

TOWNSHIP OF WEST ORANGE
DEPARTMENT OF PLANNING AND DEVELOPMENT
WEDNESDAY, OCTOBER 29, 2025
6:00 P.M.

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

BOARD MEMBERS:

ROBERT BAGOFF, Chairman
JERRY GUARINO, Vice Chairman
SUSAN McCARTNEY, Mayor
KEN ALPER
JOHN CARDOZA
LORI KAPFERER
SUSAN SCARPA, Councilwoman

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

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Corp.

1 CHAIRMAN BAGOFF: The application before us,
2 PB-24-01 West Essex Highlands, Inc, 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 of New Jersey.

For the applicant, Mr. Plocker.

MR. PLOCKER: Good evening. Bryan Plocker, Hutt, Shimanowitz & Plocker on behalf of the applicant

CHAIRMAN BAGOFF: Mr. Afran for the objectors.

MR. AFRAN: Bruce Afran for the objector.
Good evening.

CHAIRMAN BAGOFF: Good evening.

MR. AFRAN: Okay. We have our witness --
I'm sorry, I didn't realize you were waiting for me.

We have Sean Walsh from Princeton Hydro who is giving a supplemental report. If I may call Mr. Walsh. He's going to sit there, if that's okay. I didn't -- is that all right?

MS. McGOVERN: We're going to be marking the September 3, 2025 report as O-30, I believe. Okay Jamilet.

MR. AFRAN: I haven't kept track of the number, but that's our next witness.

5 1 MS. McGOVERN: I have. 2 MR. PLOCKER: Before Mr. Walsh goes, there's 3 something that I submitted to the board that I would 4 like to have marked and entered into the record. I 5 don't know if we could do this now or do it later. 6 MR. AFRAN: Do I know what that is? 7 MR. PLOCKER: It's on the agenda. The board 8 had requested that we provide the legal documents 9 regarding the rights and obligations of Oval Road. 10 MR. AFRAN: Sure. 11 MR. PLOCKER: So I did send that to the 12 board. It's posted to the agenda. I just think, in 13 full disclosure, we should put that on the record, have 14 it marked as an exhibit. 15 MR. AFRAN: I have no objection subject to 16 looking at it and seeing if there's anything that's a 17 surprise. 18 MR. PLOCKER: I will show it to Mr. Afran. 19 CHAIRMAN BAGOFF: We'll mark that in a 20 minute. 21 MS. McGOVERN: O-30 is Princeton Hydro. I 22 am looking for the applicants exhibit markings. I think 23 it's A-7 for the applicant and what are we describing 24 that as? Mr. Plocker, what am I describing that as. 25 MR. PLOCKER: I'm just going to give Mr.	7 1 MR. PLOCKER: Well, it -- is my cover letter 2 a part of it? 3 MS. McGOVERN: That's part of A-7. 4 MR. PLOCKER: Okay. That's fine. So my 5 cover letter is part of A-7 which is the publically 6 recorded document and it's, I think it's approximately 7 47 pages of recording documents itself. 8 MR. AFRAN: It's obviously a matter of 9 public record so we certainly have no objection. 10 MR. PLOCKER: It speaks for itself. 11 MR. AFRAN: Right. Subject to whatever 12 relevance we have, we might see and need any additional 13 evidence, but I'm not sure. 14 CHAIRMAN BAGOFF: Okay. 15 MR. AFRAN: Thank you. 16 Mr. Walsh, we are ready for you. 17 MS. McGOVERN: Mr. Walsh, you gave testimony 18 back on February 26, 2025, you are still under oath. 19 Okay? 20 MR. AFRAN: We have a problem with the 21 table, we just need a moment. 22 Q. Mr. Walsh has previously been accepted as an 23 expert and I believe he's previously been sworn. 24 CHAIRMAN BAGOFF: Go right ahead. Identify 25 what you're going to talk about now?
6 1 Afran a chance to review the document first. 2 CHAIRMAN BAGOFF: Go right ahead. 3 MR. AFRAN: I just need a moment. I 4 downloaded this earlier but it's a long document, I 5 couldn't read the whole thing. 6 CHAIRMAN BAGOFF: Okay. 7 Mr. Plocker, tell us what it is while he's 8 reviewing it? 9 MR. PLOCKER: Yeah, so I actually filed two 10 documents, I had a cover letter dated October 22, 2025 11 and that attaches a publically recorded document 12 entitled, Declaration of Easement and Right-Of-Way 13 Agreement, I will very briefly summarize and I will do 14 my best not to characterize the document. What it is, 15 it's, like I said, a Declaration of Easement and 16 Right-Of-Way Agreement dated January 19, 1988 and it's 17 between the parties Allied Signal, Inc, Essex Fells 18 Country Club and West Essex Highlands, Inc. It was 19 recorded in the Essex County Clerk on January 28, 1988 20 in Deed Book 5012 at Page 571. And I will just very 21 generally characterize, that document and it's 22 attachments deal with the parties that I just mentioned, 23 rights and obligations regarding Oval Road. 24 MS. McGOVERN: And that's just one document, 25 there's nothing else you want --	8 1 A. I wanted to talk briefly about the response 2 letter that CME wrote in response to our letter 3 presented to the board. 4 CHAIRMAN BAGOFF: Did you provide a report? 5 MR. AFRAN: Yes, that's Exhibit 0-30. 6 CHAIRMAN BAGOFF: I want him to say it for 7 the board, he's talking about it. 8 A. I just want to hit a few points that they had 9 talked about. First, I want to go back -- 10 MR. AFRAN: I'm sorry, there's a request 11 from the back, if you could hold the mic closer. 12 THE WITNESS: I want to go back to the 13 mottling issue that we talked about originally, 14 M-O-T-T-L-I-N-G, which was when they dig test pits to 15 try to find the seasonal high water table. The way the 16 applicant marked the seasonal high water table was by 17 where they noticed water and what the DEP requires is 18 them, for them to look for mottling, which is a 19 discoloration of the soil profile that shows a historic 20 level of the seasonal high water table. Now, what CME 21 says is that, it's not in the record and we can only go 22 by the water elevation, which is according to DEP 23 standards. What we suspect is that they never looked at 24 the mottling to begin with and that the records, the 25 flood elevations in the slope profiles are lower than

9 1 they really are and there's never any record of any 2 notice of mottling. I think they took 100 test pits and 3 we found that very suspicious. So what we've actually 4 done is we had gone out on our own, we went near the 5 site, we were not on the site, but we did four of our 6 own test pits, we only went a few feet deep and each 7 time we were able to find evidence of mottling within 12 8 inches of grade of the surface. Now, I am not saying 9 that they would've always found mottling in all their 10 test pits, but I did find it strange that we went four 11 for four and they went from like zero for 100. So it's 12 not, I don't think that they didn't see it, I just don't 13 think they really ever were looking for it. So I think 14 that's a little, I think those flow records are flawed 15 and I just needed to point that out. And for the 16 record, where we looked it's, we have the soil borings 17 and the locations are in the O-30 record that we 18 submitted and two of the test pits are within about 300 19 feet of, at most 300 feet of Basin 1 and the other two 20 are within about 300 feet of Basin 7. So while they're 21 not on-site we're not terribly far away either from 22 where these basins are and where you'd think if we saw 23 mottling you would think they would have saw mottling as 24 well. 25 So I know that CME also said that, you know,	11 1 out the peak flow elevations. CME's right. In the DEP 2 manual you actually use alternate methods to get to 3 these stormwater calculations. But what's funny about 4 when you read the stormwater report from the applicant, 5 is they never really talk about using alternate methods. 6 You read it, it seems like they're following, following 7 it straight like as per code. They never cite an 8 alternative reference and they never provide a 9 justification for an alternate method. For example, I 10 had talked about how they, when you have a flow path 11 there's not a way of calculating velocity. This is a 12 way of calculating how long that water takes to go down 13 the flow path and they're definitely using an older 14 method where you just classify it as unpaved. And the 15 latest method requires you to look at the slope and the 16 actual land uses and the forests and meadows, the 17 street, so the newer method is a more conservative 18 approach. The older method that the applicant uses 19 it's, it makes the design more easy. I would think if 20 you're going to use alternate methods you need to cite 21 the method that you used, but then also cite the 22 justification why this methods more appropriate then 23 what the standard is. And they never do that. And it's 24 not justified in the -- CME's report also does not say 25 what the method is or why this method is better and more
10 1 they need to do additional testing and when they do more 2 test pits that should be a condition of the approval. I 3 think that's a really risky way to approach it. Because 4 if we're right and the seasonal high water table is 5 actually higher than we suspect, a lot of these basins 6 are going to lose storage pretty quickly. Especially 7 the aboveground storage basins. You know, you lose a 8 foot, you lose two feet, you lose a significant amount 9 of volume and then it starts to become very, very tricky 10 of how you find that additional volume on the site, 11 because you don't go down you have to go out and as 12 everyone's seen on the plans there's a lot of site 13 constraints. The designs very tight and I don't know 14 where they would find extra volume and so then suddenly 15 you're in a situation where they're building, what are 16 they going to do. How are they going to change the 17 design to meet the requirements of the DEP and local 18 ordinance and it's in the middle of a construction 19 project. All right. That's about all I wanted to say 20 for the mottling and the lack of mottling in any of the, 21 or in any of the soil profiles or stormwater report. 22 Next I would like to talk about there is a 23 discussion using alternative methods for groundwater 24 mounding, TC calculations, or the Time of Concentration 25 calculations, which result -- which are used to figure	12 1 appropriate in this scenario. So alternate methods in 2 some scenarios are more appropriate but there was two 3 specific things that came with the TC runoff, the Time 4 of Concentration runoff calculation. We didn't classify 5 them as alternate methods. We classified two math 6 mistakes -- not math mistakes, two analysis mistakes 7 wherein one of the watersheds, one of the drainage areas 8 when you calculate Time of Concentration you have to 9 calculate it for the entire flow path of -- throughout, 10 from the highest point to the bottom. It's called, 11 point of analysis. They only calculated about half of 12 the flow path. We couldn't figure out why. That was a 13 mistake that would make the design easier to do. It 14 seemed like a mistake, but it wasn't an alternate 15 method, at least it's not a method that I'm aware of, or 16 anyone else that I know of, that would be applicable. 17 Again, that's a scenario where I think you would have to 18 cite the method, cite the reference of the method and 19 why this is more appropriate. I will just give you an 20 example of the method the DEP requires or cites in their 21 references are, they come from the National Engineering 22 Handbook that was written by the USDA and the Natural -- 23 the Natural Resources Conservation District. So this is 24 typically the reference that we use when we're trying to 25 do the stormwater calculations. It's a handbook, it's

13 1 also a PDF and the other mistake we called out was that 2 we have a watershed, we have one point of discharge. So 3 all the water collects to one point of analysis. One of 4 the watersheds, it had two points of discharge, but it 5 treated them as one. So the water was being split in 6 two different directions but the model never 7 acknowledged that. And, again, I don't know an 8 alternative method that allows for that kind of 9 calculation. I don't know who does, but, again, you 10 would think the report would cite the method, cite the 11 justification for the method and then why this is the 12 more appropriate method for this scenario. And, again, 13 if you read the report, it doesn't say anything like 14 that. It acts like it's acting straight from the DEP 15 manual. 16 I have one more point I just want to bring 17 up with relocation of the sanitary line. I brought this 18 up at the end of the presentation. The sanitary -- 19 there was a portion of the sanitary line that runs in 20 through a stormwater underground basin. There's 21 technically no rule against this, and I brought that up 22 originally when I gave testimony. It just seemed like a 23 bad idea and I wanted to bring it to the boards 24 attention. In the CME letter they agreed and they 25 actually, it's a requirement that the applicants going	15 1 that, but they're going to need to apply for more 2 wetlands permitting to get that approved. Looks like 3 they put it underneath the road, it's not an uncommon 4 thing to do, because you're already disturbing the 5 roadway for the -- you're disturbing the roadway so you 6 tuck all you're utilities in the roadway. You couldn't 7 in that situation so you have to run it to either side, 8 either side of the wetlands. So they have to go back to 9 the DEP and get more permitting approval. 10 Let me just double check my notes to see if 11 I have anything else. 12 I'd just like to say one more thing, sorry, 13 I missed this. I'll turn back to mottling. I'd like to 14 just return back to the mottling for one more minute. 15 CHAIRMAN BAGOFF: Sure. 16 THE WITNESS: You know, you have a report and 17 there's, you know, you have an update from us and you 18 have a report from the applicant and they don't have 19 anything. You don't have to take their word for it. I 20 mean, like I think this is enough of a situation where, 21 you know, you could go out to the property and have CME 22 dig some test pits to know where the test pits were 23 done, dig them adjacent, take some photographs and see 24 if they find mottling too. And, you know, you don't 25 have to -- it seems like we're sitting here like, well,
14 1 to move that sanitary line out of the stormwater basin 2 and -- move it out of the stormwater basin and keep it 3 out. No sanitary line should run through any stormwater 4 basin and sanitary structure. It's a good rule. What I 5 was curious is something -- CME also uses justification, 6 not just the alternate method just in case some of it 7 can't be called out, but also this has been approved by 8 the DEP, the DEP was the expert on the rules and if they 9 approved it then we should accept their decision. The 10 DEP also approved to put the sanitary line through the 11 stormwater basin and so it was very curious that in this 12 instant CME chose not to defer to the DEP but instead 13 chose -- they took a stance and said, no, we're going to 14 need to move this line out of the stormwater basin and 15 make sure no other lines go into the stormwater basin, 16 despite the fact that maybe CME cited a rule. I didn't 17 see them citing one in the letter, but I couldn't. So I 18 thought that was curious, the fact that for this one 19 instance they went against DEP, but on many of the other 20 instances called out they just deferred to them. 21 Also like to point out from our, from our 22 looking at it if they moved that sanitary line of the 23 sanitary -- if they moved that sanitary line out of the 24 underground stormwater basin they're going to have to 25 move it into the wetlands. I'm saying you can't do	16 1 you know, the report says what the report says. You're 2 not held to the report. You can require additional 3 investigation. You can inquire your own experts and be 4 there and witness. They don't have to do 100 tests 5 pits, they could do like five, that's a days worth of 6 work, and see the veracity and see, you know, what you 7 find. 8 So I think that is the end of my 9 supplemental testimony. 10 MR. AFRAN: Mr. Chairman, we have no further 11 questions at this time. 12 CHAIRMAN BAGOFF: Thank you. 13 Okay. Mayor McCartney, do you have any 14 questions on the witnesses testimony? 15 MAYOR MCCARTNEY: Thank you, Mr. Walsh. 16 Actually went back to my notes from February and also 17 April of this year and I asked the same question then, 18 are you recommending additional basins to go wider or 19 deeper and just to clarify what you just said, are you 20 saying that that would be impossible to do or should 21 they be adding even more basins? 22 THE WITNESS: What I'm saying is that I think 23 we suspect the seasonal high water table is higher than 24 what their report shows. So they don't need to add more 25 basins, but the basins would have to get wider. I am

17 1 not saying it's impossible, but it would seriously 2 affect the site layout and could require a serious 3 design change. We didn't have my guy further but anyone 4 that looks at the way the site is laid out, it is not a 5 lot of spare room. They're trying to keep it tight to 6 try to preserve as much of the woods as possible. 7 MAYOR McCARTNEY: That was the same question 8 that I asked CME at the last meeting. 9 Thank you, Mr. Chairman. 10 CHAIRMAN BAGOFF: Ms. Kapferer, do you have 11 any questions on the testimony? 12 MS. KAPFERER: Thank you, Mr. Chairman. 13 Thank you, Mr. Walsh. A few questions. 14 Regarding the mottling issue, did you look 15 at all of the soil surveys? 16 THE WITNESS: I did look. 17 MS. KAPFERER: And were you kind of looking 18 at soils and the water table? 19 THE WITNESS: The USDA soil survey? 20 MS. KAPFERER: Yeah. 21 THE WITNESS: We have in our record, O-30, we 22 have two soils that we looked at from that survey. The 23 report. 24 MS. KAPFERER: Did they indicate the depth, 25 you know, what the anticipated depth to the high	19 1 proposed condition. 2 CHAIRMAN BAGOFF: Let the record show that 3 Council Person Scarpa just joined the board. Thank you. 4 MS. KAPFERER: I think you referenced in the 5 materials there was time of concentration calculations 6 and you said they only used half the flow path? 7 THE WITNESS: Yeah. 8 MS. KAPFERER: Was that an existing or -- 9 THE WITNESS: That was the existing 10 condition, yes. 11 MS. KAPFERER: And then so are you saying 12 that in existing conditions that in the runoff that's 13 calculated at the points of analysis was that it would 14 be higher than, than it would had been if they had used 15 the full flow path? 16 THE WITNESS: Yes. It would be like an 17 artificially higher peak flow rate. 18 MS. KAPFERER: And so then you're saying 19 when you compare the existing conditions runoff to the 20 proposed conditions runoff that the required deductions, 21 do you have any sense of whether -- 22 THE WITNESS: So that's actually a little 23 more complicated because, you are right, that flow in 24 the proposed condition would be lower. Like it's a 25 different scenario because the land use changed
18 1 groundwater would be? 2 THE WITNESS: Let me -- give me a second to 3 check. It doesn't specifically state where they expect 4 the elevation in this report and they must have printed 5 out a slightly different report. I can provide that to 6 you and to the board. I apologize, it just doesn't say 7 here. 8 MS. KAPFERER: That would be great. If you 9 could provide it. 10 THE WITNESS: Tomorrow. 11 MS. KAPFERER: Okay. That's great. 12 One other question regarding the time of 13 concentration. Do you know, were you able to say that 14 the method that was used for their existing condition 15 versus proposed condition, like was it, was the method 16 consistent, I don't know, do you recall? 17 THE WITNESS: I don't recall. I believe the 18 method was not consistent. I believe for the proposed 19 condition they used the entire forecast. It would be 20 very different though because once developed it's a much 21 smaller, larger set of sub watersheds, so it would be a 22 very different flow path. But I don't think -- I 23 believe I checked that but I would need to go back and 24 double check, but I don't think that any one of those 25 they ever used a fraction of the flow path for the	20 1 dramatically and also those, all those peak flows go 2 through a basin, so the basin is having a significant 3 impact on the peak flow. That's the whole point of the 4 basin, to reduce the flow. So you're right there, but 5 there's a lot of math intertwined. So I think it would 6 be hard to show like a direct connection there, but, 7 yeah. 8 MS. KAPFERER: Did you look specifically at 9 a point of analysis at Warner Road at all? 10 THE WITNESS: I think Warner Road is where it 11 splits, in the mottling they don't split it. That's the 12 watershed that has two points of analysis, but they only 13 -- there's two different drainage points but they only 14 have one point of analysis. 15 MS. KAPFERER: I think that's my questions. 16 Thank you. 17 CHAIRMAN BAGOFF: Vice Chairman Guarino, do 18 you have any questions on Mr. Walsh's testimony? 19 VICE CHAIRMAN GUARINO: No questions at this 20 time, Mr. Chairman. Thank you. 21 CHAIRMAN BAGOFF: Mr. Alper, do you have any 22 questions for Mr. Walsh on his testimony? 23 MR. ALPER: Thank you. Just one. 24 You're optimum method in the analysis is the 25 land use standard, you're using one to explain or is it

21 1 really just -- 2 THE WITNESS: I am going to be honest, I've 3 never really used an alternate method. I would just 4 think you would need to state it and explain it. I 5 don't know many people that have actually used alternate 6 methods before. 7 MR. ALPER: So there's really no guidelines 8 on it? 9 THE WITNESS: Yeah, I don't think the DEP 10 actually says you have to explain it, but I would think 11 you should. Like a record. 12 MR. ALPER: Thank you. 13 CHAIRMAN BAGOFF: Mr. Cardoza, do you have 14 any questions for Mr. Walsh on his testimony? 15 MR. CARDOZA: No. 16 Thank you, Mr. Walsh. 17 No questions, Mr. Chairman. 18 CHAIRMAN BAGOFF: Council Person Scarpa, do 19 you have any questions for Mr. Walsh on his testimony? 20 COUNCILWOMAN SCARPA: No questions. 21 CHAIRMAN BAGOFF: I have a question. So you 22 said that they may not be looking for mottling, how do 23 look for it specifically, specifically and not find it? 24 THE WITNESS: Well, you just -- 25 CHAIRMAN BAGOFF: You said there was 100	23 1 for that. They were looking for water elevation and 2 like softness of soil, different soil types, but not the 3 color. So that's what I mean. 4 CHAIRMAN BAGOFF: Did you both use the same 5 methodology? 6 THE WITNESS: I don't know what methodology 7 they used, because we used the correct methodology DEP 8 requires and the way we know to use it, you can see it 9 in the records we provided. Their's was absent. They 10 did not provide the correct detail or notation to meet 11 that standard. 12 CHAIRMAN BAGOFF: They did not provide the 13 methodology or did not provide the correct methodology 14 which is what you just said, so two different things? 15 THE WITNESS: I don't remember reading them 16 citing a different methodology. They did not provide -- 17 they did not use the methodology -- they did not use 18 like the notation methodology that is required or, 19 required or recommended in the NJ DEP Manual. 20 CHAIRMAN BAGOFF: Okay. Thank you. 21 Mr. MacNeill, do you have any questions of 22 Mr. Walsh on his testimony? 23 MR. MACNEILL: Yes. Thank you, Mr. 24 Chairman. 25 First off, I have to clarify a few points in
22 1 test pits. 2 THE WITNESS: I think there's 100, yeah. 3 CHAIRMAN BAGOFF: So what's the odds 4 statistically of that happening, you don't find any 5 mottling, however, on your four test pits, all four 6 found mottling? 7 THE WITNESS: I think it's pretty low. I am 8 being honest, I don't know what the actual odds are, I'm 9 not a gambler. Bad joke. But it seems very unusual and 10 I have test pits done for sites in multiple parts of New 11 Jersey. Mottling, it does pop-up, it doesn't always 12 pop-up, sometimes on-site you will have some places 13 where you won't, it can happen, but I think it's very 14 unusual that it didn't show up anywhere. I mean, it's 15 like, I just, in my original submission we showed, we 16 have a copy of one of their test pits and how they 17 denoted it and then we show like another example of 18 something that uses the correct method, how you are 19 supposed to denote the color changes and different 20 sizes, their soil logs are devoid of any of that 21 description. I think they were, they were looking for 22 like, if you read the soil logs there's some notes on 23 moisture, the softness of the soil, but there's never 24 any discussion of any color. Mottling's mostly based on 25 color. I don't know, I don't think they were looking	24 1 Princeton Hydro's letter. So as the Planning Board 2 engineer, CME has not designed any portion of the 3 project or performed any testing in support of the 4 projects design. The role of CME is to review the 5 proposed design and supported calculation as provided by 6 the applicant for compliance with the local code of the 7 Township of West Orange. It is important to highlight 8 the fact that our review letter number 3 dated June 13, 9 2025 remains to be addressed by the applicant. Further, 10 upon receipt of revised documents and new information we 11 always reserve the right to provide additional technical 12 comments to ensure the code is maintained. So in this 13 latest report by Princeton Hydro it is stated that the 14 CME letter generally states that the proposed stormwater 15 system is compliant with NJ DEP design standards and 16 requirements found in N.J.A.C. 7:8 and the NJ DEP BMP 17 Manual. This statement is incorrect. Our office 18 reiterated that special condition number 2 of the NJ DEP 19 permit that the applicant obtained from the NJ DEP, 20 which indicates that DEP has determined that the project 21 meets the requirements of the stormwater management rule 22 N.J.A.C. 7:8. Our office has outstanding comments 23 regarding the proposed stormwater management design 24 within our review letter number 3 that remains to be 25 addressed by the applicant.

25 1 Regarding soil testing. It is important to 2 note that the submitted reports were prepared and signed 3 by a licensed geotechnical engineer contracted by the 4 applicant. CME did not perform or witness any of the 5 soil testing and if any conflicts arise during 6 construction regarding the seasonal high water table 7 elevation, the applicant remains responsible to 8 remediate accordingly. If major design changes are 9 required the applicant would be required to return to 10 the board to obtain amended approval. 11 Finally, I'll end with one question for Mr. 12 Walsh. Assuming the applicant agrees to address the 13 final technical comments outlined within their latest 14 report will your office issue a letter stating that you 15 have no further objections with the development as it 16 relates to stormwater management? 17 MR. AFRAN: Well, I'm going to raise an 18 objection. 19 CHAIRMAN BAGOFF: Hold it. He asked a 20 question of someone who testified. Please let him 21 answer, if he can. 22 MR. AFRAN: Just a moment, if I can. A 23 question put to a witness is subject to an objection by 24 counsel to the case. I am quite competent to raise an 25 objection under the rules. My objection is very simply	27 1 say whether he would agree with those. The questions 2 simply calling for speculation by the witness. Now Mr. 3 Chairman, it's your discretion to allow a question, I'm 4 simply raising the objection. 5 CHAIRMAN BAGOFF: Mr. MacNeill, do you mean 6 if he responds to them and or modifies them, based on 7 Mr. Walsh's testimony, to Mr. Walsh's satisfaction, 8 would that be what you mean? 9 MR. MacNEILL: Exactly. If the applicant 10 addressed the final comments in the letter would you 11 have any additional objection to the development as it 12 relates to the stormwater management? 13 MR. AFRAN: Again, it's the same question. 14 How will the applicant address those comments, my 15 witness can't say whether he would agree or disagree 16 until he sees how the applicant addresses those 17 comments. 18 CHAIRMAN BAGOFF: I think what he said -- 19 I'll restate it, correct me if I am wrong. I am trying 20 to get to an end. Sounds like he's saying, if the 21 applicant does it to his satisfaction -- 22 MS. McGOVERN: Is there anything else he 23 objects to? 24 MR. CARDOZA: To your satisfaction. So if 25 he were to review them and say, yes, I would like these
26 1 that it is a hypothetical question. We don't know what 2 the applicant will say and it's impossible to ask an 3 engineer now to say whether he will withdraw his 4 comments based on things we have no idea will be 5 presented later. It's a hypothetical question. 6 CHAIRMAN BAGOFF: I think he asked an 7 objective question. If the applicant does everything 8 that's in the letter -- Mr. MacNeill, would you restate 9 that for the record so it's clear. If he does 10 everything -- 11 MR. MacNEILL: Yeah, in my opinion it is a 12 simple question. If the applicant would agree to 13 address the final comments, I count it as four comments 14 remaining, mottling, time of concentration, groundwater 15 mounding and the sanitary sewer line. So four comments 16 remain out of 12 that was initially provided on the 17 previous report. If they address those remaining 18 comments will your office have any further objections to 19 the development and will you issue a letter stating 20 same? 21 MR. AFRAN: And that's the nature of my 22 objection. We have no idea how the applicant will 23 address those matters. Merely because the applicant 24 talks about them in the future doesn't mean that the 25 engineer standing next to me, our witness, can possibly	28 1 proposed fixes -- 2 MR. AFRAN: Well, I think that's what you do 3 after the applicant addresses it. You don't ask now in 4 advance will he agree. 5 MS. McGOVERN: It's a hypothetical question. 6 MR. AFRAN: Yes, that's my point. 7 MS. McGOVERN: That's okay. It's okay to 8 ask a hypothetical question. 9 MR. AFRAN: No, no, no, Ms. McGovern, a 10 hypothetical question is when you -- 11 MS. McGOVERN: It's within the -- 12 MR. AFRAN: -- pose a factual scenario about 13 facts on the ground, not when you ask a witness will you 14 agree in advance to certify something by way of an 15 answer that's not even presented. That's not a 16 hypothetical. 17 CHAIRMAN BAGOFF: Hypothetically if all the 18 requirements are satisfied from what he just said need 19 to be corrected, he's an expert, he said these things 20 need to be corrected. So it's hypothetical. 21 MR. AFRAN: That's a different question. 22 CHAIRMAN BAGOFF: If it is corrected to his 23 satisfaction, that was the question Mr. MacNeill asked. 24 MR. AFRAN: Your question, with respect, is 25 better. Because you're saying if everything's corrected

29 1 to his satisfaction, not merely addressed and that was 2 my problem. 3 CHAIRMAN BAGOFF: Okay. I think the word 4 address -- 5 MR. MacNEILL: So I'll change it to your 6 satisfaction. If they addressed all the comments that 7 are remaining in your letter to your satisfaction would 8 you write a letter that indicates you have no further 9 objection as it relates to the stormwater management? 10 THE WITNESS: Well, can I ask a question to 11 the question. I don't -- for the mottling, we think 12 it's higher, I think they're saying it's lower for the 13 seasonal high water table. Are they going to dig up 50 14 test pits and take photographs and show us. Like I 15 don't know the nature of how they would answer the 16 question. 17 CHAIRMAN BAGOFF: If they answer to your 18 satisfaction, hypothetically, whatever they would have 19 to do to make you satisfied, you're the expert. You 20 testified, you said that there are these requirements, 21 if they fulfill the requirements, these four 22 requirements. 23 MR. AFRAN: Same objection. 24 THE WITNESS: But how, to the mottling 25 question, I'm not trying to be difficult.	31 1 you. And now this hemming and hawing, I'm thinking -- 2 the board is listening very carefully and it's a simple 3 question. So in this case he can't say yes, so I'm 4 thinking there's something else that I'm missing here. 5 THE WITNESS: No, no, no. I'm, I'm just 6 trying to figure out the level to degree. The mottling 7 -- 8 CHAIRMAN BAGOFF: Whatever degree -- if you 9 need another independent agency expert to come in and do 10 these test pits and finds mottling or no mottling. 11 THE WITNESS: So can I just talk for a 12 minute and talk it out. So like if they do five -- 13 CHAIRMAN BAGOFF: I'm sorry. I'm not asking 14 the objectors to agree, I'm just asking him as a 15 professional. 16 THE WITNESS: Understand. I'm just trying to 17 understand. That's all. 18 CHAIRMAN BAGOFF: Let's say you need 20 test 19 pits, just arbitrarily you need 20 test pits and 20 test 20 pits are done and you guys, after the expert looks at it 21 -- 22 MR. AFRAN: What if they're not -- 23 CHAIRMAN BAGOFF: Let the expert speak. He 24 testified to something, I'm trying to understand. 25 THE WITNESS: So I guess this is where I
30 1 CHAIRMAN BAGOFF: They go back to do more 2 tests. 3 THE WITNESS: They dig 100 test pits and 4 take photographs? 5 MR. CARDOZA: For the sake of argument. 6 THE WITNESS: For the sake of argument -- 7 MS. McGOVERN: Using the suggestion earlier 8 that if you take four or five, I think you said five, 9 you did them very close to the ones that they already 10 did, you have an independent person do that to see 11 whether, because you were suspicious, if somebody does 12 that independently despite that, I'm not asking -- I'm 13 not suggesting they do that, and came out with the same 14 findings, would that satisfy you? 15 MR. AFRAN: It might not satisfy the 16 objectors as a matter of law because it depends on the 17 nature of those tests. The engineer can give an opinion 18 but I want to be clear, just because he's my witness 19 doesn't mean the objector necessarily would agree in 20 advance to commit to validating tests. 21 CHAIRMAN BAGOFF: Mr. Afran, you're going 22 off base here. It's a simple question. The man 23 testified as an expert, he said these things need to be 24 corrected, however he decides they need to be corrected. 25 If they are, Mr. MacNeill is saying, would that satisfy	32 1 would, it would be more conditional for me. Because 2 suppose they do 20, suppose we're right on ten but 3 they're wrong on, you know, their ten are different. 4 Well, then obviously -- well, wait a minute, do you need 5 to take more, do you have hundred of them? 6 MS. McGOVERN: You're not following. If 7 they do 20 test pits and they all came out the same way 8 that their experts came out, we're trying to figure out 9 if there's anything else besides what you said in this 10 report that you take issue with on stormwater 11 management? 12 MR. AFRAN: My objection is this is a set up 13 question. 14 MS. McGOVERN: No, it's not. 15 MR. AFRAN: Let me finish. Let me finish. 16 CHAIRMAN BAGOFF: Ladies and gentlemen, an 17 expert testifies on his license and says something to 18 the board, any one of you that would've come up with an 19 application for your home would expect the same level of 20 expertise and honesty. We're requiring an answer based 21 on testimony. It may not be answerable, but if the 22 answer is, these things need to be corrected and they're 23 corrected to your satisfaction, then you come up with 24 the answer. I'm just asking, the answer may be well, 25 no, I don't want to do that and that's okay. But the

33 1 board needs to hear that if these things are satisfied, 2 we're not asking the objector to agree, we're asking as 3 an expert would those areas be taken into consideration. 4 MR. AFRAN: These questions have no 5 specificity. You're now saying would what be taken into 6 consideration. The questions inherently vague, it's 7 asking him to say in advance that a set of tests that 8 might or might not be done by the applicant, somehow 9 could meet the standards in the profession he says needs 10 to be met. How could he possibly say that without 11 seeing the tests that are done. It's the applicants 12 duty to prove its case. If there's a problem then the 13 applicant has to prove it. At that point if the 14 applicant meets proper engineering standards, and my 15 expert has no further statement, then the objector might 16 very well say, we have no issue there. But to ask a man 17 in advance before the tests are done to say those tests 18 would satisfy him, how could he do that. As an example 19 he says, suppose ten show mottling and ten don't, how is 20 he supposed to say in advance whether the methodology is 21 correct. He might, again, say there's no notation for 22 color as he testified to. How could he know in advance 23 to answer this question. 24 CHAIRMAN BAGOFF: Then the answer would be 25 he can't, as opposed to, and I specifically said, if	35 1 preserve my objection. 2 CHAIRMAN BAGOFF: You preserve your 3 objection, great. 4 So you can answer any way you can sir, you 5 are the expert. 6 MR. MacNEILL: Mr. Chairman, if I could just 7 clarify. 8 CHAIRMAN BAGOFF: Mr. MacNeill. 9 MR. MacNEILL: So really all I'm asking is, 10 as the objecting engineering if they agree to comply 11 with any comments that remain in your letter, would you 12 have any further issues or would you agree that the 13 storm -- as it relates to stormwater management only, 14 would you agree that they have fully met your concerns? 15 MR. AFRAN: Same objection. 16 MR. MacNEILL: I have no further questions, 17 Mr. Chairman. 18 CHAIRMAN BAGOFF: Okay. Mr. Walsh, thank 19 you. 20 MR. AFRAN: Mr. Walsh, are you able to 21 answer the question? 22 CHAIRMAN BAGOFF: Okay. 23 MR. AFRAN: No, he's been presented with 24 what I said was an improper question, I'll argue to 25 that. Mr. Chairman, you said the questions proper, now
34 1 everything is done to his satisfaction, so take that for 2 English. His satisfaction, all tests are done, he 3 looked at everything, if his firm did it he would be 4 satisfied with the results based on the testing and the 5 methodology used. So if everything was done to his 6 satisfaction on the four points that were brought up in 7 his testimony today. Simple question, hypothetically. 8 MR. AFRAN: It's not a simple question 9 because what is his satisfaction. An expert has to see 10 the methodology used in the set of tests before he knows 11 he could be satisfied. A standard of care in any 12 profession requires seeing what is done. One can't 13 announce in advance they would accept the set of tests. 14 CHAIRMAN BAGOFF: So an expert can, as he 15 testified, present a set of facts and then say these are 16 the requirements of the tests. He is an expert, he can 17 set up the requirements. 18 MR. AFRAN: This question appears to be 19 designed to lock this man into something before expert 20 analysis by the applicant is put in. 21 MS. McGOVERN: Yes, the answer could be, I 22 don't know. The answer can be, there are to many 23 variables, I can't give you an answer. It was just a 24 simple question. 25 MR. AFRAN: It was not a simple question. I	36 1 there's a question not yet answered. I would ask my 2 witness, do you feel you can answer the question put to 3 you by the board's engineer? 4 CHAIRMAN BAGOFF: If you feel you can, 5 answer it. If you feel you can't, say there's not 6 enough information, you can't answer the question. 7 THE WITNESS: I will give a little bit of a 8 mixed answer, if you don't mind. 9 CHAIRMAN BAGOFF: Sure. 10 THE WITNESS: Some of the comments in the TC 11 calcs it means they're going to go back and run 12 everything as per the standard and it all works, I mean, 13 there are trickle down effects to the results of those 14 TC calculations and increased volume and peak flow 15 calculations. So, yes, there's -- for those mistakes or 16 alternate methods they use the standard methods, then, 17 yeah, there's a chance that we could find it. I don't 18 know what the trickle down effects of those are, I think 19 they will actually trigger design and layout changes. 20 For the mottling, I think it's a little to complicated. 21 I would -- it's -- the thing that causes me pause is the 22 scenario if they dig 20 and ten are good and ten are 23 bad, then it's like well, to my gut I'd say well, then 24 you should dig more, but that's not the answer you want. 25 So --

37 1 CHAIRMAN BAGOFF: I want the answer that you 2 give. 3 THE WITNESS: So that is more complicated, 4 but I think it could, but the mottling's difficult to 5 give a specific answer with. 6 CHAIRMAN BAGOFF: Okay. That's good. Thank 7 you. 8 Mr. Plocker. 9 MR. PLOCKER: Yeah, I just have a very few 10 brief questions. 11 Thank you very much, Mr. Walsh. I reread 12 your report, just by frame of reference, my client 13 originally applied for the DEP permits in March of 2023 14 and the permits were issued on November 15, 2024. Does 15 that sound about right? 16 THE WITNESS: I think that sounds right. 17 MR. PLOCKER: Okay. 18 Did you or your firm ever have a chance to 19 comment to the DEP at any point along during the 20 application process? 21 THE WITNESS: I believe we did. 22 MR. PLOCKER: Okay. 23 THE WITNESS: Multiple times. I think we 24 sent several letters. 25 MR. PLOCKER: I believe he sent one	39 1 last letter, but, yes. 2 MR. PLOCKER: Thank you. 3 And the permits were issued, correct? 4 THE WITNESS: They were issued. 5 MR. PLOCKER: Okay. 6 And just one more point. Do you recall 7 either you or you as a co-author, I believe it was you, 8 sent a letter to the DEP dated April 29, 2025 during the 9 pendency of this Planning Board proceeding about five, 10 six months after the permit was issued, do you recall 11 that? 12 THE WITNESS: Yes. 13 MR. PLOCKER: Okay. 14 And isn't it true that you requested that 15 the permit be suspended? 16 THE WITNESS: Yes, we did. 17 MR. PLOCKER: Okay. 18 Did the DEP suspend the permits? 19 THE WITNESS: They have not gotten back to 20 us, but, no, it's not been suspended. 21 MR. PLOCKER: Okay. Thank you very much. 22 That's all I have. 23 CHAIRMAN BAGOFF: Thank you. 24 Mr. Afran. 25 MR. AFRAN: One clarification. The matters
38 1 September 29, 2023. Does that sound about right? 2 THE WITNESS: That sounds about right, yes. 3 MR. PLOCKER: All right. 4 And one October 30, 2023. 5 THE WITNESS: I believe so, yes. 6 MR. PLOCKER: Okay. 7 And then there was one September 13, 2024, 8 about two months before the permits were issued, is that 9 correct? 10 THE WITNESS: I think that's right. I don't 11 have the dates. 12 MR. PLOCKER: Okay. 13 And you may recall you did send one, I don't 14 know if it was coincidence or not, but on November 15, 15 the same day that the permit was issued, is that 16 correct? 17 THE WITNESS: Yes, that's correct. 18 MR. PLOCKER: So did you have a chance to 19 make some or many of these comments to the DEP during 20 the application process and the DEP review? 21 THE WITNESS: Yes, the design changed so our 22 comments can change, but many of these comments were 23 reviewed. 24 MR. PLOCKER: Okay. 25 THE WITNESS: Some were reviewed in that	40 1 Mr. Plocker referred to are on appeal. So I want to 2 remind the board there is an appeal pending in the 3 Appellate Division on all of these issues Mr. Plocker 4 raised. To the extent that DEP's rulings are binding or 5 have impacts here, that, we don't agree necessarily that 6 they do, but that matter is on appeal. 7 CHAIRMAN BAGOFF: Okay. Thank you. 8 Malvika, do you have any questions? 9 MS. APTE: Not at this time. Thank you. 10 CHAIRMAN BAGOFF: Any members of the public 11 have questions for Mr. Walsh on his testimony this 12 evening only? Please come up front, state your name for 13 the record. 14 MR. AFRAN: Let's make an arrangement. Mr. 15 Walsh was actually at the lectern so -- 16 CHAIRMAN BAGOFF: Do any members of the 17 public have any questions for Mr. Walsh about his 18 testimony this evening? Okay. And remember ladies and 19 gentlemen, comments are something we don't -- we're not 20 listening to tonight. We have a meeting set up for 21 that. So these are questions specifically to Mr. Walsh 22 about his testimony this evening. If anybody starts 23 testifying or comments, I would ask you -- I will ask 24 you respectfully to be quite. Okay. Thank you. 25 Go right ahead.

41 1 THE PUBLIC: Seth Weisleder, Howell Drive. 2 Within the 200-foot range notice. 3 Thank you for your testimony. A question 4 that I have is, you said that you dug about four pits 5 close to the site. Was that near Howell Drive, near 6 Warner Road, where were these done? 7 THE WITNESS: It was near Warner Road. It 8 was on that side of the property. 9 THE PUBLIC: Right. So as you know 10 additional test pits were dug near Howell Drive along 11 the slope that faces where Building D is going to be. 12 Do you think that there should be more test pits dug 13 based on mottling in that area to, to understand the 14 stability of that slope and also water there too? 15 THE WITNESS: That's more of a geotechnical 16 question. I just spoke on the stormwater design, so I 17 don't want to verge into that area. That would be, 18 that's not my level of expertise when it comes to 19 geotechnical engineering. So I wouldn't want to answer 20 that question. 21 THE PUBLIC: Okay. 22 THE WITNESS: Those test pits were for the 23 soil stability analysis, correct? 24 THE PUBLIC: I believe so. 25 THE WITNESS: Yeah.	43 1 you're talking about. 2 THE WITNESS: Well, what time? 3 THE PUBLIC: So I'm a little confused and, 4 you know, in regards to the basin, I'm not sure if the 5 other person asked you that question, but one of the 6 buildings I think it's Building D, it's right on the 7 ridge. So are basins going to be in that area and if it 8 is, is it going to be able to preserve all that water? 9 Because I know when we have rains for a few days we get 10 floods. So I'm concerned about the flood basins, which 11 I don't believe by an expert by experience, myself and 12 my family, that their basins are going to hold all that 13 water and that's one of the problems that we have in our 14 neighborhood. Especially because of the fact that we 15 are downhill right at the bottom of that number D 16 building. So that's my question. 17 THE WITNESS: So I think your -- the plans -- 18 MR. AFRAN: Can I ask Mr. Walsh to speak up 19 for the record, because it's hard to hear. 20 CHAIRMAN BAGOFF: Sure. Absolutely. 21 MS. McGOVERN: Is it better if you stand at 22 the podium. Is that a microphone? 23 THE WITNESS: All right. So I think your 24 property is to the east of that Building D? 25 THE PUBLIC: Yeah. Yeah.
42 1 THE PUBLIC: Thank you. 2 CHAIRMAN BAGOFF: Thank you. 3 Any members of the public have any questions 4 for Mr. Walsh on his testimony? Please come up, be 5 identified. 6 Do any members have any questions for Mr. 7 Walsh on his testimony? Please come up and be 8 identified. Come right up, sir. 9 THE PUBLIC: Orin Knights. I have a 10 question for Mr. Walsh. I am trying to find out when 11 was their high water season? I don't know, do you know 12 when exactly that is. 13 THE WITNESS: I assume you mean for the 14 groundwater? 15 THE PUBLIC: Yes. 16 THE WITNESS: That's between January and 17 through the end of April, according to the NJ DEP Manual 18 and that's where they did -- when they did their test 19 pits. 20 THE PUBLIC: So after that time period 21 you're saying that the waters going to be observed and 22 come to earth? In other words, for instance my 23 basement, am I going to get flood after that high water 24 season? The reason I'm asking the question is because 25 we had floods in our area after the time frame that	44 1 THE WITNESS: All right. 2 Stormwater isn't being directed in that 3 direction. Stormwater's actually being directed to the 4 west of the property. There is no, there is no 5 additional water being transported toward your property. 6 THE PUBLIC: So I'm in trouble then. 7 Because if I don't have any kind of protection, I mean, 8 you're going to remove the trees and all this kind of 9 stuff, I mean, where is, where is the observation for 10 the water. I mean, you tear down almost 7,000 trees, 11 this helps to absorb the water, what happens? I guess 12 we all get flooded. 13 THE WITNESS: I don't understand where you 14 live so it's difficult to say. 15 THE PUBLIC: I'm actually at the bottom of 16 the building. This is Building D and I'm downhill. 17 We're downhill. 18 THE WITNESS: Any of that water comes off 19 that building, I believe, is going to the east which is 20 not where your house is. That's away from your house. 21 The impact, I think you're out of that drainage area, 22 according to the plans. 23 THE PUBLIC: Okay. Thank you. 24 CHAIRMAN BAGOFF: Thank you. 25 Do any other members of the public have any

45 1 questions for Mr. Walsh? Please come up and be 2 identified. 3 THE PUBLIC: Rachel Klein, Howell Drive. 4 I want to ask you about the retention 5 basins. When I hear retention basin I understand it's 6 going to hold water, right? 7 THE WITNESS: Yes. 8 THE PUBLIC: Do those have to be maintained? 9 THE WITNESS: It will only hold water for a 10 short period of time. They're only allowed to hold 11 water for 72 hours at most and then they have to be 12 emptied. 13 THE PUBLIC: And something like, like 14 another earthquake and something's damaged, would that 15 have to be checked to make sure it wasn't broken and not 16 working any longer? 17 THE WITNESS: Stormwater systems have to 18 routinely be inspected by their owners. 19 THE PUBLIC: Routinely inspected by their 20 owner? 21 THE WITNESS: Yes. 22 THE PUBLIC: Thank you. 23 CHAIRMAN BAGOFF: Any other members of the 24 public have questions for Mr. Walsh on his testimony? 25 Come up and be identified.	47 1 THE WITNESS: No. 2 THE PUBLIC: Okay. 3 If you were writing a report and you used an 4 alternate method would your firm detail what methodology 5 was used? Would that be industry best practice to do 6 so. 7 THE WITNESS: I never had to use an alternate 8 method before, but I would think it would be a normal 9 practice to call it out. 10 THE PUBLIC: Okay. 11 THE WITNESS: Honestly, to avoid the comment 12 later from a reviewer. 13 THE PUBLIC: And in reviewing the alternate 14 method used were you able to determine what alternate 15 method was used? 16 THE WITNESS: For some of it they used an 17 older method that used to be the standard for the DEP, 18 for other ones we think they're just mistakes, 19 miscalculation. So they weren't methods, we think they 20 were mistakes. 21 THE PUBLIC: Was the older method retired by 22 the DEP? 23 THE WITNESS: Yeah, they had replaced it. 24 There's a more current one. 25 THE PUBLIC: Do you know why?
46 1 THE PUBLIC: Hi, Kevin Millman, the botany 2 guy. 3 CHAIRMAN BAGOFF: Go right ahead, sir. 4 THE PUBLIC: Mr. Walsh, I just want to 5 clarify some things. So the first is, you talked about 6 the analysis that the DEP suggests or requires or is at 7 least detailed, correct? Are you saying that in the 8 applicants report they didn't say whether they followed 9 that, it was just silent. 10 THE WITNESS: It's -- they used an alternate 11 method. They don't say they used alternate, but that's 12 been the justification. 13 THE PUBLIC: But you can back into that 14 through what they detailed? 15 THE WITNESS: Yeah, we pointed out some of 16 their calculations don't match DEP regulations. 17 THE PUBLIC: Say it again. 18 THE WITNESS: We found that some of their 19 calculations and methodology didn't match what was found 20 in the NJ DEP Manual, that's the standard. 21 THE PUBLIC: So we're left to assume that an 22 alternate method was used? 23 THE WITNESS: Yes. For a portion of it, yes. 24 THE PUBLIC: And that alternate method was 25 not outlined?	48 1 THE WITNESS: I don't know the particulars of 2 that. I don't want to -- I imagine it's a more 3 conservative method, but that's, I don't know what their 4 thought was. 5 THE PUBLIC: Okay. 6 Since we're getting into hypotheticals -- 7 MR. AFRAN: Oh, please. Kidding. 8 THE PUBLIC: If you are in CME's seat, would 9 you want to go out personally and do tests so that the 10 board could see for themselves about the mottling, 11 M-O-T-T-L-I-N-G, the coloration. Would you want that -- 12 THE WITNESS: I think I'd have a lot more 13 questions about the soil profiles and depending on what 14 they said -- 15 THE PUBLIC: In other words, would you 16 rather just rely on two conflicting reports or would you 17 want to see it for yourself? 18 THE WITNESS: It's an extreme option. I 19 think I'd have a lot more questions for the geotechnical 20 engineer and maybe it would deem to that fact. 21 THE PUBLIC: I mean just from, for the 22 board, from a common sense standpoint, I think I would 23 want to see it for myself. But, okay. 24 You talked about the volume of the basins, 25 basically the high water table and the mottling were

49 1 different or the mounding, right? That it would fill up 2 and I'm just trying to clarify. You said you can't go 3 deeper, you have to go wider, correct? 4 THE WITNESS: Yeah, if the seasonal high 5 water table is higher then you can't go into the water, 6 into the ground water table, so you have to go wider to 7 get the volume. 8 THE PUBLIC: And what would be the impact of 9 going wider? 10 THE WITNESS: Depends on how much volume you 11 have to make up, but as I said before, I think the site 12 is designed very efficiently, very tightly, they're 13 trying to limit the disturbance. It could lead to 14 greater amounts of disturbance. But that can trigger a 15 lot of changes. The sites a very big site, so it ends 16 up being hypothetical, but I think you're going to have 17 significant impacts to the way the sites laid out. 18 THE PUBLIC: Okay. 19 You talked about the, I guess, that also 20 impacting I think or the sanitary piping, is that what 21 it is? 22 THE WITNESS: There's a sanitary line. 23 THE PUBLIC: Line. 24 THE WITNESS: Yeah. 25 THE PUBLIC: That is currently planned to go	51 1 guidelines. 2 THE PUBLIC: They would need additional 3 permitting for that? 4 THE WITNESS: I think it's a general permit. 5 I don't remember the number. 6 THE PUBLIC: You mentioned that it could 7 somehow like be tucked under roads because they're 8 already -- 9 THE WITNESS: I was just calling it out. The 10 reason it's under the road is probably to minimize the 11 permit requirements they had to pull out from under the 12 roads so that would require an additional permit. 13 THE PUBLIC: You may not know the answer to 14 this, but would that in any way potentially effect the 15 integrity of the road system? 16 THE WITNESS: No, I don't think so at all. 17 THE PUBLIC: Okay. 18 CHAIRMAN BAGOFF: Okay. Thank you very 19 much. 20 THE PUBLIC: Could I ask one more question. 21 CHAIRMAN BAGOFF: One more question, sure. 22 THE PUBLIC: Thank you. 23 You were talking about pods and you said you 24 weren't a gambler. 25 THE WITNESS: Bad joke.
50 1 through the basin, one of the basins? 2 THE WITNESS: It's a underground stormwater 3 basin. It is, but CME's requiring them to move it out. 4 THE PUBLIC: CME is requiring them to move 5 it out. But it would still, you said, then have to go 6 within additional areas of wetlands? 7 THE WITNESS: Yes, it would. More analysis 8 would require an additional permit. 9 THE PUBLIC: Is there a risk to that? 10 THE WITNESS: I don't know what you mean by, 11 risk. 12 THE PUBLIC: So if you're going into 13 additional areas of wetlands and you're putting sanitary 14 piping in additional areas of wetlands and the piping 15 fails or is that something that could have happened if 16 it was within the basins itself? 17 THE WITNESS: There is a -- 18 THE PUBLIC: If you don't know, you don't 19 know. 20 THE PUBLIC: -- standard permit for putting 21 utility lines through wetlands. 22 THE PUBLIC: Okay. So that's something DEP 23 approved? 24 THE WITNESS: Yeah, you have to follow 25 protocol. You can get that approval if you follow the	52 1 THE PUBLIC: No, that's fine. I do gamble. 2 So I live not far from Warner Road in the Highlands and 3 you say that, that your four tests were done just off 4 Warner Road? 5 THE WITNESS: Near that area. We have a 6 map. 7 THE PUBLIC: Is there anything about 8 mottling itself that I should understand that's done in 9 my, when I'm looking at it in a relatively flat area off 10 Warner Road versus what I would think the mottling would 11 be done on the 100 test pits on the hilly areas of the 12 slopes, that we should know about in your experience? 13 You tend to see more mottling in areas like that or that 14 doesn't affect it, I'm really just curious? 15 THE WITNESS: I don't think the slope has a 16 major impact. It's soil types. So there's a bunch of 17 factors. 18 THE PUBLIC: But all being equal slopes or 19 no slopes, I don't want to use the word odds, I don't 20 want to use the word suspicion, how unlikely is it in 21 your experience having done this around the state, as 22 you said, that four versus 100 would show zero versus 23 100 percent? 24 THE WITNESS: I think it feels like it's low 25 odds.

53 1 THE PUBLIC: Okay. Thank you. 2 CHAIRMAN BAGOFF: Thank very much. 3 Anyone else from the public have any 4 questions for Mr. Walsh on his testimony? Please come 5 up and be identified. 6 Hi, Danielle DePalma, 200-foot area. 7 Good evening Mr. Walsh. Thank you for being 8 here. Did your study show what would happen when you 9 have a 100-year storm or rainstorm? You have this 10 current proposal that satisfies DEP in those situations 11 or other situations? 12 THE WITNESS: So in the stormwater report 13 they show, according to the calculation, that they would 14 need flow reduction to hold water back. It's in our 15 comment letter where we think some of their calculations 16 are incorrect and they're undercounting how much. 17 They're not counting the volume or how fast waters going 18 to come down and we think the basins may be undersized. 19 THE PUBLIC: So you have two 20 conflicting findings? 21 THE WITNESS: Yeah, we disagree with their 22 analysis. I think that's what I said, yes. 23 THE PUBLIC: Thank you. 24 CHAIRMAN BAGOFF: Thank you. 25 Anyone else from the audience with questions	55 1 THE PUBLIC: Okay. 2 My question is, does an undersized 3 stormwater management system create additional or can it 4 create additional hydrostatic pressure on the 5 subsurface, like the rock that is underneath the area? 6 THE WITNESS: To what end do you mean? 7 THE PUBLIC: To the end where you're putting 8 a building on the ridge, like Building D, and there's 9 additional stormwater collecting above and around the 10 building, does that put additional pressure on the 11 foundation of the building? And when I say foundation, 12 I mean the rock below. 13 THE WITNESS: That's a geotechnical question 14 that I don't feel like I have the expertise to answer. 15 THE PUBLIC: And in your -- 16 THE WITNESS: I'm stormwater. I am not 17 geotechnical. 18 THE PUBLIC: In your experience has that 19 ever happened? You get into like -- 20 THE WITNESS: No, I haven't worked on a site 21 like this with steep slopes in this specific scenario. 22 But, yeah, it is really kind of beyond me to answer that 23 question. I don't want to give -- I understand what 24 you're asking, a different engineer would have to give 25 you that answer.
54 1 for Mr. Walsh on his testimony? 2 Seeing nothing, thank you very much Mr. 3 Walsh. 4 Okay. Go right ahead. 5 THE PUBLIC: Jack McEvoy, M-C-E-V-O-Y. 6 Mr. Walsh, you keep talking about a sanitary 7 sewer line going through the stormwater basin. Where 8 exactly is that? 9 THE WITNESS: It's in the development on the 10 main thoroughfare. The basin under the road. 11 THE PUBLIC: Did you see plans of this 12 sanitary sewer line coming out of this development? 13 Because it's my understanding that no one knows where 14 this sanitary sewer is going right now. 15 THE WITNESS: It's an internal line. 16 THE PUBLIC: But you saw a plan of it. 17 THE WITNESS: Yeah, the plan has sanitary 18 sewer lines on it. 19 THE PUBLIC: Okay. We haven't seen it. 20 You talked about an undersized, I believe a 21 stormwater management system that's created or was given 22 to us is undersized, correct? 23 THE WITNESS: Yeah. Yes. 24 THE PUBLIC: So my question is -- 25 THE WITNESS: Portions of it, yes.	56 1 THE PUBLIC: Thank you. 2 CHAIRMAN BAGOFF: Thank you. 3 Any other members of the public have any 4 questions for Mr. Walsh on his testimony? Seeing none. 5 Thank you very much, Mr. Walsh. 6 Mr. Afran. 7 MR. AFRAN: We have nothing more this 8 evening. Obviously subject to cross of the ultimate 9 testimony by CME on the geotechnical issues. 10 CHAIRMAN BAGOFF: You have no more 11 witnesses, objector is done? 12 MR. AFRAN: No, I said subject to ultimate 13 testimony by CME on geotechnical issues and also CME's 14 report, as we read it but it's not yet published and 15 discussion indicates it wants more from the applicant. 16 So there may very well be information or reports or 17 surveys from the applicant that prompt additional 18 responses from the objector. I have no idea at this 19 point. It's purely hypothetical. 20 CHAIRMAN BAGOFF: We're going to take a 21 ten-minute break. 22 (Whereupon, a short recess is taken.) 23 CHAIRMAN BAGOFF: Welcome back ladies and 24 gentlemen on zoom and in council chambers. 25 At this time I'm going to ask Mr. MacNeill

57 1 from CME to discuss traffic. 2 Mr. MacNeil. 3 MR. MacNEILL: Thank you, Mr. Chairman. 4 I'll start off, again, with reiterating, this memo is 5 neither in support or -- in support of either the 6 applicant or the objectors in this case. It's strictly 7 to outline the facts as CME sees it based on the 8 regulations. 9 So the first point -- so this is all 10 regarding, first couple points are regarding the 11 classifications of the roadways as it relates to RSIS. 12 So the average daily traffic for a 496 unit mid-rise 13 apartment project is approximately 2728 trips. Since 14 you have that many trips you do require the second means 15 of ingress and egress. The development is proposing 16 that through Warner Road and Kuzik Drive as well as 17 emergency access via Howell Drive. Therefore it's 18 indicated within the applicants traffic engineers 19 testimony and traffic impact study, the roadways should 20 be classified as minor collector roadways with total 21 traffic volume that should not exceed 3500 trips. 22 The applicant did request a de minimis 23 exception from RSIS to allow the closure of Kuzik Drive, 24 except for emergency vehicles. If that exception was 25 granted by the Planning Board, which as the board you	59 1 for Planning Board consideration. The applicants 2 request for de minimis exception indicates that the 3 opening of Kuzik Drive to the normal flow of traffic to 4 and from the proposed residential community will exact 5 an unnecessary and undue hardship on the existing 6 residents of the West Essex Highlands Condominium along 7 Kuzik Drive. 8 Further that request indicates that public 9 safety is not compromised because Kuzik Drive will 10 accommodate emergency access. So, again, this is 11 directly from the applicants de minimis exception 12 request that has been filed to the board. 13 The third point in Mr. Litwornia's report 14 was regarding the intersection of Eagle Rock Avenue and 15 Oval Road must be signalized. So as indicated within 16 the applicants traffic impact study a traffic signal is 17 proposed at the intersection of Eagle Rock Avenue and 18 Oval Road, which is expected to operate at a level of 19 service A. Level of service A represents the best 20 operating conditions, whereas level of service F 21 represents the worst. So if the board did come to a 22 decision and grant the applicant approval for this 23 development, the installation of the traffic signal at 24 Eagle Rock Avenue and Oval Road will be required. 25 Point 4 in Mr. Litwornia's report is, a
58 1 either can grant or deny that exception. If that road 2 is closed to meet standard traffic then it would be 3 classified as a multifamily cul-de-sac with the maximum 4 of 1000 average daily trips, which would be exceeded by 5 the proposed development which thereby requires the de 6 minimis exception. This is all detailed within the 7 applicants request for the de minimis exception. 8 So, again, it's up for board consideration 9 whether to grant or deny that de minimis exception. 10 The second point -- so, again, the second 11 point in this -- let me backtrack a bit. 12 This is all in reference to the traffic 13 engineers review prepared by Alexander Litwornia, who is 14 a PE and professional planner with Litwornia Associates 15 dated August 22, 2025. 16 So his second conclusion was amount of 17 traffic to be utilized by Warner Road from the proposed 18 development would be way in excess of the 1000 trips per 19 day that RSIS allows. It would be approximately 2728 20 trips or 2.7 times allowed volume, if classified as a 21 multi unit cul-de-sac and quadruple the amount of 22 traffic at a looped roadway. So this is directly from 23 Mr. Litwornia's report. Just as indicated the applicant 24 has submitted a de minimis exception request for the 25 closure of Kuzik Drive except for emergency vehicles up	60 1 left-turn lane should be installed on Eagle Rock Avenue 2 at Oval Road. So, again, as indicated within the 3 applicants traffic impact study Eagle Rock Avenue 4 eastbound will be widened to provide a left turn lane 5 into Oval Road, a through lane and a through right-turn 6 lane into Crestmont County Club. 7 Further as indicated above, if the 8 development is granted approval by the Planning Board 9 the installation of the signal and it's improvements at 10 Eagle Rock Avenue and Oval Road will be required. 11 Point 5 is regarding the roadway width 12 should be improved at the divided section to a minimum 13 of 20 feet on each side of the medium. So this is 14 directly from the applicants traffic engineers testimony 15 and our office does agree that RSIS clarification number 16 3 does not require a development to improve adjacent 17 roadways. 18 Number 6 of Mr. Litwornia's letter is 19 regarding, road slopes are higher than RSIS allows. So 20 essentially RSIS Table 4.6 is very clear, the maximum 21 allowable grade for minor collector road is ten percent. 22 The applicant has proposed roads up to ten percent, but 23 has not exceeded that standard. And I will add to that, 24 that if the de minimis exception is granted by the 25 Planning Board and it will be considered multifamily

61 1 cul-de-sac, in that case you have actually higher 2 standards for maximum grade up to 12 percent. So 3 whether the de minimis exception is granted or not, does 4 not affect the maximum roadway slope. So it's either, 5 right now it's currently at a maximum of ten because 6 they're minor collector roadways. But if the exception 7 is granted that maximum grade would go up to 12 percent 8 and the plans would still confirm compliance with that 9 standard. 10 Last point is ADA requirements must be met. 11 I absolutely agree. Every development must comply with 12 ADA requirements. Again, if the development is granted 13 by the Planning Board the applicant will be required to 14 provide revised plans verifying compliance with those 15 ADA requirements and will also be responsible to ensure 16 the installed infrastructure maintains ADA compliance at 17 the completion of the construction phase. So this is 18 verified typically through an as-built survey that is a 19 requirement of all developments to verify they have the 20 adequate slopes. If they don't have the adequate slopes 21 they will be required to remediate and ensure that they 22 are ADA compliant. 23 So that really ends the conclusions that Mr. 24 Litwornia had in his review letter. Again, a lot of the 25 points I would say are correct on if the de minimis	63 1 our office to provide even additional ramping throughout 2 the project and potentially raised crosswalks just to 3 make the site more walkable for ADA compliance. ADA 4 compliance also outlines a number of required spaces you 5 need based on the units and total parking spaces. Based 6 on our review it appears that they comply with that 7 requirement. 8 MAYOR McCARTNEY: Okay. 9 And number 5, you mentioned about how 10 widening the roads -- that it would be a good idea to 11 widen the road, but explain that again? 12 MR. MacNEILL: Yeah. So, again, from an 13 engineering standpoint I absolutely do agree it would be 14 a good idea to improve Warner Road, but it is not the 15 applicants requirement to do so based on the RSIS 16 standards, Residential Site Improvement Standards. 17 MAYOR McCARTNEY: Also seems impossible to 18 do? 19 MR. MacNEILL: I will let the applicant 20 address that one. 21 MAYOR McCARTNEY: That's my observation. 22 And I think I'm still not clear about number 23 1, about Warner Road and Kuzik. If you keep Kuzik 24 closed what is that option? 25 MR. MacNEILL: So if the board does grant
62 1 exception is granted it would be considered a 2 multifamily cul-de-sac, which is why you need the 3 exception. If the board did not grant that exception 4 then they would remain as minor collector roadways with 5 the adequate, or under the maximum average daily trips. 6 Further, the intersection at Eagle Rock and 7 Oval will absolutely be required if the board granted 8 approval and, again, ADA compliance will have to be 9 maintained and reviewed at the end of construction. 10 All right. That's all I have on traffic 11 RSIS compliance. 12 CHAIRMAN BAGOFF: Okay. Thank you. 13 Mayor McCartney, do you have any questions 14 on Mr. MacNeill's testimony? 15 MAYOR McCARTNEY: Thank you, Mr. MacNeill. 16 Working backwards, number 7, the ADA requirements, what 17 are they related to traffic? 18 THE WITNESS: That's a good question. So 19 really, so typically you have curb ramps really that are 20 required to be 8.3 percent maximum, with really flat 21 areas, landing areas, as well as turning areas that have 22 a maximum requirement of 2 percent. So as far we're 23 aware they do comply with those requirements. As -- the 24 last meeting where the traffic -- applicants traffic 25 engineer provided testimony, they did agree to work with	64 1 that exception and allows it to only require emergency 2 access then it would be a multifamily cul-de-sac, which 3 is why they need the exception. But I believe that the 4 applicants traffic engineer provided testimony that 5 essentially said if the board did not grant it that they 6 would move forward with keeping Kuzik Drive open, which 7 then in turn still -- it would still comply with the 8 standards due to the average daily trips of 2728 being 9 below the 3500 trips for a minor collector roadway. 10 MAYOR McCARTNEY: Sounds like an awful lot 11 of trips, but I'm curious even what that would, you 12 know, hypothetically, what the number would be? What's 13 the current number for the development or -- 14 MR. MacNEILL: As you said, I can't answer 15 that. Thank you. 16 MAYOR McCARTNEY: Thank you. 17 CHAIRMAN BAGOFF: Ms. Kapferer, do have any 18 questions for Mr. MacNeill on his testimony? 19 MS. KAPFERER: I don't have any questions. 20 Thank you. 21 CHAIRMAN BAGOFF: Vice Chairman Guarino, do 22 you have any questions for Mr. MacNeill on his 23 testimony? 24 VICE CHAIRMAN GUARINO: Yes, I do. Thank 25 you, Mr. Chairman.

65 1 Sir, when you talk about that public safety 2 for the development would not be compromised, what 3 conditions or situations would be employed in your view 4 to that make that statement that public safety would not 5 be compromised? 6 MR. MacNEILL: So I would say, I am not 7 making that statement. That is a word for word quote 8 from the applicants de minimis exception request. So I 9 believe that question is better suited for the 10 applicant. 11 VICE CHAIRMAN GUARINO: Thank you, Mr. 12 Chairman. That's all I have. 13 CHAIRMAN BAGOFF: Mr. Alper, do you have any 14 questions for Mr. MacNeill on his testimony? 15 MR. ALPER: I do, thank you. 16 CHAIRMAN BAGOFF: Could we have quiet, 17 please. 18 MR. ALPER: Thank you. 19 The Litwornia report says in number 1 that 20 there is an estimated daily traffic of over 5100 trips 21 per day when the existing development is taken into 22 account. Are we not able to take that into account when 23 we are talking about the minor collector roadway that 24 shouldn't exceed 3500 or are we only allowed to consider 25 the 2700 from the new development?	67 1 MR. MacNEILL: To avoid the additional 2 traffic on Kuzik. 3 MR. ALPER: Thank you. 4 CHAIRMAN BAGOFF: Mr. Cardoza, do you have 5 any questions for Mr. MacNeill on his testimony? 6 MR. CARDOZA: Yes, thank you. 7 Mr. MacNeill, following up on Mr. Alper's 8 question. So the question of closing Kuzik, I 9 apologize, it's been a little while since we heard the 10 original testimony on traffic, so you're saying that, 11 and I wouldn't want to characterize it if you can't, but 12 the applicants intention was to alleviate the problems 13 if those minor collecting roads, because I mean they 14 empty out to the same point, you're saying that the 15 intention was to avoid problems at that point? 16 MR. MacNEILL: Yes. So I believe, and again 17 I do feel like that question may be is better served for 18 by the applicant, but based on their de minimis 19 exception request it is my understanding that they did 20 not want to put additional traffic onto Kuzik Drive. 21 MR. CARDOZA: Okay. So what I'm trying to 22 get at is the benefits of traffic flow closing off Kuzik 23 Drive, like there's the benefits versus, I mean, I guess 24 you're going to have problems in one area, where I'm 25 trying to sus that out. You know, how is that supposed
66 1 MR. MacNEILL: So you're supposed to look at 2 the proposed development stopping at the boundary lines 3 of that proposed development. 4 MR. ALPER: So the existing traffic is 5 not -- 6 MR. MacNEILL: Based on the standards. 7 Whether we agree with that or not, that's what the 8 standards indicate. 9 MR. ALPER: And when you talk about closing 10 Kuzik, the phrase de minimis exception suggests that 11 it's minimal, but we're -- it's closed then you got 2700 12 trips when you're only supposed to have a 1000, which is 13 almost three times as many, which to me is a minimum? 14 MR. MacNEILL: I absolutely agree with the 15 phrasing is not in line with maybe the severity of that 16 request, but, again, at least based on the applicants 17 testimony, if the board decided to deny that request 18 they would allow Kuzik Drive to open, which would then 19 make them compliant with the number of trips based on 20 the roadway classification. 21 MR. ALPER: Which would then create 22 different problems? 23 MR. MacNEILL: Exactly. Which I believe is 24 the reason for the requesting the de minimis exception. 25 MR. ALPER: Understood.	68 1 to be more beneficial. The idea of closing Kuzik Drive 2 to the, you know, only allowing emergency access, how is 3 that supposed to be more beneficial? 4 MR. MacNEILL: In my opinion it really helps 5 just the residents on Kuzik Drive. 6 MR. CARDOZA: But not necessarily the 7 residents on Warner? 8 MR. MacNEILL: No. No. 9 MR. CARDOZA: Okay. 10 The -- so if we're just putting all the 11 traffic on Warner we have a much more, I don't know, 12 backed up potentially roadway than, I don't know, you're 13 going to have. I guess you're going to have that 14 problem at any point but -- 15 MR. MacNEILL: So you would have additional 16 trips on Warner. 17 MR. CARDOZA: I'm going to go around in 18 circles, so thank you Mr. MacNeill. 19 CHAIRMAN BAGOFF: Counsel Person Scarpa, do 20 you have any questions for Mr. MacNeill on his 21 testimony? 22 COUNCILWOMAN SCARPA: Yeah, just a little on 23 the same topic. I have concerns about safety. The 24 traffic engineer, wouldn't they typically look at 25 current traffic that's there, because seems like

69 1 existing traffic would be a vital part to understand the 2 safety issues. You know, vital to understand the total 3 picture. 4 MR. MacNEILL: Yeah, so whether we agree 5 with it or not this is a permitted use. So when a use 6 is permitted it's included in the Master Plan and in 7 that case they do not have to dive into the traffic 8 volume counts. 9 COUNCILWOMAN SCARPA: But shouldn't they? 10 Maybe they don't have or it might not be the standard, 11 but shouldn't they do it. 12 MR. MacNEILL: I'm just outlining what is 13 the standard. It's not my role to opine one way or the 14 other. It's simply these are what the standards are in 15 black and white, it is not my role to, again, have an 16 opinion one way or another on the application. 17 COUNCILWOMAN SCARPA: Would it be best 18 practices to look at this a little bit more accurately? 19 MR. MacNEILL: I can't comment on that. I'm 20 sorry. 21 CHAIRMAN BAGOFF: Okay. Thank you. 22 Malvika, do you have any questions for Mr. 23 MacNeill on his testimony? 24 MS. APTE: Not at this time. 25 CHAIRMAN BAGOFF: Mr. Plocker, do you have	71 1 Mr. MacNeill, what's your understanding of 2 the peculiar conditions that attach to this property 3 that give rise to de minimis exception? 4 MR. MacNEILL: What peculiar conditions? 5 MR. AFRAN: That's the requirement. 6 MR. MacNEILL: So I'm not the applicants 7 traffic engineer, that is a question for the applicants 8 traffic engineer. 9 MR. AFRAN: You reviewed their application? 10 MR. MacNEILL: Yes, I did. 11 MR. AFRAN: You commented on it for the 12 board? 13 MR. MacNEILL: Yes, I did. 14 MR. AFRAN: My question to you is, to your 15 knowledge what are the peculiar conditions? 16 MR. MacNEILL: And my answer is that is a 17 question that needs to be answered by the applicants 18 traffic engineer. 19 MR. AFRAN: Have you seen any evidence of 20 peculiar conditions in this application that would meet 21 the definition of the RSIS? 22 MR. MacNEILL: I will reiterate my same 23 response -- 24 MR. AFRAN: All right. 25 MR. MacNEILL: -- that's a question for the
70 1 any questions for Mr. MacNeill on his testimony? 2 MR. PLOCKER: I don't have any questions but 3 I would just like to clear up, since it was addressed by 4 the applicant previously during these hearings, is that 5 as Mr. MacNeill said, the site plan application that's 6 pending before the board has Kuzik Drive open. We are 7 seeking a de minimis exception, I think it may have been 8 a misnomer and it wasn't intentional on anyone's part, 9 it's not really because there would be problems, it was 10 because we have a specific obligation as a result of the 11 settlement agreement to which the condominium 12 association is a party and we agreed to seek that 13 exception. It's understood that it's either granted or 14 it's not. If it's not, as Mr. MacNeill said, it's open. 15 So it's not, and it was done as a accommodation to -- for 16 the residents of Kuzik Drive and that was a product of 17 the negotiations which led to the settlement agreement. 18 MR. CARDOZA: Thank you, Mr. Plocker. 19 MR. PLOCKER: Thank you. 20 CHAIRMAN BAGOFF: Okay. 21 Do any members of the public have any 22 questions? 23 MR. AFRAN: I have some questions. 24 CHAIRMAN BAGOFF: Mr. Afran. 25 MR. AFRAN: Thank you.	72 1 applicants traffic engineer. 2 MR. AFRAN: I'm going to reiterate my 3 question and I'll ask it be answered. You read the 4 application, you studied it, correct? 5 Mr. MacNeill, I asked you a question. 6 MR. MacNEILL: Correct. 7 MR. AFRAN: Now that you've read the 8 application and studied it and offered your 9 clarification of the law and the rules, I'm asking you a 10 very simple question. In your review have you seen 11 evidence of a "peculiar" condition that RSIS requires in 12 a property in order to grant a de minimis exception. 13 Have you seen that in this file? 14 MR. MacNEILL: My response does not change. 15 MR. AFRAN: I couldn't hear you. 16 MR. MacNEILL: My response does not change. 17 MR. AFRAN: Okay. 18 Now, you would agree a de minimis exception 19 in the RSIS rules is described by several examples, 20 correct? And those examples consist of -- let me just 21 get that here. A. Reducing the minimum number of 22 parking spaces and minimum number size of parking 23 stalls. 24 B. Reducing the -- well, I'll paraphrase, 25 certain geometrics distinct design, "such as curbed

73 1 radii, horizontal and vertical curbs, etc. Reducing 2 cartway width and changes in design standards necessary 3 to implement traffic calming devises." So the examples 4 that are given, and you agree those are examples given 5 in the RSIS? 6 MR. MacNEILL: I believe so. 7 MR. AFRAN: You would agree those examples 8 are very small and minor matters that occasionally could 9 be corrected without real burden to anybody, fair to 10 say? 11 MR. MacNEILL: Fair to say. 12 MR. AFRAN: Now, would you say a extra, 13 forgetting 5100 and the totality of the traffic in this 14 gigantic cul-de-sac, when you look at all two 15 developments plus the new one, looking at only the 2728, 16 which is in excess of 1000, is it fair to say in your 17 opinion as someone familiar with RSIS, that an 18 additional 1728 rides or trips per day is not de 19 minimis? 20 MR. MacNEILL: That is not what I'm saying. 21 MR. AFRAN: I'm asking you in your opinion 22 as an engineer who studies this work. You're a 23 municipal engineer, correct? 24 MR. MacNEILL: So the de minimis exception 25 request was submitted by the applicant and should be,	75 1 opened. 2 MR. AFRAN: Fair enough. As is proposed by 3 the applicants suggestion de minimis exception to deal 4 with terms of their prior settlement. Now, let's assume 5 Kuzik is open, you understand Kuzik to be a short loop 6 road that loops right back to Warner, is that correct? 7 MR. MacNEILL: Yes. 8 MR. AFRAN: Would you agree it's 9 approximately one tenth of a mile in length? 10 MR. MacNEILL: I don't know the exact 11 length. 12 MR. AFRAN: But it's a relatively short 13 road? 14 MR. MacNEILL: Yes, I would agree with that. 15 MR. AFRAN: So if you leave the development 16 and go through Kuzik you go right onto Warner, correct? 17 MR. MacNEILL: There's no denying that. 18 MR. AFRAN: Right. And if you leave through 19 the Building D road that goes right onto Warner, 20 correct? 21 MR. MacNEILL: Yes. 22 MR. AFRAN: Okay. 23 So these residents who will live in these 24 496 units are all going to feed right into Warner, just 25 like the residents of the other two developments do
74 1 any testimony regarding the de minimis exception request 2 should be answered by the applicant, not by the board 3 engineer. I am not supporting or denying this 4 application in any way. I am not going to recommend 5 this to be approved, it is up to the board to make that 6 decision based on the de minimis exception request 7 submitted by the applicant. 8 MR. AFRAN: It's a simple question. I mean, 9 are you prepared to say as a professional municipal 10 engineer who is familiar with RSIS and has studied it, 11 has worked with it, that an additional 1728 rides per 12 day, trips per day on the ADT, is it de minimis? 13 MR. MacNEILL: I will have the same 14 response. That is not up to me to decide as the board 15 engineer, not the applicants traffic engineer, and not 16 the board that is going to be making that decision. 17 MR. AFRAN: That's your answer, correct? 18 MR. MacNEILL: That is my answer. 19 MR. AFRAN: I have asked my question. I 20 preserve it. You answered. That's fair. 21 MR. MacNEILL: Exactly. 22 MR. AFRAN: Now, let's assume for the sake 23 of argument Kuzik was open, as the applicant originally 24 proposed. 25 MR. PLOCKER: Objection. It is proposed as	76 1 today, is that correct? 2 MR. MacNEILL: That's correct. 3 MR. AFRAN: And all those people will leave 4 through Oval, correct? 5 MR. MacNEILL: Yes. 6 MR. AFRAN: And there's no other way of 7 ingress or egress from his large complex of three 8 developments except through Oval, is that correct? 9 MR. MacNEILL: So are you talking about the 10 proposed development on-site or West Essex Highlands as 11 it exits today? 12 MR. AFRAN: I said to you there are -- well, 13 I'm not sure why are you doubting my question. I asked 14 you -- 15 MR. MacNEILL: I'm asking you to clarify the 16 question. I'm asking are you talking about the proposed 17 development which stops at the property line or are you 18 asking about the proposed development plus the existing 19 development. 20 MR. AFRAN: I said -- 21 MR. MacNEILL: Because my answer would be 22 the proposed development ends at the connections to 23 Warner and Kuzik Drive, which is outlined in RSIS, which 24 is the only way as a professional engineer I could 25 review this project.

77 1 MR. AFRAN: It's a factual question. 2 Assuming there's two existing developments and a third 3 one proposed, if that is ever built, you would agree 4 that all of the residents of these three developments 5 could only go in through Oval and can only go out 6 through Oval, isn't that correct? 7 MR. MacNEILL: Yes. 8 MR. AFRAN: Thank you. 9 You would also agree that if the applicant, 10 which built the other developments, had built this 11 development at the same time as those, this would be one 12 gigantic cul-de-sac without question, isn't that true? 13 MR. MacNEILL: Yes, in that hypothetical 14 situation that is correct. 15 MR. AFRAN: Thank you. 16 I have no further questions. 17 CHAIRMAN BAGOFF: Mayor McCartney. 18 MAYOR McCARTNEY: Thank you, Chairman. I 19 have a question for Mr. Plocker about the status on the 20 Eagle Rock Avenue and Oval Road light I believe that was 21 approved? 22 MR. PLOCKER: No, I don't believe that was 23 and I don't know what the current status is. Thank you, 24 Mayor. 25 MAYOR McCARTNEY: Thank you.	79 1 multifamily cul-de-sac. 2 THE PUBLIC: Okay. 3 I'm just going to use the word a lot. So a 4 lot of the additional trips are going to be added onto 5 Oval Road coming out of Oval Road every day, 6 irrespective of whether or not we add the traffic light 7 and a whole bunch of them are going to go eastbound, 8 some go westbound and right now vehicles can't go 9 eastbound into Pleasantdale into West Orange. So to me 10 as a Planning Board and, so, okay. I don't have to say 11 anything else, I don't know where they're going to go 12 but I don't how that's going to be dealt with. Okay. 13 CHAIRMAN BAGOFF: Thank you, sir. 14 Any other members of the public have a 15 question for Mr. MacNeill on his testimony? Please come 16 up and be identified. 17 THE PUBLIC: Rachel Klein, Howell Drive. 18 Mr. MacNeill, when you were reviewing this 19 were you reviewing, also keeping in mind the proposed 20 business, up to four businesses in support of this 21 project, but definitely one business proposed in the 22 settlement. When you reviewed it did you have that in 23 mind is my question? 24 MR. MacNEILL: No, so what I reviewed in my 25 letter on October 29 is Alexander J. Litwornia's report
78 1 CHAIRMAN BAGOFF: Do any other members of 2 the public have any questions for Mr. MacNeill on his 3 testimony? Come up and be identified. On his testimony 4 this evening. Come right up, state your name for the 5 record. 6 THE PUBLIC: Donald Gershow, Holmhill Lane, 7 Roseland. 8 Regarding the traffic light on Oval Road, is 9 that designed to have any impact on the traffic 10 congestion that backs up at Pleasant Valley Way and 11 Eagle Rock Avenue? 12 MR. MacNEILL: I'm not designing the traffic 13 signal. I can't answer that question. 14 THE PUBLIC: All right. 15 MR. MacNEILL: The questions I can answer is 16 what was written in my October 29 dated today report 17 that outlines the report prepared by Alexander J. 18 Litwornia. 19 THE PUBLIC: Okay. 20 So, my numbers may be incorrect, so the 1728 21 additional vehicle trips that are proposed -- 22 MR. MacNEILL: I'll actually clarify that. 23 It' actually 1728 additional trips that if the exception 24 is approved would be in addition to the maximum average 25 daily trips of 1000 when it's classified as a	80 1 against the traffic engineers report and outlined what 2 Alexander said and what the traffic engineer and the 3 applicant said. It's as simple as that. Again, I do 4 not have an opinion one way or the other on the board. 5 I do not -- I did not design anything as far as -- 6 THE PUBLIC: No, I'm not asking you that. 7 Yes, I know. But I think there's a perception, not just 8 for the condominiums but the settlement specifically 9 talks to a business being back there. So that was just 10 my question, whether or not you had -- 11 MR. MacNEILL: No, I did not. 12 THE PUBLIC: Thank you. 13 CHAIRMAN BAGOFF: Any other members of the 14 public have any questions for Mr. MacNeill on his 15 testimony? Please come up and be identified. 16 THE PUBLIC: Hi. Kevin again. Kevin 17 Millman, I live at 27 Bayowski Road, West Highlands. 18 So I haven't read the traffic study done by 19 Alex, I forgot his last name, sorry. 20 CHAIRMAN BAGOFF: Litwornia. 21 MR. MacNEILL: Litwornia. 22 THE PUBLIC: Okay. I trust you. 23 Does it talk about -- so as I understand 24 what you're saying, a little over 1700 more trips will 25 be allowed, even through Kuzik with, even with the de

81 1 minimis exception, is that right? 2 MR. MacNEILL: So The total trips based on 3 RSIS for the number of units that are proposed are 2728. 4 THE PUBLIC: Right. The thousand that are 5 allowable plus the de minimis exception? 6 MR. MacNEILL: Yeah. So they're requesting 7 that exception for the additional 1728. 8 THE PUBLIC: Through Kuzik and the rest of 9 the development? 10 MR. MacNEILL: It would be through Warner. 11 THE PUBLIC: Through Warner? 12 MR. MacNEILL: Yeah. 13 THE PUBLIC: But they could go through 14 Kuzik? 15 MR. MacNEILL: No. 16 THE PUBLIC: They could travel around, 17 there's not going to be any gates or anything? 18 MR. MacNEILL: So the exception they're 19 requesting is to close Kuzik to only allow emergency 20 vehicles. 21 THE PUBLIC: What about the rest of the 22 neighborhood that lives there? 23 MR. MacNEILL: So, I'm sorry. Close Kuzik 24 to the development. 25 THE PUBLIC: To the other development?	83 1 study a light that is now proposed and that you say 2 should be required. 3 THE WITNESS: Yeah, it has to be required. 4 THE PUBLIC: It has to be required. 5 THE WITNESS: Yeah, it is a requirement. 6 THE PUBLIC: Okay. 7 So let's say there's 300 units, right? In 8 the Highlands currently and there's The Grand, I don't 9 know how many units that is, but, okay, so let's just 10 say 600 cars for the Highlands and another 140 cars for 11 that, that's 740 cars going back and forth. I guess a 12 trip is like one way? In other words, if I go out onto 13 Eagle Rock and come back that's two trips, right? 14 THE WITNESS: Yeah, you would have an in and 15 out trip. 16 THE PUBLIC: Will you say, let's say 17 potentially another thousand for the 496? 18 THE WITNESS: You lost me. How much are we 19 up to? 20 THE PUBLIC: Well, on the proposed 21 development there's 496 proposed units, right? 22 THE WITNESS: Correct. 23 THE PUBLIC: Let's split the baby and say 24 750, right. Let's say at least every unit has a car and 25 half those units have two cars.
82 1 MR. MacNEILL: Yeah. 2 THE PUBLIC: That wouldn't stop them coming 3 down Warner and going around. Let's say Warner's 4 congested because triple the amount are now allowed, 5 right? 6 THE WITNESS: Yeah, so they're proposing a 7 gate -- 8 THE PUBLIC: There's nothing in the plan 9 that prevents -- 10 THE WITNESS: They're proposing a gate at 11 Kuzik to the development as part of the emergency access 12 and the de minimis exception. 13 THE PUBLIC: You could still get in there 14 through Warner. I get that there would be a gate from 15 where the woods are now, but there's not going to be a 16 gate that say prevents them from going to Kuzik to Reger 17 Lane and all that area? 18 THE WITNESS: So I mean, you can go up, yeah. 19 THE PUBLIC: Sorry. Is there? 20 THE WITNESS: You are correct, that you can 21 go into Warner and then go to both sides of Kuzik, but 22 you wouldn't be able to go from the development through 23 Kuzik to the other side. 24 THE PUBLIC: Understood. Understood that. 25 And -- okay. So 2700, almost triple, in the traffic	84 1 THE WITNESS: Okay. 2 THE PUBLIC: All right. Did the traffic 3 study talk about to the light that's proposed that 4 already takes me sometimes ten minutes to make a left 5 turn onto Eagle Rock, because people whiz back and 6 forth, did the traffic study talk about even if it was 7 just for the additional cars, let's say 750, just 8 ignoring that The Grand and the Highlands exist, how 9 long at a level A light, assuming it operates at level A 10 100 percent of the time, would it take the flow of cars 11 each way? Like how many cars, how many minutes, did the 12 traffic study account for that. 13 THE WITNESS: I apologize, you lost me. 14 THE PUBLIC: I lost you. 15 THE WITNESS: I will have to say though -- 16 THE PUBLIC: In other words, let's say 17 there's ten cars waiting to make a left or a right, 18 let's say there's no right turn, I don't know if that's 19 proposed or not, but let's say you've got cars lined up 20 to turn onto Eagle Rock, they got to wait for a green 21 light, does the traffic study talk about the time it 22 would take on both ends, Eagle Rock comes from both ways 23 and, you know, coming out of the development to turn 24 onto Eagle Rock, is there a time component to the 25 traffic study is my question?

85 1 THE WITNESS: You need to ask that question 2 to the traffic engineer. 3 THE PUBLIC: Are they here? 4 THE WITNESS: No, but I believe they 5 provided testimony previously. 6 THE PUBLIC: Okay. 7 It seems like it would take a long time, 8 right? 9 And the traffic study just, I think this was 10 asked but I want to make sure. They're only responsible 11 to do the traffic study for the new development but not 12 the proposed development, correct? 13 THE WITNESS: So when it relates to -- 14 THE PUBLIC: In other words, they're not 15 required to account for the Highlands and The Grand? 16 THE WITNESS: Are you talking about for the 17 RSIS components? 18 THE PUBLIC: So I got to ask you, what's 19 RSI, because I think of that like it's a market 20 indicator? 21 THE WITNESS: So it's Residential Site 22 Improvement Standard. It's New Jersey administrative 23 code 521, so that's essentially the standard for all 24 residential development in New Jersey. 25 THE PUBLIC: Okay. I'm not sure that	87 1 THE WITNESS: I didn't create the standards. 2 THE PUBLIC: Not accusing you of anything. 3 I'm just asking you. 4 Okay. 5 Thank you. 6 CHAIRMAN BAGOFF: Thank you. 7 Anybody else from the public have any 8 questions for Mr. MacNeill on his testimony? 9 THE PUBLIC: Seth Weisleder, Howell Drive. 10 A quick question for you. Thank you for some 11 clarification, I'm trying to follow. So you said if the 12 de minimis exception was granted it would be considered 13 a multifamily cul-de-sac, if it wasn't granted it's 14 considered a -- 15 THE WITNESS: Designed as a minor collector 16 roadway. 17 THE PUBLIC: Minor collector roadway? 18 THE WITNESS: Yes. 19 THE PUBLIC: So are there, if there's a 20 multifamily cul-de-sac, what other affects does this 21 have on other RSIS standards that have to be met and I 22 believe you mentioned like it raises or lowers the 23 traffic level based on the formula from RSIS, is that 24 correct? 25 THE WITNESS: Yeah. So that's regarding
86 1 changes my question. 2 THE WITNESS: I think you asked what RSIS 3 was. 4 THE PUBLIC: Oh, yeah. But before that, in 5 other words, the developer -- 6 THE WITNESS: I didn't design it. 7 THE PUBLIC: They're only for -- the RSIS is 8 only required to account for the traffic that would be 9 coming out of the proposed development not to add on 10 what already exists in the Highlands and what already 11 exists in The Grand, nor are they required to project 12 how many cars will be coming in and out in addition to 13 that for the doggy daycare? 14 THE WITNESS: No. So what they are required 15 to do is based on the number of units proposed for the 16 development. 17 THE PUBLIC: 496. 18 THE WITNESS: That relates to 2728 trips. 19 So that is as far as they need to -- 20 THE PUBLIC: So then the answer to my 21 question, sorry, is they're not required to account for 22 what's already there? 23 THE WITNESS: Not as it relates to RSIS 24 components. 25 THE PUBLIC: As if we don't exist.	88 1 maximum grade. 2 THE PUBLIC: Okay. Right. But what -- is 3 there any other affects that either one has on the 4 standard that need to be met within the development? 5 Like -- so if you write, because everything has multiple 6 effects, so is there other things that weren't shared 7 this evening? 8 THE WITNESS: I am not 100 percent following 9 you, but nothing that I am aware of and, again, I do 10 feel like that's a question better suited for the 11 applicants traffic engineer. 12 THE PUBLIC: Okay. 13 I just wonder if it goes one way will 14 everything be met? If the exception is not granted and 15 it's a, sorry, can't remember that one term. 16 THE WITNESS: De minimis. 17 THE PUBLIC: If it is accepted it's a 18 multifamily cul-de-sac, so are there other implications 19 or does RSIS, are there other things that had to be 20 conformed to and met and what are those and if it's not 21 granted and goes the other way, that definition that you 22 mentioned, what else has to be met there? Because it 23 does change the -- does it change any other, you know, 24 things that you could be -- 25 THE WITNESS: Not that I am aware of. But

89 1 again, I feel like that's a question better suited for 2 the applicants traffic engineer. The one thing I will 3 say is there's also, again, I don't want to speak for 4 the applicant, but I believe they're requested a de 5 minimis exception for not having -- for only having a 6 sidewalk on one side of the roadway. So it's those two 7 exceptions from the RSIS standards that would be 8 required. 9 THE PUBLIC: So how would you guide a 10 Planning Board to look at this and evaluate it? 11 THE WITNESS: Yes, I outlined what the 12 standards are, the exceptions that the applicant is 13 requesting and then I do not have a vote and I do not 14 recommend or approve or deny, it's up to the board to 15 hear the testimony specifically from the applicant. I 16 will say, I never have given testimony as a board 17 engineer, this is my first time in my career. It's not 18 typical for a board engineer to provide testimony one 19 way or the other on an application. I am not bias, I 20 outline the standards, and their compliance with those 21 standards. And it is on -- it is the burden of the 22 applicant to provide the adequate testimony, not the 23 board engineer. 24 THE PUBLIC: Right. Could the engineer 25 share his impression positive and also negative?	91 1 with Mr. MacNeill's interpretation. Under the Land Use 2 Law I believe that the approval vests and gives 3 protection from zoning changes and that's what the 4 statute in the MLUL provides. In this case there were 5 other restrictions regarding the amendment of the zone, 6 namely the court approved affordable housing, so. 7 THE WITNESS: So I'll defer to the attorneys 8 on that situation. 9 MR. PLOCKER: I didn't mean to say anything 10 intentionally. 11 THE PUBLIC: Okay. I'm confused by that. 12 Well, I don't know where our attorney is. So, not our 13 attorney -- 14 THE WITNESS: So to clarify my point. The 15 county approval for this signal, if the board chose to 16 provide an approval, would be required as a conditional 17 approval and they would have to meet that condition 18 before starting construction. 19 THE PUBLIC: Thank you. 20 CHAIRMAN BAGOFF: Thank you. 21 Any other members of the public have any 22 questions for Mr. MacNeill on his testimony? 23 Please come up. 24 THE PUBLIC: Jack McEvoy, Verona. 25 For clarity on numbers, you said 2728 per
90 1 THE WITNESS: So we outline what does and 2 does not comply with the standards. It's the simplest 3 way to put it. 4 THE PUBLIC: My last question is, you said 5 that this traffic signal on a county road has to be 6 there to meet all these other standards. So what is the 7 RSIS or what is the normal process in getting that 8 approval? Is that done after the project is approved, 9 is it done before a project is approved. What is the 10 normal situation that would take place? 11 THE WITNESS: I would say every project is 12 different, right. Sometimes you have every single 13 approval before going to a Planning Board, I have seen 14 that before. A lot of times they are required, if the 15 board did grant an approval as a condition of approval 16 and if they did not get that county approval to do the 17 signal then they can't proceed with construction and if 18 they couldn't proceed with construction within the two 19 year period that you have for a resolution approval, 20 they could request up to three years of extensions per 21 the MLUL and if they couldn't get the county approval 22 within that time, then their resolution approval expires 23 and they have to come bank to the board with a new 24 application. 25 MR. PLOCKER: Respectfully, I would disagree	92 1 day for the new development? 2 THE WITNESS: Yes. 3 THE PUBLIC: And did I hear a number of 5100 4 for the entire development? 5 THE WITNESS: So that was what -- 6 THE PUBLIC: Going out Oval Road. 7 THE WITNESS: That's what Mr. Litwornia 8 calculated for the proposed development plus the 9 existing development. 10 THE PUBLIC: Okay. 11 Now, if we look at Kuzik Road and Warner, 12 they meet outside of the development area, there's two 13 other roads that come into Kuzik and I don't believe 14 there's any, I don't think any units on Kuzik Road, I 15 think they're all on it's Lapis and Luft. So if there's 16 2728 coming out and you need two egresses then where 17 Kuzik and Warner meet aren't you adding more than the 18 496 plus what the units are on the other two roads? 19 THE WITNESS: I absolutely understand where 20 you're coming from, but I can only review against the 21 standards. The standards unfortunately stop at the 22 property line. 23 THE PUBLIC: So -- but if the standards stop 24 at the property line then why is the developer putting a 25 light on Eagle Rock Avenue and Homehill?

93 1 THE WITNESS: Maybe the applicants attorney 2 can address that, but I believe that was part of 3 potentially this settlement agreement condition. 4 MR. PLOCKER: I can certainly address it. 5 CHAIRMAN BAGOFF: Mr. Plocker. 6 MR. PLOCKER: I think it was, it certainly 7 is a requirement of the settlement agreement, because at 8 the time the Township and Lehigh settled the case it was 9 recognized that the proposed development would meet 10 warrants for a traffic light at that intersection and I 11 believe Mr. Pehnke testified extensively that the 12 proposed development does meet, give warrant for a 13 traffic light, which is why the light is required. It 14 would be required. And we recognized that back in 2015 15 when we first got involved in the towns third round 16 affordable housing litigation. 17 THE PUBLIC: So is there a traffic study 18 that shows that already or do you wait for a development 19 to go in to do the traffic study to see if that 20 intersection warrants a traffic light? 21 CHAIRMAN BAGOFF: Mr. Plocker, have you 22 presented to the county a request for a traffic signal? 23 MR. PLOCKER: I don't know the status. I am 24 not involved with that. 25 CHAIRMAN BAGOFF: Okay. We'll find out.	95 1 THE WITNESS: So my testimony was related to 2 that only and, again, even saying board engineer 3 provided testimony is atypical in planning board 4 meetings. 5 THE PUBLIC: Are you providing expert 6 testimony or lay testimony? 7 THE WITNESS: So I believe I answered that 8 question. I am providing -- even calling it testimony, 9 I don't really agree with. I am the board engineer 10 outlining what the applicants engineer submitted and 11 what the objectors engineer submitted. 12 THE PUBLIC: This evening were you sworn in 13 as the expert, an expert? 14 THE WITNESS: Yeah, as the board engineer, 15 not an expert providing testimony for or against the 16 application. 17 THE PUBLIC: Are you familiar with the 18 concept of a net opinion? 19 THE WITNESS: I am not. 20 THE PUBLIC: You're an expert in the field 21 of engineering and you're unfamiliar with the concept of 22 net opinions? 23 THE WITNESS: Net opinions? 24 THE PUBLIC: Yes. 25 THE WITNESS: I haven't heard that, no.
94 1 THE PUBLIC: And lastly, the plan presented 2 has an access road on Howell Drive? 3 THE WITNESS: Yes. 4 THE PUBLIC: Access only, for emergency 5 access. In your opinion, if that access road is denied 6 for whatever reason is this plan doable or how would it 7 affect this plan? 8 THE WITNESS: I am not going to provide 9 testimony on that. Again, I am the board engineer, I 10 have, if testimony's required it should be provided by 11 the applicants traffic engineer. 12 THE PUBLIC: Thank you. 13 CHAIRMAN BAGOFF: Any other member of the 14 public have any questions for Mr. MacNeill on his 15 testimony? Please come up and be identified. 16 THE PUBLIC: Mr. Chairman, Micaela Bennett, 17 just your average everyday taxpayer. 18 So just a point of clarification. You're 19 providing expert testimony here tonight? 20 THE WITNESS: So what I am doing as the board 21 engineer is outlining the objectors traffic engineers 22 report against the applicants traffic impact study for 23 five -- sorry, seven points brought up by the objectors 24 traffic engineer. 25 THE PUBLIC: And are you --	96 1 THE PUBLIC: When you deferred answering 2 questions that were presented by the objectors attorney 3 stating that the expert for the applicant is who should 4 be answering the questions -- 5 THE WITNESS: Again, I did not -- 6 THE PUBLIC: I didn't ask the question. 7 THE WITNESS: Okay. Go ahead. 8 THE PUBLIC: When you did that -- well, I 9 guess when you say you don't know what a net opinion is 10 -- 11 CHAIRMAN BAGOFF: Would you ask him a 12 question about his testimony, please. 13 THE PUBLIC: I am asking him questions about 14 testimony. He stated he doesn't testify, I am trying to 15 get to the point of is he providing facts as a lay 16 witness or is he providing expert opinions and 17 testimony. 18 CHAIRMAN BAGOFF: His opinion is based on 19 reviewing the applicants traffic engineer and the 20 objectors traffic engineer. He's looking at both sides 21 and saying, RSIS says this. So it's not objective 22 information, he's not offering his opinion, he's just 23 telling the board what RSIS says in relation to these 24 experts. 25 THE PUBLIC: As an expert he has been asked,

97 1 I would like to know the answer, he said he could not 2 answer, I think he said he should not answer, I would 3 like to know the answers to the questions that were 4 presented by the objectors attorney. 5 CHAIRMAN BAGOFF: He is not testifying to 6 the traffic engineering studies. He's testifying to the 7 relationship to the RSIS, which is what we asked him to 8 do. 9 THE PUBLIC: I understand that, but you 10 didn't get an answer. There were questions asked and as 11 a taxpayer who pays for CME services to the township I 12 want -- 13 CHAIRMAN BAGOFF: That's inappropriate. Let 14 me clarify that the applicant pays for that through 15 escrow. So let's just be clear. I want the public to 16 understand this. The applicant pays for this through 17 escrow funds. 18 THE PUBLIC: Pays for this testimony? 19 CHAIRMAN BAGOFF: Correct. 20 THE PUBLIC: CME wrote reports that are now 21 in question as to accuracy and I am saying to you that 22 taxpayers, you, me and everyone here, pays for CME's 23 services. 24 CHAIRMAN BAGOFF: I want you to listen 25 carefully.	99 1 characterization. 2 CHAIRMAN BAGOFF: It's paid for through 3 escrow funds and the town decides how to administer 4 those escrow funds to our experts, which are 5 independent. We pick, it's us, not the applicant. We 6 have we asked our engineer, or our planner, or whoever 7 other expert we need to provide information that is 8 unbiased. It is not to the left, it is not to the 9 right, it is what they believe is the middle ground 10 looking at the law, the ordinance or the statute and 11 say, how does each apply to that. That's what we asked 12 Mr. MacNeill and that's what he has done for us. 13 THE PUBLIC: So Mr. MacNeill this evening I 14 was watching cutoff the objectors attorney on multiple 15 occasions stating that he was unwilling to answer a 16 question that was presented to him. 17 CHAIRMAN BAGOFF: There's testimony provided 18 by the objectors and the applicant that would be better 19 served for the public, if that's the question. However, 20 the answers that we require from him tonight were given 21 in relation to RSIS. 22 THE PUBLIC: In your opinion? 23 CHAIRMAN BAGOFF: That's correct. 24 THE PUBLIC: But I know I've asked questions 25 and --
98 1 THE PUBLIC: I am not saying here, I am not 2 saying in this case, but we pay for their services. We 3 have an expert witness saying he doesn't know what a net 4 opinion is. 5 CHAIRMAN BAGOFF: Ma'am, I want you to 6 listen to me for a second. Here this application is 7 paid for through escrow funds, not through taxpayer 8 funds. I want that to be clear. So please put that out 9 there, that's inappropriate and inaccurate. The 10 accuracy is he is paid for through escrow funds in this 11 application for the planning board. 12 THE PUBLIC: Thank you for your testimony, 13 Mr. Bagoff. What I am saying to you is, we taxpayers 14 pay for CME, maybe not here for this application. 15 CHAIRMAN BAGOFF: Ma'am, the only -- 16 THE PUBLIC: CME is paid for by the 17 township. 18 CHAIRMAN BAGOFF: So we're accurate for the 19 people listening here and on zoom. In this -- the thing 20 that we're focussing on tonight, this application is 21 paid for through escrow funds. That's it. Okay. Let's 22 not bring anything else in. 23 THE PUBLIC: CME is paid for by the 24 applicant? 25 MR. PLOCKER: I object to that	100 1 CHAIRMAN BAGOFF: I don't want to argue. 2 You can ask another question, please. Go right ahead. 3 THE PUBLIC: Thank you. 4 So are you aware of any bills that you 5 provided to the township to be paid by the township that 6 don't come out of escrow funds, if you are aware? If 7 you're aware CME bills the township for your services. 8 THE WITNESS: So I'll answer it with, if you 9 have any questions regarding the letter that I just read 10 off I can answer those questions. Anything else is 11 outside my role as the township planning board engineer. 12 THE PUBLIC: And you're unwilling to answer 13 questions like the basis, the law that, what the 14 standards that you should apply, all of that, the 15 standards that should be applied, because I know that 16 was asked of you and your answer was, I believe, I am 17 unwilling to answer that, that is a better question 18 answered by the applicants expert? 19 THE WITNESS: It's not my role as the 20 planning board engineer to justify any information that 21 the applicant has submitted. Again, I review against 22 the local code and West Orange and I outline what does 23 and does not comply. 24 THE PUBLIC: And in your opinion you should 25 not answer questions outside the scope of what you

101 1 believe to be your purview? 2 THE WITNESS: So since I had no part of the 3 design, I didn't -- I did nothing with the design, 4 didn't do any soil testing. I reviewed the design and I 5 wrote a letter outlining that. I could comment on that 6 letter but anything outside that is for the applicant. 7 That is the applicants burden to provide that testimony 8 to justify their design. 9 THE PUBLIC: Thank you. 10 CHAIRMAN BAGOFF: Okay. 11 Would any other member of the public have 12 any questions? Please come up be identified. 13 THE PUBLIC: Diedre Dyson, Slayback Terrace. 14 Couple minutes ago it was stated, and I want to make 15 sure I have this right, that the light at Oval Road and 16 Eagle Rock was either required or was agreed to in 2015, 17 is that correct? 18 CHAIRMAN BAGOFF: That's correct. 19 THE PUBLIC: Okay. So back then -- 20 MR. PLOCKER: No. 21 CHAIRMAN BAGOFF: I'm sorry, you said no? 22 MR. PLOCKER: It was agreed to in the 23 settlement agreement, which was in 2020. It was always 24 contemplated. 25 CHAIRMAN BAGOFF: Okay.	103 1 intervene was granted, this property was offered as a 2 site for an inclusionary development to help the 3 township satisfy what was a pretty significant 4 affordable housing obligation for the third round. From 5 that time to 2020 the parties negotiated, obviously 6 COVID began towards the end, but there were many 7 deviation sessions, there were many discussions, the 8 town was represented by its attorney, its professionals, 9 engineer, planner, affordable housing planner, my client 10 had professionals and what ultimately was the settlement 11 agreement, which was signed in the spring of 2020 and 12 eventually approved by the court, was a settlement 13 agreement which contemplated a 496 unit multifamily 14 development. The court approved that settlement 15 agreement and the town had certain obligations under 16 that settlement agreement. In addition to the 17 settlement agreement with the Fair Share Housing Center, 18 one of those requirements was to rezone this site and 19 adopt the zoning ordinance which is applicable to the 20 property today. 21 THE WITNESS: I understand what you're 22 saying, but that has nothing to do with the light. The 23 light, when this application was asked for, as far as 24 the light was concerned, this had nothing to do with 500 25 units, correct?
102 1 THE WITNESS: I thought it was 2015. Back 2 then wasn't this only for single family homes? 3 CHAIRMAN BAGOFF: Mr. Plocker. 4 MR. PLOCKER: It was not. In 2020 when it 5 was agreed to the application did not contemplate single 6 family homes. 7 MS. McGOVERN: What he said was -- 8 MR. PLOCKER: I -- 9 MS. McGOVERN: In 2015 was when you started 10 this application, this project. 11 MR. PLOCKER: 2000 -- just to be very clear 12 so there's no misunderstanding and I can explain. In 13 July of 2015 all municipalities in the State of New 14 Jersey, if they so wanted to, could voluntarily attempt 15 to comply with their third-round Mount Laurel obligation 16 by filing a lawsuit, I believe the date was July 15, 17 it's called the Declaratory Judgement Act, seeking 18 approval, blessing for their plan which goes from the 19 years 2015 to July of 2025, which just ended. We're now 20 in the fourth round. Any interested party, any 21 developers, the Fair Share Housing Center, many people 22 made applications to intervene in those litigations, so 23 the Township of West Orange 100 percent absolutely filed 24 such a litigation back in 2015. Some point thereafter 25 my client moved to intervene in the case, our motion to	104 1 MR. PLOCKER: Absolutely. When this case -- 2 the settlement agreement is part of this application. 3 It's on the agenda. Please read it carefully. The 4 light is referenced in the settlement agreement. 5 THE PUBLIC: All right. 6 MR. PLOCKER: It absolutely -- 7 THE WITNESS: As far as traffic is concerned, 8 this traffic light was going for single family homes, 9 not expecting that it's going to be this many cars 10 coming in and out. 11 MR. PLOCKER: Look, I don't want to keep 12 testifying, but I will explain what's on record with the 13 board. The traffic light was specifically required by 14 this developments density, correct. Not a single family 15 development, by this development which is why we are 16 here now. 17 THE WITNESS: That's not taking into account 18 -- 19 CHAIRMAN BAGOFF: Okay. Thank you very 20 much. 21 THE PUBLIC: Rachel Klein. Is it okay if I 22 help my neighbor, she's asking one question. 23 CHAIRMAN BAGOFF: Go ahead. 24 THE PUBLIC: Thank you. The county zoning 25 board did not recognize this as being for a multifamily

105 1 unit. They're supposed to be single family homes as of 2 July 2024 when this all began. The traffic light is for 3 a county road, I think that's what she meant. Not the 4 2020 settlement discussion. 5 CHAIRMAN BAGOFF: Thank you. 6 Anybody else from the public have any 7 questions for Mr. MacNeill on his testimony? 8 THE PUBLIC: One final question. Seth 9 Weisleder. 10 We talked -- you talked about units and then 11 there was a question by the public about businesses. I 12 believe the beginning of this, on day two I think it was 13 or hearing two, the site is scheduled for a business or 14 two businesses, but when you do traffic studies and 15 things like that, you take into account how many units 16 and do you also take into account the square footage of 17 the business to determine traffic? 18 THE WITNESS: So I will say this again, I do 19 not do any traffic studies. I did not design this 20 traffic study. Our firm reviews the traffic study that 21 was submitted and review the objectors traffic review 22 and outline what does and doesn't comply with the 23 standards. 24 THE PUBLIC: Right. After reviewing each 25 traffic study did it indicate that units were only taken	107 1 had asked, and there was two traffic studies. 2 THE PUBLIC: Compare and contrast, I get it. 3 CHAIRMAN BAGOFF: The objectors and the 4 applicants and both speaking about RSIS. We asked our 5 engineer to look at this in relation to RSIS, not the 6 basic study but each parties related to the RSIS, which 7 is the Residential Site Improvement Standards. So the 8 board wanted to know is it a cul-de-sac or isn't it a 9 cul-de-sac, is it this or is it that, and he answered 10 those question for the board. So there are other 11 questions you may have, but they were answered 12 previously by each the objector and applicants traffic 13 engineers. So for what the board asked him to do he 14 did. Okay. 15 THE PUBLIC: Thank you very much. 16 CHAIRMAN BAGOFF: Do any other members of 17 the public have a question fro Mr. MacNeill on his 18 testimony? Please come up and ask your question. 19 THE PUBLIC: John Haydu, 81 Avon Drive, 20 Essex Fells. 21 When Mr. Plocker talks about the settlement 22 agreement, did anything come into play with the town of 23 Essex fells about our settlement agreement with the 24 builder from 2005? 25 CHAIRMAN BAGOFF: I am just going to say,
106 1 into consideration for the traffic study? Was there any 2 square footage of the business taken into consideration 3 for the traffic study as you reviewed per reviewing each 4 report? 5 THE WITNESS: So, again, anything related to 6 my testimony tonight I could answer it, if there's more 7 detailed questions on the traffic impact study, I do not 8 feel comfortable answering them as board engineer 9 because I did not prepare the traffic impact study. 10 THE PUBLIC: You said you reviewed each 11 traffic study, correct? 12 THE WITNESS: Yes. 13 THE PUBLIC: I asking, upon review of each 14 traffic study was square footage of the businesses taken 15 into consideration for the traffic volume, "yes" or 16 "no"? 17 THE WITNESS: That was the same question and 18 I have the same answer. 19 THE PUBLIC: Okay. 20 THE WITNESS: If you have that question for 21 the traffic -- 22 THE PUBLIC: Well, if you reviewed it, you 23 either saw it or didn't see it. I don't understand, 24 it's a yes or a no? 25 CHAIRMAN BAGOFF: The question was the board	108 1 Mr. MacNeill didn't testify to that. 2 THE PUBLIC: I am asking -- 3 CHAIRMAN BAGOFF: I understand you're 4 asking. 5 THE PUBLIC: Why don't you want to answer 6 the question? 7 CHAIRMAN BAGOFF: The reason you are up 8 there is to ask Mr. MacNeill a question. 9 THE PUBLIC: He brought up the settlement 10 agreement, keeps bringing up the settlement agreement. 11 My question is, did you guys, when you did the 12 settlement agreement -- 13 CHAIRMAN BAGOFF: We guys, I'm sorry, sir. 14 We don't have anything to do with it. 15 THE PUBLIC: Okay. Can I ask Mr. Plocker. 16 The settlement agreement in 2005 with Essex 17 Fells, did you guys bring that into -- 18 MR. PLOCKER: Everybody was aware of the 19 history of this sites prior applications. If you want 20 to make an argument Mr. Haydu, under that settlement 21 agreement, go to a courthouse, because it's not for this 22 board. 23 CHAIRMAN BAGOFF: Wait a second. Hold it. 24 One second. Organized. 25 Now, go right ahead.

109 1 MR. AFRAN: I'm sorry, I just want to take 2 the position, we said this very early on, but I think 3 because of Mr. Plocker's analysis, which I understand 4 why he gave it, we don't necessarily accept that the 5 settlement agreement is a binding document. 6 CHAIRMAN BAGOFF: You have stated this 7 before and we understand your stance. 8 MR. AFRAN: That's all I wanted to say. 9 CHAIRMAN BAGOFF: That is on the record. 10 Thank you. 11 Do any other members of the public have any 12 questions for Mr. MacNeill on his testimony this 13 evening? Come right up, sir. 14 THE PUBIC: So I have a question, feel free 15 to say no if it's not -- 16 CHAIRMAN BAGOFF: Name, sir. 17 THE PUBLIC: John, and I am. 18 CHAIRMAN BAGOFF: Last name, sir. 19 THE PUBLIC: My name is Johny. I'm here 20 representing an Indigenous Social Club called Top Hats. 21 I just have one question, if it is no I will 22 talk to the camera outside after this is done. 23 So I came an hour away here to deliver a 24 message, so I was hoping that you guys could let me, you 25 know --	111 1 you're not going to win and if you do win it's going to 2 be one of the toughest -- 3 CHAIRMAN BAGOFF: Thank you, sir. I think 4 you're done. Thank you very much. 5 THE PUBLIC: Have a good night. 6 CHAIRMAN BAGOFF: Okay. Any other members 7 of the public have a question -- 8 THE PUBLIC: Yes, Jessica Pearson. 9 CHAIRMAN BAGOFF: Ma'am, let me finish, like 10 everyone. You don't have to sit down. Let's not play 11 games. 12 THE PUBLIC: Please don't call me ma'am. 13 CHAIRMAN BAGOFF: Please state your name for 14 the record and go ahead and ask your question. 15 THE PUBLIC: Jessica Pearson, Verona. Thank 16 you. 17 Mr. Engineer, Mr. MacNeill -- 18 THE WITNESS: Yes. 19 THE PUBLIC: -- earlier you had responded to 20 a question about the ADA necessities and you actually 21 said, I absolutely agree. 22 THE WITNESS: Yes. 23 THE PUBLIC: So you actually were weighing 24 in on certain answers that you feel strongly to guide. 25 As the board engineer you're guiding this board in a
110 1 CHAIRMAN BAGOFF: Ask your question. Go 2 ahead, ask your question, sir. 3 THE PUBLIC: All right. So it's not really 4 much of a question, I'm just going to go ahead and -- 5 CHAIRMAN BAGOFF: Right now is only time for 6 questions, sir. 7 THE PUBLIC: It's not a comment. I came 8 from an hour away to deliver a message. This is 9 important, especially for the Mayor over here. So the 10 entire night I've seen a lot of slurs, a lot of giggling 11 up here on the board, just want you guys to know that 12 half of the people on that zoom are currently recording 13 this and most of them are public figures as well. Not 14 only do you guys not care about your own people of this 15 town, you're also messing with sacred land that belongs 16 to Indigenous People. So now you have a bigger problem 17 on your hands. I just came to deliver that message. 18 This is about to become a nationwide issue. It's about, 19 we have some more friends in New York including the New 20 York Times and the news outlets out there. So I want to 21 let you guys know that you guys are really embarrassing, 22 but this is really a bigger issue for you guys now. So 23 from hereon out whatever it is you guys are doing here 24 and for Zygy Wilf who might be listening to this or 25 whatever, you guys have an entire battle on your hand	112 1 direction, that is a problem. That is what your job is 2 as the board engineer, to review the plans and to say 3 yeah, this is deficient, this meets the standards, and I 4 recommend that this board have new tests done. I don't 5 agree with the results of this. This looks fishy. 6 Isn't that what the board engineer is supposed to do? 7 It's supposed to grant guidance to the very people that 8 are entrusting you over, by the way, their engineer and 9 perhaps over an objectors engineer. They're entrusting 10 you to give them the guidance and you're refusing to do 11 it right now. 12 THE WITNESS: So -- 13 THE PUBLIC: That's your job. 14 THE WITNESS: That's not the role of the 15 board engineer. 16 THE PUBLIC: Okay. What is your job, you 17 tell us? 18 THE WITNESS: So we review submitted 19 information, we write a report where we outline our 20 comments. We do have an open rapport, review number 3, 21 our third review that's dated June 13, 2025. 22 THE PUBLIC: You're citing work that you did 23 review work, but you're not telling me what you see your 24 job is big picture. Is your job not to help this board 25 make proper determinations for a safe and effective and

113 1 -- 2 CHAIRMAN BAGOFF: I'm going to stop you 3 right there. Ma'am, I'm going to stop you. 4 THE PUBLIC: Excuse me, I am asking what his 5 job is and he's not answering. He's telling me a report 6 he drafted. 7 CHAIRMAN BAGOFF: Ma'am, right now -- 8 THE PUBLIC: Can you tell me what your job 9 is? I am not getting an answer. 10 THE WITNESS: My job is reviewing the 11 applicants plans and reports and writing a review letter 12 that says what does and does not comply with the code. 13 And if it does not comply, we have review comments for 14 the applicant to revise and address before we would 15 indicate that the plans are then sufficient with our 16 review comments. 17 THE PUBLIC: Which code do you check it 18 with? 19 THE WITNESS: Township of West Orange. 20 THE PUBLIC: Township of West Orange code? 21 THE WITNESS: Yeah. 22 THE PUBLIC: But see the developer's 23 agreement threw that all out. There is no code included 24 in the developer's agreement, so what are you checking 25 it against?	115 1 You keep saying, zoning code, but the zoning 2 code was basically written out of the settlement 3 agreement that is the basis for this entire plan, would 4 you agree? 5 THE WITNESS: So we reviewed it against the 6 Township of West Orange. That is my answer. We 7 reviewed it against the code at the time of submission. 8 I don't have any other answer but that. That is the 9 only job of the board engineer. 10 THE PUBLIC: That's your -- that's how you 11 construe what your job is? 12 THE WITNESS: That's not -- that's not 13 construing. 14 THE PUBLIC: Check the box and say, this 15 doesn't meet our code or this does? 16 THE WITNESS: Exactly. 17 THE PUBLIC: Not to give guidance? 18 THE WITNESS: As -- my role is not to 19 recommend an approval, recommend a denial. 20 THE PUBLIC: I'm not saying recommend an 21 approval, please. I'm not -- don't confuse -- 22 THE WITNESS: So what guidance are you 23 referring to? 24 THE PUBLIC: Giving guidance in telling this 25 board this doesn't look like a complete plan or this
114 1 THE WITNESS: Okay. So in this case it's 2 the settlement agreement as well as the Township of West 3 Orange code. 4 THE PUBLIC: But the Township of West Orange 5 code doesn't exist in the settlement agreement. 6 THE WITNESS: So, I did -- 7 THE PUBLIC: It was all tossed out. 8 THE WITNESS: So it related to stormwater. 9 It was all outlined in the local code regarding the 10 landscaping, lighting, site layout. It's all outlined 11 in the zoning code. 12 THE PUBLIC: I understand that, but the 13 zoning code was completely cancelled in the settlement 14 agreement. 15 THE WITNESS: Are you talking about the use? 16 THE PUBLIC: Talking about the October 2020 17 settlement agreement that continuously is getting 18 referred to right now this evening, correct? 19 CHAIRMAN BAGOFF: Ma'am. 20 THE PUBLIC: Where's the zoning code, it's 21 very clear it was tossed. 22 CHAIRMAN BAGOFF: I'm going to ask you to 23 ask him a question. 24 THE PUBLIC: I am. So I am asking him what 25 code he is referring to.	116 1 doesn't meet all of the safety recommendations that I 2 would want this township to follow. 3 THE WITNESS: So it's not -- 4 THE PUBLIC: Don't you give guidance in that 5 light? 6 THE WITNESS: I can't comment on what I 7 think would be the best. 8 THE PUBLIC: Okay. 9 THE WITNESS: I have to review against the 10 code. I can't create regulations. I review against 11 what code was already put in place. That's the only job 12 that I have. It's reviewing, exactly like you said -- 13 THE PUBLIC: I want that job. 14 THE WITNESS: -- checking off the boxes. 15 THE PUBLIC: Thank you. 16 CHAIRMAN BAGOFF: Okay. Thank you. 17 Any other members of the public have any 18 questions for Mr. MacNeill on his testimony? 19 Seeing none. Thank you, Mr. MacNeill. 20 MR. AFRAN: I have a follow up. 21 Mr. MacNeill, you mentioned -- 22 CHAIRMAN BAGOFF: Mr. Afran, go right ahead. 23 MR. AFRAN: Thank you. 24 Mr. MacNeill, in your report number 3 you 25 still have issues you're waiting for answers on?

117 1 THE WITNESS: Yes, that's correct. 2 MR. AFRAN: With respect to reports 1 and 2, 3 because there were two prior ones, are there still 4 issues outstanding, were they incorporated into report 5 three 3, can you explain that status? 6 THE WITNESS: Typically review 3 would 7 incorporate any items that were addressed, yes. 8 MR. AFRAN: Okay. Thank you very much. 9 CHAIRMAN BAGOFF: Mr. Plocker. 10 MR. PLOCKER: Thank you. 11 Mr. MacNeill, I believe you know we looked 12 at your number 3 and the issues pursuant to the revised 13 plan which was revised to comply to show what was sent 14 to the DEP and what was approved by the DEP. I believe 15 we stated we would comply with the items in those 16 reports, but we'll go back and check to make sure we 17 have a clear record. 18 THE WITNESS: From my understanding that was 19 the applicants testimony was that you can comply with 20 our comments. 21 MR. PLOCKER: Thank you. 22 MR. AFRAN: Well, is it expected -- 23 CHAIRMAN BAGOFF: Mr. Afran. 24 MR. AFRAN: Mr. MacNeill, is it expected 25 from your point of view that the written statement	119 1 THE PUBLIC: Okay. But it's not in the 2 plans. 3 CHAIRMAN BAGOFF: We haven't approved 4 anything, so there's no plan right now. 5 THE PUBLIC: Okay. 6 CHAIRMAN BAGOFF: I am not sure what trees 7 are to be removed or not, that would be a function of 8 the complex, but for right now, if there's trees to be 9 marked, I would go to the township forester. 10 THE PUBLIC: Okay. 11 CHAIRMAN BAGOFF: Thank you. 12 Okay. Thank you. And that wraps up Mr. 13 MacNeill. 14 Okay. Malvika. 15 THE WITNESS: Thank you, Mr. Chairman, 16 members of the board. 17 So I would be presenting from a planning 18 standpoint what this application brings, what is it that 19 the board members have to look for in the application, 20 and answer, you know, the synopsis of it. 21 So this application is seeking a 22 preliminary/final site plan with one bulk variance and 23 two de minimis waivers from the RSIS standards. 24 The first and the only bulk variance they're 25 seeking has got to do with the maximum exposure of the
118 1 explaining how compliance will be done? 2 THE WITNESS: So I, again, the applicant 3 provided testimony that they will comply. But a written 4 response would be on the applicant to provide. Again, I 5 am only reviewing what's submitted. 6 MR. AFRAN: Okay. Thank you. 7 CHAIRMAN BAGOFF: Thank you. 8 Okay. Sir, would you like to ask a 9 question? 10 THE PUBLIC: Hello. My name is Kemonte 11 Howard. I live at 5 Slayback Terrace. I live across 12 from the development, I walk my dog there all the time. 13 I tried to get a permit through the town not to long ago 14 and they said we had to mark all the trees in order to 15 cut them down. And I have noticed none of the trees are 16 marked in the forest across from my house. So how does 17 that work? 18 CHAIRMAN BAGOFF: I think it's the job of 19 the forester. If you call the building department 20 tomorrow speak with the forester. 21 THE PUBLIC: Don't they have to mark all the 22 trees? 23 CHAIRMAN BAGOFF: I don't know anything 24 about that, so I would refer you to the township 25 forester who will probably give the best answer.	120 1 walls that should not exceed 15 percent. They require 2 it all for the four buildings, A, B, C and D, and 3 they're seeking the two waivers, one is for creating the 4 Kuzik Road as an emergency access, that means they're 5 requesting that they put a, some kind of stopping fence 6 over there and make it only an emergency access road. 7 And the second waiver is for sidewalks, because as part 8 of RSIS standard, a minor collector street are required 9 to have sidewalks on both sides. The area they're not 10 meeting is where, for the circle is coming from Warren 11 Road to Building D, there is a certain section that they 12 are not providing the sidewalk on one side of the road. 13 Now, typically in cases like this what is it 14 about variance that the board has to look for. Again, I 15 apologize if I'm repeating, I know this board has seen 16 several applications, but because of the intensity of 17 this application I do want to remind board what is it 18 that they are looking for in a bulk variance. As per 19 MLUL the applicant can request to seek a bulk variance, 20 which is commonly known as a C Variance and there are 21 two proofs for that. Either can apply for a C-1 22 variance or a C-2 variance. C-1 is a hardship which is 23 peculiar for the property and C-2, which I believe the 24 applicants planner testified to, is more known as the 25 benefits outweigh the detriment. Or also known as the

121 1 Flex C. 2 What the applicant -- what the board here 3 has to review from the testimony that the applicants 4 expert has provided is, there are four -- five items 5 that the board has to review. One, the application 6 relates to the specific piece of property. The variance 7 that they're requesting relates to the specific piece of 8 property. 9 The purposes of the Land Use Law will be 10 advanced by deviation from the zoning ordinance 11 requirement. 12 The variance can be granted without 13 substantial detriment to the public good. I do want to 14 stress on the fact, substantial detriment. 15 And the fourth is the benefits of the 16 deviation have to, again, substantially outweigh the 17 detriment. 18 I do want to go back to what Mr. Cardoza was 19 trying to just moments earlier talk about, you know, 20 when he was trying to balance in his head about how the 21 benefits will outweigh the detriments. This is what the 22 board has to kind of review over here with this 23 application. Again, the variance is for the exposure of 24 the walls and that's what the applicant is requesting. 25 And the last kind of proof, again, the	123 1 applicants expert has to meet. First of all, is the 2 exception consistent with the intent of the RSIS act. 3 Then, is it reasonable, is it limited and is 4 it not unduly burdensome. 5 Is it meeting the needs of the public health 6 and safety, and does it take into account the existing 7 infrastructure and possible surrounding development. So 8 those are the four criteria's that, again, RSIS asks you 9 to review and decide on when applicants are seeking the 10 requirement. 11 Now, the third part of what I had to do was, 12 I know a lot of times, again, in seeking, in reviewing 13 some of these transcripts, the question was brought up 14 as to how this application has come about and I know a 15 lot of times a settlement agreement is referred to and a 16 concept plan is referred to. What I did together is 17 kind of put together a concept plan which is attached to 18 the agreement. It's, I believe, dated March 3, 2020. 19 Reviewed that against the site plan, the latest site 20 plan, I believe I have the date of October 28, 2024, and 21 the ordinance. So I'm not going to go through each 22 item, I know you guys have reviewed these site plan 23 in-depth, however I do want to bring up the key points. 24 First, the concept plan contemplated the 25 multifamily use. The site plan does show a multifamily
122 1 applicant has to provide, is that this variance, this 2 bulk variance, will not substantially outweigh the 3 intent and the purpose of the zone plan and the zoning 4 ordinance. 5 So to wrap up, this was the main task that 6 the applicants expert had to provide to the board in 7 terms of this bulk variance. 8 Now, as we move to, one thing that the board 9 has to understand is if the, if the, what we call the, 10 relaxation of standards, of granting this variance it 11 has to benefit not only the applicant but also has to 12 present an opportunity for the general welfare of the 13 entire community. So those are the aspects that the 14 board has to look at. 15 Now, the two RSIS de minimis waivers that 16 the applicant is requesting, I already stated what they 17 are. 18 Now, the examples of de minimis exception, 19 which is brought up again earlier tonight, the RSIS 20 standards does list some of them as an example, but it 21 also says these are not limited to only these examples, 22 we're just giving them to you as some of the exceptions. 23 What the board or the approving authority, the municipal 24 approving authority in granting of these exception has 25 to see is, again, there are four criteria's that the	124 1 use and that is permitted in the IH-1 zone. 2 The concept plan did show a dog park, a dog 3 kennel, a maintenance building, a recreation building, 4 which included a clubhouse and a pool and a pump 5 station. Those items are in the site plan with, for 6 example, the site plan does show a clubhouse with a pool 7 and tennis courts. It does show a dog kennel, it does 8 show an independent maintenance building and it does 9 show a pump station. 10 Now, does the ordinance provide for all 11 this, I believe it does. It does list these accessible 12 uses, it permits clubhouse buildings, it permits 13 swimming pools, it permits courts, it permits pet 14 friendly stand alone buildings, it permits maintenance 15 buildings and permits parking. 16 The concept plan, again, contemplated a 17 maximum of 496 units. The site plan proposes 496 units. 18 And the ordinance that's the max that it permits. 19 Again, the applicant shows that. 20 The concept plan requires set aside of 20 21 percent, which comes to 99.2, but 100 units. The site 22 plan proposes 100 units over here and that is what the 23 ordinance also requires. 24 And another key aspect was the concept plan 25 contemplates an area of disturbance of about 26.9 acres.

125 1 The site plan shows the area of disturbance of about 2 27.82. The ordinance said the maximum area of 3 disturbance that this development would be permitted was 4 30 acres. 5 The site access, the concept plan showed 6 site access from Warner Road as well Kuzik Drive. The 7 proposed site plan does show the access from both Warner 8 Road and Kuzik Drive with the caveat that they're 9 seeking an exception by proposing an emergency only 10 access on Kuzik Drive. What the ordinance does say, 11 ordinance says the unrestricted site access shall be 12 permitted from Warner Drive and Kuzik Drive. 13 Then couple of other points, the concept 14 plan did show an emergency roadway to Howell Drive from 15 Lots 8 & 9, which is not of the property. The site plan 16 shows that emergency roadway and the ordinance said an 17 emergency access shall be permitted on Block 179.17 Lots 18 8 & 9. 19 The next couple of other things that, again, 20 comparing the concept, the site plan and the ordinance 21 that it details provided on what the unit sizes can be 22 for affordable units. In the ordinance there's a 23 requirement which is based on the Uniform Housing 24 Affordability controls, which is a state standard. The 25 site plans do provide you the square footage and they	127 1 Mountain shall remain undisturbed from the peak of the 2 ridge line. I believe the site plan does not show any 3 bedrock beyond the ridge line and that is shown on the 4 line and steep slope stability report also, where the 5 ridge line is that they've shown. The concept plan 6 doesn't outright show the ridge line as marked out on 7 the concept plan, so that comparison can't be made. But 8 I believe the ordinance says that they have to not -- 9 they have to remain -- east face of Watchung Mountain 10 shall remain undisturbed and applicants site plan shows 11 that. 12 The parking requirement in the ordinance has 13 to be as per RSIS standards. There were, the detail 14 count wasn't very legible on the concept plan but I 15 believe the site plan shows that they meet that 16 requirement of the parking spaces. 17 Lastly, I believe the concept plan noted 18 each of building to be four stories and the site plan 19 shows that as four story buildings. 20 Again, reviewing the settlement agreement as 21 well, the ordinance, the ordinance does have points in 22 the statement that applicant can seek bulk variances, no 23 use variances, however they are allowed to seek bulk 24 variances as the engineered the site plan. 25 The agreement also states something similar
126 1 meet that requirement. The concept plan doesn't have 2 such details, obviously at that point that was not 3 contemplated. 4 The building height. Ordinance permits a 5 maximum building height of 75 feet, I believe the 6 concept plan didn't state how much height is proposed 7 for those buildings. I think at that point it was a 8 concept plan, however the site plan notes that as 47.5 9 feet is the height that they're proposing. 10 The ordinance is -- they have no details on 11 the exposure of perimeter walls. There were no details 12 in the concept plan. There is the requirement in the 13 ordinance that you're not supposed to exceed the 50 14 percent and applicant is requesting that variance for 15 all four buildings. 16 There was a buffer requirement, again, in 17 the concept plan and I do want to add the caveat here, I 18 was reviewing it based on the concept plan that's in the 19 agreement. So I was -- the minimum buffer requirement 20 that the ordinance requires is 100 feet, I believe the 21 concept plan showed somewhere between 108, 212 and the 22 proposal has, I believe, 106.3 as the buffer that 23 they're proposing at the closest point in the site plan. 24 Then the other requirement that the 25 ordinance has is that the east face of the Watchung	128 1 to that affect, that the applicant has to substantially 2 be similar to the concept plan. However, because no 3 engineering was done during the concept plan they may 4 seek bulk variances as permitted in the ordinance. 5 So that was the third part of my review. 6 I believe then, I think there was another 7 question raised about the emergency access. I believe 8 in the review it shows that there is a 16 foot emergency 9 access, which in the transcript review was testified to 10 that is going to be paved. It would be along Lots 8 & 9 11 and connecting to Howell Drive. I believe this 12 requirement is in the zoning ordinance and it follows 13 the settlement agreement that was mentioned. 14 I believe these were the four items I was 15 tasked with when reviewing the application and provided 16 testimony on that. 17 CHAIRMAN BAGOFF: Thank you. 18 Mayor McCartney, do you have any questions 19 on the testimony? 20 MAYOR McCARTNEY: Thanks for your review. 21 Thank you very much. 22 CHAIRMAN BAGOFF: Mayor? 23 MAYOR McCARTNEY: I have no questions. 24 CHAIRMAN BAGOFF: Thank you. 25 Ms. Kapferer, do you have any questions?

129 1 MS. KAPFERER: I also don't have any 2 questions. Thank you so much for your testimony. 3 CHAIRMAN BAGOFF: Vice Chairman Guarino, do 4 you have any questions? 5 VICE CHAIRMAN GUARINO: I don't, no. Thank 6 you very much. Very detailed. 7 CHAIRMAN BAGOFF: Mr. Alper, do you have any 8 questions? 9 MR. ALPER: I have no questions. Thank you. 10 CHAIRMAN BAGOFF: Mr. Cardoza, do you have 11 any questions? 12 MR. CARDOZA: I appreciate your summation. 13 No questions. 14 CHAIRMAN BAGOFF: Council Person Scarpa, do 15 you have any questions? 16 COUNCILWOMAN SCARPA: No. Thank you. 17 CHAIRMAN BAGOFF: Mr. MacNeill, do you have 18 any questions? 19 MR. MacNEILL: No, Mr. Chairman. 20 CHAIRMAN BAGOFF: Thank you. 21 Any members of the public have any 22 questions? 23 Mr. Afran. 24 MR. AFRAN: Very briefly. Thank you. 25 Is there a difference in the position of	131 1 THE WITNESS: You're welcome. 2 CHAIRMAN BAGOFF: Thank you. Anyone from 3 the public have any questions? 4 THE PUBLIC: I have a quick question. 5 CHAIRMAN BAGOFF: Please come up. Go right 6 ahead. 7 THE PUBLIC: May I speak? Jessica Pearson, 8 Verona. 9 I have a question regarding, I think it was 10 your opinion that this would cause no substantial harm, 11 right? No -- hold on, I'm not done. In regard to the 12 placement of roadways and facilities and routes that 13 might cause congestion or blight. How can you say that 14 the placement of these buildings and the congestion of 15 the roadways that has been a serious topic of discussion 16 would not cause substantial harm and was that in fact 17 just your opinion? I mean, can't be fact, right? So 18 that's your opinion, you're putting your thumb on the 19 scale. 20 THE WITNESS: All right. I'll answer the 21 two questions in three parts, if I may. 22 THE PUBLIC: Sure. 23 THE WITNESS: So the first question, 24 basically I didn't testify to the fact whether the, as 25 you put it, the substantial impact of all this concept
130 1 Building D versus in the concept plan and the site plan 2 in terms of the ridge line or what we're roughly calling 3 the ridge line? 4 THE WITNESS: So as I stated earlier in the 5 concept plan the ridge line is not outright marked. 6 It's just saying the shape of the Building D. It is a, 7 the shape is, geometrically you could say there is a 8 little difference between the two -- between the concept 9 plan and site plan. 10 MR. AFRAN: No, I was really referring to 11 the distance of the position of Building D from the 12 ridge in the site plan that's been submitted versus is 13 the concept plan, are you able to opine on that? 14 THE WITNESS: No, again, on the concept plan 15 the ridge line is not very clearly marked out. The site 16 plan does show the ridge line and that's why it meets 17 the ordinance requirement which said that nothing east 18 of the ridge line should be undisturbed and I think it 19 meets that. 20 MR. AFRAN: Okay. But you're not able to 21 comment on the relative position from the concept plan 22 to the site plan? 23 THE WITNESS: Yes, because of the fact in the 24 concept plan I can't see where the ridge line is. 25 MR. AFRAN: Thank you very much.	132 1 plan would be. What I stated for the board is what is 2 it that they're reviewing when they're looking at what 3 the bulk variance is bringing to that fact. So I stated 4 what is it in the testimony of the applicant that the 5 applicant has to prove to the board and what are the 6 five parameters they have to review with them. 7 THE PUBLIC: Right. But doesn't one or two 8 or maybe three parameters include particular waivers in 9 regard to RSIS standards? 10 THE WITNESS: RSIS standards, again, I listed 11 for the fact what is it that the board has to -- 12 THE PUBLIC: Yes, but those entail roadways, 13 yes? Those entail -- 14 THE WITNESS: Yes. 15 THE PUBLIC: And so in regard to my original 16 question, which is a planning question. 17 THE WITNESS: I still haven't answered, but 18 okay. 19 THE PUBLIC: It's a Municipal Land Use Law 20 question in terms of the placement of routes and 21 facilities that will not cause congestion or blight 22 that, you don't want to do that, and you're saying that 23 this is fine. Even with all the waivers granted and 24 everything is okay, it will cause no substantial harm? 25 THE WITNESS: I believe I did not say that,

133 1 you know, the site plan will not cause substantial harm. 2 I asked -- provided for the board what is it that they 3 would be looking for when they are reviewing what the 4 applicant is asking them. The three -- the one variance 5 and the two waivers, what is it that they have to base 6 their decision on. 7 The second part of the question, what I did 8 speak about is, I compared the concept plan, which was 9 the original concept plan in the settlement agreement 10 against the site plan that the applicant is presented 11 before the board and third comparison I made to the 12 ordinance. 13 THE PUBLIC: Did you not go a little further 14 than that and actually weigh in and state for the record 15 your opinion that there would be no substantial harm? 16 THE WITNESS: I did not do that. 17 THE PUBLIC: You, actually I think, if we 18 back up -- 19 CHAIRMAN BAGOFF: She did not say those 20 words. 21 MS. McGOVERN: I was sitting here taking 22 notes, we can get a read back, but not what she said. 23 THE PUBLIC: I believe she did, but we could 24 look at the transcript before they get erased or before 25 they, if they get posted.	135 1 criteria that the board has to look at on the variance 2 and I believe I provided them that. 3 THE PUBLIC: And you believe the board 4 should just grant all the waivers and it would not cause 5 substantial harm for them to do so? 6 THE WITNESS: I didn't say whether the board 7 should weigh which way or vote which way. I did ask 8 them what is that they have to review against for what 9 the variance or the waivers the applicant is asking. 10 THE PUBLIC: Okay. 11 CHAIRMAN BAGOFF: Thank you. 12 Any other member of the public have any 13 questions on the testimony? Please come up and be 14 identified. 15 THE PUBLIC: Can I ask about the ridge line? 16 Rachel, Klein, Howell Drive. 17 So the concept plan and the site plan, did 18 I, what they call the ridge line on either of those is 19 that like the real ridge line as far as you're aware or 20 is it still like a line drawn on the map and the ridge 21 line is just this theoretical line still not determined 22 as to where it actually is? 23 THE WITNESS: So the site plan I can define 24 the ridge line, which I believe has been done by a 25 licensed professional engineer. I can't speak to the
134 1 MS. McGOVERN: They are by the certified 2 court reporter. 3 THE PUBLIC: I know, I wasn't referring to 4 his job. I was referring to things on your website that 5 are aren't there. 6 CHAIRMAN BAGOFF: Things are never erased, 7 ma'am. That's not truthful. We want to be truthful 8 here. That's totally untruthful. 9 THE PUBLIC: I have not seen -- 10 CHAIRMAN BAGOFF: Ma'am. 11 THE PUBLIC: -- the testimony from Greg 12 Mescera or the film or the tape, so. 13 CHAIRMAN BAGOFF: Everything -- 14 THE PUBLIC: My planning board attorney was 15 here. 16 CHAIRMAN BAGOFF: Because you didn't see it 17 doesn't mean it was not there. 18 THE PUBLIC: It's nowhere to be found. So 19 that, I will state on the record, that he came. 20 At any rate, so you're saying that this 21 would not cause substantial harm? 22 THE WITNESS: I did not testify to that. 23 THE PUBLIC: What is your opinion on this 24 then? 25 THE WITNESS: I was asked to review what the	136 1 fact whether that is, you know, the ridge line or a line 2 on the paper. But I believe a licensed professional 3 engineer has drawn that on the site plan. 4 THE PUBLIC: Because the Building D that 5 we're most concerned about specifically for the ridge 6 line, we are concerned about other buildings for other 7 reasons, but that building appears to be getting closer 8 to that line that we're saying is not necessarily a real 9 line but there is a sewer line that runs a little more 10 east of it that's on both site -- on both plans. It's 11 real, it's easily found, it's not theoretical and so it 12 would appear that Building D has moved quite a few feet 13 east. 14 MR. PLOCKER: I'm just going to object to 15 the question and characterization that the line is 16 theoretical. The line is on the concept plan, it's on 17 the site plan. The line is not theoretical, it was not 18 arbitrary. It was a negotiated line that during the 19 settlement negotiations between the applicants 20 professionals and the township professionals, including 21 their engineer. 22 THE PUBLIC: And it represents the amazing 23 drop for the part of the east of the, of where you want 24 to put the building, so -- 25 MR. PLOCKER: The building complies with the

137 1 zoning ordinance, Ms. Klein. 2 THE PUBLIC: Thank you. 3 CHAIRMAN BAGOFF: Thank you. 4 Any other member of the public have any 5 questions on the testimony? Please come up. 6 THE PUBLIC: Justin Goldsmith. I just have 7 a question to you, you're with Heyer Gruel? 8 THE WITNESS: Yes. 9 THE PUBLIC: Last night at the council 10 meeting a contract was renewed for Heyer Gruel for 11 \$14,800 as it relates to services rendered toward the 12 Planning Board. I specifically asked last night at the 13 council board -- at the council meeting what the role 14 and -- can you say your name? 15 THE WITNESS: Malvika Apte, you can call me 16 Ms. Apte. 17 THE PUBLIC: So in that agreement is that we 18 would have two planners and I asked the differentiations 19 of Malvika Apte and Megan Adam who would be the two 20 designated coordinated people from Heyer Gruel to 21 preside over this. My question is, can you shed some 22 light on as to what your role specific to West Essex 23 Highlands is, because I did not get an answer at the 24 council meeting last night and why we're paying for the 25 services of two members when I don't see the other	139 1 and our zoning components? 2 CHAIRMAN BAGOFF: That's fair enough. 3 THE PUBLIC: Thank you. Thank you, I 4 appreciate it. 5 THE WITNESS: So I'm the consulting board 6 planner for the Planning Board. 7 THE PUBLIC: And that entails? 8 THE WITNESS: That entails the review of 9 this application, the testimony and providing the board 10 with testimony that I provided. 11 THE PUBLIC: Thank you. I was just asking 12 because last night I did not get an answer. 13 CHAIRMAN BAGOFF: Fair. 14 Any other members of the public have any 15 questions? 16 Go on, please. 17 THE PUBLIC: It's different testimony, I 18 mean, I have two questions, they're thought out. I'm 19 not going -- 20 CHAIRMAN BAGOFF: Go ahead. 21 THE PUBLIC: I'm going to ask straight 22 forward questions. 23 So you were talking about concept plan and 24 site plans. Concept plan, you testified that it was 25 attached to the settlement agreement, correct? So is
138 1 member here? Those are my questions. 2 CHAIRMAN BAGOFF: Okay. Our attorney is 3 going to answer that very quickly. 4 MS. McGOVERN: So Megan Adam has the 5 affordable housing forth round plan. She's not a 6 certified planner so, I think at this point, I think her 7 license is pending. She is assisting Mr. Gruel on the 8 fourth round plan. 9 THE PUBLIC: The contract last night 10 respectfully was for a contract not related to the 11 fourth round housing of it. 12 MS. McGOVERN: She may do background work in 13 terms of research, but the person who comes to testify 14 has to be the licensed planner, and that's Ms. Apte. 15 THE PUBLIC: Understood. So can you please 16 shed some light, since I did not get an answer last 17 night when I asked what is your role in helping with us 18 moving forward or not moving forward on this project. 19 Because it was outlined -- 20 CHAIRMAN BAGOFF: I don't know she was there 21 last night. I don't know if she would have the answer, 22 the information she's not privy to. 23 THE PUBLIC: Okay. Can you please state for 24 the record what your role is as a representative of 25 Heyer Gruel related to the West Essex Highlands proposal	140 1 this from -- is there mixed use allowed here, such as 2 units and a business? Because during the testimony 3 there was citing of a dog kennel which you said was not 4 on the concept plan but now on the site plan. 5 THE WITNESS: No, I believe I said that there 6 was a dog kennel on the concept plan and I believe it 7 has been shown on the site plan also. And in the 8 ordinance it's permitted as an accessory use. 9 THE PUBLIC: So it's permitted as a business 10 use you're saying? 11 MR. PLOCKER: I think I can clarify -- help 12 move things along in response to Mr. Weisleder's 13 question. May I -- 14 THE PUBLIC: You may, sure. 15 MR. PLOCKER: -- Mr. Chairman? 16 CHAIRMAN BAGOFF: Mr. Plocker. 17 MR. PLOCKER: The applicant will agree to a 18 condition of approval, it was not meant to be used 19 outside the development. It will not be a commercial 20 use, it would be an amenity for on-site development 21 that's the subject of this application. 22 THE PUBLIC: Okay. 23 My other question is -- thank you, Mr. 24 Plocker. 25 MR. PLOCKER: You're welcome.

141 1 THE PUBLIC: My other question is, the 2 heights of the building, were they, you mentioned they 3 were all in the concept plan, I forget what you said? 4 THE WITNESS: So what I said is the 5 ordinance permits the maximum height of 75 feet in this 6 zone. The concept plan, again, it's attached to this, 7 it's not very legible but it doesn't talk about what the 8 proposed height is, because I believe it was a concept 9 plan then. But I believe the site plan and the 10 architectural plan talks to the height of the building, 11 the proposed height of the building is 47.5 and they 12 meet the ordinance. 13 THE PUBLIC: Okay. 14 And on the concept plan, the site plan with 15 regard to Building D, was there any other units shown 16 with a rooftop terrace? 17 THE WITNESS: So the concept plan, again, 18 was schematically drawn, so it doesn't get to the 19 details of showing roof terraces, but I believe the site 20 plan showed that. 21 THE PUBLIC: And you're familiar that 22 Building D only has one rooftop terrace? 23 THE WITNESS: I believe so, yes. 24 THE PUBLIC: Okay. Thank you. 25 CHAIRMAN BAGOFF: Thank you.	143 1 CHAIRMAN BAGOFF: Okay. How long do you 2 need to go over them? 3 MR. AFRAN: When is CME going testify? 4 MS. McGOVERN: They're coming the meeting, 5 November 10. 6 MR. PLOCKER: Mr. Chairman, it was my 7 understanding that the CME from here on out it would be 8 the last word as the boards advisor. We are not talking 9 about any additional witnesses, I don't think, are we? 10 MR. AFRAN: Well, we don't know what CME is 11 going to say yet. If they introduce new materials it 12 might monk that. I'm not looking for it, but we can't 13 say for sure there can't be anymore testimony. We need 14 to hear what CME says. We have to review it. I don't 15 believe Mr. Plocker and I had a chance to go over it in 16 detail. 17 CHAIRMAN BAGOFF: During your review from 18 today and then you will see if you need to have any 19 other testimony. 20 MR. AFRAN: Look, I can't guarantee 21 anything, but I am sure between November 10 we can 22 review those issues, provided Mr. Goll is available and 23 I am sure he will be available during that period. 24 CHAIRMAN BAGOFF: Contact the board attorney 25 and let her know.
142 1 Would anyone else from the public have a 2 question about the testimony? Seeing none. 3 Thank you very much. 4 Mr. Afran, after hearing all this, do you 5 have any expert you would like to testify? 6 MR. AFRAN: I don't know why I have to keep 7 saying this. I have said specifically we need to see 8 CME's testimony and the geotechnical issues. I also 9 said that based on the report that was filed today, CME 10 is asking the applicant for very substantial additional 11 submissions and therefore we don't know until we hear 12 CME testify and we hear what the applicant has to say in 13 response. I just can't answer that. 14 MR. PLOCKER: And in response to that, Mr. 15 Chairman. 16 CHAIRMAN BAGOFF: Go right ahead. 17 MR. PLOCKER: One of the items that was 18 referenced in that report, which will be testified to at 19 the next meeting, we believe was done and it just may 20 have been an oversight. So that's something that we're 21 going to figure out, because like Mr. Afran, we did 22 receive the report today. 23 MR. AFRAN: I'm not saying yes or no whether 24 they were done or not. I'm just saying we just can't 25 tell because we hadn't had a chance to go over it.	144 1 MR. AFRAN: As soon as we have an answer, 2 yes. But also remember, it does depend on what CME 3 testifies to. I can't give -- 4 CHAIRMAN BAGOFF: I understand. That's one 5 testimony. I'm trying to figure out if there's anything 6 else -- 7 MR. AFRAN: The only other thing that came 8 about, Mr. Plocker submitted, I'm not faulting the 9 timing, the additional documents from the 1980 10 agreement. I have to read them, I haven't read them. 11 CHAIRMAN BAGOFF: Trying to do some magic, 12 because the holidays are coming and the board and you 13 guys have families. 14 MR. AFRAN: I just need to read that to make 15 sure it doesn't create any factual issues. 16 CHAIRMAN BAGOFF: Right. 17 MR. AFRAN: I'll try to get this all done 18 before November 10 and get an answer. 19 CHAIRMAN BAGOFF: Thank you. 20 MR. AFRAN: I do have a question on 21 management. Now, obviously it was made known originally 22 that public comment would be part of the evening today, 23 we assumed CME would testify and that would have been 24 done earlier. I am not criticizing CME, I know things 25 happen. A lot of people did come out, many not here

145 1 now, they were here earlier, it's hard on those who come 2 out thinking finally after -- 3 CHAIRMAN BAGOFF: If I may, testimony has to 4 be given and questions -- 5 MR. AFRAN: I'm not criticizing. I 6 understand. 7 CHAIRMAN BAGOFF: Thank you. Appreciate 8 that. 9 MR. AFRAN: Problem is if we say November 10 10 will be more time for community comment, seems unlikely 11 because you have the fourth round affordable housing, 12 then we have the CME testimony which will obviously take 13 time. So I don't want to have the public come out again 14 on November 10 because realistically seems to me we are 15 not likely to get to the public comment. 16 CHAIRMAN BAGOFF: I don't know yet and it's 17 posted on the website. 18 MR. AFRAN: So I want to stress, it's hard 19 for groups of organized people to come out. People come 20 out on their own to come and find they can't speak. I'm 21 not complaining, I know it happens but the public may 22 not. So we're concerned that perhaps there should be a 23 definitive date at some point that no matter what else 24 will be devoted to -- 25 CHAIRMAN BAGOFF: Unfortunately we have to	147 1 MS. McGOVERN: On July 30. 2 CHAIRMAN BAGOFF: So it's all there. It's 3 all there. 4 The next Planning Board regular meeting will 5 be held on November 5, 2025 7:30 PM via zoom. The next 6 special meeting will be held November 10, 2025 at 6:00 7 o'clock PM in council chambers. 8 (Hearing concludes at ten 10:22 PM.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
146 1 have all testimony before public comment. So that's 2 what I am trying to find out if there's anybody else. 3 We are working hard so we can achieve this. 4 MR. AFRAN: I'm not complaining. 5 CHAIRMAN BAGOFF: We appreciate the public 6 is very understanding. 7 MR. AFRAN: And we've encouraged them to be 8 understanding. We are trying. 9 CHAIRMAN BAGOFF: Okay. Good. 10 MR. AFRAN: Do we have any idea on the 10th 11 what time we think we will reach this case, any concept? 12 CHAIRMAN BAGOFF: No. Sorry. 13 MS. McGOVERN: I would not get here before 14 seven. 15 MR. PLOCKER: Dr. Bagoff, can I say one more 16 thing. 17 CHAIRMAN BAGOFF: Mr. Plocker. 18 MR. PLOCKER: In response to a comment made 19 by one of the members of the public about the board 20 posting the transcripts, in two seconds I was able to 21 locate every single transcript from prior tonight or 22 close to it. I didn't count everyone, but they looked 23 to be a complete set of transcripts. 24 CHAIRMAN BAGOFF: There was testimony also 25 on July 30.	148 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 17 18 19 20 21 22 23 24 25  ----- ERIC S. FISHMAN, S.R. Dated: <u>11/19/2025</u>

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Date

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