrative things to clear up and at this
12 time we're going to ask Mr. Litwornia some questions.

13 Mr. Plocker.

14 MR. PLOCKER: Okay.

15 CROSS-EXAMINATION BY MR. PLOCKER:

16 Q. Thank you Mr. Litwornia for coming. I know it's
17 a long night and I know you don't live close, so I'm
18 going to be pretty brief. I just have just a couple of
19 clarifications/objections.

20 One, a lot was made about, very much unknown
21 about the traffic signal at the corner of Eagle Rock and
22 Oval Road. You know, we've stated very clearly for the
23 record, it's in the settlement agreement between the
24 Township and my client. My client is 100 percent
25 committed and obligated and this approval -- any

1 approval would be contingent upon my client obtaining
2 approval from Essex County, because it is a county
3 intersection that's governed by Essex County, and my
4 client is obligated to fund that full improvement as an
5 off track improvement. So I just wanted to state that
6 for the record, unless somebody's going to disagree with
7 me I think that's been pretty clearly established.

8 Two, I just want to ask Mr. Litwornia, he talked
9 about a lot of having the rights, you know, to access
10 and come off the site.

11 Mr. Litwornia, do you know who owns the emergency
12 access lots up on Howell Drive? I forget the block but
13 I know they're Lots 8 and 9. It's actually Block
14 179.17, Lots 8 and 9. Do you know who owns those lots?

15 A. I believe the applicant has control over the lots
16 but there is no way for people to drive off the lots
17 because there were restrictions that were never recorded
18 in the survey.

19 Q. Okay. What restrictions are you referring to?

20 A. That people from this lot would be able to use
21 that lot.

22 Q. Did you review the IH-1 zoning ordinance in West
23 Orange?

24 A. It was --

25 Q. I think he's testifying.

1 A. I looked at the plan and looked at the ordinance
2 requirement.

3 Q. Okay. My question was, did you review the IH-1
4 zoning ordinance in West Orange?

5 A. I did not use it myself. I talked to somebody
6 who did.

7 Q. Okay.

8 Who did you talk to?

9 A. Joe Philapano and the planner.

10 Q. Who, Joe Philapano? Are you talking about Joe
11 Pannullo?

12 A. Yes.

13 MR. AFRAN: He also said, and the planner.
14 I think he referred in his answer to two separate
15 people.

16 MR. PLOCKER: Okay. Please let --

17 CHAIRMAN BAGOFF: Let him testify.

18 Q. Okay.

19 What did Mr. Pannullo tell you?

20 A. That the lots were owned by the property owner of
21 this lot, but that there was no access to the other
22 roads because there were restrictions in the original
23 approval of the lots.

24 Q. Did you ask him -- sorry.

25 A. That there were restrictions on the use of the

1 lot for people leaving these lots to go to the other
2 ones.

3 Q. And did Mr. Pannullo provide you with those
4 alleged restrictions?

5 A. I did not receive a copy of them.

6 Q. Did you ask Mr. Pannullo for those restrictions?

7 A. No.

8 Q. Okay.

9 For the record, Section 25-19E.6 of the IH-1
10 zoning ordinance states, and I quote, "Emergency access
11 ingress and egress shall be permitted to Block 179.17,
12 Lots 8 and 9 to the north and Bayowski Road to the
13 south." Have you ever seen that ordinance provision
14 before?

15 A. No.

16 Q. Okay.

17 Are you aware that my client has an easement
18 through the West Essex Highlands Condominium to access
19 the subject property via Oval Road?

20 MR. AFRAN: I object to the phrase easement.
21 It's not clear whether this is something that the
22 developer gave himself on those other roads -- Oval
23 Road. I strike that.

24 Q. Are you aware of any legal right that my client
25 may have to traverse the West Essex Highlands

1 Condominium from Oval Road to access the subject
2 property?

3 A. I'm not aware that they're completely
4 unconstrained but that would show up in a survey map
5 which shows the ownership and the crossation and that
6 was not provided.

7 Q. Did you do any kind of title search?

8 A. That's supposed to be done as part of the
9 application.

10 Q. Okay. Well, this board does not decide ownership
11 issues off-site. I understand that the objector group
12 may very well argue that we don't have the right to
13 access our own property, but that would definitely be
14 for a different forum and I'll also state for the
15 record, my client has the legal right to traverse Oval
16 Road to get to Warner Road to get to this site. But
17 you've never seen any documents that indicate that?

18 A. No, I have not seen any.

19 Q. Okay.

20 MR. AFRAN: Well, Mr. Plocker can make that
21 representation --

22 CHAIRMAN BAGOFF: Wait. Wait. Hang on.

23 MR. AFRAN: Mr. Plocker can make that
24 representation and at some point that ought to be
25 proffered to the board.

1 MR. PLOCKER: It's, with all due respect Mr.
2 Chairman, this board does not adjudicate ownership
3 issues.

4 MR. AFRAN: No, it does not adjudicate
5 ownership but it can't approve applications unless
6 there's evidence that there's a proprietary interest in
7 the lands that must be traversed. The board can't act
8 on an application unless the applicant shows it has a
9 right to do so.

10 CHAIRMAN BAGOFF: The applicant -- who
11 directed the applicant sole rights to those lots?

12 MR. PLOCKER: We would be more than happy to
13 do so.

14 CHAIRMAN BAGOFF: Okay. Thank you.

15 MR. AFRAN: I just want to clarify the
16 issue.

17 CHAIRMAN BAGOFF: Absolutely.

18 MR. PLOCKER: No ones going to sit here for
19 19 meetings and spend the time and resources to
20 prosecute this application if we didn't have the rights.

21 CHAIRMAN BAGOFF: I ask that you provide
22 that, please.

23 MR. PLOCKER: We can do that.

24 CHAIRMAN BAGOFF: Thank you.

25 Q. On September 11 of last year, Karl Pehnke, our

1 traffic engineer testified, did you review all of his
2 testimony?

3 A. Yes.

4 Q. Okay.

5 So is it fair to say that Mr. Pehnke testified
6 that these roads and maybe even our engineer, Mr.
7 Anderson, testified that these roads were designed as
8 minor collector roads?

9 A. I don't recall right now.

10 Q. Okay.

11 MR. AFRAN: Could you repeat that.

12 Q. I'm sorry. Did you say you don't recall?

13 A. Correct.

14 Q. Okay.

15 Do you know what the maximum grading permit is
16 for a minor collector road under RSIS?

17 A. I believe it's five percent.

18 Q. I would disagree. I would submit that it's ten
19 percent but that's --

20 CHAIRMAN BAGOFF: Okay.

21 Q. We can -- we will bring Mr. Pehnke back the next
22 meeting.

23 MR. AFRAN: Just for the record, I couldn't
24 quite hear, could the witness repeat his answer. I know
25 Mr. Plocker disagrees. I couldn't hear the answer.

1 MR. PLOCKER: He said five percent.

2 MR. AFRAN: That's what I thought. Thank
3 you.

4 Q. Do you know what the grading of the road on
5 Howell Drive is?

6 A. Excuse me.

7 Q. Do you know what the grading of the road on
8 Howell Drive is?

9 A. No. I remember looking it up.

10 Q. You mentioned something about tandem parking, how
11 RSIS doesn't address it, correct?

12 A. Yes.

13 Q. Does RSIS prohibit tandem parking?

14 A. It only allows 9 by 18 spaces and tandem space
15 was not --

16 Q. So your testimony is that RSIS does not allow
17 tandem parking? It's okay, we can disagree. I just
18 want to get your testimony clear for the record.

19 A. So there's nowhere that it's allowed and nowhere
20 does it allow a different size. So by inference it
21 doesn't allow any other different size. It wouldn't be
22 allowed.

23 Q. So is your testimony that RSIS does not permit
24 tandem parking?

25 A. Yes.

1 Q. Okay.

2 A. It does not by inference allow it. And I think I
3 misspoke previously.

4 Q. You said you reviewed Mr. Pehnke's testimony,
5 correct?

6 A. I did read it.

7 Q. And what was his conclusion as to the level of
8 service at the intersection of Eagle Rock and Oval Road
9 once the traffic improvement is installed?

10 A. Basically level service C or better.

11 Q. Mr. Pehnke said that?

12 A. What?

13 Q. Mr. Pehnke said that it was a level of service of
14 C?

15 A. His report.

16 Q. All right. We'll bring him back. I would beg to
17 differ. His testimony says something else, but that's
18 okay.

19 Did you review the settlement agreement between
20 the Township and my client?

21 A. No.

22 Q. Did you review the stormwater plan?

23 A. No.

24 Q. But you did testify that you thought there would
25 be flooding?

1 A. There would be what?

2 Q. I thought you said you were concerned that there
3 would be a stormwater runoff issue?

4 A. Yeah.

5 Q. Because of the roads.

6 Well, how can you make that conclusion if you
7 didn't review the stormwater plan?

8 A. I looked at the plans.

9 Q. My first question was, did you review the
10 stormwater plan that's part of this?

11 A. I didn't review it, I just looked at them to see
12 certain parts of it. I didn't review them.

13 Q. Okay.

14 You didn't review the whole thing?

15 A. I didn't review the whole thing in detail.

16 Q. Okay.

17 Which parts did you review?

18 A. The slopes and cross slopes.

19 Q. Of the roads?

20 A. Of what?

21 Q. Of the roads?

22 A. Yes.

23 Q. Okay.

24 Did you review any detention basins, catch
25 basins, anything of that nature where the stormwater is

1 designed to go under the plan. Did you review any of
2 those items?

3 MR. AFRAN: You know, I would raise an
4 objection. The witness didn't speak to those issues.
5 He spoke to a very limited question in terms of one
6 component of the road structure. He wasn't speaking of
7 the whole stormwater.

8 MR. PLOCKER: He said the road was going to
9 flood.

10 CHAIRMAN BAGOFF: He did say flooding of the
11 roads and he specifically said that the water was going
12 to come down and go past the retention basin. That was
13 his direct testimony. So I'm going to allow this.

14 Q. Okay.

15 And are you aware my client obtained DEP approval
16 for the stormwater design?

17 A. No.

18 Q. You aren't aware of that. Okay.

19 MR. AFRAN: Just to remind the board that
20 matter is under appeal.

21 CHAIRMAN BAGOFF: Yes, so noted.

22 MR. PLOCKER: Good luck.

23 MR. AFRAN: Did I just hear a good luck.

24 Q. And just one more question. Does the ADA allow
25 sidewalks on a street to follow the road grade? Is that

1 permitted by the ADA?

2 A. Either that or it would require ramping in cases.

3 Q. Can you point to a particular section of the ADA
4 to support that statement? That's okay. That's okay.

5 MR. PLOCKER: I have nothing further at this
6 time.

7 CHAIRMAN BAGOFF: Okay. Thank you.

8 Mr. Klein.

9 MR. KLEIN: Good evening, Mr. Litwornia.

10 Sir, you said that the traffic signal at Oval
11 Road is not warranted or what -- I wrote down a bunch of
12 notes about, you didn't think it was warranted or it
13 wasn't designed. That's where your main contention is,
14 that they don't have an actual plan that shows the
15 design?

16 THE WITNESS: It's not designed, it's not
17 included in -- could you repeat the question.

18 MR. KLEIN: So when you were talking about
19 the traffic signal at Oval Road --

20 THE WITNESS: Yes.

21 MR. KLEIN: -- in the Langan report dated
22 June 19, 2024, they did a warrant study. They met the
23 eight-hour warrant, the four-hour warrant and the
24 peak-hour warrant. Are you contesting that that's not
25 accurate? That the signal is not warranted.

1 THE WITNESS: No, I didn't say it's not
2 warranted.

3 MR. KLEIN: Okay.

4 THE WITNESS: I said it should be shown and
5 warranted and a warrant analysis wasn't provided as part
6 of this application, is what I said.

7 MR. KLEIN: It was provided in the June 19,
8 2024 traffic report. Did you review that report? The
9 Langan traffic report for this application.

10 THE WITNESS: I'm not sure that's the one I
11 saw. It was in -- it wasn't in the Pehnke one, it was
12 in the previous report.

13 MR. KLEIN: Previous report from 2006 or for
14 this application?

15 THE WITNESS: I believe it was prior to
16 this. Prior report I don't believe shows it met the
17 warrant allowance.

18 MR. KLEIN: It does. Page 12 it talks about
19 the warrants. It's in there. All right.

20 So are you saying that the whole development
21 from Oval Road in is one giant cul-de-sac?

22 THE WITNESS: It is.

23 MR. KLEIN: And what's -- how do you define
24 -- how do you come up with that?

25 THE WITNESS: One way in and out.

1 MR. KLEIN: That's different. That's a --
2 Oval Road should be a boulevard. Divided road, so that
3 there's an emergency on Oval Road it's divided and
4 people could still get in the out and out the in if they
5 have to. Is that what you meant?

6 THE WITNESS: No, it should be designed as a
7 boulevard but in addition to that there should be more
8 than one in and out. Right now there's only one way in
9 and out.

10 MR. KLEIN: All right. So you're saying the
11 RSIS there's a limitation on how many roads you need to
12 get in and out of a development as opposed to one road
13 with a boulevard design?

14 THE WITNESS: I'm saying it needs more than
15 one way in and out.

16 MR. KLEIN: I mean, we have -- there's
17 emergency access that doesn't -- it's for an emergency
18 or you just talking generalities to operate every day
19 two ways more than one way?

20 THE WITNESS: Open every day.

21 MR. KLEIN: Every day.

22 Would you be able to tell me where in the
23 RSIS it says that?

24 MR. AFRAN: Is the question, does the RSIS
25 say there has to be more than one way for every day use?

1 MR. KLEIN: Yeah. Yeah. I'd like to know
2 where it says that.

3 THE WITNESS: It says it by inference more
4 than by statement. It says it in an inference where it
5 says you have to have --

6 MR. KLEIN: Is there a limitation on the
7 number of units or the number of trips, daily, hourly?

8 THE WITNESS: There's limitations on number
9 of trips not by length.

10 MR. KLEIN: Not by --

11 THE WITNESS: Length of roadway.

12 MR. KLEIN: Okay.

13 THE WITNESS: But in some places they have
14 the length of roadway like a thousand feet maximum.

15 MR. KLEIN: Right. I mean a cul-de-sac
16 longer than 300 feet needs a bulb, things like that
17 you're talking about?

18 THE WITNESS: Well, something like that. In
19 addition to that there's a thousand foot requirement for
20 a -- thousand foot requirement for a cul-de-sac for
21 small size residence -- multifamily residences.

22 MR. KLEIN: So you reviewed the site plan,
23 are there lengths of road that have no intersecting
24 roads that are longer than a thousand feet within the
25 development? One single stem of a road that's greater

1 than a thousand feet with no intersecting roadways, are
2 there?

3 THE WITNESS: That would be the maximum
4 length of cul-de-sac and there would have to be another
5 lane.

6 MR. KLEIN: Like for instance, I'm looking
7 at what they're proposing, they've got, I mean, I don't
8 know what I'm looking at here. But, all right. And --
9 all right. So MUTCD says that traffic signals should
10 not be spaced at a thousand feet. They should be --
11 what's the minimum spacing of two traffic signals?

12 THE WITNESS: What is it?

13 MR. KLEIN: What does MUTCD say about the
14 spacing of the existing signal at Laurel, what's the
15 closest you can have another signal on Eagle Rock?

16 THE WITNESS: A thousand feet.

17 MR. KLEIN: And we're at 750?

18 THE WITNESS: Yeah.

19 MR. KLEIN: So it says that it's not
20 permitted or discourages it?

21 THE WITNESS: It says that you can not use
22 -- you can not use certain things in your justification.
23 One of the things you can't use in justification is that
24 it will provide a coordination of signals and if you're
25 using a coordination of signals as part of your

1 justification then you can't do it. You have to find
2 another justification.

3 MR. KLEIN: So I don't know if you're aware
4 of a lot of traffic signals just in West Orange, in
5 front of the zoo there's three or four maybe five that
6 are within less than a thousand feet of each other.
7 There's others on Northfield that are also close
8 together. Are they illegal signals or they somehow
9 skirted the MUTCD and were able to sneak it in there?

10 THE WITNESS: Well, they said -- the FHWA
11 said in the Manual On Uniform Traffic Control Devices
12 that, that the justification for warrant for signals
13 using coordination would not be acceptable if the
14 signals were closer than a thousand feet because they
15 found coordination doesn't operate well at that
16 distance.

17 MR. KLEIN: Okay.

18 They're not putting the signal in for
19 coordination, they're putting in the signal to operate
20 the intersection of Oval Road and Eagle Rock Avenue.
21 They met three of the warrants. So they're putting it
22 in 750 feet away from Laurel Avenue, but there's a way
23 to coordinate those two signals so they operate
24 properly?

25 THE WITNESS: No, if they use that for a

1 design and for a warrant approval --

2 MR. KLEIN: No. No. They met the
3 peak-hour, the four-hour, the eight-hour. They didn't,
4 they didn't put -- I know what you're talking about.
5 There's the coordination, I forget what number it is,
6 seven or eight on something on the list.

7 THE WITNESS: But they're not --

8 MR. KLEIN: They're not putting it in to get
9 spacing to coordinate two traffic signals.

10 THE WITNESS: Well, the numbers vary
11 according to which warrant you use, so if it doesn't
12 meet the volume warrant --

13 MR. KLEIN: It did.

14 THE WITNESS: -- and if it meets the volume
15 warrant then it -- one of the reasons that you're using
16 the warrant for under coordination signals then that
17 wouldn't operate. It wouldn't count. The warrant
18 analysis wouldn't be good if in fact it's been a ruling
19 on coordination in the law.

20 MR. KLEIN: But if they can coordinate the
21 existing signal at Laurel with the proposed signal at
22 Oval Road and it doesn't impede the operation at Eagle
23 Rock Avenue then they could make it work?

24 THE WITNESS: They'd have to prove it can
25 work, because you don't know. Basically the manual says

1 you can use it for your justification in the warrant
2 analysis. So you can't use coordination as the volume
3 in everything under that for your approval in the
4 warrant. Because that close proximity of two streets
5 will cause a problem with coordination in the next
6 signal down. Well, that's what the book says.

7 MR. KLEIN: That's it for me.

8 CHAIRMAN BAGOFF: Thank you.

9 Mayor McCartney, do you have any questions
10 for Mr. Litwornia on his testimony.

11 MAYOR McCARTNEY: Good evening, sir. My
12 question is about RSIS on the ADA sidewalks. You
13 mentioned the sidewalks. RSIS states that they have to
14 be on both sides of the road?

15 THE WITNESS: Could you repeat that, I'm
16 sorry.

17 MAYOR McCARTNEY: Yes. In RSIS, do they
18 state the sidewalks have to be on both sides of the
19 road? You mentioned it a few times about sidewalks. Do
20 they have to be on both sides of the road?

21 THE WITNESS: I couldn't hear that.

22 MAYOR McCARTNEY: The sidewalks themselves,
23 do they have to be, according to RSIS, do they have to
24 be on both sides of the road?

25 THE WITNESS: What have to be on both sides?

1 MR. KLEIN: Sidewalks.

2 MAYOR McCARTNEY: Sidewalks. Sorry.
3 Sidewalks.

4 THE WITNESS: Yes.

5 MAYOR McCARTNEY: According to RSIS?

6 THE WITNESS: Because it's a medium density
7 road you need sidewalks on both sides. And you need
8 sidewalks on both sides because they changed the signal
9 requirements, now the signal requirement have to meet
10 ADA as well as FHWA, as well as some other regulations
11 as well. So you're going to have signals that have push
12 buttons that are audible and verbal and the newest and
13 best and everything has to be accessible with sidewalks
14 on all -- on every side and every corner and it's a real
15 pain. It's geared toward everyone and the newest
16 regulations came out in December of last year and
17 they're not finalized yet, but the government says,
18 federal government says to follow those regulations
19 because we're going to institute them all for the push
20 button and verbal and for sidewalk sizes and for
21 location of -- for location of push buttons.

22 MAYOR McCARTNEY: So another question,
23 according to RSIS in this particular application are the
24 roads 18 feet or 20 feet?

25 MR. AFRAN: Could you repeat the whole

1 question, I couldn't hear the first part.

2 MAYOR McCARTNEY: In this report it talks
3 about the road width, I'm asking whether they're 18 feet
4 or 20 feet, do you know?

5 THE WITNESS: I believe I was looking with --
6 my report was predicting the use of 24.

7 MAYOR McCARTNEY: And what should they be?
8 And what do you -- what are you saying they should be?

9 THE WITNESS: Should be --

10 MAYOR McCARTNEY: The road width.

11 THE WITNESS: I think in the applicable
12 locations where they have buildings located for, close
13 to where a forest fire might come over the hill, those
14 places I think should have a 32 foot, 32 foot width
15 roadway. Because they -- the fire department has to put
16 outriggers out and I think they were 28 feet,
17 requirement is 28 feet for that, you have a 12, 14 foot
18 pass by, so.

19 MAYOR McCARTNEY: Thank you.

20 CHAIRMAN BAGOFF: Ms. Kapferer, do you have
21 any questions for Mr. Litwornia on his testimony.

22 MS. KAPFERER: I do.

23 Thank you, Mr. Litwornia. I do have a
24 question about, did you look at the Howell Drive access
25 plan?

1 THE WITNESS: The what?

2 MS. KAPFERER: At Howell Drive, the --

3 THE WITNESS: Yes.

4 MS. KAPFERER: -- emergency access?

5 THE WITNESS: Yes.

6 MS. KAPFERER: Did you look at -- do you
7 know what the width of that access is or the slope, did
8 you look at either of those?

9 THE WITNESS: I walked it but I didn't
10 remember -- I didn't measure it.

11 MS. KAPFERER: Okay. Just curious about
12 that.

13 One other question. Did you say that Warner
14 Road was a minor collector? I'm sorry, I'm not sure,
15 I'm sorry.

16 MR. AFRAN: Hang on one second.

17 THE WITNESS: I don't recall.

18 MR. AFRAN: Thank you.

19 MS. KAPFERER: I'm sorry, I asked you, it
20 might have been someone else who stated this, so I
21 apologize. I thought -- did someone say that, that
22 Warner Road is a minor collector? Did I -- did you --

23 MR. PLOCKER: I can make the representation
24 that I was characterizing previous testimony by either
25 Mr. Pehnke or Mr. Anderson. I did say we will bring Mr.

1 Pehnke back to clarify. But that the roads that are
2 proposed on the subject property were designed and
3 classified as minor collector roads.

4 MS. KAPFERER: Okay. Then that would be my
5 question for Mr. Pehnke.

6 I think that's it for me.

7 CHAIRMAN BAGOFF: Thank you.

8 Vice Chairman Guarino, do you have any
9 questions for Mr. Litwornia on his testimony.

10 VICE CHAIRMAN GUARINO: Yes, I do Mr.
11 Chairman.

12 Thank you for being here tonight and thank
13 you for your expert testimony. I have a couple of
14 questions for you, sir.

15 One, my one question is, and I ask this of a
16 lot of the people making testimony, have you visited the
17 site and walked the site? I know it's private property
18 but have you been anywhere within the development zone,
19 the current development zone when one, you made your
20 assumptions, you made your calculations, have you been
21 to the site, sir?

22 THE WITNESS: Yes. I walked the site and
23 I've driven it a couple of times.

24 VICE CHAIRMAN GUARINO: Well, the site we're
25 talking about sir, you know, the current development

1 where the current, you know, condominiums and housing,
2 the roadways in the area, I know you can't go onto the
3 part where the applicant has because it's private
4 property, but have you seen the way the development
5 currently exists in its current conditions and its
6 current roadway conditions and traffic movements and
7 such, I just have ask that one question?

8 THE WITNESS: Yeah, I've seen it in
9 operation.

10 VICE CHAIRMAN GUARINO: You've been there,
11 sir?

12 THE WITNESS: Yes.

13 VICE CHAIRMAN GUARINO: So if you have, sir,
14 if I could just assume you haven't been to the
15 development site, the current, what's there now, your
16 assumptions here, can I say your testimony here is based
17 upon information received from third-party sources other
18 than yourself?

19 MR. AFRAN: With respect, Mr. Chairman. He
20 was analyzing the report submitted by the applicant. So
21 naturally those calculations are from a third-party.
22 Now there's expert --

23 VICE CHAIRMAN GUARINO: Thank you, Mr.
24 Afran. I just wanted to get an idea where the
25 information came from and how his conclusions were

1 arrived at. So, and that's why I'm asking was he at the
2 site, has he walked the site and he got an eyeball idea
3 of how the traffic flows, what's going on. That's all
4 I'm trying to figure out, so.

5 MR. AFRAN: I appreciate that. Thank you.

6 VICE CHAIRMAN GUARINO: So I mean, I don't
7 know has he -- have you been to the site?

8 MR. AFRAN: He said he did -- the forest or
9 -- does Mr. Guarino mean the forest itself or the
10 development next to it?

11 VICE CHAIRMAN GUARINO: Well, he can't go on
12 it.

13 MR. AFRAN: Right. So we're talking about
14 the development -- the question was, has he been to the
15 development and gone through it?

16 VICE CHAIRMAN GUARINO: The current
17 development that's there.

18 MR. AFRAN: Perhaps the witness could
19 clarify that answer.

20 VICE CHAIRMAN GUARINO: Yes.

21 MR. AFRAN: Have you been to the
22 development, the association, gone through it, looked at
23 it, observed its, its current conditions, etc.?

24 THE WITNESS: The existing?

25 MR. AFRAN: Yes, the existing development.

1 THE WITNESS: Yes.

2 MR. AFRAN: And how did you do that? Did
3 you walk it, did you drive it, did you do a combination
4 of both. How did you go through the development?

5 THE WITNESS: I drove it a couple of times.
6 I was either a passenger or I drove it.

7 MR. AFRAN: Okay. Thank you. Thank you.

8 VICE CHAIRMAN GUARINO: Thank you, Mr.
9 Afran.

10 Thank you sir, I appreciate it.

11 Thank you, Mr. Chairman.

12 Thank you, sir.

13 CHAIRMAN BAGOFF: Mr. Alper, do you have any
14 questions for Mr. Litwornia on his testimony.

15 MR. ALPER: Sure.

16 First Mr. Chairman, can we get CME maybe to
17 issue a response to the claims written in the written
18 report and the power point because there's a lot, a lot
19 on there.

20 CHAIRMAN BAGOFF: Yes.

21 MR. ALPER: Okay. Good.

22 On Page 13 of your written report where you
23 talked about the emergency access roadways, specifically
24 Howell Drive, regardless of the ownership of those lots
25 on Howell, can you talk a little bit about your specific

1 concerns about the emergency access that you outlined in
2 your report?

3 THE WITNESS: Well, my specific concern
4 about the lots are that subconnection can be reviewed
5 without counting the existing traffic, which is an
6 interesting point. So if that can happen the question
7 is what volume would you limit it to and you limit it
8 then to the cul-de-sac with a -- a cul-de-sac with a
9 single way in or out and multifamily unit and you have a
10 thousand feet length that you can use as a maximum.

11 MR. ALPER: So can these -- is the
12 cul-de-sac, the 15 feet also defined as a -- is a
13 cul-de-sac also a minor collector or are those separate
14 categories of roads?

15 THE WITNESS: I call it a separate category.
16 And the reason being is that you can have that -- it has
17 to have one way in and out. And a collector can have
18 two -- has two ways. One on either side of the road.
19 Either end. You come to a T-intersection you can make a
20 right or a left on the collector. So you go a thousand
21 feet down, you come to a stop sign and then you can make
22 a left or a right. Now, that theoretically is basically
23 like a loop roadway which is what the applicant has
24 done. But when you loop -- all the loops you do, all
25 the loops you have, when you finish the loops you still

1 come out to the one location and one big cul-de-sac, no
2 matter how you look at it. And the one road gets
3 blocked nobody can get in or out.

4 MR. ALPER: And if it's a cul-de-sac it has
5 a lower number of units that it can support?

6 THE WITNESS: Well, that cul-de-sac may have
7 -- usually they have units on it. I don't know if it
8 does not have units, if it doesn't have any units, it
9 could be a thousand -- a thousand foot limitation.

10 MR. ALPER: Right. I'm asking about on your
11 slides, on Page 9 of your slides, you talk about the
12 RSIS limits and number of units that a cul-de-sac can
13 support, which I don't know if you spoke about, but it's
14 in your prepared materials.

15 MR. AFRAN: Mr. Chairman, I just note that
16 we didn't use the slides at the Chairs request because
17 you wanted to avoid duplication. However, it may be
18 useful to use this one slide if the board member
19 believes there's information that should be addressed.

20 MR. ALPER: I think I can ask the question
21 if the witness can refer to the information on it. The
22 slide is saying that RSIS, according to RSIS and the
23 math that you produced here, that 496 units is more than
24 a cul-de-sac can support?

25 CHAIRMAN BAGOFF: Do you have a copy of the

1 slide so we can have it?

2 MS. McGOVERN: Number 11. Page 11. Right?

3 MR. AFRAN: It's Page 9. It's in front of
4 the witness.

5 MS. McGOVERN: Thank you.

6 MR. ALPER: So I guess I'm curious if you
7 can explain A, the numbers you're showing here and based
8 on that what you think can be supported. And B, if it's
9 not a cul-de-sac and it is a minor collector, what the
10 numbers would be?

11 MR. AFRAN: Could we, just since we're
12 addressing the slide and nobody can see it except us,
13 could we please put that one page on the screen.

14 CHAIRMAN BAGOFF: Can you put that one slide
15 up?

16 MR. AFRAN: Okay.

17 For the record then, the slide is now on the
18 screen. That's Page 9 of the PDF. That's Page 9 of
19 Exhibit O-28A.

20 I'm sorry Mr. Alper, could you repeat your
21 question. I interrupted you to get the slide up.

22 MR. ALPER: Sure. I guess what I'm getting
23 at is the slide is saying that if Warner Road is
24 considered a cul-de-sac that only 188 units would be
25 supported by a cul-de-sac and there are already more

1 than 188 units in that location. So I guess I'm hoping
2 A, you can explain that a little bit better. And B, if
3 it's not a cul-de-sac, if it is considered a minor
4 collector by whoever the ultimate authority is that
5 decides if it is a cul-de-sac or it is a collector, what
6 number of allowable units would be in that case?
7 Because it seems to be important.

8 THE WITNESS: Well, what happens is no
9 matter which way you do it, whatever you call it, it's
10 still a cul-de-sac because all the buildings together
11 still come out of the cul-de-sac. There's only way out
12 and in.

13 MR. ALPER: So even if it were a much bigger
14 road, if it were much wider and had a divider in the
15 middle and could carry many more vehicles, because
16 there's no second exit it would still be a cul-de-sac
17 and would still be limited to 188 units or am I not
18 understanding that?

19 THE WITNESS: So basically you can hold more
20 units if you make it a higher scale roadway. But the
21 thing is, no matter how big you make it, the roadway,
22 you have to make it big scale roadway. If you made it a
23 big boulevard all the way from the, the end of the
24 existing road all the way out that would work. Except
25 that you'd have to demolish a lot of homes to form the

1 boulevard, so you couldn't do it. If you were doing
2 this because you had a planned development and you
3 planned on putting a boulevard through then you could be
4 able -- you'd be able to work it out the way you said.

5 MR. ALPER: Okay.

6 THE WITNESS: But now -- it's past the point
7 of no return.

8 MR. ALPER: And I think that's all I have.
9 Thank you.

10 CHAIRMAN BAGOFF: Thank you.

11 THE WITNESS: And I think I can -- one other
12 thing.

13 MR. AFRAN: Well, wait. The witness was
14 saying something.

15 CHAIRMAN BAGOFF: I'm sorry, Mr. Litwornia.
16 Go right ahead, sir.

17 THE WITNESS: The other thing is, if in
18 fact, if in fact you had a planned development and you
19 put the road in before that you'd be able to have all --
20 have -- most of the plan points revolve, the problems,
21 revolve around the cul-de-sac and the one access and
22 entrance point. The whole project could be redesigned,
23 you know, it occurred in the first planned development,
24 so that when the developer was finishing it off or
25 beginning it, it would be able to say he's going to use

1 the back or use dividing access points or right-of-way
2 for the municipality or for himself, the private road,
3 so that the roads could be designed according to the
4 normal planning book. But by leaving out the design and
5 leaving out the connectivity and creating one big
6 cul-de-sac, he created the necessity for going through
7 other properties to, whether they're his or the
8 condominiums, there's no argument about it. Because the
9 Residential Site Improvement Standards call for the
10 identification of all the right-of-ways and other things
11 as part of the survey map. Or a Township map and we
12 asked for a Township map to see what -- where they stand
13 and there is no Township map. So it's supposed to be
14 located on the Township map and it's not there. It's
15 supposed to have a survey that lists all the ownerships
16 to know if the ownership agree with the project or a
17 part of it or not. And there's no specificity. So
18 there's just so many things missing that I didn't go
19 into the exact detailing you normally go in the finished
20 plan. I didn't look for guide rails around detention
21 basins. Guide rails next to slopes that are over three
22 to one. I didn't look at a lot of those things because
23 there's so many of them that it just didn't make sense.

24 MR. ALPER: Thank you.

25 CHAIRMAN BAGOFF: Thank you.

1 Mr. Cardoza, do you have any questions for
2 Mr. Litwornia on his testimony.

3 MR. CARDOZA: Yes, thank you Mr. Chairman.
4 Thank you Mr. Litwornia for your expert testimony, for
5 your presentation and submissions to the board.

6 I guess the first thing is it's been some
7 time since we discussed the specifics of the site plan.
8 In the beginning, and I don't have the benefit of my
9 previous notes here, you made allusions to, or said
10 several times a lot of things are missing from the site
11 plan. Did you evaluate -- do you know what that was
12 dated, the site plan that you worked off of? Because I
13 believe we discussed some of those elements in prior
14 meetings, so I'm just wondering.

15 THE WITNESS: That show up on -- I didn't
16 really look at that, normally I do, sorry.

17 MR. CARDOZA: Okay.

18 MR. AFRAN: You need the microphone.

19 THE WITNESS: Okay. We used the one that
20 was on the electronic website from the municipality.

21 MR. CARDOZA: What website would that be?

22 THE WITNESS: We used the ones that were on
23 file from the municipality.

24 MR. AFRAN: I think he's referring to --

25 MR. CARDOZA: Filed from the municipality?

1 MR. AFRAN: I think he's referring to the
2 Planning Board website.

3 MR. PLOCKER: There are two on file with the
4 board, just for the record. One originally and then I
5 believe the last revision date was this past October, to
6 reflect the improvements.

7 MR. AFRAN: Mr. Chairman, I would say that
8 maybe a factual question could resolve, if there were
9 changes that addressed what Mr. Litwornia said would be
10 resolved by that at a later time. It may not be
11 fruitful to try do that, I'm not criticizing the
12 question.

13 THE WITNESS: Well, I could clarify that. We
14 just looked at the slope. Mr. Green looked at it and he
15 said he used the -- there are two on file from the
16 municipality, he said he looked at both of them.

17 MR. CARDOZA: He looked both. Okay. So,
18 you know, my concern is when you're stating things on
19 this end are you basing that off the last recently
20 updated plans, which I believe Mr. Plocker you can
21 confirm are issued with several suggestions from the
22 board.

23 MR. PLOCKER: From the board. Obviously
24 we've been through several hearings by October and we
25 were also on the precipice of or had received the DEP

1 permits, it might have been before, slightly, but
2 because of the change in certain designs of the
3 stormwater system which wound up ultimately getting
4 approved by the DEP, we thought that the correct plans
5 that were with the DEP that the site plan for this
6 application should reflect it so the board would have
7 the most up to date information.

8 MR. CARDOZA: Okay. Thank you.

9 So, again, to confirm, I'm sorry Mr.
10 Litwornia, I want to drill down on this. So many of
11 the, all of the numbers you presented here, your
12 evaluation is based off of the most recent site plan
13 dated October or --

14 THE WITNESS: Most recent one on file.

15 MR. CARDOZA: Most recent one on file. So
16 -- but I just want to make certain that any
17 representations in your submission to the board did not
18 -- were not based off the previous if -- well, they
19 could be based off previously submitted site plans but
20 if those, if anything that's commented on subsequently
21 updated, I want to know if that's the case, that you
22 evaluated the most up to date site plan?

23 THE WITNESS: I understand what you're
24 saying, but I dont have the dates.

25 MR. CARDOZA: Okay.

1 THE WITNESS: They're in the report.

2 MR. CARDOZA: Okay. Perhaps when the boards
3 experts evaluate it they could make adjustments. Okay.
4 Thank you.

5 Specifically when it comes to trip
6 generation, those numbers, I believe the representation
7 from Mr. Afran was, those numbers were initially
8 presented by the applicant and you evaluated based on
9 that?

10 THE WITNESS: We used the last one.

11 MR. CARDOZA: Okay.

12 THE WITNESS: And the latest ones that are
13 on file show that we xeroxed and put it attached to the
14 report, which shows the steep slopes that occur and some
15 of the sight triangle distances that are problematic.

16 MR. CARDOZA: I'm sorry, I lost -- what was
17 xeroxed?

18 MR. AFRAN: No. We can see it on here you
19 can't actually. I think the question you're asking was
20 whether or not the trip calculation numbers, where did
21 they come from. Is that --

22 MR. CARDOZA: To a certain extent, yes.

23 MR. AFRAN: Okay. I'm just trying to help.

24 MR. CARDOZA: Another way to state it.

25 MR. AFRAN: So in other words --

1 MR. CARDOZA: -- where did they come from?

2 MR. AFRAN: One question is, where did the
3 trip calculations come from? Were those from the
4 applicants report or were those generated separately by
5 Litwornia & Associates?

6 MR. CARDOZA: Yes. Thank you for
7 clarifying.

8 THE WITNESS: We used the applicants data.

9 MR. CARDOZA: Okay.

10 CHAIRMAN BAGOFF: Mr. Litwornia, hold the
11 microphone, please.

12 THE WITNESS: We used the applicants data
13 for that.

14 MR. CARDOZA: Okay. Thank you.

15 Thank you, Mr. Litwornia. I look forward to
16 our reviewing the response documents that our experts,
17 that the boards experts presented.

18 CHAIRMAN BAGOFF: Thank you.

19 Council Person Scarpa, do you have any
20 questions for Mr. Litwornia's on his testimony.

21 COUNCILWOMAN SCARPA: Yeah, just a quick
22 one. Thank you for your testimony.

23 Do you have concerns about the walkability
24 of this site? I know you talked about the ADA five
25 percent and the slope not allowing for the RSIS rules.

1 I ask because I know with affordable's it's important
2 that it be walkable around the community. Not only the
3 existing community but it's always best if they are
4 near, you know, important spots.

5 THE WITNESS: The ADA requires an accessible
6 route, which would mean sidewalks, single lane within
7 their limits of five percent.

8 COUNCILWOMAN SCARPA: Okay.

9 So you don't feel this is walkable? This is
10 walkable.

11 THE WITNESS: Well, you have to design it to
12 be walkable. It doesn't necessarily have to follow the
13 roads. And if it's over five percent you can put a ramp
14 in, but the ramp, I think, can't be more than seven
15 percent.

16 COUNCILWOMAN SCARPA: Okay.

17 I was just concerned about walkability and I
18 just wanted to understand your concerns.

19 THE WITNESS: Well, it's all hilly so it's
20 problematic.

21 COUNCILWOMAN SCARPA: Okay. Great. Thank
22 you very much.

23 CHAIRMAN BAGOFF: Thank you.

24 Mr. MacNeill, do you have any questions for
25 Mr. Litwornia on his testimony.

1 MR. MacNEILL: Thank you, Mr. Chairman. I
2 don't have any questions.

3 CHAIRMAN BAGOFF: Thank you.

4 Mr. Haizel, do you have any questions for
5 Mr. Litwornia on his testimony.

6 MR. HAIZEL: Not at this time.

7 CHAIRMAN BAGOFF: Okay.

8 We're going to take a five-minute break.

9 (Whereupon, a short recess is taken.)

10 CHAIRMAN BAGOFF: Thank you. Ladies and
11 gentlemen, welcome back here and on Zoom.

12 How many -- can you raise your hand if you
13 have serious questions for Mr. Litwornia this evening
14 about his testimony that was not addressed in your mind.
15 Questions not comments. Just please raise your hand.
16 Just trying get an idea. Two. Okay.

17 Please come up, you can ask Mr. Litwornia
18 questions.

19 Seth.

20 Okay. Ma'am in the back, come up. Do you
21 have a mic over there? Do you want to come over to the
22 stand here.

23 State your name for the record.

24 THE PUBLIC: Gilda Paul, 61 Howell Drive.

25 CHAIRMAN BAGOFF: Go right ahead.

1 THE PUBLIC: So I live across from where the
2 emergency exit road will come out and I'm totally
3 confused. I thought that that was only for emergency
4 vehicles, and I'm sitting here and everyone's talking
5 about it as an access road. Is it an access road or is
6 it for emergency vehicles?

7 CHAIRMAN BAGOFF: I think I'm going to let
8 the applicants attorney answer that question.

9 MR. PLOCKER: I think it's been clear
10 through the testimony demonstrated it is for emergency
11 access only.

12 THE PUBLIC: Okay. Thank you.

13 CHAIRMAN BAGOFF: You're welcome. Thank
14 you.

15 Mr. Weisleder? No questions.

16 Does anybody else have any questions about
17 -- come right up, sir.

18 THE PUBLIC: I need a little clarity --

19 CHAIRMAN BAGOFF: Yes, sir.

20 THE PUBLIC: -- on these two lots up on
21 Howell that's been referenced through the night.

22 CHAIRMAN BAGOFF: Could you give us your
23 name for the record, sir. Your name.

24 THE PUBLIC: Robert Sharenow from the
25 Highlands.

1 On the two lots up on Howell that they're
2 talking about that they're both family owned, those two
3 lots from what I can understand, correct me if I'm
4 wrong, are zoned for one family homes. Did I hear
5 correctly from their lawyer that they got somehow an
6 exception to not build one family homes and have that as
7 another exit or am I misunderstanding?

8 CHAIRMAN BAGOFF: Mr. Plocker.

9 MR. PLOCKER: The IH-1 zoning ordinance with
10 the township adopted in 2020 permits emergency access
11 use over those two specific lots only, correct.

12 THE PUBLIC: So, so they got an exception to
13 the zoning rule, is that what he's saying?

14 CHAIRMAN BAGOFF: No, sir. It is part of
15 the IH-1 zone. If you go on the website, the IH-1 zone
16 is on the Planning Boards website. You can read
17 everything that's in there.

18 THE PUBLIC: I hope it's very explicit
19 because it doesn't look very kosher.

20 CHAIRMAN BAGOFF: Thank you.

21 MR. AFRAN: Just as a matter of law, so I
22 don't waive any issues. Mr. Plocker's comments that the
23 IH having impacts the emergency access to the next zone
24 is something we will discuss legally. My silence should
25 not be taken to mean that I agree.

1 CHAIRMAN BAGOFF: I understand.

2 Go right ahead. Ask Mr. Litwornia a
3 question on his testimony.

4 THE PUBLIC: Niedra Dyson, Howell Drive.

5 My question is, as far as emergency access,
6 are we talking about fire trucks, ambulance and police
7 or are we talking about people needing to leave because
8 Oval Road is closed?

9 CHAIRMAN BAGOFF: I think it's going to have
10 to be up to the Township and how they address what that
11 meant. But we will discuss that before the application
12 is completed. That's a good question.

13 Come right up. State your name for the
14 record.

15 THE PUBLIC: Richard Baum. I live in The
16 Grand.

17 Okay. So there's currently 370 residents in
18 this cul-de-sac and you guys are talking about adding
19 another 500 residents. So my calculation says that's
20 about an extra 1500 cars -- 900 cars and 1500 residents
21 in that area. You know, the traffic on Eagle Rock now
22 between --

23 CHAIRMAN BAGOFF: Sir. Sir. Questions of
24 Mr. Litwornia.

25 THE PUBLIC: I'm going to get to the

1 question. Eagle Rock and Oval is a dangerous
2 intersection. My wife broke her neck in a serious
3 accident there in '25 -- in 2005 and we came to town and
4 wanted a light at that intersection. We were told
5 emphatically there will ever be a light put there, it's
6 to close to Shrewsbury. So what has changed that?

7 CHAIRMAN BAGOFF: Sir.

8 THE PUBLIC: I'm asking you what has
9 changed.

10 CHAIRMAN BAGOFF: Sa part of the agreement
11 with the Township the applicant will go to the Essex
12 County to get a light so that it will be signalized.

13 THE PUBLIC: So they told us no then, so
14 what has changed now?

15 CHAIRMAN BAGOFF: That would be part of the
16 finished application if it's approved. If it's not
17 approved then it won't be.

18 THE PUBLIC: Well, why would they approve it
19 now and they wouldn't approve it in 2005?

20 CHAIRMAN BAGOFF: I have --

21 THE PUBLIC: Big developer with a lot of
22 money, right?

23 CHAIRMAN BAGOFF: I'm not arguing. I'm just
24 saying the applicant will seek to have that done. That
25 will be part of the application.

1 THE PUBLIC: Are there any another places in
2 West Orange where you have 900 residents with a single
3 access road, a cul-de-sac?

4 CHAIRMAN BAGOFF: Sir, I'm going to ask you
5 to just question Mr. Litwornia about his testimony.

6 THE PUBLIC: I'm asking, is there any other
7 place.

8 CHAIRMAN BAGOFF: Sir, you have to focus on
9 Mr. Litwornia's testimony.

10 THE PUBLIC: So there's not. Okay. I
11 understand that.

12 Can any of the traffic experts that reviewed
13 this project, that the traffic conditions on Eagle Rock
14 and Oval Road are not going to deteriorate from the way
15 they are today?

16 MR. PLOCKER: I'm going to object. This is
17 an off-site traffic issue. This property is zoned and
18 it's not a reason that can be considered.

19 THE PUBLIC: This traffic has a thousand
20 cars.

21 MR. PLOCKER: And the town knew that when
22 they zoned it.

23 CHAIRMAN BAGOFF: Sir. Sir. You can ask
24 questions of Mr. Litwornia on his testimony.

25 THE PUBLIC: I think these are relevant

1 questions because the town is going to approve a project
2 that is going to deteriorate the life of the residents
3 in this area. What are you going to do for the
4 residents in this area? If you approve this project
5 what are you going to do? You're going to do nothing.
6 You're not going to compensate us, you're not going to
7 take care of us at all. You're going to do nothing.

8 CHAIRMAN BAGOFF: So the answer, please note
9 for the record, the answer is there comes a time when
10 folks come and ask questions and the board listens to
11 those questions. We have experts --

12 THE PUBLIC: The traffic is what you're
13 talking about today. It's traffic that's going to be
14 terrible. You're cramming too many residents into this
15 bad spot. You didn't approve it years ago when it was
16 136 houses, why are you going to approve it now with
17 500? The traffic is the problem. There's a million
18 other problems with this project too and everybody's
19 talked about it. The traffic is the problem that's
20 going to deteriorate the life of everybody that lives in
21 West Orange right now.

22 CHAIRMAN BAGOFF: Thank you for your
23 questions.

24 MR. AFRAN: Mr. Chairman, if I may note my
25 disagreement with Mr. Plocker's objection to Mr. Baum's

1 question. Obviously traffic analysis is fundamental to
2 any site plan review and that obviously implicates
3 traffic impacts off the site of the development. So we
4 would take the position that that aspect of Mr. Baum's
5 statement comprised a relevant question. So we
6 respectfully would disagree.

7 CHAIRMAN BAGOFF: Okay.

8 Does anybody else have a question for Mr.
9 Litwornia on his testimony this evening, please raise
10 your hand. Does anybody have a question for Mr.
11 Litwornia on his testimony this evening?

12 Seeing none. Thank you very much Mr.
13 Litwornia.

14 MR. AFRAN: There is one housekeeping item,
15 if I can, Mr. Chairman.

16 CHAIRMAN BAGOFF: Okay.

17 MR. AFRAN: This is with respect to Mr.
18 Green's report which was inadvertently not entered into
19 evidence when he testified and since he's here I would
20 like to enter it into evidence.

21 MS. McGOVERN: That would be O-29. That's
22 another report dated August 22, 2025. And it's on the
23 Litwornia stationary, but it was Mr. Green's, correct?

24 MR. AFRAN: This document he had relied upon
25 but it was not submitted at that time apparently or it

1 got overlooked.

2 MS. McGOVERN: Let's get that authenticated
3 then.

4 MR. AFRAN: Mr. Green.

5 MS. McGOVERN: It's eight pages.

6 CHAIRMAN BAGOFF: Dated August 22, 2025.

7 Q. There's a document dated August 22, 2025 and it
8 has, it states, Re: Utilities Review Memo. Are you
9 familiar with this document?

10 A. Yes, I am.

11 Q. And does this document represent your report in
12 connection with the testimony you gave concerning the
13 presence or absence of the utilities and related
14 information on the site plan application?

15 A. Yes, it does.

16 Q. And do you adopt this report as part of your
17 evidence?

18 A. Yes.

19 MR. AFRAN: I would proffer this as the next
20 objectors exhibit.

21 CHAIRMAN BAGOFF: Is it marked Objector --

22 MS. McGOVERN: O-29.

23 CHAIRMAN BAGOFF: -- O-29.

24 MR. AFRAN: O-29. Thank you.

25 MS. McGOVERN: You have my copy?

1 MR. AFRAN: I'll give it to you.

2 CHAIRMAN BAGOFF: Okay. Thank you.

3 This meeting will be carried without further
4 notice, PB 24-01, West Essex Highlands, Incorporated
5 will be carried to September 17, 6:30 PM in council
6 chambers. We may or may not have zoom available, please
7 go to the website to find out if zoom will be available.
8 We'll know within 24 hours.

9 MR. PLOCKER: No further notice, correct?

10 CHAIRMAN BAGOFF: No further notice will be
11 required.

12 (Hearing concludes at 9:48 PM.)

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

2 I, ERIC S. FISHMAN, a Shorthand Reporter
3 and Notary Public of the State of New Jersey do hereby
4 certify that the foregoing is a true and accurate
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8 I DO FURTHER CERTIFY that I am neither a
9 relative nor employee nor attorney nor counsel of any of
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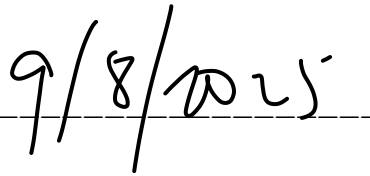
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