

TOWNSHIP OF WEST ORANGE
DEPARTMENT OF PLANNING AND DEVELOPMENT
WEDNESDAY, SEPTEMBER 17, 2025
6:30 P.M.

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

BOARD MEMBERS:

ROBERT BAGOFF, Chairman
JERRY GUARINO, Vice Chairman
SUSAN McCARTNEY, Mayor
KEN ALPER
LORI KAPFERER
SUSAN SCARPA, Councilwoman
RICHARD KLEIN
WILLIAM B. WILKES
JOHN CARDOZA

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

WITNESSES:
MARK SEEL, Geotechnical Engineer
KARL PEHNKE, Traffic Engineer

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

EXHIBIT

DESCRIPTION

A-5 HIGH RESOLUTION COPY OF IMAGES IN
MR. SEEL'S SEPTEMBER 15, 2025 REPORT

1 CHAIRMAN BAGOFF: The application PB-24-01
2 West Essex Highlands, Incorporated, Block 179 Lot 32
3 Zone IH-1, Warner Road. The applicant is proposing to
4 develop a 496 unit inclusionary multifamily residential
5 development on a vacant 120 acre property in the
6 northwest corner of the Township.

7 For the applicant.

8 MR. PLOCKER: Good evening everybody, Mr.
9 Chairman. Bryan Plocker from firm of Hutt, Shimanowitz
10 & Plocker on behalf of the applicant, West Essex
11 Highlands, Inc.

12 CHAIRMAN BAGOFF: Thank you, sir.

13 Mr. Afran.

14 MR. AFRAN: Good evening, Mr. Chairman.
15 Bruce Afran for the objector, We Care New Jersey.

16 CHAIRMAN BAGOFF: Thank you.

17 Mr. Plocker, I think you have the floor.

18 MR. PLOCKER: Yeah. The applicant would
19 like to recall Mark Seel.

20 CHAIRMAN BAGOFF: Mr. Seel, you realize that
21 you are still under oath, sir?

22 MR. AFRAN: Let me just ask in terms of
23 timing, because we have Mr. Hudacsko here, the planner
24 -- as the planning expert for the objectors. Does Mr.
25 Plocker have an idea how much time his engineer on

1 recall will take, roughly?

2 MR. PLOCKER: I don't suspect my redirect of
3 Mr. Seel to be very long. We also do have Mr. Pehnke,
4 we're bringing back after Mr. Seel, and I don't expect
5 his direct testimony to be very long either.

6 MR. AFRAN: Okay. Thank you.

7 CHAIRMAN BAGOFF: Okay.

8 Mr. Plocker.

9 MR. PLOCKER: Okay.

10 Q. Thank you, Mr. Seel and you do recognize you're
11 still under oath from last time?

12 A. I do.

13 Q. Okay.

14 Were you able to review the testimony given by
15 Mr. Goll from Princeton Hydro regarding the geotechnical
16 issues he raised?

17 A. Yes, I was.

18 Q. Okay.

19 And you reviewed the reports that he submitted to
20 the board, correct?

21 A. Correct. July 16 letter and the August 12
22 letter.

23 Q. Okay.

24 And did you, in addition to the reports you
25 previously prepared and that we made part of the

1 application materials, did you prepare a letter dated
2 September 15, 2025?

3 A. Yes, we did.

4 Q. Okay.

5 A. That was in response to the testimony and to the
6 aforementioned Princeton letters.

7 MR. PLOCKER: And for the record, I did
8 provide that for the board and I believe it was added to
9 the agenda prior to this meeting.

10 Q. Okay.

11 Mr. Seel, can you just characterize -- can you go
12 over your response to Mr. Goll's comments and
13 collusions?

14 A. I can.

15 Can you bring it up on the screen?

16 MS. MCGOVERN: What are we bringing up, the
17 report or that --

18 MR. PLOCKER: It's going to be the, I think
19 what I labeled, the companion exhibit.

20 MS. MCGOVERN: Separate document?

21 MR. PLOCKER: And I'll describe it in a
22 second.

23 MR. AFRAN: So to be clear, just to be clear
24 for the record.

25 CHAIRMAN BAGOFF: We're going to raise our

1 hand and be identified.

2 Mr. Afran, go right ahead, sir.

3 MR. AFRAN: Just to be clear for the record.
4 The report, the letter is what's called the companion
5 document, is that correct?

6 MR. PLOCKER: No, that's not correct and I
7 was going to explain all of that.

8 MR. AFRAN: Okay. Thank you.

9 CHAIRMAN BAGOFF: Mr. Plocker, explain.

10 MR. AFRAN: I just want to be sure.

11 CHAIRMAN BAGOFF: Hang on one second. We
12 are going to see what comes up and we'll go from there.

13 Mr. Plocker, is that what you're looking
14 for?

15 MR. PLOCKER: Yes, it is and I want to
16 identify it for the record and we should probably mark
17 it, but I'll explain it first fully. It's a two page
18 PDF. It has two images, both images are imbedded in Mr.
19 Seel's September 15, 2025 report on Page 2 out of 7.
20 This copy has a bit of a higher resolution, so we wanted
21 it to be legible for the board and everybody in the
22 room, so we made it a separate exhibit. So we could
23 mark that as a the next applicants exhibit since it's a
24 stand alone exhibit, all though I will represent and Mr.
25 Seel can confirm, it's the same exhibit that's imbedded

1 in the report.

2 MS. MCGOVERN: Okay.

3 Jamilet, I have it as A-5 for a stand alone
4 exhibit, is that your number?

5 So A-5. What are we calling this, an
6 imbedded --

7 MR. PLOCKER: I --

8 MS. MCGOVERN: It says, PB 4.4B.

9 MR. PLOCKER: I would say, Higher Resolution
10 Copy of the Images Contained on Page 2 of Mr. Seel's
11 September 15, 2025 report.

12 CHAIRMAN BAGOFF: Mr. Afran, you rise.

13 MR. AFRAN: Thank you. That -- we agree
14 that appears as Page 2, so that's a good way of
15 referring to it.

16 CHAIRMAN BAGOFF: You agree.

17 MR. AFRAN: Good way of referring to it.
18 Just confirming that's how I see it.

19 CHAIRMAN BAGOFF: Excellent. Thank you.

20 Mr. Plocker.

21 Q. Mr. Seel, please go ahead.

22 A. Okay. Thank you.

23 So after having reviewed the two letters from
24 Princeton and the testimony, we prepared this report
25 dated September 15 and we maintain that the slope is

1 stable and that there will be no additional loading from
2 the building on the slope. We put these two exhibits
3 together to help illustrate that point and this is a
4 cross section of the proposed buildings through, you see
5 the upper right corner, the red section line goes on
6 from the north end of the building to kind of the
7 northeast. And that's the -- that represents this
8 particular section. What this shows is what you would
9 expect for a typical foundation loading case where you
10 have a basement.

11 Now, this doesn't identify a particular isolated
12 footing, but what it shows is there's typically a fairly
13 shallow foundation influence line, call it one to one
14 influence line. So basically what happens is all the
15 load is shed within that kind of blue zone and there is
16 no load that is shed to the slope. There's been, from
17 my understanding, questions and comments that have been
18 made, there's been a concern that this building is
19 shedding the load directly onto the slope and that's
20 simply incorrect.

21 Q. And just to confirm, the exhibit that we are
22 looking at, and I just want -- so we want, do have a
23 clear record. That this is your markup of one of the
24 sheets of Mr. Appel's architectural submissions, is that
25 correct?

1 A. That's correct. And if you go to the next sheet
2 we can see -- well, look at the other section line and
3 as you look at in the upper right-hand corner there's
4 that red line, it goes kind of down the middle of the
5 building as well and here you can see the top of the
6 slope is where that approximate vertical dash line is,
7 which is the, from what I understand, negotiated limit
8 from the top of the slope and the building is located
9 and this, in this particular section further back from
10 the slope, and the -- and we represent the one to one
11 influence line and, again, you can see that there's no
12 influence of the building loading onto the slope. In
13 fact beneath the soil and/or rock that abuts the right
14 side of, the east side of the building we put a load
15 onto the building rather than the building putting a
16 load on the slope.

17 CHAIRMAN BAGOFF: Can you identify the
18 letter of the building?

19 THE WITNESS: That's Building D.

20 CHAIRMAN BAGOFF: Okay. Thank you.

21 A. Sorry. Nothing else on here.

22 I, I also wanted to say further that the, as we
23 reviewed Princeton's comments and their report we found
24 that there appears to be a fair amount of misalignment
25 and inconsistency within the document. You know, more

1 specifically one example would be in the slope stability
2 analysis, which was in the -- that Princeton provided in
3 their August 12 letter, actually they proved the exact
4 same, I think, point we have been making all along.
5 That the soil and the rock is, is, even with the lower
6 values, that slope is still stable under the existing
7 conditions. There's no influence from the building on
8 that slope and therefore there's no additional
9 instability once the buildings constructed. And also
10 noted as well that in, when Princeton had done their
11 supplemental analysis using our data, the increase of
12 thickness of the weakest soils, which is incorrect based
13 on the data, they also, they also proved that the rock
14 strength does not control slope, which is also a
15 condition or position that we've made and maintained
16 throughout this testimony in our report.

17 MR. AFRAN: It's difficult to hear the
18 witness. If he could either, I'm sorry, speak a little
19 louder. The people are having trouble hearing.

20 THE WITNESS: Yeah.

21 CHAIRMAN BAGOFF: Ladies and gentlemen in
22 the back, if you have a problem hearing please raise
23 your hand. Okay. Got it. Thank you.

24 Can you speak a little louder, sir. There
25 you go.

1 A. Thank you.

2 So as I have spoken to some of the, you know, the
3 issues that were raised in the Princeton, in their first
4 letter, they spoke about some of our parameters not
5 matching, actually when in fact they do and we could
6 provide supplemental data that we can layout in detail.
7 In fact our strength values are much higher than the
8 ones that we used in our analysis, despite what was
9 being said. If you put up the surfaces that is the
10 lowest factors of safety on slope stability analysis,
11 they don't go into the rock as it was previously
12 suggested and that's true, not only of the basalt but
13 also the felt fill formation which Princeton had
14 maintained was somehow irrelevant to this analysis.
15 Princeton had made a comment that the geologic hazard
16 review was dismissed and which of course it wasn't. We
17 were very clear in our position on the geological hazard
18 for the site and the rock, the rock outcropping and the
19 stability of the slope.

20 They acknowledge that there was favorable joint,
21 which we had reported, and we had seemed to --

22 MR. AFRAN: Favorable what? I didn't hear.

23 THE WITNESS: Favorable joint in the rock.

24 MR. AFRAN: Thanks.

25 A. Which tends to control stability of hard rock

1 formation such as this. So there's quite a bit of
2 inconsistency and misalignment from the testimony that
3 they made in their report. And my report -- our, our
4 report, I believe, clearly demonstrates.

5 CHAIRMAN BAGOFF: What does misalignment
6 mean in your expertise?

7 THE WITNESS: So meaning their statements
8 that were made were perhaps misleading or, or not
9 properly made based on the data. And, and despite their
10 own analysis showing that the site or the slope is
11 stable they maintain the position that it is not or may
12 not be despite their own analysis showing that it is.

13 Q. Okay.

14 MR. PLOCKER: I have nothing further for Mr.
15 Seel.

16 Q. I just wanted to confirm that all of your
17 collusions and testimony you provided tonight are
18 contained within your September 15 report?

19 A. Correct, it's all in the report.

20 MR. PLOCKER: Okay. Thank you.

21 CHAIRMAN BAGOFF: Thank you.

22 Mayor McCartney, do you have any questions?

23 MAYOR McCARTNEY: I do. Thank you,
24 Chairman.

25 Mr. Seel, when we were listening to the

1 testimony from Mr. Goll --

2 MR. AFRAN: Mayor, people can't hear you.
3 Also people on the right side can't actually see all of
4 the screen because it's angled at a certain way. So
5 Mayor, if you could speak up we'd appreciate it.

6 MAYOR McCARTNEY: Mr. Seel, my question was
7 that over the summer when we were listening to this
8 testimony there was testimony on blasting. So can you
9 address that, this is slope stability?

10 THE WITNESS: Yeah. Of course. Yeah. This
11 is also contained in our report and the way we -- so
12 first of all, why we would have never recommended that
13 blasting be done. Blasting is one method of excavating.
14 There are many other methods of excavation. There are
15 mechanical means such as excavators, rock ripping teeth
16 dozers with shanks, splitters, hoe rams. There's the
17 use of chemical expanders that are drilled holes into
18 the rock and quick line and some other fillers into it,
19 basically cracks the rock and breaks it. There's
20 controlled blasting which limits the charge per day.
21 The amount of charge provides precise sequencing of
22 blasting and spacing patterns for the holes. All these
23 methods are used to, to not just to sequence the
24 blasting but also to minimize the rock break and impacts
25 to the rock beyond the blast zone. So these are all

1 different types of methods that are available.

2 In our report we outlined some of the values
3 that are available using different contexts of GSI
4 values. For example, up to certain values are typically
5 found to be associated with conventional excavation
6 versus GSI values over a certain amount might typically
7 be chemical standards and/or blasting and, you know,
8 below a certain value might simply just be conventional
9 or some combination of conventional excavation. So I
10 address all that.

11 CHAIRMAN BAGOFF: Sir, can you speak up a
12 little, please.

13 A. One of the key takeaways in that case was
14 Princeton Hydro had suggested that the rock is bored,
15 which it's not and, you know, the GSI value of 20, which
16 their slop stability analysis clearly shows it doesn't
17 impact the stability, but if the GSI value of 20, if the
18 rock really is that bad, no ones blasting anyway. So I
19 think what has to -- what I know has to happen here is
20 that once the contractors brought on board they're going
21 to evaluate the data and they're going to develop their
22 own excavation plan for this project -- (pause for
23 sirens) -- I was concluded, so I will repeat the last
24 statement just in case.

25 CHAIRMAN BAGOFF: Go right ahead, Mr. Seel.

1 Sorry for the interruption.

2 A. No, that's okay.

3 So what I was saying was, we had, using the GSI
4 value of 20, what Princeton was suggesting in that case,
5 the rock would not need to be blasted, it would just
6 simply be excavated using conventional methods.

7 MAYOR McCARTNEY: Thank you.

8 CHAIRMAN BAGOFF: Mr. Klein, do you have any
9 questions for Mr. Seel on his testimony?

10 MR. KLEIN: Yes.

11 So Mr. Seel, where you drew that red line in the
12 upper right-hand corner of Exhibit A-5 Page 2. It seems
13 like, if you moved down a little bit to the bend in the
14 building, that might be a little bit closer to the
15 building itself. It would be closer to the top of the
16 slope. Does that -- if you were to move it down and do
17 a cross section like you did on the left, where it's
18 closer, would that change your conclusions about the
19 influence of the foundation?

20 THE WITNESS: I understand your question. So
21 first of all, that red line is drawn as part of the
22 exhibit, the architectural exhibit, I just utilized it.
23 But to answer your question, if we brought it down to
24 where the, where the buildings closer, you simply slide
25 the building closer towards the slope but it's -- the

1 building still is behind the dashed vertical black line
2 and there would be no influence on the slope from the
3 building.

4 MR. KLEIN: Where would the blue trapezoid
5 have to be in order for it to influence the slope?

6 THE WITNESS: On the slope.

7 MR. KLEIN: Give me an idea. Underneath the
8 first tree?

9 THE WITNESS: First tree.

10 MR. KLEIN: Okay.

11 So the intended building would have to be
12 located between the dash line and the first tree?

13 THE WITNESS: Correct. The building clearly
14 in every instance is behind or to the left of the black
15 dashed line by varying amounts. As little as seven feet
16 and as much as 30 or so.

17 MR. KLEIN: Thank you.

18 CHAIRMAN BAGOFF: Ms. Kapferer, do you have
19 any questions for Mr. Seel on his testimony?

20 MS. KAPFERER: Thank you, Mr. Seel.

21 Yeah, I have the same question as Mr. Klein
22 did. Curious about the foundation influence and, you
23 know, proximity to the ridge and wondering if the cross
24 section is closest to the that ridge line?

25 My other question was in regards to the

1 sanitary sewer. I think there was a comment in Mr.
2 Goll's letter, maybe he testified to it as well, concern
3 about the existing sanitary sewer being total slope and,
4 you know, being a bit unsure as to what the back fill
5 would be, you know, at the time back filling, didn't
6 know that the housing development might go on top of the
7 slope. So just wondering if you have any comments on
8 that?

9 THE WITNESS: We did. We, our initial
10 analysis of that condition is that it's not in play
11 similar to the rock itself. When you look at our slope
12 stability output files you will see these semi circular
13 arcs. Those represent the lowest factors of safety that
14 are calculated when you're doing an analysis. They
15 simply go into rock and they don't come close to the
16 sewer.

17 MS. KAPFERER: Okay.

18 THE WITNESS: So in other words, they don't
19 -- the sewers not under the influence of the slope.

20 MS. KAPFERER: All right. Thank you.

21 CHAIRMAN BAGOFF: Vice Chairman Guarino, do
22 you a question for Mr. Seel on his testimony?

23 VICE CHAIRMAN GUARINO: Not at this time.

24 CHAIRMAN BAGOFF: Thank you.

25 Mr. Alper, do you have a question for Mr.

1 Seel on his testimony?

2 MR. ALPER: I do.

3 Can you go to Page 1 of the document. So
4 where it shows that that's a, that the foundation stress
5 area is 40 feet deep or it extends 40 feet.

6 THE WITNESS: That's arbitrary but that
7 would represent, for example, if there was a strip
8 footing that is four feet wide, ten times that depth the
9 stress is about six percent. So in other words, if it
10 was, you put 3000 pounds per square foot on the square
11 footing you'd have 6 percent of that recharge, which is
12 about 40 below ground, which is less than a person
13 standing.

14 MR. ALPER: Would the influence -- if it
15 goes deeper for whatever reason, is there a point where
16 the right side of the trapezoid extends down into the
17 slope like about 60 or 80 feet?

18 THE WITNESS: No, that influence line is the
19 outside limit of the influence from the footing.

20 MR. ALPER: Okay.

21 It would --

22 THE WITNESS: In fact it --

23 MR. ALPER: -- continue on down infinitely?

24 THE WITNESS: Correct. Would actually start
25 to curl. It'd probably curl back.

1 MR. ALPER: Okay.

2 That was all I had. Thank you.

3 CHAIRMAN BAGOFF: Mr. Wilkes, do you have a
4 question for Mr. Seel on his testimony?

5 MR. WILKES: No questions at this time.

6 CHAIRMAN BAGOFF: Thank you.

7 Council Person Scarpa, do you have a
8 question for Mr. Seel on his testimony?

9 COUNCILWOMAN SCARPA: Yeah, just quickly.

10 You made a broad statement about
11 inconsistency and misalignments of Princeton Hydro's
12 report. There were a couple -- you made a broad
13 statement about inconsistencies and misalignments, could
14 you be a little bit more specific? All I heard was that
15 in your opinion the slope is stable, but are there other
16 concerns that you have?

17 THE WITNESS: I don't have any concerns
18 about our analysis. I was simply making a statement
19 that there was, that there was, the way that Princeton
20 had approached their analysis of the data, they made,
21 for example, one cross section, he created a very thick
22 section of a weak soil, simply doesn't exist in our
23 data. So it was a misrepresentation of the data, number
24 1. But also it was misaligned with the fact that
25 they're saying our values are much lower and we

1 shouldn't have had to explain this to them but we did in
2 our subsequent letter. We showed them that our values
3 that we had we could have used much, much higher than we
4 actually used.

5 COUNCILWOMAN SCARPA: Okay. Thank you.

6 CHAIRMAN BAGOFF: Mr. Cardoza, do you have a
7 question for Mr. Seel on his testimony?

8 MR. CARDOZA: Not at this time Chairman.

9 MR. KLEIN: One follow-up.

10 CHAIRMAN BAGOFF: Mr. Klein.

11 MR. KLEIN: So let me just ask you this, Mr.
12 Seel. Did Princeton Hydro find any mistakes in your
13 report, your calculations, that you would have to go
14 back and make changes to?

15 THE WITNESS: No.

16 MR. KLEIN: Anything as far as assumptions
17 go, conservative versus liberal versus anything like
18 that where you have to go back and make some
19 recalculations?

20 THE WITNESS: No, we maintained all along
21 that our analysis is correct. And Princeton's, their
22 second -- or their second letter dated August 12
23 provides an analysis that shows that our, our analysis,
24 I think the slope is stable, is correct. But despite
25 that they maintain other concerns.

1 CHAIRMAN BAGOFF: Mr. MacNeill, do you have
2 a question for Mr. Seel on his testimony?

3 MR. MacNEILL: Thank you, Mr. Chairman. I
4 have a couple of questions.

5 So after reviewing additional information
6 within Princeton Hydro's reports, would you recommend
7 any improvements to the slope? Do you see any need to
8 provide any improvements on the slope to ensure
9 stability?

10 THE WITNESS: No, the slope is currently
11 stable. There's no loading to the slope from the
12 building. There's no need for a stabilization of any
13 sort.

14 MR. MacNEILL: Okay.

15 So to piggyback off of that, would you
16 recommend or do you see a need for any additional soil
17 testing analysis that would change any of your
18 recommendations or opinions in your report?

19 THE WITNESS: No.

20 MR. MacNEILL: Okay.

21 That's all I have. Thank you.

22 CHAIRMAN BAGOFF: Thank you. Okay.

23 I am going to ask Mr. Afran, do you have a
24 question, sir?

25 MR. AFRAN: Not at this time. We of course

1 would wait for the board's engineer report on similar
2 subjects and we may come back then with some response
3 from Mr. Goll at that time.

4 I would note one evidentiary issue. I have
5 no objection to the two slides on the screen coming in
6 as an exhibit, but much of the report contains material
7 that wasn't gone into Mr. Seel's testimony just now. So
8 I don't think the report itself is evidence, except to
9 the extent it refers to things he testified to. So if
10 the report is proposed as an exhibit I would say that
11 only those parts are deemed evidence that refer to --
12 relate to what was testified to, not all of what's in
13 the report is the subject of Mr. Seel's testimony.

14 MR. PLOCKER: Respectfully --

15 CHAIRMAN BAGOFF: Mr. Plocker.

16 MR. PLOCKER: There have been many reports
17 served by the objector group, many reports by us, we
18 aren't bound by the rules of evidence as if we're in a
19 Superior Court case. We have no problem with the board
20 reviewing every single word that the objectors reports
21 state. And unless you would like him, and waste more
22 time, to read every single word of his letter, which
23 he's very capable of doing, I would ask that Mr. Afran
24 just agree that reports become part of the record, on
25 both sides.

1 MR. AFRAN: I stated my objection and
2 obviously it's the Chairs discretion.

3 CHAIRMAN BAGOFF: Any objection?

4 MS. MCGOVERN: As you know, the rules of
5 evidence are the -- technically the rules of evidence
6 don't apply to the Planning Board, there's some leeway
7 here.

8 Mr. Seel, do you adopt your report as if you
9 were to testify regarding every word in that report?

10 THE WITNESS: I am not citing every word, I
11 am giving a sense.

12 MS. MCGOVERN: I understand. Did you
13 prepare the report?

14 THE WITNESS: Yes, I did.

15 MS. MCGOVERN: And you reviewed it?

16 THE WITNESS: I did.

17 MS. MCGOVERN: And you standby it as
18 truthful?

19 THE WITNESS: Correct.

20 CHAIRMAN BAGOFF: Based on your license in
21 the State of New Jersey?

22 THE WITNESS: Correct.

23 MS. MCGOVERN: I, I don't know if you think
24 there's anything stopping the board from accepting the
25 report.

1 MR. AFRAN: The boards discretion is its
2 own. I simply stated an objection.

3 CHAIRMAN BAGOFF: Unless any member of the
4 board objects, I recommend we adopt this report and it's
5 open to the public and posted on the website.

6 MR. AFRAN: When you say adopt, you mean
7 admit into evidence?

8 CHAIRMAN BAGOFF: Admit into evidence.

9 MR. AFRAN: Thank you.

10 CHAIRMAN BAGOFF: Okay.

11 Do any member of the public have any
12 questions of Mr. Seel, specifically on the information
13 that he proffered this evening? Okay, we're going to
14 focus on what he proffered this evening. You may ask
15 questions, you have three minutes.

16 Please state you name for the record.

17 THE PUBLIC: Deborah Butensky, the Grande at
18 West Orange.

19 So my question is --

20 CHAIRMAN BAGOFF: Ma'am, thank you.

21 THE PUBLIC: My question is, how are you,
22 meaning the developer, recommending the developer
23 excavate?

24 MR. PLOCKER: I'm going to object. I think
25 his testimony was clear, that Mr. Seel nor his firm make

1 that determination. It is determined by the contractor
2 in the field and as we represented before, in accordance
3 with all state and local regulations.

4 CHAIRMAN BAGOFF: Mr. Seel didn't testify to
5 that.

6 THE PUBLIC: It's relevant because they
7 don't have to necessarily use blasting to get the
8 footings 40 feet down.

9 THE WITNESS: I didn't say anything about
10 the depth.

11 THE PUBLIC: Well, you said that in order to
12 get them under -- can you go back to the other slide.
13 You were talking about going down 40 feet.

14 THE WITNESS: No, I wasn't talking about
15 going down 40 feet. The 40-foot was just, it was a
16 demarcation of a random depth of the stress that the
17 rock would feel from a footing.

18 THE PUBLIC: Explain that?

19 THE WITNESS: The --

20 THE PUBLIC: Well, the real question is,
21 when you guys have to put in the underground parking,
22 the subterranean parking, and that was distal to where
23 you showed it. It's closer to the southern part of
24 Building D. How is that going to affect -- because you
25 got 125 units or so on that building and you're

1 proposing parking, how does that destabilize or not
2 according to your testimony?

3 THE WITNESS: The cross section was
4 developed by the architect not by my firm, we just
5 simply used it for illustration purposes. I didn't --
6 it is where it is.

7 THE PUBLIC: No, it's relevance is that
8 you're going deep down --

9 THE WITNESS: You're as deep going as 20 --

10 THE PUBLIC: -- and excavating for parking.
11 That's what I'm trying to understand. How is that not
12 destabilizing the slope? You're digging into the rock
13 to get --

14 THE WITNESS: We're digging into the rock
15 directly below the building. The slope is 40 to 60 feet
16 away.

17 THE PUBLIC: At some point it's only seven
18 feet away.

19 THE WITNESS: No, it's not.

20 THE PUBLIC: Can you show it again.

21 THE WITNESS: Yeah, the distance of seven
22 feet is the peek at the ridge line. That vertical
23 dashed black line, that is not the slope.

24 MS. MCGOVERN: Can we have the question
25 again.

1 CHAIRMAN BAGOFF: Can you ask the question
2 again, please.

3 THE PUBLIC: So the question is, can you
4 demarcate on Building D, your seven feet from the ridge
5 line, how far up into the building from the south to the
6 north does the parking extend? Does the subterranean
7 parking. So you have to excavate out to get there. I'm
8 not understanding.

9 THE WITNESS: Well, I think the excavation,
10 I think, as I understand it, there's a basement below
11 the entire building and there's two depths of excavation
12 -- of basement, I think over in this area. And the rock
13 is basically in this section here. And the proximity of
14 seven feet between the building and this line occurs
15 somewhere up in here.

16 THE PUBLIC: So where is the parking?

17 THE WITNESS: What I understand is it's
18 under this, mostly under this --

19 THE PUBLIC: Under the whole building?
20 That's what I'm am trying to understand, where the
21 parking is going to be.

22 THE WITNESS: I think it's under the entire
23 building.

24 THE PUBLIC: Right. So at one point you're
25 at seven feet from the slope. You have no excavating --

1 THE WITNESS: Where -- there's seven feet
2 from this line, which is in -- this is not
3 representative of that representation. Maybe if you go
4 to the next slide, please. I think it's more
5 representative of this, where you're closer to seven
6 feet from, if this building is translated forward, it
7 would be seven feet back in here. So you're flat up in
8 this area, the building is seven feet behind it, you're
9 still back up the slope. You're not excavating into the
10 slope, you're excavating vertically.

11 THE PUBLIC: You're excavating as close to
12 seven feet from the slope?

13 THE WITNESS: No, we're not excavating --
14 they are not going to be excavating as close as seven
15 feet from the slope. They're excavating seven feet from
16 this line. That is not -- the slope is down over here.

17 THE PUBLIC: Well, the slope goes up to the
18 line.

19 THE WITNESS: This is flat right here. The
20 ground is flat right here. You can see the section. So
21 you're excavating seven feet over on this side and
22 you're going straight down, so you're not touching the
23 slope.

24 THE PUBLIC: You're at the top -- you're at
25 the top of some of the slope, and we're questioning

1 things, but the point is, it is very close, seven feet,
2 and you have disrupted all this fill, all this rock,
3 bedrock to get the parking. You're telling me that it's
4 not going to destabilize the slope, that's what you
5 testified.

6 THE WITNESS: That is exactly what I
7 testified to.

8 THE PUBLIC: Okay.

9 CHAIRMAN BAGOFF: Thank you.

10 THE PUBLIC: God help.

11 MR. KLEIN: Can I have a follow-up quickly.

12 CHAIRMAN BAGOFF: One second.

13 Mr. Klein.

14 MR. KLEIN: Mr. Seel, the deeper you go, the
15 deeper you go, where you go basement and parking garage,
16 that blue trapezoid is going to deeper?

17 THE WITNESS: Yeah. You could barely see it
18 but there's a line under here which is the lowest
19 basement, so this trapezoid could start lower now.

20 MR. KLEIN: Correct.

21 THE WITNESS: Because you're further from the
22 slope.

23 MR. KLEIN: And if you were to take that
24 whole trapezoid and building and slide it over seven
25 feet from the dashed line --

1 THE WITNESS: Correct.

2 MR. KLEIN: -- you're going to be deeper and
3 you're still not going to be --

4 THE WITNESS: You're still never going to
5 affect the slope.

6 MR. KLEIN: Where would it have to be to
7 affect the slope? You said down by the trees.

8 THE WITNESS: On the slope, correct.

9 MR. KLEIN: Thank you.

10 CHAIRMAN BAGOFF: Mr. Plocker.

11 MR. PLOCKER: And just for the record, it's
12 been established and was set forth in the zoning
13 ordinance, the peak of the ridge line, dotted line Mr.
14 Seel is referring to, is not a setback. It was a line
15 agreed to as part of this ordinance in connection with
16 the settlement and there could be no development that
17 occurred to the east of it.

18 CHAIRMAN BAGOFF: Okay.

19 MR. PLOCKER: I just want to make that clear
20 for the record.

21 CHAIRMAN BAGOFF: Thank you, Mr. Plocker.

22 CHAIRMAN BAGOFF: You rise.

23 MR. AFRAN: Yes, of course. But the
24 question factually would be, where is the ridge line?
25 We can have a settlement or an ordinance that says there

1 shall be no development east of it. The question is
2 frequently raised is, where exactly is that point. I
3 want to note there is a difference between the factual
4 location of the Ridge line and the fact what that we
5 said it's a rule, no development east of it. So the
6 statement in the ordinance and the settlement actually
7 tell us geographically where the ridge line is in
8 relation to a building. I just wanted to point that
9 out, that's a separate question and one of the problems
10 has been that the schematics don't really tell us the
11 location of the ridge line and Mr. Plocker had one
12 version where it is, for example, in statement he's made
13 on behalf of his client. So I just want to point out
14 that regardless of what the ordinance says about where
15 you build in relation to the ridge line, there's a
16 factual issue as to where the ridge line is which is not
17 in the ordinance. I just wanted to make that point.
18 Because Mr. Plocker's statement makes it suggest like we
19 know where that is because of the ordinance. We don't.
20 Not because of the ordinance.

21 CHAIRMAN BAGOFF: The question is, do you
22 know where the ridge line is based on the geography not
23 because of the ordinance, correct?

24 MR. AFRAN: Correct. I just wanted to make
25 the point that the ordinance is not telling us where the

1 ridge line is in relation to the building.

2 CHAIRMAN BAGOFF: I think the board
3 understands and we'll ask the applicant to proffer
4 exactly where the ridge line is based on the geography.

5 MR. AFRAN: If we need to do that, yes. I
6 just wanted to point out that the --

7 CHAIRMAN BAGOFF: I think it has been done
8 already.

9 MR. PLOCKER: I think it has and just to be
10 clear, the language in the ordinance is, I believe the
11 peak of the ridge line. That line was, you know, on the
12 concept plan and Mr. Anderson in his direct testimony
13 did show it on his plan and showed that we were to the
14 west of it.

15 CHAIRMAN BAGOFF: Okay.

16 MR. AFRAN: I'm simply pointing out that
17 what the ordinance says in terms of where you build,
18 does not tell us actually where it is. So to the extent
19 we need to know that, that's not sufficient. That's all
20 I'm saying.

21 CHAIRMAN BAGOFF: These are important pieces
22 of information. We're going to make sure everyone is
23 comfortable, I promise.

24 Go right ahead.

25 THE PUBLIC: Rachel Klein, Howell Drive.

1 Can you put the drawing back up for a second.

2 CHAIRMAN BAGOFF: State your name, please.

3 THE PUBLIC: Rachel Klein, Howell Drive.

4 CHAIRMAN BAGOFF: Thank you.

5 THE WITNESS: Mr. Seel, did you prepare this
6 picture, this rendering?

7 THE WITNESS: No, this document is from this
8 firm here, who is the architect. All we did is put on
9 this information here, just to show the -- just to show
10 the proximity of the, of the load that would be shed by
11 the building onto the underlying soil rock.

12 THE PUBLIC: So the landscape in there it
13 rises and falls, this isn't actually realistic to what's
14 in there. So at points where the actual slope, there's
15 only one part of your slope that is really that high and
16 then for almost the entirety of it's heading north, it
17 actually goes lower and lower. So this is right above
18 Mayfair, I know that house, and I know how the slope
19 goes. So when the slope drops ten feet, seven feet, 20
20 feet, what's that going to change? Because that
21 rendering -- because the building as you see is not
22 exactly in a straight line, but it's not so far off
23 either. It's following more or less the way that the
24 slope, the ridge does drop, but there's very -- there's
25 only one point in the entire forest where the slope

1 rises that high and then it just continues to drop
2 downwards north the entire way. So that's the most
3 southern tip of the building. That's Mayfair and the
4 top of the building that's where Howell Drive is. So my
5 question is, you're telling everyone that it's all
6 stable and fine, but that's because you're saying you
7 are going to the top of the slope, but that's really
8 only one small portion of this building. So knowing
9 that now are you still saying that everything's going to
10 be -- it's fine, it's fine. That's my question. Does
11 that change anything?

12 THE WITNESS: Is your question, is your
13 question, does it change anything. Does that change
14 anything?

15 THE PUBLIC: Because the top of the slope to
16 the building, that isn't -- it's not realistic. The
17 slope drops and drops and drops and drops towards the
18 north. See, that's why --

19 MR. KLEIN: You're saying this line is down
20 here sometimes?

21 THE PUBLIC: And lower.

22 MR. KLEIN: Okay. So where -- so the
23 question is --

24 THE PUBLIC: But the drop off is more
25 precipitous as that happens. That looks gentle.

1 MR. KLEIN: So ask him what elevation the
2 slope would have or the ridge would have to be in order
3 for this trapezoid to influence the slope. Ask him that
4 question.

5 THE PUBLIC: Thank you. What Mr. Klein just
6 asked.

7 THE WITNESS: Well, so to try to recap this.
8 This building would have to be situated on the area of
9 the slope and would have to basically sit out beyond it.
10 Unless this slope line here, anywhere where this slope
11 is steeper than 45 degrees, this line could potentially
12 intercept it.

13 THE PUBLIC: But is deeper than 45 degrees
14 --

15 CHAIRMAN BAGOFF: Ma'am. Ma'am. Ma'am.
16 You can do a lot of -- you can ask questions, you just
17 can't testify. You can ask him anything you want, but
18 please do no testify.

19 THE PUBLIC: Okay. Thank you. You answered
20 my question.

21 CHAIRMAN BAGOFF: Thank you.
22 Okay.

23 MR. AFRAN: Could I just clarify the
24 question.

25 CHAIRMAN BAGOFF: Mr. Afran.

1 MR. AFRAN: Mr. Klein as helpfully referred
2 to the trapezoid, which is a good term.

3 MR. PLOCKER: I think Mr. Seel want's to say
4 something.

5 CHAIRMAN BAGOFF: One at a time, I'm old.
6 Please.

7 MR. AFRAN: Let me just clarify one factual
8 thing. Mr. Seel, is the purple trapezoid the part your
9 added to this exhibit?

10 THE WITNESS: Yes, it is.

11 MR. AFRAN: And the original building was on
12 Mr. Appel's schematic, is that correct?

13 THE WITNESS: Correct.

14 MR. AFRAN: Okay.

15 THE WITNESS: I want to clarify just one
16 thing. There was -- in the last question there was a
17 lot of discussion about how the position of the building
18 changes with respect to the dashed black line and the
19 closest it gets is seven feet, which is probably a lot
20 closer to the turn at the southern end of the building,
21 but as you get further to the north in general it gets
22 further back. So in other words -- yeah, I can use the
23 pointer here. So, so all though that dashed black line,
24 I'm not sure it's shown on here, but it somewhere falls
25 within this area down here like this. This is the high

1 point, you can see this topographic feature. So this
2 would be the high point. So that dashed black line kind
3 of goes through there something like this.

4 MR. KLEIN: All right.

5 THE WITNESS: So --

6 MR. KLEIN: I'm trying to clarify. I think
7 what Ms. Klein was saying is, this is a high point,
8 another high point and then it dips down. So maybe in
9 here, can you talk about what happens in here when that
10 -- when the slope is lower, it's lowest point relative
11 to the floor of the garage? If you say it that way.

12 THE WITNESS: Yeah, I'd have to see what the
13 contours are, but these are two foot contours, you're
14 dropping six feet, you're dropping 12 feet off here.
15 All that happens is your basement --

16 MR. KLEIN: That's the back patio, I think
17 even, right?

18 THE WITNESS: It could be. But if you're --
19 basically you have a footing just a little bit below
20 that. Below the grade here. And so what that -- if you
21 zoom out now. Back out to this. So maybe your slope
22 would be somewhere like down at -- the ground surface
23 would be something like this. Come out and then down
24 the hill.

25 MR. KLEIN: And the trapezoid still doesn't

1 affect the slope?

2 THE WITNESS: Correct. The trapezoid is
3 still below the slope.

4 CHAIRMAN BAGOFF: Thank you.

5 Any other members of the public have any
6 questions for Mr. Seel on his testimony?

7 Come up, state your name for the record,
8 please. You have three minutes.

9 THE PUBLIC: Hi. Susan Pannullo, I live
10 within the 200-foot notice point of the development. I
11 have a question. I read your report, thank you Mr.
12 Seel. The blasting versus no blasting, there was an
13 extensive section in the report describing the whole
14 situation of the different methods of excavating, etc.,
15 And you said there's not likely be blasting. But when
16 there's blasting, if there's blasting that impacts
17 people like me who are within earshot of the blasting.
18 So at what point do I know is there blasting or no
19 blasting. Because that makes a really, really big deal
20 to people who are in proximity to that in terms of even
21 things like stability of our domiciles, forgetting about
22 quality of life.

23 CHAIRMAN BAGOFF: Ma'am, I think that is set
24 by the state ordinance and the applicant will have to --
25 will have to apply for a blasting license. The Township

1 -- Mr. Plocker.

2 MR. PLOCKER: And I think it's --

3 THE PUBLIC: I still get to get an answer to
4 that question, no?

5 MR. PLOCKER: I'm going to answer the
6 question for Ms. Pannullo. The applicant has an
7 affirmative obligation --

8 CHAIRMAN BAGOFF: Mr. Plocker.

9 MR. PLOCKER: I'll wait.

10 CHAIRMAN BAGOFF: Okay.

11 MR. PLOCKER: Thanks for your comment and
12 question. I can confirm with the applicant, as part of
13 the settlement agreement, even though there were no
14 Essex Fells residents who were part of the settlement
15 agreement, even though Essex Fells itself was not party
16 to the settlement agreement, we do have an affirmative
17 obligation in connection with working with the town in
18 following all the regulations. As we previously advised
19 the board and the public, we do have an affirmative
20 obligation to provide notice, whether it be on the
21 Township website to work with the town when any and all
22 blasting activity occurs and we would certainly apply
23 that curtesy to Essex Fells.

24 MR. AFRAN: Well, I don't think that's what
25 the question was.

1 CHAIRMAN BAGOFF: One at a time.

2 THE PUBLIC: My question, thank you for
3 speaking. My question was blasting versus not blasting
4 and at what point do we know whether there's, you know,
5 controls over it or not? Blasting versus no blasting.
6 That's what I would like to know.

7 CHAIRMAN BAGOFF: Mr. Seel, would you
8 explain that again, please.

9 THE WITNESS: Well, based on the data that's
10 available the contractor would develop an excavation
11 plan which would identify the appropriate method for the
12 various areas, and there may be other contributing
13 factors and there maybe other influences, limitations in
14 doing one over another and I can't speak to that.

15 THE PUBLIC: And if the blasting affects my
16 home, what happens to like --

17 MR. PLOCKER: That's not within his
18 testimony.

19 CHAIRMAN BAGOFF: That's not in his -- true,
20 not in his testimony. If he can answer.

21 THE PUBLIC: That's okay. I don't want to
22 waste my time. I get a couple bonus minutes or seconds.

23 CHAIRMAN BAGOFF: Bonus points, there you
24 go.

25 THE PUBLIC: The -- with respect to the

1 discussion regarding the ground, I'll call it the steep
2 slope, I understand that's a dynamic piece of land, it's
3 not like one day it's exactly the same as another, in
4 fact over time through erosion that, that slope actually
5 changes. This might be similar to the question I just
6 asked, but in terms of your responsibility and others
7 who have created this plan, who's responsible when the
8 building comes down because of miscalculations in the,
9 the steep slope, the proximity to the slope, the changes
10 in the ground, the changes in the degree of slope, who's
11 responsible for that when the building falls down?

12 MR. PLOCKER: It's not within his testimony.

13 MR. AFRAN: Call Mr. Plocker.

14 CHAIRMAN BAGOFF: Let him just speak.

15 MR. PLOCKER: I'm just saying, she's allowed
16 to ask questions about his testimony.

17 CHAIRMAN BAGOFF: Right.

18 MR. PLOCKER: He did not testify as to any
19 responsibility or liability based on hypotheticals.

20 THE PUBLIC: Well, I guess it goes to the
21 question, who wrote the report and who's responsible for
22 the contents of the report. You testified that you
23 wrote the report. You also testified that you didn't do
24 those drawings contained in the report, that the
25 architect did those and you relied upon those drawings

1 in making some of your decisions about what you wrote in
2 the report.

3 THE WITNESS: I am not sure I understand the
4 question. Are you asking me if am I responsible, is my
5 firm responsible?

6 THE PUBLIC: No, I didn't ask that. I asked
7 who is responsible for the contents. You testified that
8 you did the report, that you didn't do the drawings.
9 Based on those drawings some of your recommendations,
10 some of your writing in your report were based on other
11 peoples work that was included in the report. So who's
12 responsible for the building when it comes down?

13 CHAIRMAN BAGOFF: If you can answer, you
14 can. If you can't answer, you can't.

15 MR. AFRAN: I don't know what the question
16 is.

17 CHAIRMAN BAGOFF: Okay.

18 THE PUBLIC: I can repeat it. Dr. Bagoff,
19 you would actually understand this because as a surgeon
20 if I do something and I make an error based upon
21 somebody else's work, in my work, I am still responsible
22 for the work that caused say a problem in a procedure.
23 So Dr. Bagoff I think understands that.

24 CHAIRMAN BAGOFF: I'll speak to that.
25 There's a lot of variances in what you just said and you

1 know that. So to this, there's a report that's been
2 written and it's based on his license and that's all any
3 expert can do is have a report based on their license.

4 THE PUBLIC: So I'll ask the question again.
5 So you wrote this report and did you not write the
6 ancillary data that formed the drawings by the architect
7 that you used to form some of your opinions in your
8 report, correct?

9 THE WITNESS: Our report stands on it's own
10 merits based on the data.

11 MS. PANNULLO: The document drawing --

12 THE WITNESS: The drawing is simply an
13 illustration to try to help folks understand that there
14 is no load that can shed directly onto the slope.
15 That's a simple illustration.

16 THE PUBLIC: And you wrote the entire report
17 by yourself?

18 THE WITNESS: No, there's another signature
19 on the report.

20 THE PUBLIC: I didn't see that. Thank you.

21 CHAIRMAN BAGOFF: Any other questions?

22 THE PUBLIC: I think I am out of time, yes.
23 Thank you for your indulgence.

24 MR. PLOCKER: We'll indulge you.

25 CHAIRMAN BAGOFF: Thank you very much.

1 Go right ahead, sir.

2 THE PUBLIC: Good evening. Seth Weisleder,
3 Howell Drive.

4 Mr. Seel, quick question, did you have the
5 opportunity to walk the property and walk the slopes?

6 THE WITNESS: Yes, I have.

7 THE PUBLIC: Okay.

8 When was that?

9 THE WITNESS: Couple, two, three occasions
10 during and after the initial report.

11 THE PUBLIC: Okay. So on this slope does
12 the soil govern the stability or does rock govern the
13 stability?

14 THE WITNESS: The soil. The soil governs
15 the stability in this case simply because when you run
16 the analysis the critical failure surfaces don't extend
17 into the rock.

18 THE PUBLIC: So, so what monitoring or
19 instrumentation might you propose during and after
20 construction to confirm no adverse eroding occurs? Are
21 you not recommending any or are you.

22 THE WITNESS: We have not recommended any at
23 this point.

24 THE PUBLIC: Would you recommend based on
25 the analysis of to different highly viable firms?

1 THE WITNESS: Well, what I expect ultimately
2 to happen during the excavation portion of the work
3 there would be some form of monitoring that would be
4 implemented. We are not involved in that.

5 THE PUBLIC: Right. But the monitoring came
6 up in discussion on blasting, not on adverse load occurs
7 with the soil governing the slope stability. So what
8 would be more stable, a rock governing it or the soil
9 governing it?

10 THE WITNESS: Rock is generally stronger
11 than soil.

12 THE PUBLIC: Right.

13 THE WITNESS: Right. So the limiting
14 material is typically the soil.

15 THE PUBLIC: So your recommendation is not
16 to have any monitoring with adverse load effects at this
17 time?

18 THE WITNESS: That's correct.

19 THE PUBLIC: Okay.

20 THE WITNESS: Well the -- what we suggest
21 typically is that there's a monitoring program when
22 excavation is done, especially in special terms of
23 blasting, but not necessarily for slope stability.

24 THE PUBLIC: Right. But -- okay.

25 If controlled blasting is ultimately

1 required what mitigation plan exists, if any or none,
2 for vibration, over break or potential slope damage and
3 should there be a plan in place?

4 MR. PLOCKER: Again, I believe that's
5 outside the scope of his testimony. But Mr. Seel can go
6 ahead and answer if he wants.

7 THE PUBLIC: He did mention there might be
8 potential blasting. I'm not saying --

9 MR. PLOCKER: Absolutely.

10 THE PUBLIC: Yeah.

11 THE WITNESS: And in the case of blasting
12 we've always recommend that there be a monitoring
13 program and that would typically involve seismographs
14 often to make certain measurements.

15 THE PUBLIC: In your rebuttal you kind of
16 downplayed the utility trench affect. But did you
17 evaluate the long-term potential for water infiltration
18 along that trench, considering the slope instability?

19 THE WITNESS: We -- I have to go back and
20 look specifically at our latest analysis, but we did
21 saturate the entire slope at one point and showed it was
22 still stable.

23 THE PUBLIC: Okay.

24 And I guess I tried to make heads or tail of
25 this, if I'm wrong please correct me. I don't say I'm

1 100 percent right. But I believe that your threshold
2 safety factor 1.5 and Princeton's suggesting 2.0, is
3 that correct?

4 THE WITNESS: That is correct.

5 THE PUBLIC: Okay.

6 So why the difference, you know, why did you
7 choose 1.5, why are they choosing 2.0 for a safety
8 factor? Under what regulatory or cite specific guidance
9 is there to determine this, because obviously that's
10 what skewing the numbers, correct? Or changing the
11 numbers.

12 THE WITNESS: It's changing the
13 interpretation. Typically 1.5 for a permanent slope is
14 what's used in this type of -- in this application.
15 What Mr. Goll of Princeton had recommended was 2.0 based
16 on the U.S. Army Core of Engineers for Critical
17 Structures such as dams where there's a huge horizontal
18 load on a structure that if it failed would wipe out an
19 entire community. That is not the case on this project.

20 THE PUBLIC: So I guess two more questions.
21 Your conclusions are based on new borings and test pits
22 and additional tests pits that were done close to the
23 homes on Howell, but how could we be confident those
24 samples represent the whole slope, especially since rock
25 quality and soil strength vary from place to place?

1 THE WITNESS: Both Langan and Princeton
2 evaluated various conditions using lower strength values
3 in our soil and there are decomposed rock than the data
4 suggests. Princeton used very low soil parameters, soil
5 rock parameters and in their analysis they even
6 thickened the weakest of the sections using the lowest
7 of the strength parameters and it was still stable.

8 THE PUBLIC: So I'm trying to understand
9 here, are you saying or accusing Princeton of
10 misrepresenting or misapplying data or are you basically
11 saying that your differences is a professional judgment
12 rather than an outright error?

13 THE WITNESS: I can't speak to Princeton how
14 they came up with that section, but based on our review
15 of the data there's no section that has such a section
16 or sequence of soil.

17 THE PUBLIC: So is it misrepresenting or
18 misapplying data?

19 CHAIRMAN BAGOFF: We're not going to go
20 there. He presented his facts, he didn't use any of
21 those words, so let's not imply something that's not
22 there. Thank you.

23 Do any other members of the public have any
24 questions? Please come up and be identified. You have
25 three minutes.

1 Go right ahead, sir.

2 THE PUBLIC: Donald Ershow, I live in
3 Roseland and I drink the water from the Essex Fells
4 Water Company, which is affected by the area. I have a
5 question regarding the blasting that you had spoken
6 about and how, if I understand correctly, there doesn't
7 have to be a type, from what you had testified, there
8 doesn't have to be a type of blasting that some people
9 are concerned about. And you had mentioned that there
10 are some chemical expanders, I think you had said, and
11 other methods. What does that mean?

12 THE WITNESS: So couple things. One is,
13 there's been a lot of talk about blasting and people do
14 have, I perceive, concerns about how the blasting would
15 go. Typically blasting, in my experience, is that it's
16 not typically loud. It is, other than the vibration,
17 you rarely even know that it occurs and that perhaps
18 speaks to the perception being, you know, what we
19 normally see in the industry versus some exceptional
20 case, which I understand from the public would be a
21 concern.

22 Chemical expanders are another product
23 that's used. It's usually a quick line, there's an
24 aluminum component, iron component, silica and it's
25 simply you drill a whole, you drill a whole into the

1 rock, you put this material in and then it creates a
2 chemical reaction and ultimately breaks the rock. And
3 there's, similarly there's hydro-splitters where you
4 drill holes into the rock, you put this magnetizing
5 device in and split the rock. There's many different
6 ways to break rock.

7 THE PUBLIC: So can you quickly put the
8 photo up of the diagram that you had earlier that showed
9 the hill. So, so these elements are put into the ground
10 to assist in the blasting, so there's less blasting in
11 the excavation?

12 THE WITNESS: In the excavation. If you zoom
13 in please on this area down here I could probably
14 illustrate.

15 THE PUBLIC: And is this thing called the
16 knob, somebody had mentioned the knob earlier?

17 THE WITNESS: So for the sake of this
18 discussion, we ultimately say that this material that,
19 from here down to the base of this excavation, this is
20 rock. Whether -- regardless of the excavation technique
21 it would be a vertical excavation. They would drill a
22 hole, it would be break the rock in vertical, in
23 vertical sections using any one of these techniques.

24 THE PUBLIC: Okay.

25 So all that stuff goes in and it helps to

1 bust out all this rock?

2 THE WITNESS: Correct.

3 THE PUBLIC: Okay.

4 So I'm not going -- I'm not a chemist, I
5 spent my whole life in the media and advertising
6 business and I know nothing about this. But I know that
7 crack flows downhill and my family drinks, and tens of
8 thousands of other people are going to be drinking all
9 this stuff. So my concern --

10 CHAIRMAN BAGOFF: Sir, ask the question.
11 You can raise concerns at public comment. Ask a
12 question.

13 THE PUBLIC: But this is to the point.

14 CHAIRMAN BAGOFF: Okay. Good.

15 THE PUBLIC: Is from, and you're an
16 environmental engineer with a masters from Stevens, if I
17 have my notes correct here, how are we going to prevent
18 all of this at the headwaters of the Canoe Brook from
19 going into the Canoe Brook and going downstream into the
20 water that we're drinking if we're using chemical
21 expanders and other methods in addition to the other
22 concerns of the blasting. I mean, it's one other
23 concern. So how do we -- if we're, like what, I don't
24 know, the aluminum and the other stuff, I don't have the
25 time now, right, to hear this?

1 CHAIRMAN BAGOFF: I'm listening. We're
2 listening. So basically the question is, you have not
3 testified to the exact way to do this, is that correct?

4 THE WITNESS: Correct, I haven't, so --
5 right. So just to clarify --

6 CHAIRMAN BAGOFF: He offered options.

7 THE WITNESS: I have not testified how this
8 would be done. I simply identified in the report how --
9 the typical methods that are utilized for excavation.
10 The contractor must choose based on the available
11 information and within the regulations of using these
12 materials how to use them and what's the best
13 application.

14 MR. PLOCKER: And is it possible that more
15 than one method is used depending on the area?

16 THE WITNESS: It is. It could be any
17 combination I testified to and written in the report.
18 It could be any combination of such methods.

19 THE PUBLIC: But we all should be having an
20 Erin Brockovich moment here.

21 THE WITNESS: Well, these products are used
22 universally and I am not aware of any hazardous effects
23 with them as long as they're used properly and under
24 controlled conditions, so.

25 THE PUBLIC: Thank you.

1 CHAIRMAN BAGOFF: Thank you.

2 Any other members of the public have any
3 questions for Mr. Seel on testimony? Please come up,
4 get identified and you have three minutes.

5 THE PUBLIC: Hello everybody. My name is
6 Jerry Companion and I work in construction for about 20
7 years, so I know what's going on, all about the drainage
8 system, sewer lines and I am asking, do we have a
9 schematic or a blueprint on the soil lines or piping
10 going from the building to the sewer system that exists
11 already?

12 THE WITNESS: I don't have one.

13 THE PUBLIC: Can that be presented to the
14 public?

15 MR. PLOCKER: We have already provided
16 testimony regarding the sewer system.

17 THE PUBLIC: Yes, sir. Thank you.

18 And the other thing is, chemical expansion.
19 You just explained to the other gentleman what the
20 chemicals are all about, but will the public be getting
21 an MSDS?

22 THE WITNESS: I would imagine they, if the
23 contractor uses that, they will have an MSDS sheet. If
24 there's any reporting requirements that would be
25 provided.

1 THE PUBLIC: Okay. So that's a definite.

2 Any chemicals --

3 CHAIRMAN BAGOFF: Ladies and gentlemen, a
4 MSDS is a Materials Safety Data Sheet. So it describes
5 what the chemical is and all the known inferences about
6 that chemical. I just want everybody to know what MSDS
7 is.

8 THE PUBLIC: Thank you for that. Thanks.

9 CHAIRMAN BAGOFF: Sure thing. Go right
10 ahead, sir.

11 THE PUBLIC: And so that would be presented
12 if that choice is made by using this chemical expansion?

13 THE WITNESS: I would imagine so.

14 THE PUBLIC: Well, it has to be, because
15 that's required by the state and local government.

16 MR. PLOCKER: For the record, Mr. Seel and
17 his firm are not the contractor.

18 THE PUBLIC: Excuse me.

19 CHAIRMAN BAGOFF: Say that again.

20 MR. PLOCKER: For the record, Mr. Seel
21 testified that it's not his firm that would be the
22 contractor. I just wanted to make it clear that he
23 didn't represent that he would be the contractor who
24 would be the one responsible for that, but thank you
25 very much for bringing that up.

1 THE PUBLIC: Thank you for the answer.

2 MR. PLOCKER: Thank you.

3 THE PUBLIC: Thank you for your time.

4 CHAIRMAN BAGOFF: Thank you, sir.

5 Do any other members of the public have any
6 questions for Mr. Seel on his testimony? Three minutes.
7 Come up and be identified.

8 THE PUBLIC: Justin Goldman.

9 You had mentioned in your initial remarks
10 that there was the possibility of different methods for
11 excavation. You mentioned splitters, chemicals,
12 blasting.

13 THE WITNESS: Correct.

14 THE PUBLIC: Your proposal, your
15 presentation tonight was based on the assumption that
16 the blasting was used. Of using more of the blasting.

17 THE WITNESS: No, I'm not suggesting one
18 method over another.

19 THE PUBLIC: Okay.

20 Is there a way for you to maybe illuminate
21 any of those construction plans, especially with the
22 underground parking units in a differential like based
23 on blasting, if a chemical is used, if, you know,
24 splitters are used and how that would impact the
25 difference on the plan?

1 THE WITNESS: I don't understand your
2 question. I'm not following you.

3 THE PUBLIC: Will the proposed parking deck
4 alter in any way dependent upon the technique of
5 excavation?

6 THE PUBLIC: I would not imagine that it
7 would. The intent is too build what's shown on the
8 construction plans, whenever those are finalized. And
9 the means and methods chosen by the contractor have to
10 achieve that.

11 THE PUBLIC: I'm just asking, I don't know
12 if that's forcing everything to shift depending on if
13 you use a chemical, that's all I was asking. Thank you
14 very much. I appreciate that.

15 CHAIRMAN BAGOFF: Thank you.

16 Any other members of the public have a
17 question? Please come up, be identified. You have
18 three minutes.

19 THE PUBLIC: Good evening. Joyce Rudin.
20 You testified in you response to a question that in
21 regard to noise from blasting, are there regulations in
22 New Jersey that require contractors to give notice
23 before blasting and set blasting schedules?

24 THE WITNESS: Yes, there'll be -- there are
25 public notifications that must be -- they're mandatory,

1 that would be made and all that information would be
2 shared.

3 THE PUBLIC: Can you confirm whether or not
4 the noise levels during blasting reach between 120 and
5 140 decibels at the blast?

6 CHAIRMAN BAGOFF: He didn't testify to that.

7 THE PUBLIC: I know he didn't. I'm just
8 asking him, he testified that blasting does not cause so
9 much noise. So I'm asking if --

10 THE WITNESS: I testified that the blasting,
11 if it's done properly, doesn't create the levels of
12 noise that I'm hearing are a concern.

13 THE PUBLIC: So what level of noise would
14 you describe it as?

15 THE WITNESS: We're talking qualitatively,
16 it could sound like a boom.

17 THE PUBLIC: A boom?

18 THE WITNESS: If it's done properly, yes.

19 THE PUBLIC: Like a boom during a war time
20 boom?

21 THE WITNESS: No.

22 CHAIRMAN BAGOFF: Okay. I'm going to stop
23 this. We're going off on a tangent. So he testified --
24 wait one second. He testified that he's not
25 representing the company doing the blasting. He's not

1 testifying as to exactly how it's going to be done,
2 which I think is the question you are asking. We're
3 going down a rabbit hole that he doesn't have the right
4 answer too. So asking these questions is, he's the
5 wrong person and I don't want the public or the board to
6 get answers that are not in his expertise.

7 MR. PLOCKER: And to confirm the
8 councilwoman's question, I just want to confirm that we
9 do have the affirmative obligation to provide full
10 notice and schedule and we will live up to that
11 obligation.

12 THE PUBLIC: He did testify in terms of the
13 sound quality and that's what I was referencing.

14 CHAIRMAN BAGOFF: But he didn't testify to
15 the decibel and which you also asked that question.

16 THE PUBLIC: No, he did not. But he used
17 the word boom, so I was trying to understand --

18 CHAIRMAN BAGOFF: Ma'am, I understand.
19 We're going down a rabbit hole.

20 THE PUBLIC: What does he mean by a boom?

21 CHAIRMAN BAGOFF: You're going down a rabbit
22 hole again.

23 THE PUBLIC: Can you respond to what you
24 meant by stating it would be a boom?

25 THE WITNESS: Simply trying to differentiate

1 between what I'm understanding the public concerns are
2 over these noise levels versus what the actual
3 controlled blast sounds like and there's a very
4 dramatic, without trying to qualify what that sound is,
5 I would say that it's not, it's, it lacks the effect
6 that I'm hearing is of concern.

7 THE PUBLIC: Would a boom cause vibration?

8 THE WITNESS: Well, the pressure through the
9 rock is what causes vibrations.

10 THE PUBLIC: So, yes, they would be
11 vibrations?

12 THE WITNESS: There's vibration generated by
13 a blast, yes. There's vibration generated by drilling.
14 There's vibrations generated by a lot of construction
15 activities and the magnitude of those varies by the
16 source and by using controlled blasting techniques
17 you're limiting the amount of charge per each delay in
18 the blast that gets out into the rock and by using
19 additional controlled techniques where you create line
20 or channel drilling you don't, the pressure doesn't
21 propagate beyond that. It gets controlled.

22 THE PUBLIC: Could the ground vibrations
23 affect the residents who are living closest to this
24 site?

25 THE WITNESS: Well, by affect you mean would

1 you notice a vibration?

2 THE PUBLIC: Yes, and could it -- could they
3 feel it within their house and could it potentially do
4 any damage within their homes?

5 THE PUBLIC: Well, I'd say we all can sense
6 vibrations, sure. But the purpose of a controlled
7 blasting program is to prevent them from being
8 detrimental.

9 MR. PLOCKER: And is that what the
10 regulations are designed to do?

11 THE WITNESS: Yes, it is.

12 THE PUBLIC: Could the vibration be similar
13 to an earthquake?

14 THE WITNESS: Well, it's a different type of
15 vibration. So, again, the intent of the program is to
16 prevent any such damaging effects. That's all I can say
17 for that.

18 THE PUBLIC: Thank you.

19 CHAIRMAN BAGOFF: Thank you.

20 Any other members of the public have any
21 questions for Mr. Seel on his testimony? Please come up
22 and be identified. You have three minutes.

23 THE PUBLIC: Gilda Paul, Howell Drive.

24 Thank you for your testimony. I especially
25 appreciated your explaining the difference between the

1 1.5 number, I believe, and the number, the 2.0 number
2 from Princeton Hydro. And I just want to make sure I
3 understand you correctly. So if I understand you
4 correctly you're saying that neither the 1.5 nor the 2.0
5 number guaranties that the slope won't collapse. That
6 the difference is based on the amount of damage that
7 would be done if the slope collapsed. So the U.S.
8 Engineers base it on, because the damage, you said would
9 wipeout a whole city, they require 2.0 and because if
10 this slope happened to collapse it would only wipeout
11 maybe half a dozen houses, 1.5 is an adequate number, is
12 that what you're saying?

13 THE WITNESS: No, that's not it. 1.5 -- a
14 factor safety of 1.0 means that the forces that tend to
15 drive failure are equal to the forces that tend to
16 resist failure. So at 1.5 you're 50 percent higher, you
17 know, 50 percent more resisting forces than you have
18 driving forces. At 2.0 you have twice the number amount
19 of driving -- of resisting forces relative to the
20 driving forces. So in both cases the slope is stable.

21 THE PUBLIC: So why would they U.S.
22 Engineers have a different number than you, if that's
23 the case?

24 THE WITNESS: Well, the U.S. Core of Army
25 Engineers they -- I suppose you have to ask them why

1 they have such a high number. It could have to do with
2 the way they analyze or their consultants analyze
3 conditions.

4 THE PUBLIC: I may have misunderstood. I
5 thought you said something like the dam could take out a
6 whole city, but maybe I misheard.

7 THE WITNESS: No, I did not.

8 THE PUBLIC: No. Okay. I'm sorry. Thank
9 you.

10 CHAIRMAN BAGOFF: Any other member of the
11 public have any questions? Come on up, state your name
12 for the record. You have three minutes.

13 Your name for the record and you have three
14 minutes.

15 THE PUBLIC: Marea DePalma, Lapis Circle in
16 the Highlands.

17 I have a question. The three ways that you
18 are planning on excavating with the chemicals, blasting
19 and I can't think of the third one. How --

20 CHAIRMAN BAGOFF: I'm sorry. Mr. Plocker
21 wants to say something.

22 MR. PLOCKER: Yeah. I don't think his
23 testimony was that we plan on excavating those ways. I
24 believe Mr. Seel gave examples of the different means
25 and methods --

1 THE PUBLIC: Forgive me.

2 MR. PLOCKER: -- of excavation and that the
3 exact means and excavation would be determined by the
4 contractor in the field pursuant to applicable
5 regulations.

6 MR. AFRAN: If I may.

7 CHAIRMAN BAGOFF: Mr. Afran.

8 MR. AFRAN: Mr. Seel's testimony was there
9 are a variety of methods, he didn't rule out any. So
10 the question from the public --

11 CHAIRMAN BAGOFF: Let's be fair. He didn't
12 rule in any. He said there are methods. That's all he
13 said.

14 MR. AFRAN: Correct. Now the questioner is
15 asking about the methods in the universe of methods that
16 Mr. Seel is referring to.

17 CHAIRMAN BAGOFF: That's fine.

18 MR. AFRAN: Quite a proper question.

19 CHAIRMAN BAGOFF: That's fine. I didn't say
20 no.

21 MR. AFRAN: I'm responding to Mr. Plocker.

22 MR. PLOCKER: And I believe the question
23 presumed that he suggested that certain methods would be
24 used, and I just wanted to make clear that that was not
25 his testimony.

1 CHAIRMAN BAGOFF: Mr. Seel, did you
2 recommend one method over another or did you say there
3 are many methods?

4 THE WITNESS: No, I'm not recommending one
5 over another.

6 CHAIRMAN BAGOFF: Go right ahead. Ask your
7 question.

8 THE PUBLIC: So whatever method is used how
9 will that effect the people in the Highlands, where I
10 live, over this long project, air quality, for us to be
11 healthy and breathe all that in. It's a long project,
12 there's going to be a lot of dust in the air. It's
13 going to be -- if you use chemicals that would be in the
14 air. How does that protect us, our children, our pets.
15 How is -- where is our guarantee that we won't be
16 affected by it health wise?

17 MR. PLOCKER: Did you testify that things
18 were going to be in the air?

19 THE PUBLIC: A chemical would be if it is
20 used, wouldn't it? I mean, you can't put a chemical in
21 a bubble.

22 THE WITNESS: Well, the contractor will have
23 to choose the best available methods for the project
24 requirements and this is for the duration, as you
25 pointed out, of the project.

1 THE PUBLIC: I can't hear you.

2 THE WITNESS: I said, the contractor will
3 have to select the appropriate means and methods of
4 excavation, cleanup, all those things to be compliant
5 with all the regulations that he's subject to for
6 maintaining health and safety.

7 THE PUBLIC: So would we be notified of that
8 or do we find out after it's all started?

9 CHAIRMAN BAGOFF: You can answer the
10 question, sir.

11 THE WITNESS: Well, it's not my -- my
12 understanding is you will -- I don't control the
13 contractor, but I understand that all the regulations
14 that will be set forth for the construction are to be
15 complied with.

16 MR. PLOCKER: In addition to our obligation
17 to do so under the settlement agreement with the
18 Township of West Orange, we will 100 percent provide
19 notice, timing, it will be on the website. There are
20 many things that we have agreed to that we will continue
21 to abide by in good faith.

22 THE PUBLIC: So not only will that be in the
23 area of us, it will be in -- it's not going to stay
24 right where we are, it's going to be in all the
25 surrounding, Essex Fells, Roseland, it's going to travel

1 with the air, it's not subject to just us. The wind
2 blows this way, the wind blows that way and all those
3 chemicals will be traveling wherever, you know, however
4 the wind --

5 CHAIRMAN BAGOFF: Ma'am, you're testifying.

6 THE PUBLIC: Okay. Well, that's what I
7 wanted to know. Thank you.

8 CHAIRMAN BAGOFF: Thank you very much.

9 THE PUBLIC: Thank you.

10 CHAIRMAN BAGOFF: Do any other member of the
11 public for the first round, anybody have first round
12 questions and hasn't been -- come on up, sir.

13 THE PUBLIC: Just one follow up question.
14 Seth Weisleder, Howell Drive.

15 Going back to the safety factor of Princeton
16 Hydro suggesting 2.0 and to using 1.5. Since our homes
17 are at the bottom of the slope shouldn't more
18 conservative standards be applied to protect our safety?

19 THE WITNESS: Well --

20 THE PUBLIC: I mean 1.5 --

21 THE WITNESS: 1.5 is a industry standard used
22 in all residential/commercial construction. And our
23 analysis even utilized lower strength values than we
24 could have. So the fact is safety that we could have
25 calculated in our analysis could be considerably higher

1 than 1.5.

2 THE PUBLIC: At this point being, maybe just
3 staying conservative, but what else would you recommend
4 to give us a piece of mind not only during construction,
5 which has been focused on, but five to ten years from
6 now as things will change, what else can we recommend?
7 I know there's things in place but there's things that
8 we can be -- we're being conservative and that's where
9 fears are coming from, because we have two professional
10 engineering reports with conflicting comments and
11 conflicting giving us not a piece of mind. So what else
12 would you recommend that be in place now to give us that
13 certainty during and then after construction in
14 perpetuity?

15 THE WITNESS: I don't have anything else to
16 add.

17 THE PUBLIC: Okay.

18 MR. PLOCKER: Does the risk of failure
19 change from pre to post construction?

20 THE WITNESS: No, it does not.

21 THE PUBLIC: What does that mean?

22 THE WITNESS: It means, as I've testified,
23 the factor of safety, the stability of the slope of the
24 existing condition doesn't change after the building is
25 put in place because there's no loading onto the slope.

1 THE PUBLIC: But you're talking about load.
2 But what about, and I'm going to add to the
3 conversation, if I may. What about environmental, the
4 100-year storm, a slight earthquake, wouldn't that
5 contribute to it?

6 THE WITNESS: We analyzed the stability of
7 the slope under seismic conditions. We analyzed the
8 stability of the slope under saturated conditions. And
9 it's still stable.

10 CHAIRMAN BAGOFF: Do any other members of
11 the public -- come right up.

12 THE PUBLIC: Deborah Butensky.

13 So the question I have is, this isn't like
14 using a laser, what is the lateral effects of whatever
15 modality is used, what are you trying to excavate? How
16 far laterally, how many feet.

17 THE WITNESS: It's -- typically the methods
18 are fairly controlled and the impact is finite. It's
19 within -- it's maybe a few feet you get --

20 THE PUBLIC: Well, How many is a few? You
21 only have seven at certain points. Is it beyond seven?

22 THE WITNESS: You have seven -- well no,
23 not in my experience. No.

24 THE PUBLIC: So what, in your experience,
25 what is the maximum spread?

1 THE WITNESS: As long as the material -- as
2 long as the methods that are used to excavate are
3 controlled the -- we're talking about really no over
4 breaks, so it's within, I don't know, a foot or two at
5 the most.

6 THE PUBLIC: And the other question is, what
7 is the role of the geotech person with the developer?
8 You guys recommend what they should use, how do you guys
9 interact?

10 THE WITNESS: Are you talking about -- well,
11 at this stage, are you talking about during
12 construction?

13 THE PUBLIC: Both.

14 THE WITNESS: So we are asked to provide
15 services, which in this case is to analyze the stability
16 of the slope and we made recommendations -- we analyzed
17 conditions and made recommendations. During
18 construction, if we were to be retained, we would have a
19 specific scope of work and that might be monitoring or
20 inspecting some activity.

21 THE PUBLIC: Do you make recommendations as
22 to modality for excavation?

23 THE WITNESS: We make recommendations on the
24 type of excavation that would be appropriate or that
25 could be used and then the contractor has to choose. We

1 don't direct means and methods to contractors.

2 THE PUBLIC: But they would ask you to give
3 recommendations on the optimum method?

4 THE WITNESS: Not necessarily. And we have a
5 report here that's -- that provides suggested or, you
6 know, the universe of methods that can be used.

7 THE PUBLIC: And a follow-up to my
8 colleagues question about the toxicity that could
9 emanate from whatever modalities that are used during
10 the construction. For example, the air pollution, what
11 is the developers responsibility to control or contain
12 the potential toxicity to the air and to the soil?

13 THE WITNESS: Well, I'm sure there are state
14 if not federal air pollution regulations that have to be
15 complied with, which as I understand there's a
16 developers agreement in place to comply with.

17 MR. PLOCKER: Just for the record. Right
18 now there's a settlement agreement, there's no
19 developers agreement at this time. That's something
20 that would typically happen in post approval.

21 CHAIRMAN BAGOFF: Thank you.

22 THE PUBLIC: Thank you.

23 CHAIRMAN BAGOFF: Come right up, ma'am.

24 THE PUBLIC: Quick question.

25 CHAIRMAN BAGOFF: State your name for the

1 record.

2 THE PUBLIC: Susan Pannullo, I am still
3 within the 200-foot notice line.

4 When, in your experience, when there's a
5 situation of two very different opinions, one being
6 things are safe, one being things are not safe, when
7 there are different risk benefit analysis done, how is
8 that usually settled out? How is that usually
9 adjudicated and managed.

10 THE WITNESS: Well, I would say that's
11 probably done at the level of this board in this case,
12 for example. We have our position and I understand that
13 there's a position, a different position that's taken by
14 Princeton Hydro.

15 THE PUBLIC: So going back to a liability
16 issue then, does that put liability on any board, does
17 it, is it the responsibility of the public to be asking
18 good questions to help everybody make decisions. How is
19 that managed in your experience?

20 MR. PLOCKER: Again, he didn't testify as to
21 liability. It's not his job.

22 THE PUBLIC: In your experience how is the
23 situation usually managed then? Just to clarify for me.

24 THE WITNESS: I can't --

25 THE PUBLIC: Two completely different

1 opinions, safe versus not safe.

2 THE WITNESS: Well honestly, I don't
3 typically encounter this. I don't know how Princeton
4 arrived at the values they did and the statements they
5 made. We are confident in our analysis that it's safe
6 and will be safe.

7 MR. PLOCKER: And your September 15 report
8 was designed to address Princeton Hydro's testimony and
9 comments, right?

10 THE WITNESS: That's correct.

11 THE PUBLIC: Thank you.

12 CHAIRMAN BAGOFF: Thank you.

13 Any other member of the public have any
14 questions for Mr. Seel on his testimony? Please raise
15 your hand and be identified.

16 Any member have a question for Mr. Seel on
17 his testimony? Please raise your hand and be
18 identified.

19 Seeing none.

20 Thank you, Mr. Seel.

21 We're going to take a ten-minute break.

22 (Whereupon, a short recess is taken.)

23 CHAIRMAN BAGOFF: We will come back ladies
24 and gentlemen on zoom and in town hall.

25 Now we have Mr. Plocker and his next expert.

1 MR. PLOCKER: Thank you, Mr. Chairman.

2 The applicant would like to call Karl
3 Pehnke. Should say recall Karl Pehnke.

4 CHAIRMAN BAGOFF: Thank you.

5 Sir, you realize that you are still under
6 oath?

7 THE WITNESS: Yes.

8 CHAIRMAN BAGOFF: And your license is still
9 active in the State of New Jersey?

10 THE WITNESS: Yes, it is.

11 CHAIRMAN BAGOFF: Thank you.

12 Go right head, Mr. Plocker.

13 Q. Thank you, Mr. Pehnke.

14 At the last most recent meeting, testimony was
15 given by the objectors traffic expert Mr. Litwornia, are
16 you aware of that?

17 A. Yes, I am.

18 Q. Were you able to review his testimony --

19 A. Yes.

20 Q. -- prior to the last meeting?

21 A. Yes, I was.

22 Q. And did you review the report Mr. Litwornia
23 provided to the board?

24 A. Yes, I did.

25 Q. And are you prepared to offer testimony to

1 comment on that report?

2 A. Yes.

3 Q. Okay. Please go ahead.

4 A. Certainly. So at the last meeting Mr. Litwornia
5 presented his findings, a report and slides that
6 proffered several assertions with regard to this
7 application that I think require correction and/or
8 clarification. There's several broad categories that he
9 touched on, but I think the first one is probably, first
10 and foremost the most important one and it is the
11 characterization and the determination of the
12 circulation system within the site and how it is
13 derived. Mr. Litwornia --

14 CHAIRMAN BAGOFF: One second, sir. Go right
15 ahead. Thank you.

16 A. Thank you.

17 Mr. Litwornia is correct that the Residential
18 Site Improvement Standards that are published by and
19 governed by the DCA are the governing standards for this
20 site. Under those standards Mr. Litwornia made, offered
21 the, or proffered the opinion that the site circulation
22 roadways of this project and it's circulation system
23 would be categorized as a cul-de-sac and as a result
24 based upon the cul-de-sac standards, and he actually
25 mixed and matched the standards between a standard

1 cul-de-sac and a multifamily cul-de-sac, which are two
2 different standards, but regardless, under those
3 standards it would suggest in his opinion that it would
4 limit the number of units that could be developed on
5 this site.

6 So let me first be clear on the Residential Site
7 Improvement Standards and how they are applied. With
8 regard to site improvement standards, if you read
9 through the standards, the application of those
10 standards start at the property line. They're clear in
11 the actual report and in fact that is such an important
12 element of the Residential Site Improvement Standards
13 that on of the four clarifications maintained by DCA --

14 CHAIRMAN BAGOFF: One second, sir.

15 Go right a head.

16 (Pause for sirens.)

17 A. That one of the clarifications on the DCA
18 website, actually clarification 3, and I'm going to read
19 it, specifically says that "The Residential Site
20 Improvement Standards do not require that the
21 developments built before the rules be improved to meet
22 the standards." This is even true when a proposed
23 development relies on an existing development for its
24 street network. And then further it goes on to say
25 that, "The ADT" which is what we use to calculate and

1 determine whether it's a residential access, minor or
2 major access, "should be limited based on the ADT of the
3 street segment that serves the proposed development.
4 Not the ADT of the proposed and existing development."
5 Mr. Litwornia inferred that that is true, he actually
6 pointed to those very specifics but then he went on --

7 CHAIRMAN BAGOFF: Can you explain what RSIS
8 and ADT is to the public so everyone has an
9 understanding?

10 THE WITNESS: Sure.

11 A. So RSIS is, Residential Site Improvement
12 Standards, it's the regulations for design standards for
13 residential developments throughout the State of New
14 Jersey.

15 ADT is basically Average Daily Traffic. It's an
16 estimated calculation of the traffic generated by a use.

17 But Mr. Litwornia went on to infer that
18 regardless of that clarification and the written
19 language in the regulation itself that there was
20 something in RSIS that said, yeah, but if it's a big
21 project or something other that you have to take that
22 into account and that's absolutely not true. The
23 standards are direct, clear, in black and white and the
24 clarifiers are black and white.

25 So going back to my testimony last year, this

1 project under the Residential Site Improvement Standards
2 has three points of access. It connects at Warner Road,
3 it connects at Kuzik and it has -- and it connects at
4 Howell. Those are three points of access. Two of them
5 are proposed to be controlled as emergency access. One,
6 Howell, fully emergency access. Two, at the
7 determination of this board, would be emergency access.
8 As such the internal roadway systems are not a
9 cul-de-sac, they're classified as a minor collector.
10 And the design standards that were used by Mr. Anderson
11 in designing the site meet the requirements as defined
12 in the RSIS for the design of a minor collector road
13 system.

14 I would go on to indicate that Mr. Litwornia
15 further started to discuss that you should take both
16 sites together, which clearly RSIS does not require, and
17 inferred that the existing Highlands area is actually a
18 cul-de-sac. And that's actually not the case either.
19 Oval Road has two points of access. It has the
20 connection to Eagle Rock Road, which is used on a daily
21 basis, and it also has an emergency access connection
22 into Essex Fells by the extension of the emergency
23 access easement that's enjoyed between the connection of
24 Warner and over to the private road section in the
25 easement that exists. So there are two points of access

1 along Oval Road, and the Highlands has two points of
2 access to Oval. It has Bongart Drive and there's
3 Barnard Road, which interconnects inside with its other
4 connecting roadway system, Davey Drive, Kuzik Drive, all
5 of that starts to make a multiple grid of streets that
6 connect. So the existing Highlands would not be
7 classified as a cul-de-sac. So the project as it stands
8 is a system of roads that are, are characterized as
9 minor access.

10 Now, go on to say that there has been discussion
11 through the year about Howell Drive and the emergency
12 access connection. If you recall my testimony from over
13 a year ago, I indicated that I believe that's a good
14 component of this project. It's certainly supported by
15 the IH zone and it will benefit not only the people that
16 live in this community, but it will benefit the
17 remaining portion of the community by providing another
18 point of access for emergency services. However, I
19 would note that quite frankly we don't need it. If that
20 went away the only cul-de-sac that would be classified
21 one the internal system would be Road D. Road D
22 extending from the roundabout back to Building D would
23 then be come a multifamily cul-de-sac. A multifamily
24 cul-de-sac has a required ADT of no more than 1000
25 vehicles per day. Building D of 166 units would

1 generate about 776 vehicles per day below that standard
2 and could stand alone without that emergency access. I
3 am not advocating for the elimination of that access,
4 I'm just pointing it out that we could live without it
5 if this board so determined, but I think it is an
6 advantage to both the community that it is being built
7 as well as the existing community to maintain that. And
8 to be clear, it's an emergency access. The fact is it
9 will probably see some pedestrians, it'll see a
10 snowplow. The likelihood that it'll ever see an
11 emergency vehicle or any kind of traffic is very, very
12 small. Just as the likelihood as the existing emergency
13 access connection that people in this room may or may
14 not know exists on Oval Road probably hasn't seen much
15 more than a snowplow through the years. And that's the
16 purpose of an emergency access. It's there if it's
17 needed and can be used by emergency services however
18 they need to respond.

19 So that larger segment being said, which is most
20 important, there's certainly no restriction on the
21 number of units based upon RSIS on this site.

22 Mr. Litwornia also went on to assert a few other
23 things. He indicated that in his review of the plans,
24 and he wasn't clear which plans he reviewed, that Mr.
25 Anderson had violated the RSIS standard designs for

1 roadway grades. He implied that there were roadway
2 grades on this site greater than ten percent. To be
3 clear, for minor access roadways RSIS does permit up to
4 a ten percent grade. In fact RSIS permits a little bit
5 more than that in areas such as this where you have
6 hilly terrain, you could actually add 2 percent and not
7 be in violation. So in fact Mr. Anderson could have
8 designed up to 12 percent on profiles on the roads.
9 None of Mr. Anderson's road profiles exceed ten percent.
10 They vary, seven percent, four percent, they're all over
11 the place. But they are certainly compliant and Mr.
12 Anderson has testified to that and he continued to
13 represent the design of his plans.

14 With regard to grades, Mr. Litwornia also seemed
15 to suggest that he thought based upon his looking at the
16 plans that some of the side street approaches, the
17 driveway approaches to the, to the, to the minor access,
18 to the minor arterial, which is supposed to be graded at
19 five percent within 50 feet of the intersection for
20 reasons that he explained, snow and stopping and so
21 forth, he thought they were exceeding that. The plans
22 are clear Mr. Anderson did design to RSIS standards. In
23 my review of them and talking to Mr. Anderson, we meet
24 the 50 feet, five percent grading, in fact many of the
25 driveways are graded at 2 percent or less. I didn't

1 find any instances, in double checking Mr. Anderson's
2 plans, in the grading plans, where I thought he -- it
3 might be questionable. Certainly if your review
4 engineer has any questions on that or needs to see
5 something, I also saw nothing in the plans that
6 indicated that we can't achieve five percent or less.
7 So I think that was important to clarify.

8 Mr. Litwornia also then went on to discuss the
9 improvements at Oval Road and Eagle Rock Avenue and I
10 gave lengthy testimony to those improvements a year ago,
11 I won't rehash them, but basically the applicant by the
12 settlement agreement and has documented in the Traffic
13 Impact Study, will be constructing improvements at Eagle
14 Rock Avenue and Oval Road. Those improvements will
15 include widening of Eagle Rock Avenue to provide a left
16 turn, a suggesting of Mr. Litwornia. He would have seen
17 that if he read the documents. It will include
18 signalization of the intersection and it'll include
19 proper pedestrian accommodations as we talked about with
20 this board a year ago to accommodate crossings and so
21 forth.

22 Mr. Litwornia suggested that that intersection,
23 based on my analysis, would be operating at a level of
24 service C. Again, to refresh the boards memory and the
25 public's memory, engineers, traffic engineers boil down

1 all of our calculations to a simplistic rating of A to
2 F. A being excellent levels of service and operation.
3 And F being failing conditions. Doesn't mean gridlock,
4 it just means you might show up at a signal at the end
5 of a cycle and have to wait a cycle to get through or
6 you might be in a que of three or four, five vehicles at
7 an unsignalized intersection, but bottom line, it's
8 delays that are a little less tolerable to residents.
9 The fact of the matter is the intersection calculations
10 that we provided in the analysis show that that
11 intersection will operate at the A level of service
12 during both peak hours.

13 He also inferred that our analysis did not
14 consider the fact that we do need to coordinate the
15 signals with Laurel Avenue. That is untrue. If he had
16 reviewed our analysis documented in the report, he would
17 have seen the analysis, that the analysis specifically
18 considered a coordinated system. It incorporates the
19 anticipated offset will be designed and that level of
20 service A reflects that coordination and operation.

21 Lastly Mr. Litwornia with regard to the signal
22 referred that I'm violating some type of the law in the
23 Manual on Uniform Traffic Control Devices with regard to
24 spacing. He suggested the signal is 400 feet from
25 Laurel Avenue. It is not 400 feet, it is actually

1 between 800 to 900 feet, depending on whether you
2 measure it centerline to centerline or stop bar to
3 future stop bar. Regardless, there is no law in the
4 Manual on Uniform Traffic Control Devices that says you
5 can't have a signal within 1000 feet of another signal.
6 And certainly can coordinate signals and there are
7 multiple times that we built signals closer with much
8 closer offsets. What Mr. Litwornia was reporting to in
9 the Manual on Uniform Traffic Control Devices is one of
10 the causes that we use as traffic engineers to determine
11 if a signal should be implemented and in the Manual on
12 Uniform Traffic Control Devices there are a series of
13 criteria called warrants and there's specifically
14 different criteria in warrants that traffic engineers
15 use to determine if a signal should be considered and/or
16 is appropriate to be installed. The majority of the
17 warrants that we use as traffic engineers are actually
18 the first four warrants. They are basically volume
19 based warrants. There's an eight-hour warrant, you meet
20 certain criteria eight-hours a day. There's a four-hour
21 warrant, you meet criteria four-hours of the day.
22 There's a peak hour warrant, that's usually used for
23 unique situations like a manufacturing facility letting
24 out a bunch of people at a time. As documented in the
25 traffic study, we meet the volume warrants. The

1 eight-hour volume warrants, the four-hour volume
2 warrants and, as I had testified to, we will be
3 certifying that for the county and we know the county
4 does not have an objection to a signal at this location.

5 What Mr. Litwornia was referring to, I had to
6 read through the MUTCD because I was a little concerned,
7 and he was referring to a substandard within warrant
8 six. It's a unique warrant. In 40 years I've never
9 used it, didn't really even know it existed and that's a
10 warrant that is used in a situation if you have an
11 unsignalized intersection that would not otherwise
12 warrant a traffic signal based on the typical volume
13 warrants and it's basically an analysis that's done to
14 see if installation of a traffic signal at that location
15 would benefit the operation of a car and that's a
16 coordination warrant. And within that there's a
17 substandard that basically says you should not use this
18 warrant if it's within a 1000 feet of another signalized
19 intersection. Has nothing to do -- it is not a law, it
20 is a restriction and certainly engineers, traffic
21 engineers design traffic signals all the time that are
22 much closer than a 1000 feet and there will be no issue
23 designing this signal and it will operate at good levels
24 of service and as I testified to will benefit the
25 residents, the existing community as well as accommodate

1 the additional traffic generated by this site.

2 Mr. Litwornia also went on to suggest that our
3 sidewalk system, which is quite robust and was described
4 by Mr. Anderson and verified by myself, was not ADA
5 compliant because it does not -- did not meet five
6 percent grades. Again, Mr. Litwornia unfortunately is
7 incorrect. Under the ADA guidelines a sidewalk that
8 runs adjacent to roadways can run the slope of the
9 roadway. So we have a ten percent roadway, ADA
10 compliant sidewalk is built behind the curb at the
11 running slope of the roadway. So all of the sidewalks
12 designed by Mr. Anderson are ADA compliant. Certainly
13 all the handicapped ramps and landings are ADA
14 compliant. And his assessable routes I'll leave, it's
15 his plan stamp what they are and he's testified to it.

16 Mr. Litwornia identified that the RSIS does
17 require sidewalks on both sides of the roadways. If you
18 recall in my testimony from years ago we did identify
19 that and we did indicate that we we're requesting a de
20 minimus exception from that standard. The only place
21 where that, we don't meet that, is on the section of
22 Warner Drive extension from where it meets the property
23 line up to the roundabout. There is sidewalk provided
24 on one side and then on Road D from the roundabout
25 heading up to Building D we opted to put a sidewalk on

1 one side. If you recall the proofs, I'll give them to
2 you again, with regard to Road D it's simple. We have
3 two sidewalks that connect the community from the
4 amenity building and the other buildings to Road D. Mr.
5 Anderson just opted to take that sidewalk and rather run
6 the lengthy route along the second side of the road, he
7 put a direct route, ADA compliant path between Building
8 D and the amenities. So it is a better use of sidewalk
9 and pavement area for that connection.

10 With regard to the connection down Warner Drive,
11 as I testified to we have three sidewalks that run down
12 to the adjacent community. Two along Kuzik all the way
13 down the property line and one along Warner. I would
14 respectfully suggest that provides more than adequate
15 pedestrian connectivity to the adjacent community that
16 has no sidewalks and there is no point of destination on
17 the side of -- the side the road of Warner Road that
18 pedestrians would want to get to. So I think this board
19 is well within it's right to recognize and grant that de
20 minimis exception and I would support that it is not,
21 and give it the and/or change, but robust walking paths
22 that are provided within this site. So I thought that
23 was important to revisit. We did agree with him on that
24 and we did provide the proofs for that.

25 Mr. Litwornia went on to discuss parking to a

1 little extent. Parking is RSIS compliant. Mr. Anderson
2 has stated we will be providing 15 percent EV ready
3 parking throughout the site. He has some external to
4 the building and there will be some internal to the
5 building, but we will be providing that as part of the
6 design of the MEP for the building.

7 The other aspect of parking that Mr. Litwornia
8 suggested is that the tandem parking that we are using
9 under the building is not permitted by RSIS. That
10 actually is not true. RSIS does not define how you
11 assemble the parking standards. It defines the sizes,
12 the 9 by 18 parking stalls. The aisle widths, the 25
13 foot aisle widths, but it does not prohibit how we put
14 those elements together. In fact RSIS does recognize
15 tandem marking. In a townhouse community a garage
16 driveway combination is tandem parking. There's no
17 difference between a unit having the tandem parking in
18 the garage under this building, versus somebody who owns
19 a townhouse building, a home with a single car garage
20 that parks in the garage and parks on their driveway.
21 It's controlled by the same people and the movement of
22 the cars are controlled by the same people. So there is
23 no prohibition under RSIS with regard to that design and
24 as testified by the architect it's common in design
25 these days when you design parking or under building

1 parking. So I just wanted to clarify there is no
2 prohibition on that from RSIS. It is a designers and
3 owners choice with regard to the assemblage.

4 That really, I think, summarizes -- oh, there was
5 one other thing that disturbed me a little bit. Mr.
6 Litwornia suggested that there was no air quality
7 analysis submitted because there was a law requiring air
8 quality analysis for parking garages over 100 spaces.
9 In 40 years I've never seen that requirement, I did look
10 for it. I am not aware of it. I am aware that in
11 design of under building garage and parking decks there
12 are requirements for free air and how much of the
13 facades have to be free and if not you have to do a
14 mechanical ventilation system. That is a building
15 design and building permit issue and the architect will
16 comply with that, otherwise we will not get permits. So
17 if mechanical ventilation is needed in these buildings
18 it would be done. But there is no requirement to submit
19 to the Planning Board an air quality analysis for
20 parking with over a 100 spaces.

21 And I think I hit the points that I wanted to hit
22 that I thought needed to be touched on.

23 MR. PLOCKER: Can we get some of that free
24 air in here?

25 All right. I have nothing further, Mr.

1 Pehnke. Thank you.

2 CHAIRMAN BAGOFF: Okay.

3 Mayor McCartney, do you have any questions?

4 MAYOR MCCARTNEY: Mr. Pehnke, thank you very
5 much.

6 So Mr. Litwornia's report starts with the
7 cul-de-sacs, that's how he starts, and I didn't see
8 anything on the maps that he provided, I didn't see a
9 cul-de-sac on here. So my question would be that, it's
10 not a cul-de-sac that that means that the numbers that
11 his ADT, Average Daily Trips, they would have to -- they
12 would have to be different?

13 THE WITNESS: Correct. So for a minor
14 collector and the ADT that differentiates going from a
15 minor collector to a major collector, is 3500 vehicles
16 per day. We're generating more than just a residential
17 access, which I think is a 1000 to 1500, something in
18 that area, but we're generating below 3500 trips per
19 day. That creates the minor collector characterization.
20 And, and that's the difference.

21 The cul-de-sac, when you have no other way
22 to service the site, is where you start to get into, and
23 there's two differentiations, it's interesting, in RSIS,
24 because he was right, it's not a volume issue because
25 there's more than enough capacity to handle operations.

1 It's more of a layout issue. And there's two standards
2 for a cul-de-sac. There's one where you're doing a
3 residential subdivision serving single family homes and
4 the ADT limitation on that is 250 trips for one point of
5 access.

6 The other is what they call a multifamily
7 cul-de-sac, which I just described Road D would be if
8 limited it to Howell. And in that, for some reason,
9 RSIS allows up to a 1000 trips. Same issue, same number
10 of units in there, same number of people or more people
11 obviously, just two different standards. But RSIS does
12 say that what obviates a cul-de-sac is if you have
13 another means of access for the free movement of
14 emergency vehicles and one of the options that they
15 offer, which is often done, not ideally, but often done,
16 is what they call a Boulevard. You separate the inbound
17 and the outbound, you make both wide and the theory is
18 if a tree falls across one side emergency vehicles can
19 still go up and down the other side. What's been done
20 over the years is, as an alternative to that and better
21 design, is just an emergency access connection some
22 place else in the site. In this site you have the Oval
23 Road emergency access that connects into Essex Fells.
24 You have the emergency access that's proposed to Howell
25 Drive. All of that provides the ability for your

1 emergency services to get to this site and in fact in
2 terms of the access, the emergency access for Howell,
3 your emergency services actually in an easement would
4 have the right to open to traffic. They have the right
5 to open it to emergency vehicles as they see fit, which
6 my opinion would mean if there were some extreme event
7 that shutdown this community from getting down Eagle
8 Rock, they could actually open that and it actually
9 exists. It's -- there's a 20-foot paved path there, it
10 could flow traffic.

11 MAYOR McCARTNEY: So we heard your testimony
12 about an emergency, we had talked about it and we did
13 hear testimony about and public comment about emergency
14 situations. But how would a resident, if this happened
15 to a resident, if there was an emergency, how would a
16 resident be able to use the emergency access?

17 THE WITNESS: It would be controlled by
18 emergency services within the towns purview as it should
19 be to make that decision.

20 MAYOR McCARTNEY: Okay.

21 We have different points here. Thank you.

22 CHAIRMAN BAGOFF: Thank you.

23 Mr. Klein.

24 MR. KLEIN: No questions.

25 CHAIRMAN BAGOFF: Thank you.

1 Ms. Kapferer, do you have a question?

2 MS. KAPFERER: Thank you, Mr. Pehnke.

3 Same question related to the emergency
4 access. So when you say we're going to have access,
5 emergency access, that's just for emergency vehicles or
6 can you clarify, is that also for residents who can use
7 it?

8 THE WITNESS: It's really for controlled
9 emergency services. It's a road, it's improved, and the
10 emergency -- primarily the intent is for emergency
11 vehicles. But if there was some reason, some need to do
12 it, emergency services could control that in a different
13 manner. It's a traversable road.

14 MS. KAPFERER: Okay.

15 And you said it's fully controlled by
16 emergency services?

17 THE WITNESS: Correct. So the homeowners
18 association can't make the option to open it. The
19 existing homeowners association can't do that. The
20 future homeowners management can't do it. It is within
21 the control of emergency services and the municipality.

22 MS. KAPFERER: What design is there for
23 emergency access?

24 THE WITNESS: Basically it is an improved
25 road, something that the emergency services should be

1 comfortable with to handle their equipment. In the case
2 of Oval Road, it's a 20-foot easement that connects into
3 Essex Fells. In the case of the Howell Road design,
4 it's basically a 16 foot paved road down to Howell.

5 MS. KAPFERER: And are there any -- is there
6 a criteria for slopes? I think --

7 THE WITNESS: You basically follow the same
8 slopes of the road. So in terms of the slope down to
9 Howell, that's ten percent. Same as it's following the
10 max, so it's traversable. Just to give some sense, a
11 handicapped ramp is 8.3 percent. So while it is a
12 slope, it is not a nonnegotiable slope.

13 MS. KAPFERER: My other questions are about
14 sidewalks. I am not sure that you testified to all of
15 this tonight, so this may be back to last year.

16 THE WITNESS: Most of it is.

17 MS. KAPFERER: Yeah. Answer what you can, I
18 guess. Was there consideration of a sidewalk on Warner
19 Road and Oval Road and outside of the immediate West
20 Highlands to gain access to the sidewalk on Eagle Rock
21 Avenue?

22 THE WITNESS: Not outside our property
23 bounds.

24 MS. KAPFERER: Okay.

25 And I believe this was asked, in your

1 opinion, just for clarification, who owns -- do you know
2 who owns this?

3 THE WITNESS: I'm going to defer.

4 MR. PLOCKER: Yeah, I can answer it. The
5 roadway is owned by the property owners who front Oval
6 Road. However, my client, going back in connection, I
7 believe even prior to the approval of the West Highland
8 Condominiums, there was an easement granted in Oval Road
9 and there was certain agreements which are recorded
10 which require my client to maintain and repair Oval
11 Road, but gives my client, and I believe the general
12 public, the right to use it as a public -- as if it was
13 a public road. But it is private.

14 MS. KAPFERER: Okay.

15 MR. PLOCKER: I hear comments that it's
16 private property. It is 100 percent private property.
17 All the property owners going back to the 1980s entered
18 into an agreement, and there are recorded easements,
19 that give the right to use Oval Road, all of it, up
20 until the entrance of the condominium on Warner. The
21 right, and I can get the specific language, to be used
22 for public use. And all the property owners agreed to
23 that. Those agreements run with the land and if you own
24 property now or own property, which is subject to any
25 easement, then my client and the public have the right

1 to use those roads.

2 MR. AFRAN: To that last point --

3 CHAIRMAN BAGOFF: Mr. Afran.

4 MR. AFRAN: To that last point, I don't
5 think we have anything in the record at this point
6 identifying those easements or as Mr. Plocker said, the
7 actual language. Does the applicant intend to provide
8 those easements?

9 MR. PLOCKER: Yes, we will --

10 MR. AFRAN: Or the documents comprised of
11 those provisions?

12 MR. PLOCKER: 100 percent.

13 MR. AFRAN: They go back 40 years perhaps.

14 MR. PLOCKER: 100 percent. Absolutely.

15 MR. AFRAN: I would ask that be done. Thank
16 you.

17 CHAIRMAN BAGOFF: Okay. Thank you.

18 MS. KAPFERER: That's it for me.

19 CHAIRMAN BAGOFF: Vice Chairman Guarino, do
20 you have any questions?

21 VICE CHAIRMAN GUARINO: Thank you, Mr.
22 Chairman.

23 Sir, I have a question for you. Looking at
24 the roadways and understanding the roadways and
25 basically pedestrian safety, you know, what our need is

1 -- put your hand down, I hear you. What our need is,
2 you know, when people are walking going through and
3 coming through the development, will this include
4 calming infrastructure into the roadways to reduce the
5 speed and control the speed throughout the development?

6 THE WITNESS: We can. Mr. Anderson is open
7 to working with your engineer to institute, where
8 applicable, any additional safety. We would like this
9 to be what we're designing it for, a low speed community
10 road, self contained. So we do have some stretches of
11 road that probably should have a traffic calming feature
12 or two to it. Particularly maybe raised crosswalks. I
13 think we talked to that last time I was here. There was
14 a few things, there were a few suggestions that you had
15 made at each of the garage entrances and we've agreed to
16 those. Again, we have no problem adding a few features.
17 It's certainly to our benefit and to our future
18 residents benefit.

19 VICE CHAIRMAN GUARINO: Okay. I have one
20 other question.

21 Is there any possibility, are the roadways
22 wide enough to accommodate bike lanes?

23 THE WITNESS: They are not. They are --
24 Residential Site Improvement Standards actually set the
25 standard for a minor access. A minor, minor collector

1 roads actually 20 feet wide. If you recall my testimony
2 Mr. Anderson actually chose to do a little wider, he
3 went to 22 feet. But that doesn't create bike lanes.
4 These are share the road roadways. And part of the
5 reason is to keep them low speed. You start going
6 wider, the reason why you have high speeds on a road
7 like Oval Road is they're 40 feet wide and you feel like
8 you're on a race track. So the purpose of RSIS, one of
9 the reasons why it was established, those are issues
10 that were being faced state wide, so that the roadways
11 were selected to fit the environment, to fit the ADT and
12 to create residential places.

13 VICE CHAIRMAN GUARINO: Thank you, sir.
14 Thank you, Mr. Chairman.

15 CHAIRMAN BAGOFF: Mr. Alper, do you have a
16 question?

17 MR. ALPER: Sure. There was something in
18 the Litwornia report suggesting that Verona would need
19 to consent to allow the Howell emergency access,
20 something about it being, because it was a municipal
21 border, it was like a one sentence line, did you see
22 that?

23 THE WITNESS: I did see that. That's not my
24 area of expertise. It does fall within West Orange.
25 There is your IH zone which calls for the connection to

1 be made. It's a road connection that's typical, but I
2 will have to defer to the legal interpretation. I don't
3 know why they would have to consent. There's no site
4 plan application to them, there is no regulatory
5 provision for those lots that fall within West Orange.

6 MR. PLOCKER: And Mr. Alper, if I may add,
7 that allegation has been made, there are old approvals
8 being referenced. We have never seen any documents to
9 the contrary. If anybody has any we would love to look
10 at them and certainly address them.

11 MR. ALPER: Similarly, are there deed
12 restrictions on this property that would prevent, even
13 if you owned them, that would prevent them from being
14 used for emergency roadways?

15 MR. PLOCKER: Not to our knowledge.

16 MR. ALPER: Okay.

17 This is probably too hypothetical, but in an
18 emergency, in an emergency where West Orange conditions
19 determined it's necessary to evacuate or the weather
20 forced everyone to leave or just to allow as an option
21 to leave, you know, a tree is down on Oval with power
22 out, could Essex Fells or Verona say, no, that West
23 Orange can't open one of those two access points to
24 allow people, I wouldn't imagine it would every be a
25 problem for fire trucks, I'm wondering specifically, you

1 know, about there's a tree down like Sandy and it's days
2 before it's cleared and, no, we don't want people on our
3 roads. Can they do that?

4 MR. PLOCKER: I will address that because it
5 is kind of a legal issue. First, otherwise then not
6 being a good neighbor, there is, like I said, there is a
7 recorded agreement and easement document which I do not
8 have with me here tonight but I reviewed it, we
9 certainly can provide it to the board, that leaves it to
10 the discretion, as with all emergency access, that
11 leaves it up to the officials, but I will rely on the
12 recorded document before Mr. Afran objects to my
13 characterization of the document.

14 MR. AFRAN: I wasn't objecting. I was just
15 saying we just don't have it in front of us. I wouldn't
16 say it's an objection, just noting it on this point.

17 MR. PLOCKER: I'm impressed with my
18 peripheral vision, it's still good.

19 MR. ALPER: I think you see where I'm at. I
20 want to be certain that any emergency access is actually
21 two-way emergency access in an emergency and it can't be
22 stopped. That's all. Thank you.

23 CHAIRMAN BAGOFF: No, sorry. Let the
24 board --

25 THE PUBLIC: I know it's not commentary but

1 as the Mayor of Essex Fells I can answer directly the
2 question --

3 CHAIRMAN BAGOFF: Sir.

4 THE PUBLIC: -- the question, the testimony
5 --

6 CHAIRMAN BAGOFF: Sir.

7 THE PUBLIC: -- to Mr. Plocker.

8 MR. PLOCKER: No question.

9 CHAIRMAN BAGOFF: Before disagreeing with
10 the presentation, let's be presented with the
11 documentation. Let's see the documentation first.

12 THE PUBLIC: He made a statement before the
13 board that I'm aware of personally, so I can testify to
14 it. I could wait.

15 CHAIRMAN BAGOFF: Do you have the
16 documentation with you, sir?

17 THE PUBLIC: It's a matter of public record.

18 CHAIRMAN BAGOFF: When we see the public
19 record you can testify.

20 THE PUBLIC: Who's going to put that into
21 the record? It's been misstated right here in front of
22 you.

23 CHAIRMAN BAGOFF: Sir, the documentation
24 it's objective information. It either exists or it
25 doesn't. If it does exist the board attorney will

1 evaluate it and then come to a conclusion based on the
2 recorded documentation and then you can object to it or
3 you can say your peace. But the board doesn't have any
4 documentation to look at. It's like an expert
5 testifying saying I didn't do a report, but I'm going to
6 testify to something you don't have.

7 THE PUBLIC: Mr. Plocker just testified to a
8 legal matter to you.

9 CHAIRMAN BAGOFF: Correct. Mr. Plocker will
10 provide that document.

11 THE PUBLIC: He didn't say to you that
12 basically we'll look at the record and we'll sort it
13 out. He said this is a fact.

14 CHAIRMAN BAGOFF: He said he's going to
15 provide the documentation.

16 THE PUBLIC: After he testified to the
17 facts.

18 MR. PLOCKER: All right. Mayor, if you have
19 any issue with what I said, my phone line is open, my
20 e-mail is open, tell me what I misstated for the record.
21 I wasn't reading the document verbatim. I was giving a
22 general characterization. It's a recorded document on
23 file with the Essex County clerk and we will rely on its
24 terms as stated.

25 CHAIRMAN BAGOFF: Is there any objection to

1 what he just said?

2 THE PUBLIC: I'm happy to talk to Mr.
3 Plocker off line, but we're also going to have
4 conversations in front of the Planning Board so they
5 understand the facts, both because he's referencing two
6 different things. There's Oval Road obviously in West
7 Orange. Right. Then from Howell Drive -- from Howell
8 Drive to Eagle Rock Avenue. Second section. From
9 Howell Drive to the border of Essex Fells, which has the
10 fencing. Then there's Howell Drive and Essex Fells from
11 the border of Essex Fells to Oval Lane in Essex Fells
12 precisely. Easements governing them are not universal,
13 they're different. So what he's referring to, which I
14 take no issue with, it's not my issue, is he's talking
15 about easements among private parties in West Orange.
16 In addition he's not referencing the easement, the only
17 easement that exists in Essex Fells is based on
18 emergency access easement for fire and emergency
19 vehicles. So to the board members point, the answer is,
20 you can not have residential traffic go through there
21 without the consent of Essex Fells. Yes, with the
22 emergency access that's the only easement we have as a
23 town. It's not, it's a private road, it's practically a
24 driveway. So, again, it's an important point to
25 understand. I'm talking about the Essex Fells side of

1 West Orange. You guys are talking about something else.
2 It's an important distinction. I don't know the
3 witnesses point how that affects RSIS, but it absolutely
4 legally clear you can confirm in the written record at
5 the Essex County registers office that basically there
6 is no residential access on Oval Road from West Orange
7 and Essex Fells. Full stop.

8 CHAIRMAN BAGOFF: So let's get the
9 documentation and we'll have the board attorney evaluate
10 it and then we'll have -- then you can present anything
11 you want to present based on the documentation.

12 MR. PLOCKER: And I don't necessarily
13 disagree with Mayor Davis. I'm going to rely on the
14 document itself and I agree that it is in writing, there
15 may be different interpretations and if I was conflating
16 the portion of Oval Road in West Orange and then the
17 portion that goes into the Essex Fells, which is gated
18 off, I did not mean to conflate them. But I believe
19 that certain easements do reference both sides. They
20 reference the private agreement the Mayor referred to,
21 but it doesn't make sense for us to hash it out now if
22 nobody can look at the document.

23 CHAIRMAN BAGOFF: Let's get the
24 documentation.

25 THE PUBLIC: Documentation is one thing.

1 Perhaps I can wait until the comment period, but what
2 the board should be interested in, and I don't know the
3 answer to it, but in the experts testimony he's talking
4 about RSIS. It's unclear to me based on his testimony
5 whether it's the fact that, if based on what we see, if
6 what I'm saying is true, and residents can not access
7 it, does it change his analysis of the cul-de-sac?

8 THE WITNESS: It does not.

9 CHAIRMAN BAGOFF: Okay. Say it again. What
10 you're basically saying, in your opinion based on what
11 you know, residents can't access that, it's only for
12 emergency vehicles, is that correct?

13 THE PUBLIC: Absolutely.

14 MR. PLOCKER: And I just want to be clear
15 for the record.

16 CHAIRMAN BAGOFF: We're asking the question,
17 provide the documentation and our board attorney will
18 evaluate it. Then we can have a reasonable discussion.

19 MR. PLOCKER: And we will do that, but I
20 just want to make crystal clear for the record, that if
21 no resident access is allowed through the Essex Fells
22 gate for emergency purposes, if that is both strictly
23 prohibited, as the Mayor says, does the proposed project
24 still comply with RSIS?

25 THE WITNESS: It does because it provides the

1 emergency access RSIS is seeking.

2 MR. KLEIN: On Howell?

3 THE WITNESS: On Howell and at Oval.

4 MR. AFRAN: Howell and what?

5 CHAIRMAN BAGOFF: Sir, gentlemen, ladies.

6 Okay. So we're going to get documentation and then
7 we're going to have more of a discussion. Thank you
8 very much.

9 MR. PLOCKER: Thank you Mayor.

10 MR. AFRAN: Could I just ask --

11 CHAIRMAN BAGOFF: Mr. Afran.

12 MR. AFRAN: Thank you.

13 You just said it does permit emergency
14 access at Howell and I couldn't hear the next name and
15 I'm not sure it was transcribed on the record.

16 THE WITNESS: So for the project itself
17 we're RSIS compliant whether or not we have the Howell
18 Road access, as I testified to. Because we have two
19 points of access to Kuzik and Warner. So we are RSIS
20 compliant with or without Howell.

21 With regard to, you know, if you were to
22 consider the existing Highlands against RSIS, which as I
23 indicated the clarification does not require to do that,
24 but the use of the emergency vehicles, of the emergency
25 access for Essex Fells also obviates any

1 characterization as a cul-de-sac. So the same
2 difference. It doesn't have to be open to public
3 traffic.

4 MR. AFRAN: I was just asking a question,
5 you said there's emergency access at Howell and another
6 road and I couldn't hear what you said. I'm just asking
7 for the name of the other street.

8 THE WITNESS: I said Oval.

9 MR. AFRAN: Oval. Okay. Thank you. That's
10 all I wanted.

11 CHAIRMAN BAGOFF: Okay. Thank you.

12 Mr. Alper.

13 MR. ALPER: No, I'm done.

14 CHAIRMAN BAGOFF: Mr. Wilkes.

15 MR. WILKES: No questions.

16 CHAIRMAN BAGOFF: Council Person Scarpa.

17 COUNCILWOMAN SCARPA: Yeah, just a quick
18 question. Thank you for your testimony.

19 Given that, given that affordable housing
20 typically is built with accessibility to streets and
21 amenities and the center of town, you said that the
22 adjacent community has no sidewalks, no connecting
23 sidewalks and you would want a de minimus exception.
24 What is your rationale for getting that exception?

25 THE WITNESS: We are not asking for an

1 exception for anything off-site. We are not building
2 anything off-site because it's not our property. So
3 from that standpoint we are not looking for any
4 exception for any off-site improvements.

5 With regard to that connection down between
6 the two properties, we have three sidewalks, so we have
7 adequate sidewalks. There's three routes to connect
8 down to the property line, which connect to the road
9 system in the adjacent community.

10 COUNCILWOMAN SCARPA: And I just want to
11 understand a little bit about the safety of the slope
12 where the sidewalks are. I think you said the slope can
13 run up to ten percent and is that a really steep slope?
14 I have no concept of what that is. Is that dangerous
15 for someone in a wheelchair?

16 THE WITNESS: So a handicapped ramp runs at
17 8.3 percent. We've all seen a handicap ramp, so ten
18 percent is a little steeper than that. But ADA
19 basically says, and it reflects the fact that this
20 country is ADA is nationwide. As mountainous areas have
21 flat areas and so forth and it reflects that we build
22 sidewalks like this adjacent to roads. So that's why
23 it's considered ADA compatible. When you build a
24 sidewalk that parallels and runs along a roadway,
25 whether or not somebody can negotiate it with a

1 wheelchair is really not the metrics. Where the
2 wheelchair metrics come in is turning spaces at
3 crosswalk areas. We made sure that there's a flat area
4 where somebody can stop and wait to cross. There's the
5 design of the handicapped ramp itself, which is
6 exacting, it has to be at 8.3 percent or less and then
7 there's the crossing itself. So those elements are
8 where we pay particular attention, but in terms of
9 connectivity along roadways, it can be running slope of
10 the roadways. And then there's -- and that's not to say
11 everything's ten percent. If you look at Mr. Anderson's
12 plans it varies. We've got locations that are flat, we
13 got depressed curbs, he's got five percent in some
14 places and he's got flatter and obviously as you get
15 into the parking lots and the buildings themselves, he
16 has accessible routes and a traversable area. So the
17 site has a lot of different features to it.

18 COUNCILWOMAN SCARPA: All right. I was just
19 concerned because it seems like the site is not in place
20 for the average person, especially a handicapped person,
21 to navigate and get out to the various --

22 THE WITNESS: They certainly can navigate
23 their day to day chores as per ADA requirements between
24 parking spaces between buildings. And I would say
25 there's really nothing here that's stopping the average

1 person from enjoying the environment that's being
2 created without, as I indicated. One of the things Mr.
3 Anderson chose to do is take the second sidewalk on Road
4 D and run it directly between with a flatter slope so
5 that both direct connection and something that wasn't
6 running slope, but was more flat and enjoyable. So
7 those features are present throughout the site for
8 typical people that would live here.

9 COUNCILWOMAN SCARPA: Thank you.

10 CHAIRMAN BAGOFF: Thank you.

11 Mr. Cardoza, do you have any questions?

12 MR. CARDOZA: No questions, Mr. Chairman.

13 CHAIRMAN BAGOFF: Mr. MacNeill, do you have
14 any questions?

15 MR. MacNEILL: Thank you, Mr. Chairman.
16 Just one quick question.

17 I do realize the plans are compliant with
18 ADA requirements due to the roadway slope. But would, I
19 guess maybe not your office, but the applicant be
20 willing to work with our office to install additional
21 handicapped ramps along some of the sidewalk areas that
22 have higher slope?

23 THE WITNESS: I think we indicated at the
24 last meeting that there was some locations along Kuzik
25 between the buildings that we thought would be

1 appropriate. I think we already committed to it. That
2 was a year ago.

3 MR. MacNEILL: Okay. Great. That's all I
4 have.

5 MR. PLOCKER: Mr. Chairman.

6 CHAIRMAN BAGOFF: Mr. Plocker.

7 MR. PLOCKER: Yeah, I happened to be looking
8 through my handy dandy litigation bag and I happened to
9 have the easement agreement that allows, not everything
10 that we've been talking about, but that allows my client
11 to utilize the roads within the condominium for this
12 particular site in addition to any portion of Oval Road
13 which may be owned by the condominium association. I do
14 have multiple copies and I would like like to mark it, I
15 guess as Exhibit A-6, if I'm correct and I do have a
16 copy for Mr. Afran and the entire board.

17 MR. AFRAN: Can I see it first before we
18 mark it.

19 MR. PLOCKER: Absolutely.

20 MS. MCGOVERN: Which easement? I think we
21 are getting a few of them.

22 MR. PLOCKER: It's one document. I will let
23 Mr. Afran look at it and then I'll --

24 (Whereupon, a short recess is taken.)

25 MR. AFRAN: A-6.

1 CHAIRMAN BAGOFF: You want to describe what
2 this is, Mr. Plocker?

3 MR. PLOCKER: I will. I will try to be
4 brief. This is an easement agreement made the 14th day
5 of February, Happy Valentines Day, 1989. It was between
6 West Essex Highlands, INC., and West Essex Highlands,
7 INC. I will note for the record that there is -- it's
8 between the Party of the First Part and the Party of the
9 Second Part. And Mr. Afran can correct me if I'm wrong
10 but I'm going to paraphrase to save us some time, that
11 West Essex Highlands, Inc. owned both property that now
12 comprises the West Essex Highlands Condominium in
13 addition to the property that this application is about
14 here today. I'm going to skip the, the Whereas clauses
15 recognize the ownership interest of West Essex Highlands
16 and both properties. It says, the two properties are
17 adjacent to each other. It advises that the party of
18 what is now the condominium, which is to develop its
19 property into a condominium known as West Essex
20 Highlands, a condominium consisting of 300 units,
21 recreation facilities and a detention/retention
22 facility.

23 Whereas, the party of the Second Part
24 propose to develop its property in the future.

25 Whereas, this Agreement shall set forth the

1 respective easements granted by the parties to each
2 other in order to assist each party with the development
3 of its respective property. And I'm not going to read
4 every paragraph because we are talking right now just
5 about the road access through the condominium property.

6 Paragraph 1 says, The party of the First Part,
7 meaning the current condominium, grants the Party of the
8 Second Part, its successors, and assigns, the perpetual
9 right to connect into and use, in connection with
10 others, without any restrictions and conditions except
11 as may be agreed upon by the parties, their respective
12 successor and assigns, all the roadways, public or
13 private, which are located on the property of the Party
14 of the First Part. Meaning the property that is
15 currently the West Essex Highlands Condominium.

16 CHAIRMAN BAGOFF: Thank you, Mr. Plocker.

17 MR. PLOCKER: Oh, and I should state for the
18 record, that even though there's a handwritten note that
19 appear that it's recorded March 3, 1983, I think that
20 was somebody's error. If you turn it upside down and
21 look at the clerk stamp towards the bottom of the first
22 page of the document, it does look like March 3, 1989,
23 which would make sense since this was signed on February
24 14, 1989.

25 MR. AFRAN: Could I just ask Mr. Plocker a

1 clarifying question.

2 CHAIRMAN BAGOFF: Mr. Afran, go ahead.

3 MR. AFRAN: The Party of the First Part is,
4 I think you answered this, but I want to be sure. I
5 realize you're not a witness but you may know.

6 MR. PLOCKER: I was just referencing a
7 public recorded document.

8 MR. AFRAN: No, I understand.

9 MR. PLOCKER: Which I should state for the
10 record is recorded at the Essex County Clerks Office.
11 It's Book 5067, Page 773.

12 MR. AFRAN: And the West Essex Highlands
13 plural is known as the Party of the First Part. West
14 Essex Highland, singular, Inc., singular, is known as
15 the Party of the Second Part. Now, the West Essex
16 Highland, Inc. singular, is the entity that's seeking to
17 make this application that's before the board today, is
18 that correct?

19 MR. PLOCKER: Yes.

20 MR. AFRAN: Okay. So that company, the
21 Second part is the actual applicant here today?

22 MR. PLOCKER: Bruce, if you're saying
23 there's an S missing, there could be a typo.

24 MR. AFRAN: No, I asked that --

25 MR. PLOCKER: I don't know. I don't know

1 the answer.

2 MR. AFRAN: I don't know.

3 MR. PLOCKER: I don't the answer to that
4 question. My understanding was the that same entity
5 both --

6 MR. AFRAN: Oh, okay.

7 MR. PLOCKER: -- owned both properties at the
8 time that this --

9 MR. AFRAN: I wasn't --

10 MR. PLOCKER: -- agreement was made.

11 MR. AFRAN: No, I wasn't suggesting that. I
12 actually thought they were intentionally written
13 differently. Two separate corporations.

14 MR. PLOCKER: I don't believe so.

15 MR. AFRAN: Thinking it's the same
16 corporation giving itself an easement over part of one
17 property?

18 MR. PLOCKER: Yeah, 100 percent. It was
19 common ownership.

20 MR. AFRAN: Okay. I just wanted to clarify
21 that. Thank you.

22 MR. PLOCKER: Thank you.

23 MR. AFRAN: Our position is it says what it
24 says. What legal meaning it has, whether it's still
25 enforceable, it's subverted by any later documents is

1 something we'll discuss later.

2 CHAIRMAN BAGOFF: Good. Okay. Thank you.

3 MR. AFRAN: So I'll have some questions for
4 Mr. Pehnke. I'll have some questions for Mr. Pehnke.

5 CHAIRMAN BAGOFF: Mr. Afran.

6 MR. AFRAN: Thank you.

7 Mr. Pehnke, you mentioned that the emergency
8 access roads could be opened "in an extreme event" and
9 you used the word extreme. What did you mean by,
10 "extreme event?"

11 THE WITNESS: I don't know. We could all
12 create various scenarios. I've heard a lot of them
13 through 40 years, but let's say for some reason Oval
14 Road collapsed, like Route 80 did between Bongart and
15 Rappleye and couldn't be opened to traffic. That would
16 be an extreme event.

17 MR. AFRAN: If what happened?

18 THE WITNESS: If the road collapsed.

19 MR. AFRAN: Oh, the road collapsed.

20 THE WITNESS: It wasn't traversable.

21 MR. AFRAN: Well, the road doesn't normally
22 collapse.

23 MR. KLEIN: A car crash.

24 THE WITNESS: A car crash is more, you know,
25 short-term potentially, depending upon the severity.

1 MR. KLEIN: That's true.

2 THE WITNESS: An extreme event is something
3 that closed it for a longer period of time. Shorter
4 period of time like a car crash, you know, may or may
5 not close the road completely. You might be able to
6 alternate traffic. It really depends. There's a lot of
7 different scenarios.

8 MR. AFRAN: So you don't know at this point
9 to what extent the emergency services in the
10 municipality would regard an incident as extreme so as
11 to mandate opening these access roads, do you?

12 CHAIRMAN BAGOFF: I think two things, before
13 we go demographical. Two things here. First of all,
14 that's up to emergency services department of West
15 Orange and Essex Fells. You're looking for definition,
16 those people can probably provide the definition.

17 Secondly, I think we need to have the documentation
18 in our hands first to see at what level access is
19 allowed. Once you have that then you can ask the second
20 question and then we go to the emergency access people
21 for a better definition. Because we're looking to
22 definitions.

23 MR. AFRAN: Well, certainly that's fair, Mr.
24 Chairman. I assume Mr. Pehnke can return if we need to
25 following that documentation.

1 CHAIRMAN BAGOFF: Sorry?

2 MR. AFRAN: I assume Mr. Pehnke can return
3 if we need to following that documentation.

4 CHAIRMAN BAGOFF: That's a legal matter, not
5 a matter of the RSIS okay with it. If it's a legal
6 matter, if everybody finds that there is another
7 interpretation that's needed, yes, we'll ask the
8 applicant. However, at this time Mr. Plocker said he's
9 going to provide all that documentation, so let's see
10 what the documentation says and then we can go from
11 there.

12 MR. AFRAN: Fair enough. I have no problem
13 with that.

14 CHAIRMAN BAGOFF: Good. Thank you.

15 MR. AFRAN: I have one clarifier. We talked
16 a lot about the access roads and I'm not sure anyone has
17 actually put together the actual circulation through and
18 out. So I just want to ask you a question. Now, if
19 you're in Building D, and I don't know if you want the
20 circulation plan or not, you can probably do this by
21 heart. If you're in Building D and you want to get in
22 your car from that underground lot and go out, what
23 would you do? What road would you use to get out.

24 THE WITNESS: You would basically go down
25 Building D to the roundabout and come down Warner Road.

1 MR. AFRAN: Okay.

2 So you'd go to the roundabout. You wouldn't
3 go to Kuzik, you'd go down to the roundabout down to
4 Warner Road directly?

5 THE WITNESS: The most direct route would be
6 down Warner Road directly.

7 MR. AFRAN: Okay.

8 Now, if you were in Building D or A for
9 example, and wanted to do the same thing, you could do
10 that or you could go the other way down Kuzik down to
11 Warner?

12 THE WITNESS: Depends on the decision of
13 this board. We suggested to the board in accordance
14 with the settlement agreement with the Highlands that we
15 concur that it can be emergency gated, which means that
16 everybody would be directed to Warner Road and we're
17 fine with that. If it was open to traffic and certainly
18 if you are in A, B or C you would make your choice in
19 the morning as to which way you go and we all make
20 choices in the morning, different routes. My wife and I
21 basically go in the same direction every morning and we
22 both take two different ways to get there and I'm sure
23 that's probably true, so sometimes you're sight seeing,
24 sometimes you want to make a right instead of making a
25 left, but that's really immaterial. If the boards makes

1 the decision to do the emergency access then everybody's
2 going out Warner.

3 MR. AFRAN: Okay.

4 If Kuzik is an emergency than everyone goes
5 out Warner no matter what building you're in and if
6 Kuzik was open and you go through Kuzik it still feeds
7 on to Warner ultimately?

8 THE WITNESS: Ultimately, that's right.

9 MR. AFRAN: And then ultimately the only way
10 out from this complex is, from that point, is Warner
11 making a left turn onto Oval and out to Laurel?

12 THE WITNESS: Correct.

13 MR. AFRAN: Okay.

14 I just want to clarify this. There's one
15 way in and one way out in the ordinary day to day
16 activity?

17 THE WITNESS: For the day to day activity,
18 correct.

19 MR. AFRAN: Okay.

20 Just one second.

21 Now, let's just clarify, so it's one place
22 in the record. Assuming this project were approved,
23 assuming this project were built, what would be the
24 emergency access roads as anticipated right now in the
25 plan?

1 THE WITNESS: For the site specifically the
2 connection at the end of D, Building D to Howell would
3 be emergency access gated controlled, and subject to the
4 approval of this board, Kuzik would be emergency access
5 gated and controlled.

6 MR. AFRAN: And what point would Kuzik -- I
7 mean Kuzik seems to on the plan basically connect
8 through and swings around through B, C, H, D, what point
9 would Kuzik be gated when you have the boards decision?

10 THE WITNESS: You'd basically gate it at
11 driveway A by the, by the animal shelter.

12 MR. AFRAN: Okay.

13 So right near the animal shelter, that'd
14 probably be gated?

15 THE WITNESS: It would be gated there,
16 right.

17 MR. AFRAN: Thank you.

18 CHAIRMAN BAGOFF: Thank you.

19 Do any members of the public have any
20 questions of Mr. Pehnke on his testimony? Please come
21 up and be identified. You have three minutes, sir.

22 THE PUBLIC: Victor Misarti, Mayfair Drive.
23 I have a question, I really don't understand why this is
24 not a whole development cul-de-sac. Okay. So you're
25 saying, could I borrow that site plan. So I'm just

1 looking at the site plan that Mr. Anderson put together,
2 and my question is this, that the, you know, this whole
3 development goes into Warner Road and then goes into
4 Oval Road and then to Eagle Rock and there's that one
5 entrance and exit. So my question is that access,
6 emergency access point that goes into Essex Fells is so
7 close to Eagle Rock, I mean it's not like it's on the
8 far end, it's right there. So it's still, you know,
9 even from the point of the access road it seems like the
10 whole thing is a cul-de-sac. So my question is, I don't
11 understand?

12 THE WITNESS: Yeah, I respect that and the
13 fact is the way RSIS has chosen to establish these
14 standards recognizes and -- recognizes that emergency
15 vehicle access is required at a certain level and there
16 was some selectivity in that decision making but the
17 fact that, that an emergency access is provided to
18 Howell, the emergency access exists out to Essex Fells
19 under the standards that are developed obviate the
20 definition of the site being a cul-de-sac, because
21 there's more than one point of access for the freedom of
22 emergency vehicle movement. That's just the definition
23 that's been chosen and established in the Residential
24 Site Improvements Standards. So with that, as I said,
25 while it's not applicable because in terms of this site

1 and its design, our measurement against RSIS starts at
2 our property line and we clearly have three points of
3 access. We have Kuzik, we have Warner and we have
4 Howell and RSIS applies to our track. If you were to
5 say for some reason, as Mr. Litwornia supposed that the
6 Highlands project was being built today under RSIS it
7 also wouldn't be characterized as a cul-de-sac because
8 of the emergency access that exists. So that basically
9 is how RSIS is established.

10 THE PUBLIC: Okay.

11 So like you're saying it doesn't matter if
12 Oval Road and then an access road into Essex Fells are
13 right next to each other, it doesn't matter, they would
14 meet the requirement?

15 THE WITNESS: That's correct.

16 THE PUBLIC: Okay.

17 And then the question is, you said that if
18 Oval Road, where it comes out to Eagle Rock, if it needs
19 a traffic signal it does not need to be interconnected
20 with Laurel Avenue?

21 THE WITNESS: No, so let's be clear. There's
22 to if involved. There will be a traffic signal there
23 and there will be intersection improvements there
24 constructed by this developer associated with this
25 project. That is our obligation. Associated with that

1 the signal will be coordinated with the signal at Laurel
2 and we've analyzed for that. And in fact it'll actually
3 be some improvements at Laurel too, because we'll be
4 extending the length of the left turn lane there. So
5 there's a section of widening at Eagle Rock Avenue,
6 there's the traffic signal and the signal will operate
7 as an offset to the traffic signal at Laurel Avenue.

8 THE PUBLIC: Okay. Thank you.

9 CHAIRMAN BAGOFF: Thank you.

10 Any other members of the public have
11 questions? Please come up and be identified. You have
12 three minutes.

13 THE PUBLIC: Good evening. Seth Weisleder,
14 Howell Drive. I know we focus a lot on Oval and the
15 other side coming back to Howell and that emergency
16 access. Were the interconnecting roads to the emergency
17 access evaluated and could that support emergency
18 vehicles? So we're talking about Howell not going
19 straight down Howell, because that goes into Verona, but
20 Howell cuts over to Slayback and down to Cunningham. So
21 while the agreement or whatever was done with Oval and
22 supporting those roadways, we have a neighborhood here
23 in its current condition, could emergency, could that
24 road support heavy emergency vehicles over and over
25 again depending on what emergency it might or might not

1 be?

2 THE WITNESS: Absolutely. The existing
3 residential community is designed to accommodate the
4 types of vehicles that may go in there, which include
5 emergency vehicles. You know, as any residential
6 community is. Again, this is a very infrequent
7 scenario.

8 THE PUBLIC: Well, correct. But did you
9 evaluate those roads and its current condition today and
10 could it support it?

11 THE WITNESS: Yes, the community exists. It
12 already has service by emergency vehicles and it's just
13 extending into this site. So there's a design for that.
14 Residential communities -- this community is being
15 serviced by the same emergency vehicles that the
16 existing communities are being serviced by.

17 THE PUBLIC: Correct. But you're talking
18 about a bigger development and a high-rise building now,
19 four stories, where this is a single family unit home,
20 so wouldn't you need more additional emergency vehicles
21 to tend to an emergency?

22 THE WITNESS: No. I mean, emergency vehicle
23 activity on a site like this is a rarity, if it occurs
24 at all. Again, you're not talking about daily activity.
25 You're talking about providing the connection that is

1 there in case the main route is not available. So the
2 fact is for the most part it will probably never get
3 used.

4 THE PUBLIC: Fair enough.

5 You mentioned in your testimony tonight that
6 it was going to be a 16 foot paved road or were there
7 other plans to make it more neighborhood friendly, maybe
8 a permeable grass paver system, a grass feed, as they
9 call it, or is that going to be a paved road?

10 THE WITNESS: It's a --

11 THE PUBLIC: I thought I heard different
12 things throughout different testimony, maybe it's my
13 imagination.

14 THE WITNESS: It's a paved road, stabilized
15 to handle the emergency vehicles.

16 THE PUBLIC: Could a grass street handle
17 emergency vehicles and look more friendly in the
18 neighborhood?

19 THE WITNESS: It's been done, but the
20 proposal is for it to be a properly designed and
21 stabilized so that it can be maintained correctly over
22 time. So while that is always an option that is not the
23 proposal.

24 THE PUBLIC: Okay.

25 And my last question is, which I don't know

1 because you're an expert, does RSIS have standards in
2 terms of the amount of time emergency vehicles need to
3 reach a community? Are there any kind of like time
4 standards that RSIS has for emergency vehicles to reach
5 certain destinations.

6 THE WITNESS: There are not.

7 THE PUBLIC: Okay. Thank you.

8 CHAIRMAN BAGOFF: Thank you.

9 Do any other members of the community have a
10 question?

11 MR. AFRAN: I have a follow-up question.
12 Mr. Pehnke, I just want to clarify your view as to
13 whether this is or is not a cul-de-sac. The plan your
14 clients proposing tied into the existing development.
15 Now, is it your view that as proposed, assuming you get
16 the access road you want, is this or is this not a
17 cul-de-sac under RSIS?

18 THE WITNESS: It is not a cul-de-sac.

19 MR. AFRAN: Now, in your judgment what would
20 turn it into a cul-de-sac under RSIS?

21 THE WITNESS: For it to be a cul-de-sac you
22 wouldn't physically construct the Kuzik Road connection
23 and you wouldn't physically construct Howell Road. So
24 if you had only Warner Road coming into the site then it
25 would be a multifamily cul-de-sac subject to the 1000

1 vehicle per day limitation as I just described for Road
2 D.

3 MR. AFRAN: So in other words, if you don't
4 have the right of emergency access ultimately then this
5 is a cul-de-sac under RSIS, is that correct?

6 MR. PLOCKER: Objection.

7 THE WITNESS: That's not what's proposed.

8 MR. AFRAN: I didn't ask what's proposed, I
9 asked a simple question.

10 THE WITNESS: But we're not proposing --

11 MR. AFRAN: Why don't you follow my
12 question, please. Not your question, my question.

13 THE WITNESS: Because the plan before this
14 board --

15 MR. AFRAN: Why don't you listen to the
16 question and answer a straight question. If you don't
17 have the right to the emergency access roads that you
18 propose, isn't it true that this project would be a
19 cul-de-sac under RSIS?

20 MR. PLOCKER: I want to clarify the
21 question.

22 CHAIRMAN BAGOFF: Mr. Plocker.

23 MR. PLOCKER: Because Mr. Pehnke testified
24 to two emergency access points if the board grants the
25 RSIS exception for Kuzik. Is your question, if there's

1 -- if Kuzik is open and there's no emergency access at
2 Howell? Can you clarify, just so we have a clear
3 record. When you say, emergency access if it wasn't
4 allowed or it was not permitted. Can you just be clear
5 which points you were referring to when you asked your
6 question.

7 MR. AFRAN: With respect, my question was
8 crystal clear. I simply said, if you do not get the
9 emergency access at right that you propose in this
10 current development, would this development be a
11 cul-de-sac under RSIS?

12 MR. PLOCKER: Which road are you referring
13 to, Bruce?

14 MR. AFRAN: My question is --

15 MR. PLOCKER: It's a very easy question.

16 MR. AFRAN: My question stands. I think the
17 witness is experienced enough to understand what I'm
18 asking.

19 THE WITNESS: The answer is, not
20 necessarily. Because your other alternative, if your
21 only access is Warner Road, would be to build Warner
22 Road as a Boulevard, which is an RSIS option which
23 provides the emergency access. It just provides it on
24 the other side of a median island. So you can provide
25 what in effect what you're providing with connection to

1 Kuzik and Howell right at Warner Road starting at our
2 property line and develop it as a Boulevard. So that is
3 an option.

4 MR. AFRAN: Developing a Boulevard on what
5 property?

6 THE WITNESS: On our property. The
7 characterization starts at our property line.

8 MR. AFRAN: Why haven't you done that?

9 THE WITNESS: The plan is as proposed.

10 MR. AFRAN: I asked a question. Why hasn't
11 it been done to avoid this entire question?

12 THE WITNESS: That's a supposition. I don't
13 have an answer for that.

14 MR. PLOCKER: Why hasn't what been done?
15 Can you just clarify.

16 MR. AFRAN: Mr. Plocker, my questions are --

17 MR. PLOCKER: Bruce.

18 MR. AFRAN: -- not habitually unclear.

19 MR. PLOCKER: Bruce, I did not hear the
20 question. Can you please repeat the question as a
21 curtesy.

22 MR. AFRAN: That is a different issue.

23 MR. PLOCKER: Thank you.

24 MR. AFRAN: Why haven't you built Warner
25 Road on your segment of this property as a Boulevard and

1 avoid the whole issue?

2 THE WITNESS: I can't answer that question.
3 This plans developed over many years with the input of
4 the municipality, various agreements that have been
5 developed. So there's a lot that has gone into
6 developing this plan that is outside of my involvement.

7 MR. AFRAN: That's a fair answer.

8 Let me clarify, in your judgment if you do
9 have the emergency access roads that you're seeking you
10 could avoid the RSIS cul-de-sac problem in your judgment
11 by making Warner Road a Boulevard, is that correct?

12 THE WITNESS: That would be an option, yes.

13 MR. AFRAN: Okay.

14 And if that were not done and you don't have
15 the emergency access that you're proposing you are in a
16 cul-de-sac under RSIS, isn't that correct?

17 THE WITNESS: If you have a singular point
18 of access, that would be correct.

19 MR. AFRAN: Okay. Thank you.

20 CHAIRMAN BAGOFF: Thank you.

21 MR. PLOCKER: Would that include -- I'm
22 sorry, Mr. Chairman.

23 Would that include if Kuzik was open to
24 traffic?

25 THE WITNESS: No, that would be a second

1 means of access.

2 MR. PLOCKER: Thank you.

3 MR. AFRAN: Thank you.

4 CHAIRMAN BAGOFF: Do any other member of the
5 public have any questions for Mr. Pehnke on his
6 testimony? Please come up and be identified. You have
7 three minutes.

8 THE PUBLIC: Rachel Klein, Howell Drive.
9 And I just have two questions.

10 The first one is, you - oh, you said that
11 it's not an if, that there definitely will be impacted
12 on Oval, my question was, does, does the developer own
13 Oval Road and Eagle Rock and the land on either side
14 because it seems like it's still an end unless
15 somethings changed and we're not aware of?

16 THE WITNESS: The requirement is for the
17 developer to build the signal and improvements at Oval
18 and Eagle. It's in the agreements. It's the intent to
19 do it. It falls within the jurisdiction of Essex County
20 and it's part of the application -- part of an
21 application in Essex County.

22 THE PUBLIC: Okay.

23 But yet as far as you know that deal hasn't
24 been granted yet, so it's still an if?

25 THE WITNESS: It's not an if because it's a

1 requirement.

2 THE PUBLIC: For Essex County to --

3 THE WITNESS: For this developer to develop
4 this property.

5 THE PUBLIC: Okay.

6 And then my other question was, you keep --
7 you said a couple times that in the very, very rare
8 event of an emergency, very, very rare event of an
9 emergency, so then I guess you would be unaware that
10 quite a few years now we've had major multiple alarm
11 emergencies up in that very area that has actually
12 closed it down and required the emergency access to be
13 opened. So maybe it isn't such a rare occurrence like
14 you stated?

15 THE WITNESS: It happens and I've heard that
16 before, yes.

17 CHAIRMAN BAGOFF: Thank you.

18 I'm sorry.

19 MR. AFRAN: I have a follow-up question.

20 CHAIRMAN BAGOFF: Mr. Afran.

21 MR. AFRAN: If opening -- if using Kuzik as
22 a proper road would it also be a way to avoid the RSIS
23 cul-de-sac problem, then why isn't that being proposed
24 as part of this development, do you know?

25 THE WITNESS: Well, it is. Kuzik Road is

1 proposed as part of this development.

2 MR. AFRAN: Well, if it's an emergency
3 access road and you don't get -- you don't get the
4 rights of that, you're suggesting Kuzik is being
5 proposed as part of this development?

6 CHAIRMAN BAGOFF: Mr. Plocker.

7 MR. PLOCKER: For the record, Mr. Chairman
8 and everybody. The site plan that is on file, the site
9 plan for which we're seeking approval, has Kuzik open
10 for regular use for normal traffic. We have asked for
11 an RSIS exception at the request of the West Essex
12 Highlands Condominium Association as reflected in the
13 settlement agreement. As Mr. Pehnke testified and as
14 was recognized at the time we made the agreement, if
15 that exception is granted, great. If not our
16 development works both ways for traffic purposes as per
17 Mr. Pehnke's testimony. It really is at the -- up to
18 this board whether to grant it. Does it affect the
19 overall site plan, the development of the project
20 whether it is granted or not. No.

21 MR. AFRAN: What does the settlement --

22 THE WITNESS: I would like to clarify one
23 thing. While we filed for the agreement for an
24 exception, this board does not really need to process an
25 exception. You have a right as a planning body to

1 control the access, RSIS does not control the format and
2 I think the example I gave when I testified last is this
3 board and this applicant could've proposed to make it a
4 gated community with car access for residents and
5 emergency vehicles and a call in button. So putting a
6 gate across Kuzik really does not rise to the need for a
7 de minimus exception. We have filed for it but the
8 board can just make a finding of fact that they can --
9 so I just wanted to clarify that for the record.

10 MR. AFRAN: Is there a right of the
11 developer to actually open Kuzik as a road and access
12 the condos?

13 MS. MCGOVERN: Yes. I'm looking at the
14 ordinance.

15 MR. AFRAN: I'm not asking about the
16 ordinance. I'm asking about the question of --

17 MS. MCGOVERN: 25-19 Section E, bulk
18 regulations number 5. Unrestricted site access. Egress
19 and ingress shall be permitted from Warner Drive and
20 Kuzik Drive.

21 MR. AFRAN: I'm not asking that. I
22 understand that. What in the settlement agreement was
23 Mr. Plocker referring to when he was referring to the
24 granting of trying to grant the request of the
25 development?

1 MR. PLOCKER: And thank you for the
2 clarification and I have a clarification for you in
3 connection with your question, but I was referring to
4 the settlement agreement in that we will seek Kuzik to
5 be open, which is what the site plan, to normal traffic,
6 which is what is proposed on the site plan. I was
7 referring to the settlement agreement our obligation
8 vis-a-vis the Condominium Association to seek the
9 closure of Kuzik to regular traffic and to have it
10 available for emergency access only.

11 MR. AFRAN: So you're saying you're
12 obligated not to have an open road at Kuzik?

13 CHAIRMAN BAGOFF: No, that's not what he
14 said.

15 MR. PLOCKER: That's not what I said.

16 MR. AFRAN: Well, you're obligated to seek
17 the closure you said.

18 MR. PLOCKER: Well, right. But if the board
19 doesn't grant it then Kuzik is open, which is what the
20 site plan proposes.

21 MR. AFRAN: So your position then is if
22 Kuzik is open, you have no cul-de-sac under RSIS?

23 MR. PLOCKER: That's Mr. Pehnke's area.

24 THE WITNESS: Under either condition,
25 whether it's open or closed, it's a point of access for

1 emergency vehicles regardless.

2 MR. AFRAN: So in other words, that's the
3 basis in which you say it's not regulated by RSIS?

4 THE WITNESS: That's correct.

5 MR. AFRAN: Okay.

6 THE WITNESS: Or is regulated by RSIS --

7 MR. AFRAN: No, I don't mean that. I mean
8 as a cul-de-sac.

9 THE WITNESS: Correct.

10 MR. AFRAN: Thank you.

11 I thought this was important to clarify, I
12 don't know I agree, but I thought we never had a clear
13 statement of these issues and I think it was important
14 to clarify. Thank you.

15 CHAIRMAN BAGOFF: Thank you.

16 Any other member of the public have any
17 question for Mr. Pehnke? Please come up, identify
18 yourself. You have three minutes.

19 THE PUBLIC: Gilda Paul, Howell Drive. So
20 at an earlier meeting I asked the question about what
21 emergency access meant to Howell Drive and did it mean,
22 you know, ambulance and fire trucks or did it mean 800
23 or 900 cars that are coming out of that development
24 going, you know, past my house and I was told, I thought
25 by one of the board members but I could be wrong, that

1 that had not been determined and it would be determined
2 at a later date and was some how under the impression,
3 and this could be on me, that there would be discussion
4 in open forum about it before that was determined. So
5 my question is, when was this decided?

6 MS. MCGOVERN: About Kuzik?

7 THE PUBLIC: You know, about Howell Drive
8 and the -- and it being open to traffic.

9 MS. MCGOVERN: It's in the ordinance that
10 was adopted in 2020.

11 CHAIRMAN BAGOFF: It's open to emergency
12 vehicles.

13 THE PUBLIC: Right. No, emergency vehicles
14 I understood. But he's talking about using it as an
15 access road if needed for the development, which is 800
16 or 900 cars going past my house, not emergency vehicles.

17 MS. MCGOVERN: The ordinance allows Kuzik
18 Road --

19 THE PUBLIC: I don't know what you're
20 talking about, Kuzik Road, I live on Howell.

21 MS. MCGOVERN: Howell Drive is also in the
22 ordinance as an option for an emergency entrance.

23 THE PUBLIC: I understand that, but I
24 asked --

25 MS. MCGOVERN: And that was adopted in 2020.

1 THE PUBLIC: I asked what emergency entrance
2 meant, that was my question. And I was told that, that
3 had not been determined. So somewhere between then and
4 now I guess it was determined, and I am curious what
5 happened?

6 CHAIRMAN BAGOFF: Ma'am, we haven't gotten
7 there yet. We haven't heard testimony to that. You're
8 talking about this as an emergency exit. The testimony
9 was, correct me if I'm wrong, fire, ambulance.

10 THE PUBLIC: Am I wrong, I'm sorry. Let's
11 ask him.

12 THE WITNESS: It's available for emergency
13 services, which generally means fire, ambulances,
14 police. But it is an emergency access and if there's
15 something that occurs that the termination of the
16 emergency services needs to use it for emergency
17 purposes that includes some other evacuation route, they
18 have that option. Will that happen, I don't know. It
19 certainly is not something you're going to see on a --
20 it would have to be something extreme.

21 THE PUBLIC: So if a tree falls along Oval
22 like it did before --

23 THE PUBLIC: Not necessarily. It would not
24 necessarily be that type of an event.

25 THE PUBLIC: Is that a "yes" or a "no"?

1 THE WITNESS: I mean, a tree can be cleared
2 within on an hour, two hours, so no. I would say, no.
3 I would say the type of event that would truly need the
4 emergency services would be an involvement of the
5 decision of the administration would only result if
6 there was some closure of the route for an extended
7 period of time being days, not a period of hours.

8 THE PUBLIC: So is it, I want to make sure,
9 is that the final word or --

10 CHAIRMAN BAGOFF: Final word is up to
11 emergency services of the Township of West Orange.

12 THE PUBLIC: Okay.

13 So the impression I got last time, I guess
14 --

15 CHAIRMAN BAGOFF: Not going to be regular
16 traffic. In the case of a catastrophic threat, and they
17 would have to define what that means, we talked about
18 definitions, so leave that to the emergency services
19 department, police, fire and ambulance for the Township
20 of West Orange.

21 THE PUBLIC: Okay. Thank you.

22 CHAIRMAN BAGOFF: You're welcome.

23 Any other questions? Please come up.

24 THE PUBLIC: Thank you. Deborah Butensky,
25 The Grande, West Orange.

1 So you're probably not aware but there is
2 repair going on, on Oval Road as we speak due to a gas
3 leak that's occurring. It's just at the juncture of
4 where Oval meets Kuzik. The point of the question is,
5 should you have an event that closes off Oval close to
6 Eagle Rock Avenue what is your proposed access for the
7 residents of the Highlands and The Grande and this new
8 development to exit to get to the center of town to get
9 out of our development?

10 THE WITNESS: There's no specific proposal,
11 other than that situation being properly managed for
12 repair situation of such nature and the residents will
13 have the ability to have emergency vehicles get to the
14 site based upon the emergency accesses provided. You
15 know, traffic is maintained in those events and in
16 various ways. It depends on what it is, it depends on
17 where it is in the road. There are ways in a 40 foot
18 cartway to keep roadways open to traffic.

19 THE PUBLIC: But the hypothetical is, if
20 it's closed for hours and let's say there happens to be
21 a fire in one of those apartment buildings on the
22 proposed development?

23 THE WITNESS: Under that hypothetical the
24 community may be inconvenienced for that period of time.
25 It's possible.

1 THE PUBLIC: And trapped is the word, right?
2 Not inconvenienced but more like trapped.

3 THE WITNESS: You can use that word, yeah.

4 THE PUBLIC: Yes.

5 THE WITNESS: I don't--

6 THE PUBLIC: A child could be having an
7 asthma attack and you can't get to --

8 THE WITNESS: That's incorrect. The existing
9 residents --

10 THE PUBLIC: That's what -- I'm trying to
11 ask a question.

12 THE WITNESS: So emergency services still
13 have access, if there's an emergency that required the
14 attendance of emergency services through the various
15 emergency services routes, but the normal day to day
16 traffic might be interrupted for a period of time, which
17 would be an inconvenience to the existing residents and
18 future community. That can happen, yeah. I can't say
19 it won't happen.

20 THE PUBLIC: Thank you.

21 CHAIRMAN BAGOFF: Thank you.

22 Questions for this witness. Any other
23 questions, please come up, be identified. You have
24 three minutes.

25 THE PUBLIC: Marea DePalma, 67 Lapis Circle.

1 I have a question, back some months ago,
2 April I believe it was, there was a fire on the golf
3 course when a tree fell over and landed on Oval. I have
4 a mother that lives in West Caldwell fairly close, 12
5 minutes, and she had chest pains and I could not get
6 out. They would not let me walk out either way, Essex
7 Fells or on Oval. I was trapped in my own house, the
8 neighbors at my mom's house were not home, so what
9 happens in a case like that? I mean, the fire was on
10 the golf course, the fire engines were on the golf
11 course. There was a fire engine down by Warner and the
12 road continuing on to go into Essex Fells and they
13 wouldn't even let me out by foot. So what happens?
14 Things happen?

15 THE WITNESS: That's correct. And this
16 project is not going to change that condition with the
17 exception of it does provide another point of emergency
18 vehicle access to the Highlands, but it does not change
19 that existing condition.

20 THE PUBLIC: And by the time they came and
21 opened the roads, people that were coming home had to
22 walk from Essex Fells, my neighbor who's 86 years old
23 was all out of breath and I stopped to walk her home
24 because that's the only way she could get she home. She
25 had to leave her car in Essex Fells to walk home. So

1 we're trapped in and trapped out.

2 THE WITNESS: This project is not changing
3 that condition.

4 THE PUBLIC: Okay. Well, that's not really
5 safe at all.

6 CHAIRMAN BAGOFF: Thank any.

7 Any other member of the public have any
8 questions for Mr. Pehnke on his testimony? Please come
9 up be identified. You have three minutes.

10 THE PUBLIC: Barbara Reeves, I live on
11 Barbara Avenue.

12 In this study when it first was presented
13 there were about 500 to 800 cars that would be part of
14 this plan. In normal daily situation, how is this
15 access road going to impact on Eagle Rock, just the
16 daily situation of people leaving, coming and going to
17 the school and coming back and forth?

18 MR. PLOCKER: I would just object to the
19 subject matter of the question. The question does ask
20 about off-site traffic conditions which the board cannot
21 use to assess or evaluate this application.

22 THE PUBLIC: Per the requirement --

23 MR. PLOCKER: Because we are zoned, that's
24 permits density.

25 THE PUBLIC: This is an important, very

1 important question. We feel there's a lot of traffic
2 coming and going in and out Laurel and Eagle Rock.

3 MR. PLOCKER: I'll allow Mr. Pehnke to
4 answer.

5 CHAIRMAN BAGOFF: He testified to the level
6 of service at the intersection of when it becomes
7 signalized. I will let him answer the question.

8 THE WITNESS: Yeah, so certainly, as I've
9 indicated in my prior testimony and tonight, the
10 improvements that we are constructing at Oval and Eagle
11 Rock will benefit the existing community as well as
12 handle the additional traffic from the new community.
13 In fact it will be a substantial improvement both
14 operationally and safety wise that would prove to the
15 benefit of our residents as well as the existing
16 residents. There will also be improvements at Laurel
17 associated with it. So overall access to Oval Road and
18 traffic flow entering and exiting onto Eagle Rock Avenue
19 is going to be significantly improved.

20 THE PUBLIC: So the thing is that, as a
21 spectator here, I don't have a map and real visual cues
22 to understand what's being said. So I would like to
23 know why a presentation like this, which is so
24 important, that those kinds of visual aids are not sent
25 to the public or even to be able to see and understand

1 because this is by word of month but there is no way
2 exactly to know how it is going to be developed?

3 THE WITNESS: It will basically look like a
4 traffic signal that you see everyday at intersections at
5 Oval Road and Eagle Rock Avenue. So there's really no
6 way to depict it, we just usually put a circle on our
7 plans and say traffic signal. Except for the design
8 plans that we do in detail for the county.

9 THE PUBLIC: So we're talking about the
10 number of people in the morning going to Eagle Rock here
11 in West Orange, so there's a very big change being
12 occurred and it feels you need to be responsible for it,
13 you need to be clear not just hypothetical.

14 THE WITNESS: It's not hypothetical, it's
15 designed to the standard of the county. It's under
16 their jurisdiction and it will be reviewed in detail by
17 their engineers.

18 THE PUBLIC: Thank you.

19 CHAIRMAN BAGOFF: Thank you.

20 Are there any other members of the public
21 who have a question on Mr. Pehnke's testimony? Please
22 come up. You have three minutes.

23 THE PUBLIC: Marea DePalma, 67 Lapis Circle.

24 I have a question. Right now with all the
25 construction on Eagle Rock Avenue, which could be at any

1 given time, anything could happen where they may replace
2 a waterline, gas line, the detours are horrendous right
3 now. When we get out of here it will take me half an
4 hour to get home. In the morning when I leave to bring
5 my daughter to school there already is a backup to get
6 out of my complex, so I'm waiting at least maybe seven
7 cars. The units that you're proposing in the back is
8 going to have dozens of other cars. How quick can those
9 lights turn that we'll be sitting there, maybe 20
10 minutes to get out. How can that -- the congestion is
11 already there. The towns are over populated with cars.
12 For the past three years there's been a sudden change in
13 our town --

14 CHAIRMAN BAGOFF: Can you ask a question.

15 THE PUBLIC: -- and the next town. So how
16 do you propose a light -- how many lights do we have to
17 wait to get out? There's a lot of cars --

18 CHAIRMAN BAGOFF: Can you let him answer the
19 question.

20 THE PUBLIC: I'm asking how many lights. I
21 mean, I'm taking seven cars to get out.

22 CHAIRMAN BAGOFF: Ma'am. Ma'am, you have to
23 let him speak.

24 THE PUBLIC: Oh, I thought you said ask a
25 question.

1 THE WITNESS: So as I indicated this
2 intersection will operate at excellent level of service.
3 What that basically means is when you arrive at the
4 signal you'll be processed when the light turns green.
5 Very little que, very little delay. Much different
6 experience than the stop sign that's there today. It's
7 -- there's a big difference between a stop controlled
8 intersection and a signal controlled intersection, so
9 the ability to move out of Oval Road and out these
10 neighborhoods in the future will be safer and it will be
11 way more efficient than occur's today. And eliminates
12 the issue you have today with sight lines, looking
13 through the foliage that isn't properly maintained. All
14 that goes away with the traffic signal control.

15 THE PUBLIC: I understand what you're saying
16 about the traffic signal, but you're having hundreds of
17 cars go out and it's at 7:00 to 9:00, that's when
18 everybody wants to leave. How many lights, I mean I
19 don't know how long a signal is, but you're not going to
20 get out in two or three or four. It might be five, six
21 or seven. Because when I get to the bottom of Eagle
22 Rock right now I -- three cars can go through and the
23 lights red. And go try it. Eagle Rock and Pleasant
24 Valley Way. Three cars get out and the lights red
25 again. So I'm already backed up 12 cars and it takes me

1 at that time to get out three, four lights. That's just
2 in my community. But with congestion from that
3 community, even though they're might be two other access
4 roads, there's -- it's so little space for so many cars
5 to get out. And we're already feeling the impact of the
6 congestion of all the people moving in now, it's been
7 for the past two or three years. There's no where to
8 move or go. You're like trapped. It's congested
9 already. I can't imagine what 800 units or 400 units
10 and 1200 cars might do. That's all I wanted to say.

11 CHAIRMAN BAGOFF: Thank you.

12 Any other member of the public have any
13 questions?

14 MR. AFRAN: One final, I'm sorry.

15 Mr. Pehnke, I was just asked to inquire
16 about one subject. Are you indirectly or with others in
17 connection with your client, in communication with any
18 municipal or other governmental official concern parking
19 changes on and off Oval Road?

20 THE WITNESS: I don't understand the
21 question.

22 MR. AFRAN: Are you in connection, contact
23 with any municipal or government officials or are you
24 aware of anyone on the developers team that is in
25 connection with issues concerning the potential for

1 parking on Oval Road?

2 THE WITNESS: I am not.

3 MR. AFRAN: So you have no knowledge whether
4 there's any contemplation of adding parking to Oval
5 Road?

6 THE WITNESS: I am not aware, no.

7 MR. AFRAN: Thank you. I have no other
8 questions.

9 CHAIRMAN BAGOFF: Thank you.

10 MR. AFRAN: With respect to a statement Ms.
11 Mr. McGovern made, I just want to reserve the issue of
12 law for the objector. That, all though we know the LH 1
13 ordinance allows --

14 CHAIRMAN BAGOFF: IH.

15 MR. AFRAN: IH, sorry. Allows an access
16 road/drive from Building D towards Howell, it is our
17 legal position, as we mentioned earlier, we'll address
18 it later. I simply want to reserve the issue, that
19 there is no corresponding use permitted in the adjoining
20 R-3 zone and this access road has to cross or go between
21 two lots in the R-3. No variance has been requested and
22 it's our position that though the IH may allow an access
23 road on the IH zone from Building D there is no
24 corresponding usage in R-3. And so I wanted to just
25 respond to what Ms. McGovern said quoting the ordinance

1 to one member of the public. It is our position there
2 is no right to continue an access road in the R-3 at
3 this stage.

4 CHAIRMAN BAGOFF: Mr. Plocker.

5 MS. MCGOVERN: It's in the ordinance and
6 nobody objected to the ordinance. That passed.

7 MR. AFRAN: That's got nothing to do with
8 it. The IH ordinance allows an access drive on the
9 property in the IH zone.

10 MS. MCGOVERN: It describes it by lot and
11 block. It specifically describes it by lot and block.

12 MR. AFRAN: It can describe all it wants.
13 You can't amend the R-3 by passing elements in the IH.
14 There was no amendment to the R-3 at all. No notice was
15 given that R-3 is being amended and R-3 has never been
16 amended to allow an access road to a multifamily
17 development in the R-3 zone.

18 MS. MCGOVERN: I'm just going to disagree
19 with you and we'll agree to disagree.

20 MR. AFRAN: Fair enough. I'm just simply
21 preserving the issue. I didn't want my silence to imply
22 agreement. That's all.

23 CHAIRMAN BAGOFF: Mr. Plocker.

24 MR. PLOCKER: And just for the record, the
25 applicant does disagree with Mr. Afran's legal

1 conclusion that an emergency access is a use, so we're
2 also -- we'll reserve for another day and maybe another
3 forum, but I want to state that for the record. And
4 just to note, the two emergency access lots which
5 counsel allowed use in the IH 1 zoning ordinance, those
6 two lots, the applicant provided jurisdictional notice,
7 200-foot notice, from those two lots in addition to the
8 subject property putting anyone within 200 feet of the
9 two lots for the proposed emergency access to Howell on
10 notice.

11 MR. AFRAN: That may be --

12 MR. PLOCKER: I just wanted to state that
13 for the record and you may have your own opinion.

14 MR. AFRAN: That may very well be but that notice
15 didn't say --

16 CHAIRMAN BAGOFF: One at a time. One at a
17 time.

18 MR. AFRAN -- this use will be in the R-3 and
19 that's the point. When you give a notice that says, oh,
20 an access drive in the IH, that's not noticed to people
21 in the R-3 being changed.

22 CHAIRMAN BAGOFF: Okay.

23 We'll take everything under advisement.

24 MR. AFRAN: Thank you.

25 CHAIRMAN BAGOFF: Okay.

1 MR. AFRAN: Thank you by the way, for
2 releasing Mr. Hadascko. That was probably a good call.

3 CHAIRMAN BAGOFF: Thank you Mr. Plocker, for
4 understanding.

5 At this time we're going to close this
6 portion of the meeting. And the next regular meeting of
7 the Planning Board will be held Wednesday, October 22,
8 2025 at 6:30 PM in council chambers. And the special
9 meeting will be held October 29.

10 This meeting, this application will be
11 carried to October 22 with no additional notice to be
12 required.

13 MR. PLOCKER: I just -- I didn't mean to
14 interrupt, Mr. Chairman. I thought there might have
15 been -- are we a special meeting or are we a regular
16 meeting.

17 MS. MCGOVERN: October 22 is the regular
18 meeting.

19 MR. PLOCKER: It's a regular meeting.

20 MR. AFRAN: So we're hearing this on October
21 22?

22 MS. MCGOVERN: Yes.

23 MR. PLOCKER: That wasn't clear to me. I
24 just wanted to make sure.

25 CHAIRMAN BAGOFF: Your person speaks first.

1 October 29 is also a special meeting to be
2 held here in council chambers, 6:30 PM.

3 Motion to adjourn.

4 (Hearing concludes at 10:39 PM.)

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

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

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

13

14

15



16

ERIC S. FISHMAN, S.R.

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Dated: 10/1/2025

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