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CHAIRMAN BAGOFF: PB-24-01 West Essex
Highlands, Inc., Block: 179 Lot 32 Zone IH-1, Warner
Road. The applicant is proposing to develop a 496 unit
Inclusionary multifamily residential development on a
Vacant 120 acre property in the northwest corner of the
Township of West Orange.

At this moment only the Planning Board will
discuss with our attorney and our experts the
application that we have had since August of 2024.
There will be no public comment. We will not take any
information from the attorneys.

So at this time I open the floor to discussion of
the application and everything that we've had. Does
anybody want to start with questions or, I'm sorry, Ms.
McGovern. I'm sorry. My fault. A little ahead of
myself. Ms. McGovern is going to guide us in the law,
the ordinance and how we shall proceed.

MS. MCGOVERN: Okay.

And I'll will try not to be to long but this
was a long process.

Now, it's the boards job to review the
evidence, that includes the exhibits, the reports, the
plans and the other submissions that are found on the
agenda along with the testimony of witnesses and I want
to go over the legal aspects of what you should and

5 1 should not consider. 2 Number one, review the ordinance that 3 applies to this site. It is detailed, you are not 4 deciding if the ordinance was enacted correctly, if 5 there was a good reason to enact the ordinance, or if 6 you agree or disagree with the ordinance. 7 2. Review the exhibits, including the 8 experts reports that are found on the agenda. The 9 boards expert provided a lot of detailed information, by 10 my count there are 13 reports from the board experts 11 including, engineering, regarding stormwater, sewer, 12 slope stability, traffic planning and environmental 13 issues. 14 Review the testimony of the witnesses. You 15 have an advantage here that we don't usually have in 16 that we have full transcripts of the witness testimony 17 available for your review, not just summaries. We had 18 29 scheduled meetings, two of them ended early for 19 technical or other reasons. At the beginning of the 20 transcript there's a list of witnesses who provided 21 testimony and at the index in the rear you can look up 22 specific terms so you can go back and refresh your 23 memories. If you are text savvy you can even do a word 24 search on the transcripts. 25 Rely upon your training and experience as	7 1 utility services, landscaping, structures and signs, 2 lighting, screening devises. 3 3. Any other information that may 4 reasonably be required in order to make an informed 5 determination pursuant to an ordinance requiring review 6 and approval of site plans by the Planning Board. 7 What are the standards for preliminary and 8 final site plan approval. This is set forth in 9 N.J.S.A.40:55D-46. These are the procedures for 10 preliminary site plan approval. The statute says; 11 A. An ordinance requires site plan review 12 and approval. Shall require that a development submit 13 to the administrative officer a site plan and such other 14 information as is reasonably necessary to make an 15 informed decision as to whether the requirements 16 necessary for a preliminary site plan approval have been 17 met. 18 The site plan and any engineering documents 19 to be submitted shall be required in tentative form for 20 discussion purposes for preliminary approval. If any 21 architectural plans are required to be submitted for 22 site plan approval, the preliminary plans and elevations 23 shall be sufficient. 24 B. If the Planning Board required any 25 substantial amendment in the layout of improvements
6 1 board members and as members of this community. You are 2 also here to judge the credibility of the witnesses. 3 5. The board was not a party to the settlement 4 agreement. While that settlement agreement may be 5 informative as to why the ordinance was created as it 6 was, it is your responsibility to look at the ordinance, 7 review the site plan as proposed and grant or deny 8 preliminary site plan approval, final site plan 9 approval, a variance for the foundation exposure of 10 greater than 50 percent and two RSIS de minimus 11 exceptions for the loop road created if Kuzak Road is 12 closed and an exception as to the sidewalk being located 13 on one side of the road in a section of the development. 14 Now let's talk in more detail about the 15 standards set forth in the MLUL that you must follow. 16 N.J.S.A.40:55D-7, definition of Site Plan. Site plan 17 means a development plan of one or more lots on which is 18 shown; 19 1. The existing and proposed condition of 20 the lots, including but not necessarily limited to 21 topography, vegetation, drainage, floodplains, marshes 22 and waterways. 23 2. The location of all existing and 24 proposed buildings, drives, parking spaces, walkways, 25 means of ingress and egress, drainage facilities,	8 1 proposed by the developer that have been the subject of 2 a hearing, an amended application for development shall 3 be submitted and proceeded upon as in the case of the 4 original application for development. 5 The Planning Board shall, if the proposed 6 development complies with the ordinance and this act, 7 grant preliminary site plan approval. Note that 8 N.J.S.A.40:50D-46b provides that the board shall grant 9 preliminary and final site plan approval if the proposed 10 development complies with all of the provisions of the 11 applicable ordinance. 12 Okay. Now, if an application does not 13 comply with all the ordinance provisions the board must 14 deny approval. However, there are two exceptions. The 15 first exception is, where an application does not comply 16 with all the ordinance provisions but the board grants 17 relief in the terms of variances or exceptions. In that 18 case the board must review the application against all 19 the remaining ordinance provisions and grant approval if 20 the application complies with all such remaining 21 provisions. The second exception is whether the 22 application does not comply with all the ordinance 23 provisions but a condition can be imposed requiring a 24 revision to the plans or change to the application that 25 will satisfy the ordinance at issue. In that case the

9 1 board can either grant approval on the condition that 2 the site plans be revised or the application changed 3 prior to signing the site plan to comply with the 4 ordinance provisions. Or the board can adjourn the 5 hearing to permit the applicant the opportunity to 6 revise the plans or change the application to comply 7 with the ordinance provisions at issue prior to the 8 board granting approval. 9 Fundamental elements of a development plan 10 must be feasible for preliminary approval. While 11 N.J.S.A.40:55D-46a allows site plan engineering, 12 architectural plans required to be submitted for 13 preliminary approval to be in tentative form for 14 discussion purposes. The board cannot grant preliminary 15 approval subject to the latter submission of additional 16 information which is fundamental to an essential element 17 of a development plan. The reason is, because of the 18 time of preliminary review the board is under an 19 obligation to deal with matters vital to the public 20 health and welfare and the four fundamental and 21 essential elements of a development plan which may be 22 found to be feasible prior to the grant of preliminary 23 approval are; stormwater management and drainage, sewage 24 disposal, water supply and traffic circulation. And 25 that is cited in the case of D'Anna v. Washington	11 1 approval is not a grant of unbridle power to the expert 2 to approve or deny an approval. And that's cited in 3 Lionel Appliance Center v. Citta 156 NJ Super 257, which 4 is a law division case. 5 Also as held by the court in Shakoore Markets 6 v. Old Bridge Planning Board 420 NJ Super 193, "The MLUL 7 contemplates that a land use board will retain 8 professional consultants to assist in reviewing and 9 evaluating development applications. And using such 10 professional consultants to review and evaluate revised 11 plans was well within the scope of service anticipated 12 by the applicable statutes. Significantly it must be 13 the board and not any consultant that exercise the 14 authority to approve the application. 15 Findings and conclusions as to the essential 16 elements of the proposed plan. 17 As noted in case law that I already cited 18 there are four specific areas in the case law that have 19 been cited as areas that you have to review and be 20 satisfied that the plans submitted are feasible. I'm 21 going to add a fifth category because there was 22 questions about the geotechnical situation here, which 23 is unique to this piece of property. 24 So first, the board has to look at 25 stormwater management and the drainage. In addition to
10 1 Township Planning Board, 256 NJ Super 78. Appellate 2 Division 1992. Certification denied 130 NJ18-1992, 3 which cited Field v. Franklin Township 190 NJ Super 326. 4 Field was subsequently cited with approval by another 5 case Ten Starry Dom v. Mauro 216 NJ16. If information 6 and or plans related to the fundamental and essential 7 elements of the development plan have not been submitted 8 to the board in sufficient detail for the board to find 9 them feasible as part of the preliminary site plan 10 review period process, approval must be denied. 11 Final approval. The board cannot grant 12 final approval subject to later submission of the 13 required detailed drawings and specifications because 14 they are required to be submitted ahead of time pursuant 15 to N.J.S.A.40:55D-50a, see also N.J.S.A.40:55D-4, which 16 defines final approval. 17 As the action of the board taken after all 18 conditions, engineering plans and other requirements 19 have been completed or fulfilled, if the board is 20 comfortable with delegating review and approval 21 authority over revisions to plans to its engineering 22 expert, the board can grant final approval subject to 23 the conditions requiring provisions of the plans to be 24 reviewed and approved by the board engineering expert. 25 Provided however delegation of authority for review and	12 1 the plans submitted and the expert reports that have 2 been submitted, there was also testimony from the 3 applicants engineer, Paul Anderson, on July 30, 2024. 4 With respect to the objector, they submitted an 5 engineering expert report and they had testimony from 6 their expert, Sean Walsh, on February 26, 2025. And 7 then the boards engineer, John Rizzo -- oh, Jordan Rizzo 8 of CME gave testimony on October 22, 2025. I only point 9 out these dates in the transcripts because it's a lot of 10 dates. We had a lot of meetings, just to help the board 11 if you want to go back and look at a transcript if this 12 helps you to locate something that you want to take a 13 look at. 14 Sewage disposal. The applicant provided 15 testimony from Paul Anderson on July 30, 2024. The 16 objectors provided expert testimony from Sean Walsh on 17 February 26, 2026 and William Green, PE, on July 30, 18 2025. Board engineer, Ryan MacNeill of CME provided 19 testimony on October 22, 2025. 20 Water supply. Applicants expert Paul 21 Anderson, provided testimony, and this is all in 22 addition to the plans that were submitted in the expert 23 reports, on July 30, 2024. The objectors engineer, 24 William Green, provided testimony on July 30, 2025. 25 Traffic circulation and safety. Applicants

13 1 testimony of Karl Pehnke was provided first on September 2 11, 2024 and then again on September 17, 2025. The 3 objectors retained Alexander Litwornia who provided 4 testimony on September 3, 2025. And the board engineer, 5 Ryan MacNeill, gave testimony as to traffic on October 6 29, 2025. 7 With respect to the geotechnical stability. 8 Not cited in the case law but discussed in quite detail 9 on this case, the applicants provided testimony through 10 Mark Seel on -- I'm sorry, June 30, 2025 and September 11 17, 2025. Geoffrey Goll of Princeton Hydro on behalf of 12 the objectors gave testimony on July 16, 2025. Board 13 engineer Sam Kleinberg was here on November 10, 2025, 14 December 3, 2025 and December 25, 2025. 15 Remember, the board is reviewing whether the 16 plans submitted showed the feasibility of these items. 17 I caution you to consider probabilities and not 18 possibilities. You should be guided accordingly. 19 Now, the board also has been asked to give 20 two exceptions to RSIS. Residential standards are set 21 forth in the New Jersey administrative codes. These are 22 requirements that are like bulk standards but they apply 23 to the entire state. So each town has their own 24 specific ordinances but these are standards of design 25 that the state has promulgated that they believe should	15 1 calming devices." And the next paragraph says, "The 2 municipal approving authority granting a request for de 3 minimus exception shall be based on the finding that the 4 requested exception meets the following criteria." So 5 this is your guide set in the administrative code as to 6 what guides you into giving a de minimus exception. 7 1. It is consistent with the intent of the 8 Site Improvement Act. 9 2. It is reasonable, limited and not unduly 10 burdensome. 11 3. It meets the needs of public, health and 12 safety. 13 4. It takes into account existing 14 infrastructure and possible surrounding future 15 development. 16 There was also one variance requested which 17 was a -- promulgated under both the C-1 and C-2 criteria 18 and that was for the exposure of the foundation walls. 19 I, through out the course of the hearings, 20 took note of the various suggested and agreed upon 21 conditions. I can read them to you now, they would only 22 come into play if you granted the application. You may 23 want to hear them at this point so that you -- it makes 24 you think one way or another as to whether the 25 conditions help satisfy you or not satisfy you in terms
14 1 be applied to every application, but then they recognize 2 that there should always be an outlet for exceptions. 3 Just like variances to ordinances, these are considered 4 exceptions to these design standards. And that is found 5 at N.J.A.C.5:21-3. Those are exceptions, and it's 6 states, "The municipal approving authority may grant by 7 resolution of the Planning Board or Zoning Board of 8 Adjustment such de minimus exceptions from the 9 requirements of the site improvements standards as maybe 10 reasonable and within the general purpose and intent of 11 the standards. If the literal enforcement of one or 12 more provisions of the standards is impracticable or 13 will exact undue hardship because of peculiar conditions 14 pertaining to the development in question." And then it 15 says, "An application for exception pursuant to this 16 section shall be filed in writing with the municipal 17 approval authority and shall include" and then it give 18 some basic, you know, written instructions. But then it 19 states, "Examples of de minimus exceptions include but 20 are not limited to the following, reducing the minimum 21 size of parking stalls. Reducing the minimum geometrics 22 of street designs such as curb radii, horizontal and 23 vertical curbs, intersectional acts and angles, 24 centerline radii and others. Reducing cartway width and 25 any changes in standards necessary to implement traffic	16 1 of a decision. 2 CHAIRMAN BAGOFF: Ask the board if they have 3 any questions about what you've said so far. 4 MS. McGOVERN: Okay. I can stop there. At 5 any point in time if you have a question please let me 6 know and at any point in time in your deliberation if 7 you want to check back with me with what the law is on a 8 specific thing, I'm here and I'm happy to respond. If 9 there's something you would like me to go over again, if 10 there was something unclear at this point, I'm happy to 11 do that. Otherwise, I can just go through the list of 12 conditions, kind of at a fast pace perhaps now and then 13 in more detail, if need be, later on. All right. I'm 14 going to skip the standard ones that you all see in 15 every single resolution and go to, applicant agreed to 16 abide by all the suggestions and directives of the CME 17 reports by John Hess dated June 26 and July 29, 2024. 18 Applicant must clean up garbage in the 19 wooded are before deer fencing is installed. 20 Applicant agrees to add additional 21 landscaping in the form of spruce evergreens in the 22 location of the southern edge of the property. 23 Applicant must apply a blasting plan that 24 includes a plan for vibration and dust. 25 Applicant shall supply all geotechnical

17 1 studies to the township engineers. 2 11. The units designated as affordable 3 housing shall be constructed so as to be 4 indistinguishable on the outside from the market rate 5 apartments and have the same appliances or materially 6 similar. If there are supply chain problems as are 7 installed in the market rate apartments, this condition 8 applies in the future for any necessary replacement 9 appliances that may be needed in the future. 10 12. An AED will be available in each 11 building of the complex and shall be located in the 12 amenity section of the building. 13 13. The site will be serviced by a private 14 trash and recyclable haulers. 15 14. Applicant shall install bicycle racks 16 near the clubhouse. 17 15. The dog park and kennel amenity will be 18 for residents of the project site only. Only residents 19 of the project may utilize the kennel/dog park amenity. 20 16. Applicant will install solar panel 21 directional signs. 22 17. Each floor of every building must have 23 a fire safe room. 24 18. The proposed model apartment shown on 25 the plans in the clubhouse building may not be used as a	19 1 25. Applicants must install audible signals 2 at each garage to alert pedestrians and other drivers of 3 exiting vehicles. 4 26. Applicant must incorporate crosswalks, 5 stop signs and stop bars at the upper level exit of 6 Building D and Building C and stop bars at both garage 7 entrances that are adjacent to sidewalks. 8 27. Applicant shall construct the 9 sidewalk/walkway from Building D to the clubhouse. 10 28. White stripes shall be added on each 11 side of the paver crosswalks. 12 29. Fire, police and ambulance shall be 13 provided emergency access via Knox Box. 14 30. Deer fencing must be evaluated each 15 year by the management company and repaired as per those 16 findings. 17 31. Applicant agrees to perform GPS 18 documentation mapping of select specimen trees and/or 19 areas within the LOD in accordance with the report 20 recommendation set forth in the report by Wayne DeFeo 21 dated October 16, 2024. That would be Page 3 of that 22 report. 23 32. Applicant agrees to install the plant 24 selection and quality recommendations set forth in the 25 report by Wayne DeFeo dated October 16, 2024. Again,
18 1 permanent tenant occupied apartment and must remain 2 unoccupied. 3 19. There shall be no four bedroom units 4 permitted, including that no den may be converted into a 5 bedroom. 6 20. All plants located in the area and on 7 the trellises proposed as foundation covers, the living 8 green wall. For the parking area shall be live plants, 9 no artificial plants shall be permitted. The live 10 plants must be maintained in perpetuity. 11 21. Applicant will shield from view the 12 roof deck and any balconies facing Howell Drive with 13 live greenery, potted live plants to be maintained in 14 perpetuity. 15 22. Applicant must comply with the 16 recommendations and directives set forth in the CME 17 letter from Kevin E. Chen, PE PTOE dated July 28, 2024. 18 23. Applicant shall install a sign at the 19 parking garages that warns drivers to go slow and to 20 watch for pedestrians. 21 24. I have a notation, I don't know what 22 the board wants to do with this, it was a question mark, 23 parking spaces shall be assigned to tenants. Visitor 24 spaces labeled. You'll have to circle back to that if 25 we need to.	20 1 Page 3 of that report. 2 33. Applicant agrees to be bound by the 3 design terms for the proposed deer fencing with all 4 specifications of the New Jersey Department of 5 Agriculture for deer fencing. 6 34. Applicant shall install and maintain 7 the plastic sleeve or other deer protection methods to 8 protect plants on the site that are outside of the deer 9 fenced area. 10 35. Applicant will work with Wayne DeFeo or 11 our forester -- Wayne DeFeo or his designee or the 12 forester as to the type and number of trees and plants 13 that would be planted. The planted trees shall be 14 approved by either forester or Wayne DeFeo or his 15 designee. 16 36. Applicant will install speed reduction 17 features, traffic calming such as raised crosswalks, 18 will work with the township engineer for those measures. 19 37. Applicant will do a study via GIF 20 overview to determine what trees can be preserved in the 21 development area. 22 38. All right. This came up in terms of, 23 there was a question as to whether some type of a fund 24 can be set aside for escrow regarding if there was any 25 damage caused by blasting. It was my suggestion that

21 1 applicant shall submit to the building department 2 certificates of insurance for all contractors and 3 subcontractors. This would be instead of an escrow 4 which would be impossible to implement regarding damages 5 to third-parties. 6 39. Applicant shall conduct a post blasting 7 survey. 8 40. No sanitary sewer pipe maybe located in 9 any areas of stormwater infiltration. 10 41. Applicant agrees to work with the 11 municipal engineer as to connection of the proposed 12 sewer to the municipal system. Applicant will install 13 alternatives such as off peak pumping or other 14 reasonable alternatives as suggested by the township 15 engineer. All such alternatives must be maintained in 16 perpetuity. 17 42. Every five years or when the township 18 engineer deems necessary applicant must have the 19 stormwater and sewer system evaluated, and those 20 evaluations supplied in the report to the township 21 engineer. 22 43. Applicant must plan to maintain large 23 spruce and evergreens on the southern the edge of the 24 property. 25 44. Kuzak Road shall be open for	23 1 49. Applicant must secure all necessary 2 approvals for the installation of the traffic signal at 3 Oval Road and Eagle Rock Avenue and pay for the 4 installation of that traffic signal. 5 And -- 6 CHAIRMAN BAGOFF: Yes. 7 MS. McGOVERN: Okay. No improvement -- all 8 right. 9 And then the standard conditions, that's why 10 I started -- there are five or six standard conditions, 11 so when I started numbering them that's why if you 12 missed some, that's why we're missing some. 13 And the last condition is always, that all 14 the conditions must be added to the final site plan 15 permission prior to the submission of the building 16 permit. 17 CHAIRMAN BAGOFF: Mr. Klein. 18 MR. KLEIN: Can you go back to the one about 19 the blasting. 20 MS. McGOVERN: Yeah. 21 MR. KLEIN: You said post blasting 22 inspection. Don't we need a pre as well? 23 MS. McGOVERN: Yeah, that's what you said. 24 MR. KLEIN: Just pre or. 25 MS. McGOVERN: Pre and post.
22 1 pedestrians and bicyclists if restricted to vehicles for 2 emergency use only. Again, that condition only come 3 into play depending on what the boards decision is as to 4 Kuzak Road. 5 45. Applicant will follow all the 6 recommendations set forth in the August 15, 2025 CME 7 memo pertaining to soil testing and infiltration. 8 46. Applicant must satisfy all the 9 conditions set forth in the report of Samuel A. 10 Kleinberg dated October 28, 2025. There are 11 11 conditions on Pages 19 through 20. 12 47. Should any Native American Artifacts be 13 uncovered during any phase of construction of the 14 project, those artifacts must be preserved and reported 15 to the New Jersey Commission on Indian Affairs with a 16 copy of that notice to the Planning Department. This is 17 a condition suggested to me by a couple of the board 18 members. 19 Again, it's all for review at the end if we 20 get to that point. 21 48. Applicant will supply two jitney buses 22 to run during weekday hours to the Cody Center bust 23 station and to the train station with jitney stops 24 designated throughout the complex. Hours for the jitney 25 shall be set to run at peak hour times.	24 1 MR. KLEIN: Pre and post. You only said 2 post though right. Okay. 3 MS. McGOVERN: I had a, I thought I had -- 4 that was a different number in a different location. 5 MR. KLEIN: Oh, wait, that wasn't the other? 6 MR. CARDOZA: You said blasting plan before 7 that. 8 MR. KLEIN: Put them all together then. 9 MS. McGOVERN: I'll put them together. I'll 10 make sure blasting is one category together. 11 MR. KLEIN: Right. You got to do the pre 12 inspection before. 13 MS. McGOVERN: Right. Pre and -- do you 14 remember what number I gave it? 15 MR. CARDOZA: It was the fourth one you 16 stated and then -- 17 MR. KLEIN: Probably in the upper 30s. 18 MS. McGOVERN: Okay. I did applicant shall 19 -- that's 39, applicant shall include a post blasting 20 survey and then let me see. 9, okay. Applicant must 21 supply a blasting plan and survey. 22 MR. KLEIN: You got to do -- you have to go 23 to the peoples houses and see who has cracks in their 24 foundations. 25 MS. McGOVERN: Before.

25 1 MR. KLEIN: Before. 2 MS. McGOVERN: Like you got to do it at the 3 end, post. 4 MS. McGOVERN: Okay. So I'm going to have 5 it the condition read, if we get there, applicant must 6 supply a blasting plan and pre blasting survey. 7 MR. KLEIN: Right. And they compare it to 8 the post and -- 9 MS. McGOVERN: Right. 10 And then we have the post blasting plan. 11 MAYOR McCARTNEY: So Chairman, wasn't -- was 12 that one of the 11 conditions from Mr. Kleinberg? 13 MS. McGOVERN: It may have been. 14 MR. KLEIN: Oh, it's in there. Oh, okay. 15 CHAIRMAN BAGOFF: It is a condition but we 16 sort of put everything together in one master condition 17 list. 18 MS. McGOVERN: You all are so adept at this, 19 and been doing this for a while, that you came up with, 20 -- 21 MAYOR McCARTNEY: We've never done this. 22 MS. McGOVERN: Well, no, no, no, you all are 23 knowledgeable and have had other experiences with this, 24 and put it in, and then it was summarized all over again 25 in Mr. Kleinberg's report, so it's in there twice. So	27 1 disagreement with that? Any questions or comments about 2 -- 3 MR. KLEIN: Well, wait. We have to decide 4 whether -- 5 CHAIRMAN BAGOFF: Right. I'm asking -- 6 MR. KLEIN: We're going leave them open or 7 make them closed. 8 CHAIRMAN BAGOFF: Correct. So if you leave 9 them closed it's a cul-de-sac, which is a deviation from 10 the RSIS. 11 Mr. Alper. 12 MR. ALPER: I mean I know the term is a de 13 minimus exception, but it would be 2.7 times what's 14 allowed. It would be 2700 average daily trips as 15 opposed to a 1000, that's de maximus. 16 MR. KLEIN: Right. It's not de minimus, 17 yeah, you're right. 18 CHAIRMAN BAGOFF: Mayor McCartney, you have 19 a question? 20 Mr. Klein. 21 MAYOR McCARTNEY: I'm not saying no, I'm 22 saying I have to think. 23 CHAIRMAN BAGOFF: We're just focusing on 24 Kuzak Drive and the walkway at the moment. 25 MAYOR McCARTNEY: No, I don't have a
26 1 it's like belts and suspenders. 2 MR. ALPER: Even the one about evergreens on 3 the south end of the -- 4 MS. McGOVERN: I think that's in there 5 twice, yes. That's in there twice. 6 CHAIRMAN BAGOFF: So before we -- I think to 7 get going, we should look at the de minimus exceptions 8 first and start there as a board. I think those are the 9 easiest things, where there was testimony and take those 10 off the table. Let's see if we can get through those 11 and the we can go to the C variances then we'll go 12 around the board and everyone can have their say and 13 we'll talk about it. Does that make sense? 14 MR. KLEIN: Sure. And it's the three 15 things, foundation exposure, the sidewalk -- 16 CHAIRMAN BAGOFF: Well, there's two de 17 minimus exceptions and one C. So the sidewalk is a de 18 minimus exception and the -- 19 MR. KLEIN: Foundation exposure. 20 MAYOR McCARTNEY: Foundation exposure. 21 CHAIRMAN BAGOFF: Foundation. Kuzak Drive 22 opening and that we have testimony from Mr. MacNeill 23 that if Kuzak Drive is closed it becomes a cul-de-sac, 24 the other area becomes a cul-de-sac, which is a 25 deviation from the RSIS. So does anybody have a	28 1 question. 2 MR. KLEIN: So, all right. So we're 3 supposed to close Kuzak as, am I allowed to say the S 4 word, settlement, am I allowed to say that? 5 CHAIRMAN BAGOFF: No, no, no. It's an 6 option. We can open it or close it. 7 MR. KLEIN: It's always been an option or 8 it's supposed to be closed except in an emergency. 9 MS. McGOVERN: It's always been an option. 10 What was written in the settlement agreement was that 11 the applicant had to do its best job, it had to support 12 it being closed. 13 MR. KLEIN: Closed. Okay. 14 MS. McGOVERN: But in the event that the 15 board didn't want it -- 16 MR. KLEIN: Oh, all right. 17 CHAIRMAN BAGOFF: -- then that the -- 18 CHAIRMAN BAGOFF: And based on the testimony 19 of Mr. MacNeill he guided us that if we trust that 20 testimony that it is a, becomes a cul-de-sac and that is 21 not consistent with the RSIS. 22 MR. KLEIN: Right. 23 MAYOR McCARTNEY: But we can grant that? 24 CHAIRMAN BAGOFF: Mr. Alper. 25 MR. ALPER: I think I'll have more on this

29 1 later, but I mean, Kuzak is a block and a half long and 2 it meets Warner a block and half outside the site. I 3 think it's a legal fiction then it's a separate road to 4 begin with. I think it's a cul-de-sac regardless of 5 what we do. But getting -- closing Kuzak I think really 6 would be a problem. 7 MR. CARDOZA: Agreed. 8 CHAIRMAN BAGOFF: Ms. Kapferer. 9 MS. KAPFERER: Agreed. 10 CHAIRMAN BAGOFF: Mr. Cardoza. 11 MR. CARDOZA: I second that. 12 CHAIRMAN BAGOFF: Okay. 13 Council Person Council President Scarpa. 14 COUNCILWOMAN SCARPA: Yeah, I would agree 15 with that. 16 CHAIRMAN BAGOFF: Okay. 17 Mr. Vice Chair. 18 VICE CHAIRMAN GUARINO: I do too. 19 CHAIRMAN BAGOFF: Okay. So the condition 20 would be leave Kuzak Drive open for traffic, bicycles 21 and pedestrians. 22 Okay. The second thing is one sided walkway 23 as opposed to two. Again, there's still a walkway in 24 that area. 25 MR. KLEIN: Sidewalk.	31 1 applicant has said that they will "green" it with 2 plantings. So does anybody have a -- 3 MAYOR McCARTNEY: That makes somewhat sense 4 to me. You know, when we heard that because it would 5 alleviate the excavation or any necessary blasting, so I 6 just thought that would be better and camouflage it with 7 landscaping. 8 CHAIRMAN BAGOFF: In perpetuity. 9 MAYOR McCARTNEY: In perpetuity. 10 CHAIRMAN BAGOFF: Okay. Anybody have an 11 issues with that? 12 Council President, Mr. Cardoza, Mr. Alper. 13 Okay. 14 So we recommend to grant the C variance for 15 that. Oh, that was easy. I feel good already. 16 MR. KLEIN: It's good to check the easy 17 stuff off. 18 CHAIRMAN BAGOFF: Okay. 19 So now we'll get into the meat of the 20 application. 21 MAYOR McCARTNEY: Questions. 22 CHAIRMAN BAGOFF: Yeah. So I'm going to 23 around the board and you have your say about everything 24 that Ms. McGovern spoke about or other things that have 25 come up along the way that you'd like to share with the
30 1 CHAIRMAN BAGOFF: Sidewalk. Okay. Does 2 anybody have any problems with that as a de minimus 3 exception? 4 Ms. Kapferer. 5 MS. KAPFERER: No. 6 CHAIRMAN BAGOFF: Okay. Good. 7 Mr. Alper. 8 MR. ALPER: No. 9 CHAIRMAN BAGOFF: Mr. Cardoza. 10 MR. CARDOZA: I recall speaking at length 11 about that at the time. I'm fine with that. 12 CHAIRMAN BAGOFF: Council President Scarpa. 13 COUNCIL WOMAN SCARPA: I'm okay with that. 14 CHAIRMAN BAGOFF: Okay. 15 MAYOR McCARTNEY: Right, but it's already 16 existing that way. 17 CHAIRMAN BAGOFF: Yes. 18 MR. KLEIN: Sidewalk to nowhere. 19 CHAIRMAN BAGOFF: Correct. 20 So the third thing is a C variance. 21 So the C variance occurs because the 22 topography of the land that was brought out in the 23 application testimony that normally this would be below 24 grade but in this area it becomes part of the garage and 25 is visible and it is considered foundation. The	32 1 board. 2 Okay. Mayor McCartney. 3 MAYOR McCARTNEY: Sure. So I'm grappling 4 with this two things. One, just a better clarification 5 what we heard about, we keep hearing about a steep slope 6 and we do -- we saw in so many exhibits that there is a 7 ridge line and there's a difference between a ridge line 8 and the slope. So I would like a clarification on that 9 ridge line before you get to the slope. That's one. 10 CHAIRMAN BAGOFF: Okay. Mr. MacNeill, can 11 you opine on that. 12 MR. MacNEILL: Yeah, so it does help to 13 review the grading plan so you can review the 14 topography. I don't know if that's possible to put on 15 the screen, Joe. So it's really the site plan. 16 MS. MCGOVERN: Can you point on the agenda 17 to the document, maybe that will help Joe find it. 18 MR. MacNEILL: So Joe, it's on the -- near 19 the bottom of the third page. It's 12 items up on the 20 bottom of Page 3 on the agenda. Sheet 11. 21 Joe, if you could zoom in Sheet 11. And 22 then Joe, if you could just zoom in on Building D, the 23 right side. 24 So you could see essentially -- all right. 25 So you see Building D here, right. And then that is the

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1 dashed line, it follows up and down.

2 MR. KLEIN: That's the ridge?

3 MR. MacNEILL: That is the ridge. So the

4 ridge is really just your high point, your change in

5 grade. So you could see that the top of the ridge and

6 it slopes off to the east here, it slopes off to the

7 west. So I think there is testimony on there that the

8 closest point it gets to seven feet from that ridge. In

9 this corner it does, that corner as well. And then, so

10 really the testimony from Sam Kleinberg of my office, he

11 was saying there is a separation where you do have a

12 flatter area on the ridge before you're hitting the two

13 to one or in some cases one to one slope. So --

14 MAYOR McCARTNEY: That's my question.

15 MR. MacNEILL: Okay.

16 MAYOR MacNEILL: What is that distance?

17 MR. MacNEILL: So this distance, I believe,

18 I don't want to say off the top of my head, I don't have

19 that in front of me, but there was testimony provided on

20 the exact distance from here to there. What I can do,

21 if there's any other questions, I can scale that off

22 real quick as well, just on what I have here.

23 MAYOR McCARTNEY: Yeah, I would like to

24 know.

25 MR. MacNEILL: I'll do that on the side. If

34

1 there's any other questions that the board may have.

2 MAYOR McCARTNEY: My other question -- can I

3 keep going. All right. My other question was,

4 clarification was on the sanitary sewer capacity for the

5 township.

6 MR. MacNEILL: Okay.

7 MAYOR McCARTNEY: The question, do we

8 satisfy that?

9 MR. MacNEILL: Yeah, so sewer capacity,

10 obviously is an issue in the township, right. There's

11 -- the real problem that the township is experiencing is

12 there is not an overall study that outlines, here's the

13 current capacity of the system. Here is what is being

14 sent to the system. What the applicant has agreed to is

15 upsizing piping in the municipal system to meet their

16 capacity plus the additional or the existing development

17 up to a certain extent, which is kind of outlined in

18 our, there is a sewer review letter dated December 8,

19 2025 from my office to the township engineer, which does

20 outline some comments and some additional analysis that

21 under the sewer review with the township will have to be

22 completed by the applicant before the township engineer,

23 I don't want to speak for her, but before she will sign

24 off on the TWA application.

25 MAYOR McCARTNEY: And that the sole cost and

35

1 expense of all of that would be on the developer?

2 MR. MacNEILL: That is outside of my

3 understanding currently.

4 MAYOR McCARTNEY: Is that a condition?

5 MR. MacNEILL: I'm not sure if that's in the

6 agreement, that needs to be taken place between the

7 applicant and the township.

8 MAYOR McCARTNEY: Right. I believe that is

9 in the agreement. So is that a condition or is that --

10 MS. McGOVERN: Is it in the conditions that

11 we have with the sewer?

12 MAYOR McCARTNEY: It's not. Well, you

13 didn't mention it so can we add it or that this

14 particular project is at the sole expense and cost --

15 MS. McGOVERN: Okay.

16 MAYOR McCARTNEY: It is in the agreement.

17 It is. On Page 6.

18 MS. McGOVERN: In the ordinance it is or in

19 the --

20 MAYOR McCARTNEY: That was in the agreement.

21 MS. McGOVERN: In the settlement agreement

22 you're referencing?

23 CHAIRMAN BAGOFF: The ordinance. In the

24 ordinance.

25 MS. McGOVERN: What's the -- Mayor, can you

36

1 point out the ordinance you're taking about?

2 MAYOR McCARTNEY: I don't see anything.

3 Okay. I don't see anything about the sewer in there.

4 MS. McGOVERN: No, it's not in the

5 ordinance. That wouldn't be -- that would part of, you

6 know, your site plan or requirements within the township

7 and then if there's a side agreement with it, we're not

8 reviewing that. We don't have any say over that. But

9 we, meaning the Planning Board, does not have any say

10 over that. That's not part of your review.

11 MR. KLEIN: But they have to be able to

12 provide sewer?

13 MS. McGOVERN: Exactly.

14 MR. KLEIN: Right.

15 MS. McGOVERN: Right. Who pays for it --

16 MR. KLEIN: Right. Not our issue.

17 MR. MacNEILL: And just to answer your

18 initial question, I apologize Mayor, the slope is about

19 40 feet at the closest point to 120 feet from the ridge

20 line.

21 MR. KLEIN: Can you put that picture back

22 up, Joe.

23 Mr. MacNeill: Minimum 40 feet from the

24 ridge line to the steep slope area.

25 MAYOR McCARTNEY: Okay. So wait, but let's

37 1 add that together then. Is that what you're saying, we 2 can add -- 3 MR. MacNEILL: No. Sorry. So it's -- yeah 4 so I guess, I guess at your highest or the minimum would 5 be the 40 plus the seven. So you're seven feet from the 6 ridge line and then at the minimum from where the ridge 7 line before the slope it's 40 feet. So if you're adding 8 them together the minimum would be 47. 9 MAYOR McCARTNEY: Okay. And yet 120 at some 10 of the other points. 11 MR. MacNEILL: Yeah, you can see like in 12 this area you have more of a flat point. Here really is 13 the pinch, right. 14 MAYOR McCARTNEY: Well, all right. Thank 15 you for that. 16 We heard so much testimony and even letters 17 from the outlining communities about preservation. I 18 feel like out of 120 acres what we have heard as 19 testimony out of the 120 acres, 61 were developable and 20 this basically was clustered like our Master Plan 21 suggests on only 27.9 being disturbed. And the land is 22 not for sale. It's never been for sale. So all the 23 testimony that we heard about preservation, that's not 24 really our purview. We're preserving as much as we can. 25 So I'm just -- right. Every letter was all about	39 1 the priorities. 2 CHAIRMAN BAGOFF: Well, it is definitely a 3 priority. There are sidewalks. The board has to decide 4 does it connect to the other community that it's 5 contiguous with and if so can you get out to Eagle Rock 6 Avenue walking through the community. Is it possible. 7 It is possible to walk now to Eagle Rock Avenue through 8 the community and then does this impede that, add to it. 9 That's what the board has to look at. Okay. 10 Any other questions. 11 MS. KAPFERER: And I guess I can add some 12 commentary. 13 CHAIRMAN BAGOFF: Sure. Go right ahead. 14 MS. KAPFERER: If that's okay. I like to 15 walk and run. I do try, Eagle Rock is tough because 16 it's, you know, hilly. I have managed to get up to Oval 17 Road and it's, you know, there are definite, obviously 18 missing sidewalk, I don't know if I want to try to run, 19 you know, from Pleasantdale up into the Highlands, you 20 know, there's not connectivity. Like there's not a 21 sidewalk the whole way. So that's a comment that I 22 have. And, you know, even I think the snow, you know, 23 makes it even more obvious like where you can go, where 24 you can't. So, you know, right now if you tried to walk 25 from Pleasantdale the Highlands you would be in the
38 1 preservation, every letter I read was about preservation 2 and I don't want to discount that or minimize that, but 3 we're not here to buy this property. That's it for now. 4 CHAIRMAN BAGOFF: Okay. 5 Mr. Klein. 6 MR. KLEIN: I'm going to pass for now. 7 CHAIRMAN BAGOFF: Okay. 8 Ms. Kapferer. 9 MS. KAPFERER: Still thinking. One question 10 I do have, maybe for others who have been on the board 11 longer than I is about our Master Plan and the 12 circulation element and the way that, maybe the way that 13 it's interpreted and when I read it, I read that there's 14 an emphasis on connecting neighborhoods and an emphasis 15 on providing facilities for those who want to bike and 16 walk. Just curious if that's, if that is some of the 17 same things that stand out to others from the Master 18 Plan. Or other additional interpretations of things to 19 keep in mind. 20 MAYOR McCARTNEY: So are you asking then is 21 this a private community or can anyone go through there 22 to bike? 23 MS. KAPFERER: No, I'm asking about like the 24 Master Plan itself and what are the priorities when it 25 comes to circulation as others understand it. What are	40 1 street unless you wanted to go into kind of deep snow. 2 So just a comment that I think that that's something for 3 me that's important and I think will be to approve this 4 are some additional, maybe conditions that we would want 5 to consider. 6 CHAIRMAN BAGOFF: We had asked the applicant 7 if they could put a sidewalk on Oval Road, the applicant 8 spoke to people that owned Oval Road and they don't want 9 to change it. So that's something we had asked already 10 because the applicant doesn't own that road. 11 MS. KAPFERER: Yeah. I think thing I'm 12 still a little unclear of the ownership of that road. I 13 think, you know, that, I know it's challenging because, 14 you know, I think the other great concern that I have 15 is, you know, emergency access and I know that 16 sometimes, you know, creating an environment that's more 17 friendly to walkers and bikers can also slow traffic, 18 so, you know, feels like those priorities are competing. 19 So I'm personally struggling a bit with that on this and 20 I would guess, I mean -- 21 CHAIRMAN BAGOFF: You may see if they can 22 stripe a bike line. 23 MS. KAPFERER: Yeah, perhaps. 24 CHAIRMAN BAGOFF: We'll have to see. But if 25 there's some middle ground we could achieve where a bike

41 1 lane could be striped that would be helpful. If you 2 can't have a sidewalk, maybe a bike land and pedestrian 3 lane. 4 MAYOR McCARTNEY: I just wanted to pick up 5 on what Lori's saying that, because we've always been 6 told that when an application opens like this, and we 7 are discussing these conditions, and if it is sidewalks, 8 this is the time to, you know, you saw with it the zoo 9 how many times. 10 CHAIRMAN BAGOFF: I just have to focus you. 11 This is not the applicants. This is not the application 12 before us. It is a contiguous property that the 13 applicant has testified they don't own. So we can see 14 if it's possible, I have no problem with that. We'll 15 have to speak to Ms. McGovern if we can come up with all 16 of this, but I would not mind putting that as a 17 condition, if you can't have a sidewalk, stripe it and 18 -- I'm sorry. 19 MR. KLEIN: Inside -- 20 CHAIRMAN BAGOFF: But you're fine. 21 MR. KLEIN: Inside the site plane you're 22 talking. 23 CHAIRMAN BAGOFF: Correct. 24 MR. KLEIN: Right. I don't know. I think 25 the width is not enough to get a bike lane but we could	43 1 I don't know if I could put this in, but 2 during conversations particularly with the members of 3 the Lenape Tribe who to our meetings expressing their 4 concerns about artifacts, preserving and things like 5 that. I wonder if this the point in time we can make a 6 condition that the developer, the applicant, supply 7 enough valuation of how the soil is disturbed that 8 things in construction is going on if artifacts are 9 found, significant artifacts that pertain to the first 10 Americans and everything else, could that something made 11 a condition? 12 CHAIRMAN BAGOFF: We actually have a 13 condition in there. 14 MS. McGovern, would you -- 15 MS. McCARTNEY: There was a condition to 16 that effect. 17 CHAIRMAN BAGOFF: Let her read it in the 18 record again so we all can hear it. 19 VICE CHAIRMAN GUARINO: Yeah, because I 20 didn't hear it last time, but it's -- 21 CHAIRMAN BAGOFF: Let her read it in the 22 record. 23 MS. McGOVERN: The -- after we had the 24 testimony, this was brought to my attention, so maybe 25 you didn't hear me when I was reading the list, or --
42 1 maybe put shadows to be able to -- 2 CHAIRMAN BAGOFF: Yeah. There's gonna be 3 something that is possible. Smart minds can do amazing 4 things. Okay. 5 Mayor McCartney. 6 MAYOR McCARTNEY: Again another thing that 7 Lori just mentioned about the emergency egress. We 8 concentrated on Howell, which I think is necessary just 9 for emergencies. But we also have Oval Road that we've 10 been told by the fire department hasn't been used in 30 11 years, but it is there and there's also connectivity to 12 The Grand. So there's an emergency exit, I believe, 13 that it would be a connection there. So that's one 14 more, one more avenue. No pun intended. 15 CHAIRMAN BAGOFF: Okay. 16 Ms. Kapferer. More to come? 17 MS. KAPFERER: Yeah, probably. 18 CHAIRMAN BAGOFF: Okay. 19 MS. KAPFERER: I'm really struggling with 20 the emergency exits. 21 CHAIRMAN BAGOFF: That's good. Good. Good. 22 Think about it. Okay. 23 Vice Chairman Guarino. 24 VICE CHAIRMAN GUARINO: Thank you, Mr. 25 Chairman.	44 1 CHAIRMAN BAGOFF: Yeah, after Chief Mann of 2 the Ramapough Lenape family spoke. 3 MS. McGOVERN: Should Native American 4 artifacts be uncovered during any phase of construction 5 of the project those artifacts must preserved and/or 6 reported to the New Jersey Commission on Indian Affairs 7 with a copy of that notice to the Planning Board. 8 VICE CHAIRMAN GUARINO: Okay. 9 MS. McGOVERN: Is that sufficient? 10 VICE CHAIRMAN GUARINO: Yep. 11 MS. McGOVERN: Preserved and reported. 12 VICE CHAIRMAN GUARINO: And reported. Okay. 13 Thank you. 14 My next question is that, you know, we talk 15 about all the reporting that's going on. All these 16 evaluations, you know, from pre-construction, 17 construction as the period in the project move on. Will 18 there be times when these recordings and all these 19 findings will be available to the general public so 20 people can go to specific areas and say, okay, they have 21 done this demolition, they've done this excavation, what 22 has changed or what has not changed. Is there a 23 significant intervals of when these recordings so the 24 general public and the residents of the township and 25 surrounding areas can evaluate these reports and see

45 1 what's going on? 2 CHAIRMAN BAGOFF: Well, any document that's 3 brought to the township is available through an OPRA. 4 VICE CHAIRMAN GUARINO: Right. But I'm 5 saying is there an intimate -- is there gonna be -- it's 6 gonna done this time it's gonna be that time or it'll be 7 intimate every month, or every so many weeks, these 8 reports will be available in planning so the residents 9 can come in, people from the general public can come in 10 and see what the status of the project is? 11 CHAIRMAN BAGOFF: Good question. If there's 12 a pre-blasting report -- I'm sorry. Mr. Klein. 13 MR. KLEIN: Yeah. So would it be 14 overburdensome to ask the applicant to put up some sort 15 of website that gives some milestones of when they d 16 certain things so that people can sign up for 17 notifications, there's going to be blasting next week. 18 Things like -- I don't know, I've never seen that 19 before. 20 CHAIRMAN BAGOFF: We'll ask the applicant is 21 that a reasonable condition. 22 MR. KLEIN: Right. Just to be able to keep 23 the public informed. 24 CHAIRMAN BAGOFF: It would also be supplied 25 to the township but we'll ask the applicant to put up a	47 1 Kleinberg and I have a list of the things that, the 11 2 conditions that -- 3 CHAIRMAN BAGOFF: Go ahead. 4 MAYOR McCARTNEY: Well, I'm not going to 5 read them. I wanted to know can we read them Diana, if 6 you have them in your, I think it would be important to 7 hear those. 8 MS. McGOVERN: Okay. Let me find the 9 report. 10 CHAIRMAN BAGOFF: Yeah. If it's in his 11 report, let's pull his report and see. 12 MAYOR McCARTNEY: Oh, we could do it that 13 way. 14 CHAIRMAN BAGOFF: This way it's available as 15 it was cited in the overall -- 16 MAYOR McCARTNEY: I think it makes so much 17 sense and I think they were very important. 18 MR. MacNEILL: I have the report up. 19 MAYOR McCARTNEY: Oh, great. Okay. 20 CHAIRMAN BAGOFF: Mr. MacNeill. 21 MS. McGOVERN: You have it at you 22 fingertips. Thank you. 23 MR. MacNEILL: Yeah, I have it. 24 MAYOR McCARTNEY: Thank you, Ryan. 25 MR. MacNEILL: So the 11 conditions, or
46 1 website. 2 MR. KLEIN: Oh okay. So if the applicants 3 going to be providing it to the township then we just 4 have to have the township some how -- 5 CHAIRMAN BAGOFF: As you said, it may be 6 easier and more expeditious to have the applicant who 7 has the document in hand as opposed to moving through 8 the process of it getting, going to the Planning Board 9 secretary, getting it read, posted. It'll go that 10 process but it'll also be placed by the applicant online 11 on a site that will be available to the public. 12 Mayor McCartney. 13 MAYOR McCARTNEY: So there have been other 14 applications where we have, whether acquisitions where 15 we have monthly reports generated and maybe not 16 necessarily monthly, but quarterly to ask the applicant 17 to do that quarterly. 18 CHAIRMAN BAGOFF: That could be worked with 19 the building department, because it'll be in their 20 purview when they feel that reports are reasonably due. 21 That the building department will work with the 22 applicant to set up those times when reports will be due 23 and posted. 24 Mayor McCartney. 25 MAYOR McCARTNEY: I'm going back to Mr.	48 1 recommended requirements in Sam Kleinberg's report; 2 First one, clearing the site the limits -- 3 CHAIRMAN BAGOFF: Could you say the date of 4 that report. 5 MR. MacNEILL: Yeah. Sorry. That is the 6 October 28, 2025. 7 CHAIRMAN BAGOFF: Thank you. Go right 8 ahead. 9 MR. MacNEILL: So it starts on Page 19 and 10 goes to Page 20 of that report dated October 28, 2025. 11 So the first recommended requirement would 12 be for clearing sites, the limits of earth work and 13 disturbance should be strictly adhered to, to maintain 14 the stability of the slope. 15 2. Long-term measures should be required to 16 maintain that health of the forestry on the slope. The 17 health of the root systems provides reenforcement to the 18 shallow topsoil layer on the slope. 19 3. The provisions of the soil erosion plan 20 shall -- should provide details for protection of the 21 ridge and slope. Discharge of water from dewatering 22 during construction should not be permitted. 23 4. Surcharges resulting from the 24 stockpiling of materials and heavy equipment should not 25 be permitted on the ridge immediately above the slope to

49 1 avoid a reduction of the stability of the slope. 2 5. The requirements for construction should 3 include an excavation and dewatering work plan 4 addressing the stability of the slope during the 5 construction. This work plan should prepared by a 6 licensed professional engineer currently registered in 7 the State of New Jersey. 8 6. Support of the excavation should be 9 required along the ridge. Cutting back the slope beyond 10 the limits of the earth work should not be permitted. 11 Rock excavation should be controlled to 12 minimize vibrations and disturbance of the ridge. The 13 design of blasting charges if required should consider 14 the controlling distance to the distance -- to be the 15 distance to the top of the slope, which is in the 16 maximum range of 40 to 100 feet. 17 Dewatering and control of runoff should be 18 required. Ponding of water in the excavation could 19 surcharge the joints in the rock and should not be 20 permitted. 21 Slope indicators -- number 9. Slope 22 indicators should be installed on the slope to monitor 23 for movement during construction. 24 10. Installation of groundwater monitoring 25 wells should be considered at infiltration basins	51 1 the conditions, on top of this one, all the conditions 2 of approval are complied with and if this townships 3 inspector identifies a violation they would immediately 4 contact the construction official, the township engineer 5 and then they could put a stop work order on the 6 project, for them to remediate that problem before they 7 could then proceed with the construction. 8 COUNCIL WOMAN SCARPA: Do we have the 9 personnel to be able to do that kind of oversight? 10 MS. McGOVERN: I think that the applicant 11 pays for our consulting engineer. 12 MR. MacNEILL: Yeah, so if they approve, one 13 of the standard conditions, is they have put up a 14 performance guarantee, an inspection fee escrow. So for 15 performance guarantee they're required to put up 120 16 percent of the bondable improvements. And then on top 17 of that, 15 percent of that is your inspection fee 18 escrow and if determined if we need additional you 19 always replenish through the applicant. 20 COUNCIL WOMAN SCARPA: Okay. While I have 21 the floor, I have some questions and concerns about the 22 December 8 that we referenced. Particularly under the 23 general comments B and some of the things concerned on 24 the on-site sanitary sewer comments. 25 I still have a concern that, you know, it
50 1 located along the ridge. 2 And finally number 11. Final grading and 3 landscaping should be strictly performed to ensure that 4 runoff is intercepted and prevented from runoff over the 5 slope. 6 So to add that, I do think we will, our 7 recommendation would be to have a separate condition, if 8 it gets to that point, of requiring the blasting plan, 9 the pre-survey as well as the post-survey as a separate 10 condition, just to clarify, make sure that is included. 11 CHAIRMAN BAGOFF: Mayor McCartney. 12 Oh, I'm sorry. Council President Scarpa. 13 COUNCILWOMAN SCARPA: I wanted to say -- 14 yeah, what would have happen if some of those things are 15 not done? Because, you know, there's always 16 construction people that are not maybe paying attention 17 to detail. What would happen, and what recourse do we 18 have to ensure that those things are done? Or how is 19 the accountability. 20 MR. MacNEILL: For a project this scale 21 on-site inspections is going to be the most important 22 phase. Construction phase is the most important for 23 this type of project. So you're going to need full-time 24 on-site inspections. You will have your inspector, or 25 working side by side with the contractor to ensure all	52 1 was just in December a few months ago that a capacity 2 analysis of this site sewer was never done. The 3 developer did not show that the existing streams and 4 pipes and ditches or the stormwater drains downstream 5 can handle the extra water. Shouldn't we be taking this 6 into consideration, serious consideration, at that time? 7 At this time and it just seems that the scale and the 8 intensity of the proposal are a little out of proportion 9 with what the site could support. I mean, we've heard 10 consistent credible concerns about traffic volume, 11 stormwater management, the environmental impact, and 12 like these are not abstract worries, they're rooted in 13 real limitations of our existing infrastructure and the 14 lived experience of people who rely on it every day, who 15 we've heard had real flooding and such. You know, like 16 meeting minimal technical thresholds does not 17 automatically make a project appropriate. Our role is 18 not to rubber stamp, right. It's to evaluate whether a 19 proposal aligns with the Master Plan, the neighborhood, 20 and the long-term capacity of what we have. So the 21 technical compliance seems to me it should be the floor, 22 you know, not the ceiling. So that's something that I'm 23 very, very concerned about. In fact I know Millburn, a 24 Millburn Fair Share Housing development just was 25 rejected because of poor infrastructure. So I am very,

53 1 very concerned about that. 2 MR. MacNEILL: Yeah, so all valid concerns. 3 CHAIRMAN BAGOFF: Mr. MacNeill, why don't 4 you start with stormwater management because, and we'll 5 take it piece by piece. I think that would be the best 6 way to do this. 7 MR. MacNEILL: So for stormwater 8 management, so for stormwater management the controlling 9 regulations NJAC 78, New Jersey administrative code 78. 10 In that they outline the requirements to control 11 quantity, stormwater quality, stormwater quality 12 treatment, groundwater recharge and having green 13 infrastructure. Using more items that are more BMP's, 14 they're called, or basin stormwater systems that will 15 facilitate infiltration of runoff right to the subsoil 16 and groundwater below. 17 So in this case DEP did review and approve 18 it and indicate it complies with NJAC 78. That doesn't 19 remove the burden from the board engineer to also review 20 and comment on the stormwater, which we do have open 21 stormwater comments that the applicants engineer 22 previously indicated they can address. 23 COUNCILWOMAN SCARPA: I mean, I found the 24 Princeton Hydro testimony, which is really an unbiased, 25 it was very, very credible.	55 1 this is lived experience of our residents. And, you 2 know they told us they've been reporting this for ten 3 years. So, and, you know, instead of really addressing 4 it, I kind of heard well, okay, it's not really a 5 problem. You know, we'll do various different privacy 6 issues, it didn't really address that point. And the 7 developer really hasn't shown us that they have an 8 interest in maintaining this infrastructure once they 9 put it in place and that is my concern. It's the lived 10 experience of the residents that to me, you know, it's 11 outweighing technical analysis that can be massaged to 12 meet, you know, many different standards. 13 MR. MacNEILL: Yeah. And, again, if that's 14 how you want to weigh the testimony that was provided 15 that would really be your prerogative as a board member. 16 Every testimony, everyone that provided testimony with a 17 license, obviously obtained that license by getting the 18 necessary experience and education. Obviously you hear 19 a lot of different testimony from licensed individuals, 20 so, again, it's kind of, it is up to you to weigh that 21 testimony and determine which you -- which appears to be 22 more credible in you opinion. 23 COUNCILWOMAN SCARPA: Well, we teach the 24 kids look at the primary source. Always do that. Look 25 at the source. Look at the source and motivation of
54 1 MR. MacNEILL: And as a board member I won't 2 comment on how you should weigh different testimony, 3 that's really on you to weigh what you think is credible 4 testimony or not. My role as the board engineer is to 5 try to facilitate and help guide you through. 6 COUNCIL WOMAN SCARPA: You're kind of -- the 7 engineering calculations to me appear to be something 8 like the trades statistics. The government statistics. 9 You can massage them, depending on who you're working 10 for to be whatever you need them to be. Princeton Hydro 11 is the gold standard and they don't have any bias, other 12 than to look at, you know, what's best. So they were 13 the most credible to me. 14 MR. MacNEILL: Yeah. And, again, no comment 15 on credibility. That's how you see it, I won't have any 16 comment on that. I will say that DEP does prepare and 17 outlines those requirements down to municipalities for 18 them to adopt in their code. So always my opinion that 19 DEP created these regulations, when you have a project 20 that DEP is reviewing, they're reviewing approval it's a 21 very important component for that project. 22 COUNCILWOMAN SCARPA: Yeah. And the other 23 thing was, you know, a lot of what we heard from Mr. 24 Weislander, you know, the flooding and the stench from 25 the sewer line that runs through Howell Drive. I mean,	56 1 whoever's writing something or giving the information 2 and I think that's an important way to evaluate 3 information. 4 MAYOR McCARTNEY: Chairman. This is a 5 discussion can we do this at a discussion. 6 CHAIRMAN BAGOFF: Mayor McCartney. 7 MAYOR McCARTNEY: Okay. About the stench. 8 We did hear about that public comment. I would like to 9 find out from our engineer, because I believe that that 10 was taken care of years ago, and we should get a 11 confirmation on that. 12 CHAIRMAN BAGOFF: Okay. We will hear our 13 engineer as to that. I believe she -- there was 14 testimony about that and it was remedied. Does the 15 zoning official have any comment on that? 16 MS. GARY-ADAMS: On the stench, that's 17 engineering. 18 CHAIRMAN BAGOFF: Okay. So we'll get that. 19 Ms. McGovern. 20 MS. McGOVERN: I did ask, I'm not giving 21 testimony on this but I did ask Dr. Beth about this and 22 she was out during, I guess when those complaints were 23 made, she was out on disability and apparently the 24 individual who dealt with that is no longer with the 25 town. So I don't know that there is someone currently

57 1 that can speak to that. Whatever went on in the past 2 that addressed it in the township, because I did try to 3 make an effort to locate people within the town that 4 might have had that information to come here, but was 5 unable to. 6 MAYOR McCARTNEY: We can still follow up and 7 find out. 8 MS. McGOVERN: You had -- right. But I just 9 want to let you know that that was attempted at least. 10 CHAIRMAN BAGOFF: Well, it's the building 11 department, I think that's the place to go, and we will 12 have them report back to us within two weeks if -- when 13 the issue, if they have a documentation of it and has it 14 been resolved. That's fair. Okay. Good. 15 Anything else? 16 COUNCILWOMAN SCARPA: Yeah. Well, you want 17 me to go on, I was going to wait my turn. 18 CHAIRMAN BAGOFF: Absolutely. You got your 19 turn. 20 COUNCILWOMAN SCARPA: The other, I think 21 more important concern of mine, is the safety aspects. 22 The primary responsibility of government is to keep our 23 citizens safe, right. I have a fiduciary responsibility 24 as a council person, elected council person is to 25 support the health, the welfare and the safety of the	59 1 the impact on our neighboring towns. 2 MR. KLEIN: Can we do one at a time. 3 COUNCILWOMAN SCARPA: Yeah, we'll do one at 4 time. 5 MR. KLEIN: Yeah, so Mr. Chairman. 6 CHAIRMAN BAGOFF: Mr. Klein. 7 MR. KLEIN: Ryan, can you talk a little bit 8 about, to me as a traffic engineer unfortunately, Oval 9 Road to me is the only way in and out of this whole 10 development, whether you say Kuzak's open, close it, 11 it's the only way in and out. I asked Mr. Pehnke when 12 he testified, don't you need a Boulevard from at least 13 Eagle Rock to I guess it's either Bomgart or Warner, so 14 that when there is some kind of an incident on Oval it's 15 only on one side of the road, it's contained and you can 16 still have traffic going on the other side, but 17 technically it's not necessary. Now, it might be the 18 right thing to do, but they don't have to do it. Can 19 you address that a little bit and help enlighten, at 20 least me. 21 MR. MacNEILL: Yeah. So technically, or not 22 technically speaking. If you take a step back, and I 23 believe I provided testimony on this. If this 24 development goes in all at the same time under current 25 regulations it is a cul-de-sac based off Oval Road.
58 1 residents that put me here. I'm deeply concerned about 2 the fire safety, emergency ingress and egress. We heard 3 testimony from Marea, who was trapped inside her 4 development and was unable to get out to deal with an 5 emergency crises with her elderly mother and that 6 testimony was riveting to me. You know, I urge all my 7 colleagues to think about the responsibility we have for 8 the decisions we make. You know, sometimes, like I 9 said, the metrics that we use can be questionable. You 10 know, in -- on April 27, 2025, this is a very real 11 concern, the big windstorm took down the tree, it hit a 12 power line in the country club, there were live wires, 13 our fire department closed Oval Road, right. Blocking 14 out our residents from entering and this is real 15 experience and in Mr. Pehnke, the developers traffic 16 engineer, said that nothing in the plan would really be 17 any different. So adding 500 more homes behind that 18 fire line, that's a total of 900 residents, to me makes 19 no sense when there's only one way in and out more 20 people are going to be trapped. I just feel like this 21 application presents some really unresolved emergency 22 access and public safety risks, including the ingress 23 and the egress. The increased congestion affecting 24 first responders response time and stormwater conditions 25 that might impede emergency routes and, you know, also	60 1 There's no contesting that. 2 MR. KLEIN: Right. 3 MR. MacNEILL: NJAC 7 -- or, sorry. NJAC 4 521, Residential Site Improvement Standards, issues 5 clarifications, again, it clarifies their standards. So 6 clarification number 3, which is what I indicated in my 7 traffic review letter dated October 29, 2025, is one of 8 the most important clarifications for this project, so I 9 think it is worth reading for all board members to 10 understand that. But essentially, I have it right here, 11 I'll -- "RSIS does not require that a development build 12 before the rules become in place on June 3, 1997 to be 13 improved to meet the standards. This is true even when 14 a proposed development relies on an existing development 15 for its street network, sanitary sewer system, water 16 supply system or stormwater management system." So 17 essentially what it's saying is, if you are in before 18 1997 the standards don't apply to you. Whether I agree 19 with that or not is a separate conversation, but it is 20 my role to just outline the standards and that is what 21 the applicant needs to follow. So in this case, whether 22 I agree with it or not, they are following the standards 23 of RSIS. 24 MR. KLEIN: Right. 25 And Mr. Chairman, you mentioned before, Oval

61 1 Road is a private road, correct? 2 CHAIRMAN BAGOFF: Right. 3 MR. KLEIN: So it's not -- if it was a 4 township road, at least we could say, the right thing to 5 do is make it a boulevard all the way to Bomgart or to 6 Warner. 7 CHAIRMAN BAGOFF: Correct. 8 MR. KLEIN: But we can't even do that. 9 CHAIRMAN BAGOFF: Correct. 10 MR. KLEIN: So I don't know what we can do, 11 Council President, when it comes to this. There's 12 nothing legally they have to do to make it -- even 13 though it might be the right thing to do, they don't 14 have to do it. 15 COUNCILWOMAN SCARPA: So it's not safe. 16 CHAIRMAN BAGOFF: Ms. Kapferer. 17 MR. KLEIN: I mean, I live on Walker, after 18 Hurricane Sandy, I have three ways out of my 19 neighborhood. All three had trees. We were stuck for a 20 week. I went out with my bow saw, my neighbor came out 21 with his chain saw, we started cutting until finally the 22 fire department came and took it away, the tree. At 23 least one. So it happens. It hasn't happened that 24 often, we do have other ways out depending on where the 25 crash is. So maybe we need to look at that alternative	63 1 as I understand it. I think there's a, there's a 2 agreement between Pleasantdale Chateau and easements or 3 something. 4 CHAIRMAN BAGOFF: But it's is not the 5 applicant. It's not the township. 6 MR. KLEIN: Right. 7 CHAIRMAN BAGOFF: We had testimony to that 8 effect. 9 Mr. Alper. 10 MR. ALPER: I'll hold off until it's my 11 turn. 12 CHAIRMAN BAGOFF: Okay. Well, go for it. 13 MR. ALPER: I've got a few things on a few 14 different topics. 15 First, the matter of the sanitary sewer line 16 moving through the stormwater basin, I think it's not 17 supposed to be. We had Jordan Rizzo from CME and Sean 18 Walsh from Princeton Hydro both twice raised this, that 19 it needs to be fixed and the correction of it and I 20 think this was from Mr. Walsh's testimony, might have 21 been Rizzo's, that the correction would need to be shown 22 on the plans and there was a claim that if the wetlands 23 were impacted by that change that DEP would then need to 24 approve it. If that's all still being worked out, I 25 want to make sure we get over our own skis and move on
62 1 route to get through, I guess, Essex Fells and that 2 direction. And then we've got Howell, the other end, to 3 be able to get out and I think there's another one, you 4 said to Marie Terrace, yeah. So there are other ways 5 out. Maybe that's not the best, but it's still, now I'd 6 say technically they do have alternative ways out. 7 CHAIRMAN BAGOFF: Ms. Kapferer, Mr. Alper, 8 Mayor McCartney. 9 MS. KAPFERER: Just a quick question. Can 10 someone clarify, who owns Oval Road? I believe in on -- 11 MR. KLEIN: It's the homeowners association, 12 right? 13 MS. KAPFERER: I thought this came up at 14 some point during testimony. 15 COUNCILWOMAN SCARPA: It did. 16 CHAIRMAN BAGOFF: It did and it wasn't the 17 applicant. 18 MR. KLEIN: No, it's the homeowners 19 association I would think. 20 MS. McGOVERN: There is some kind of 21 arrangement with the Pleasantdale Chateau has some kind 22 of interest in. 23 MR. KLEIN: Oh, okay. 24 MS. McGOVERN: I don't remember, there was 25 commentary on it, but it's not, it's not the townships,	64 1 this before we're supposed to. 2 MR. MacNEILL: Yeah, so my understanding the 3 applicants or applicant already agreed to comply with 4 that requirement, which we have in our stormwater review 5 letter. So, and 100 percent agree, your sewer line 6 should not be in your stormwater management system, so 7 100 percent agree with Princeton Hydro on that fact and 8 for them they will have to adjust that while avoiding 9 the wetlands area, additional disturbance of the 10 wetlands area. It does appear feasible based on my 11 review, but if they cannot make that happen without 12 disturbing additional wetlands then they would have to 13 go back to DEP for additional permit. So keeping that, 14 if we get to a point of an approval, keeping that as a 15 condition to relocate that sewer line and it's just 16 shifting it out of the driving area off, really below 17 the sidewalk would be my understanding of the design. 18 So that would have to be a condition of approval for if 19 we got to that point. 20 MR. ALPER: So does it seem like that's 21 something we should wait on until we have it or it 22 something that we would ordinary wait for approval, 23 because the sewer line was already shown, it's was 24 something we would want to see before approval? 25 MR. MacNEILL: Yeah, knowing that there is a

65 1 feasible solution to relocating that line without 2 disturbing wetlands, it, not in my opinion that it needs 3 to be seen before a decision is made. But, again, I'll 4 defer to the board on how you feel on that, knowing that 5 if, for whatever reason, they couldn't make it work 6 they're back at the board anyway for an amended approval 7 or even going to DEP for an addition approval before 8 being allowed to start any construction. 9 COUNCILWOMAN SCARPA: That's a very 10 reasonable concern. 11 MR. ALPER: Yeah. Something to think about. 12 Next on water. The letter from New Jersey 13 American that they they're willing to provide service 14 notwithstanding, I don't think we heard rebuttal on the 15 objector testimony that a water tower would be necessary 16 for pressure. That was Bill Green from Litwornia on 17 July 30. So that's a health and welfare concern for me 18 that there could be inadequate water at the site. 19 MR. MacNEILL: Yeah. So -- 20 COUNCILWOMAN SCARPA: That's a fire safety, 21 fire pressure. That helps. It's a fire safety issue as 22 well. 23 MR. ALPER: That too. 24 MR. MacNEILL: I don't want to make any 25 comments for the applicant, so I'll maybe defer on, I	67 1 CHAIRMAN BAGOFF: We'll have talk to talk to 2 the fire department and find out what their regular 3 checking is. 4 COUNCIL WOMAN SCARPA: I feel very 5 uncomfortable with this. 6 CHAIRMAN BAGOFF: Well, I understand that, 7 but again, we have other complexes in town that have a 8 similar topography, so I would say that this is up to 9 New Jersey American Water to certify to the town and the 10 fire department would have to check to make sure 11 whatever their intervals are and if not we will 12 condition an interval to ensure the safety. We can do 13 that, it's our fire department. 14 COUNCILWOMAN SCARPA: Right. I know. I get 15 concerned because, you know, we all know there's a lot 16 of legal loop holes in the law that don't always lead up 17 to the interest of the public good and we all know that 18 lobbyists in Washington write legislation -- 19 CHAIRMAN BAGOFF: Well, nobody's lobbying us 20 and if you make a condition they're going to have to 21 live by the condition because the building department 22 will ensure and the fire department will ensure it would 23 be a condition of their requirement to do. And they'll 24 have to report back to the building department. And I'm 25 sure the applicant would want to make that the water
66 1 don't know if applicants attorney has an answer to that. 2 My understanding though is New Jersey American Water 3 provided the will serve without the inclusion of the 4 water tower. 5 CHAIRMAN BAGOFF: There are other complexes 6 in the township of West Orange that are similar in grade 7 that have water service, such as Clarken Drive, which is 8 over 30 degrees, on a similar neighborhood that was 9 totally forested. So the water pressure is a function 10 of the New Jersey American Water providing service, the 11 Township of West Orange fire department ensuring that 12 all fire service apparatus are up to snuff and to flush 13 a toilet. So that's also the building department in 14 town. So those groups have to identify that the water 15 is up to snuff and if it's deficient New Jersey American 16 Water will identify to town and say, we can't do this, 17 we'll have to have an alternative method, which maybe 18 the water tower, whatever that maybe, this is way beyond 19 my pay rate. So it is up to them, but they will have to 20 provide service and the applicant will have to show that 21 service is provided to the degree of safety on a regular 22 basis. And the fire department checks. So there's 23 backup in the checking incentive. 24 COUNCILWOMAN SCARPA: Is that something that 25 can be planned out prior?	68 1 service is appropriate. 2 Mr. Klein. 3 MR. KLEIN: I would think that if it's not 4 safe from a fire standpoint they wouldn't get a 5 certificate of occupancy. Well, makes sense. If the 6 sprinklers won't work because there's not enough water 7 pressure, they can't give them a CO. And if they need a 8 pump or some kind of a tower then they have -- I mean, 9 if it's a tower they have to come back here. If it's a 10 physical feature, if it's just a pump to get the 11 pressure up. 12 CHAIRMAN BAGOFF: They're going to do 13 whatever they need to do to satisfy the requirements of 14 the state because the buildings are sprinklered, so it 15 has to be by code. Okay. 16 Mr. Alper. 17 MR. ALPER: Sewer and carrying capacity, I 18 think that's been covered. I have the same concerns. I 19 think there was testimony from town engineer on that, 20 but I think it was in affordable housing. 21 MR. KLEIN: Yeah. 22 MR. ALPER: I think. I don't remember, I 23 think I asked about it earlier, I don't remember for 24 sure, but that's a separate proceeding but I think there 25 may be something there still. So I don't think it was

69 1 resolved, at least not as of that meeting. 2 Stormwater management and slope stability, I 3 don't think I want to get into to much of that right 4 now, I assume that's coming from more engineering 5 people, maybe. But it does stick in my mind that we had 6 the testimony of Geoffrey Goff from Princeton Hydro all 7 the way back in July last year, saying he would not live 8 in Building D. Not to say that, you know, Princeton 9 Hydro is not a biased source, because obviously they're 10 the objectors, but that is a qualified engineer making 11 that statement and I give that some credibility. 12 CHAIRMAN BAGOFF: So just everybody remember 13 that the objector and the applicant have both sides, but 14 our expert, our independent expert, is CME. So after 15 everything we've done, CME reviews things that we ask 16 them to review and they came up with their opinions. So 17 that is our townships independent engineering firm. And 18 our independent planner is Ms. Apte, so if you have 19 questions about either report, what one says this way 20 and one says that way, that goes to Mr. MacNeill or Ms. 21 Apte, and they're going to give us their view on, as you 22 see, what they feel is reasonable to condition the 23 application on for safety and health and welfare. 24 Mr. Alper. 25 MR. ALPER: The destruction of the wetlands	71 1 skirt by the rules of freshwater wetlands if you're just 2 getting a flood water hazard permit, but both, different 3 departments had a hand in reviewing this which is why 4 they have multiple permits. So flood hazard area as 5 well as freshwater wetland general permits for the 6 project. 7 CHAIRMAN BAGOFF: But it stands to reason 8 that if you decrease the flow of water to the superior 9 aspect area of the wetlands and direct it to the 10 inferior area of the wetlands the superior area may dry 11 up and you may change the topography of the wetlands. 12 So it may be a condition, you'll have to decide of the 13 board. To have the applicant go back and review this 14 how they can redirect the flow back to superior area of 15 the wetlands, which would be within keeping of the DEP's 16 concept, to keep the wetlands flowing, and they may have 17 go back to the DEP if they have to -- if you have flow 18 of X and you cutting flow down by half, and the DEP 19 agrees that it's a wetland, I don't see that the DEP, 20 and I'm not them, that the DEP would say, no, don't do 21 that. It would maintain the wetlands in the condition 22 it is pre-application. 23 MR. MacNEILL: Yeah, so it -- 24 CHAIRMAN BAGOFF: Does that make sense? 25 MR. MacNEILL: It does make sense from a
70 1 at the top of the Canoe Brook. I don't see how we can 2 permit the treated water to be dropped lower in the 3 stream, which after all grading is obviously going to 4 dry up what's at the top of the stream. That seems like 5 a bad idea and something DEP should have caught and I 6 understand it might outside our power to address but it 7 should look at that to whatever extent we can. 8 CHAIRMAN BAGOFF: Okay. Mr. MacNeill, can 9 you find a solution or is that for the applicant to 10 solve? 11 MR. MacNEILL: The problem is for, and I 12 understand the -- it's a valid point, but there's no 13 specific regulation about moving -- so stormwater 14 management they look at the point of analysis for the 15 site. Where ultimately does all this runoff go. So in 16 that case they are meeting the runoff quantity to the 17 point of analysis. There is no specific regulation that 18 I'm aware of that you need to have the exact same flow 19 to your wetland area at every point within that site. 20 The problem on top of that is the township does not 21 regulate wetland areas. That is for NJDEP. So if 22 there's any noncompliance that's where DEP would bring 23 that up, under that review. And I will say this project 24 did receive flood hazard area permits, as well as 25 freshwater wetland permits. So in some cases maybe you	72 1 practical standpoint, right. But I don't disagree with 2 anything you're saying or even Princeton Hydro's saying 3 from a practical standpoint. It will be less water to 4 the northern area of the wetlands, but DEP's regulation 5 essentially, one, they don't, to my knowledge, they 6 don't regulate to every specific area of runoff volume 7 to a wetlands area. 8 And two, they want you to reduce flow. 9 Every development and how this development complied with 10 the stormwater regulations is reducing flow to your 11 point of analysis. So it's almost, it's contradicting 12 itself by wanting to put the same exact flow back when 13 the site is required to reduce the flow to comply with 14 the stormwater management regulations. So you have two 15 contradicting aspects of this project of, you want more 16 flow or the same flow to your wetlands but you need to 17 reduce your flow in order to comply with NJAC 78. 18 COUNCILWOMAN SCARPA: And this is the 19 problem I still struggle with. I mean, meeting the 20 minimum technical threshold does not automatically make 21 a project appropriate for the site. 22 CHAIRMAN BAGOFF: So I'm not saying reduce 23 the flow, I'm saying, move it to where it started, which 24 is -- - if you're going to reduce the flow it's going to 25 be lower down by other stormwater management systems.

73 1 So I want to go out on a ledge and I'm going to suggest 2 to the board that we ask the applicant to review that 3 and see if they can redirect the stormwater to that 4 superior aspect where it starts now and in the lower 5 aspect is where we have stormwater management, where you 6 have different percolation and it is reclaimed so you 7 will decrease the overall amount of stormwater 8 management, but you keep the wetlands the wetlands. So 9 -- and the board may not vote that way. I'm just 10 throwing it out there. 11 MR. MacNEILL: Yeah, I don't want to push 12 back on that request. 13 CHAIRMAN BAGOFF: Go ahead, push back. 14 MR. MacNEILL: But one -- so any motor 15 vehicle surface, right. Every pavement area you see 16 beside building needs to be treated, right. So that's 17 another DEP requirement. You have to meet 80 percent, 18 it's called, Total Suspended Solids Removal for your 19 motor vehicle surface areas. So everywhere where a car 20 could drive they have to send it to a basin. And in 21 this case they're sending, in most stormwater designs, 22 your basin is at your low point of the site to avoid you 23 raising the site with additional fill and having a 24 disturbed additional area. So in this case their basin 25 is at the low point of the site right before discharging	75 1 basin you're going to very quickly not comply with the 2 runoff quantity standards. If you're just allowing it 3 to go detained without holding it back. Because really 4 in stormwater, any site, this is a wooded site, you're 5 adding impervious, you're increasing in your overall 6 stormwater volume, right. So this site is going to 7 generate more stormwater volume. What stormwater basins 8 do is they control that runoff, like a bathtub they have 9 outlet controls that you have to hit the 2, 10 and 10 100-year storm cutbacks. So you're just controlling 11 your flow. You're letting out your flow slower to meet 12 50 percent reduction in flow in your 2-year storm. 75 13 percent reduction in your 10-year storm event. And 80 14 percent reduction in your -- or, I'm sorry, not 15 reduction, but 80 percent of those existing storm 16 events. 17 CHAIRMAN BAGOFF: But if you have a longer 18 area for the water to dissipate into the ground because 19 you're emptying higher up, you'll have greater 20 percolation further up, so you still may have, you may 21 still come up with the same total number, but it may 22 percolate and keep the upper wetlands wet, which seems 23 to be what we're taking away. 24 MR. MacNEILL: I, I understand your point. 25 I do just think technically speaking it will be a tough
74 1 to the wetlands and they built their whole site, all the 2 finished floors for the building, it's based really off 3 that discharge elevation, that basin bottom and that top 4 of basin. So one, the only thing that you can send to 5 the northern areas without treatment would be some 6 potentially roof area which is clean, but then you get 7 into a situation where now you're not going to comply 8 with the runoff quantity requirements. So it, again, 9 it's two different aspects that is a contradiction in 10 the regulations. 11 CHAIRMAN BAGOFF: Maybe rainwater from the 12 roof that's clean, can feed that basin starting upwards 13 and I understand the topography of the land, it's easier 14 to go down to the bottom of the basin, decreasing the 15 amount of flow at the top of the basin. However, the 16 buildings that are up there may in some way drain and 17 provide clear water in rainwater to the top of the 18 basin. So it's going to be something the engineers have 19 to look at to see if we can keep the upper area wet. 20 MR. MacNEILL: Yeah. And, again, I don't 21 have any issue asking the applicant to take another 22 look. I do feel though there is some, the major 23 challenge is to juggle that with your compliance with 24 the stormwater regulations. Specifically like, when 25 you're not controlling impervious coverage runoff with a	76 1 engineering task to accomplish that. But, again, I 2 don't think there's any reason why you can't push that 3 back on the applicant to try his best to come up with a 4 solution that appeases the board. 5 CHAIRMAN BAGOFF: We can ask. 6 COUNCILWOMAN SCARPA: Ans still complies. 7 You should be an engineer coming up with all these, 8 outside of the buttons. 9 CHAIRMAN BAGOFF: Sorry. I work in small 10 areas. I build very small bridges. 11 MR. KLEIN: The only bridges you should work 12 on are in the mouth. 13 CHAIRMAN BAGOFF: They would have let me do 14 the Verrizzano. No. 15 Mr. Alper. 16 MR. ALPER: So I do have a bit on traffic 17 circulation and safety. 18 CHAIRMAN BAGOFF: Let me just say one thing. 19 MR. ALPER: Yeah. 20 CHAIRMAN BAGOFF: The traffic circulation, 21 you all have to understand is in the area of the 22 application based on the way the IH-1 zone is written. 23 It is not in the other part of West Essex Highlands. It 24 is not on Oval Road, that's not part of this 25 application. However we look at it, flow will come out

77 1 that way, but the application is in the superior aspect 2 of West Essex Highlands. So that's what we have to look 3 at. That is, we have to follow the IH-1 zone and that's 4 where the area starts. Even though it comes out and 5 eventually ends up on Oval Road road. So we have 6 limited abilities for conditioning as you move away from 7 the area of the application. So just keep that in mind. 8 COUNCILWOMAN SCARPA: This is continues to 9 be my concern. 10 CHAIRMAN BAGOFF: Council Person Scarpa. 11 Council President Scarpa, I'm sorry. 12 COUNCILWOMAN SCARPA: This continues to be 13 my concern. Where does the technical analysis meet 14 reality? 15 CHAIRMAN BAGOFF: Reality is something that 16 we have to deal with as a board, but you have to 17 understand what our limitations are as a board. So we 18 have to work within those parameters. And Mr. Ryan -- 19 Mr. MacNeill can give us a little idea, but I believe 20 that the application is within West Essex Highlands too, 21 and that' we have to identify. Traffic flow that comes 22 out of there is at this time not in our purview, but in 23 reality it is. 24 COUNCILWOMAN SCARPA: I know. This is so 25 hard for me because as a business woman I always looked	79 1 Mr. Alper. 2 MR. ALPER: Thank you. 3 So under RSIS if, as I understand it, if a 4 road serving a community like proposed here has only one 5 access point coming in from one place and it's a 6 multifamily cul-de-sac and RSIS limits you to a 1000 7 average daily trips per day, if you have multiple access 8 points to the road it becomes a minor collector and it 9 allows 3500 trips a day. So it's been claimed variously 10 that there are either two access points, Kuzak being -- 11 and Kuzak and Warner, or possibly three with Howell 12 Drive being the third, Mr. Pehnke made that claim in his 13 September appearance here for rebuttal. You know, my 14 opinion is that the RSIS street hierarchy section is 15 about usable access points to roads for regular road 16 users and the determination of which it is depends on 17 the usability of those access roads for the vehicles 18 that make up the average daily traffic on the roads. 19 You know, you and me and the people who live in the 20 community, not whether or not there's emergency access 21 points for life safety, which is a separate issue 22 outside of this part of RSIS. Howell obviously not an 23 access point, the original testimony from Mr. Pehnke in 24 September of 2024 when Mr. Klein was questioning him 25 made it clear that it's "not in approve connection.
78 1 at everything as a whole and very strategically. 2 CHAIRMAN BAGOFF: I agree, and that's part 3 of the -- 4 COUNCILWOMAN SCARPA: And I'm struggling 5 with it. 6 CHAIRMAN BAGOFF: That's part of the 7 constraints of the land use. So when we look at it as 8 law we're constrained by the application. That's what 9 we have to look at. There are other portions that we 10 have to address, Eagle Rock Avenue, Oval Road, 11 absolutely, but that's not part of our application. It 12 doesn't mean that you can't ask and present issues. 13 Okay. But we have to be careful how far you go. Okay. 14 So then if we have a question we'll go to Ms. McGovern. 15 COUNCILWOMAN SCARPA: Okay. Sorry to 16 interrupt. 17 MR. ALPER: So I want to start kind of going 18 into the RSIS a little there. You know, the idea that 19 there's two maybe three access points and that makes our 20 roads -- 21 CHAIRMAN BAGOFF: Ladies and gentlemen, RSIS 22 is the Residential Site Improvement Standards. It has 23 to do with roadways, how wide, sidewalks, topography of 24 the land, slope of the land. I just want everyone to 25 understand what we're talking about.	80 1 It's a stabilized emergency gate." The Mr. Klein asked 2 how residents would get out in a longer emergency. Mr. 3 Pehnke said, they would be impeded until it was cleared. 4 That, I think, is a dangerous lack of emergency egress 5 because that's the only way out of West Essex Highlands 6 that does not go back to Oval Road. 7 You know, moving on to Kuzak, like I said 8 before, I think it's a legal fiction that Kuzak's a 9 separate access point. It's only a block and a half 10 long, it connects to Warner, only a block and half 11 outside the site. It's not separate access point, it's 12 a stub of Warner. They're the same road for all honest 13 realistic purposes. Obviously we've already decided 14 we're not going to grant the de minimus exception, but I 15 still maintain that this is a multifamily cul-de-sac 16 with a 1000 daily trips. And I'd argue as to the 17 Litwornia report that this is a multifamily cul-de-sac, 18 not a minor collector and the average daily traffic 19 volume is more than RSIS allows on the road. I think 20 the Litwornia report was very credible on these points, 21 even with the acknowledgement that clarification three 22 says, we're not allowed to consider the other 2400 trips 23 in the existing developments. Except that we're also 24 supposed to, ahead of even RSIS, be focused on public 25 safety and having no second way to exit this site

81 1 violates that principle. I think this project needs a 2 second actual access point. If the applicant had 3 proposed to purchase land and extend Walter Street off 4 of Cunningham which connects the PBW or to get approvals 5 to connect to Devon Road in Essex Falls, which leads to 6 Bloomfield Avenue, I think that would be another story, 7 or and I acknowledge that none of these ideas are good 8 for the woods or the wetlands or for the neighborhoods 9 and the residents, but they'd at least make a difference 10 in making the project safe from an egress and emergency 11 perspective. An extension from Blakely combined with an 12 opening of the cul-de-sac on Blakely and Marie, which 13 has already been mentioned, where there's already a 14 small change separating them to provide a way out 15 through Schmidt and Marmon back to Pleasant Valley, or 16 an agreement with Essex Falls to open and maybe improve 17 Oval in the other direction. But when only Warner or 18 only Warner and this hand waive of an idea of wink, 19 wink, Kuzak, it's unsafe. Not for emergency access to 20 get in, not necessarily, though I'm not convinced about 21 access through Howell, more because of the steepness and 22 the possibility of it being unplowed in the winter, than 23 because of the use variance question which maybe doesn't 24 resolve before we make a decision, because without 25 Howell there is no secondary emergency vehicle entrance	83 1 CHAIRMAN BAGOFF: Any other 2 comments/questions? 3 Oh, Mr. Cardoza. 4 MR. CARDOZA: Yeah, no, thank you Mr. 5 Chairman. 6 Much of what I want to discuss already been 7 covered. We discussed the ongoing issues with the smell 8 effecting several residences and how we're going to 9 follow up on that. That was during Council Person 10 Scarpa's questioning. Or comments, I should say. And 11 then the original plan showing sewer lines connecting to 12 the stormwater basin, Mr. Alper brought that up, so I'm 13 left with two questions for our board attorney, 14 basically to help me focus in or conceptualize some of 15 the thinking here. So the one road aspect, which Mr. 16 Alper just did a great job summarizing, Ms. McGovern, 17 when you brought us through our -- your opening and you 18 laid out how we should think about things, you mentioned 19 feasibility and assessing probability versus 20 possibility, and when we consider that there was already 21 a fire or maybe two of them if I'm recalling correctly, 22 how should we weigh the fact that this is, again, a 23 contiguous property, so -- I mean, we have had Dr. 24 Bagoff or Chairman Bagoff layout how, you know, we could 25 only assess traffic flow on the property as opposed to
82 1 and that has to exist. But my point here is that I'm 2 really focused on the emergency egress of residents. 3 Egress is a required element under RSIS as well as under 4 our more general charges of the public safety and I 5 don't think that we have it without a true second road. 6 MR. MacNEILL: Yeah, I don't disagree with 7 anything you outlined there and not to put it back on 8 you, but that is now your role as a board member to 9 weigh what the applicant has presented and whether you 10 feel, one, if you already denied the de minimus 11 exception, but feel if the application is restricting or 12 would harm public safety and welfare. 13 MR. ALPER: Thank you. 14 CHAIRMAN BAGOFF: Mr. Cardoza. 15 Mayor McCartney. 16 MAYOR McCARTNEY: Well, I just -- sorry. I 17 wanted to follow what Kim was saying. So this sounds 18 like this could be another condition that we just had 24 19 inches of snow, that there has to be a condition that 20 the Oval Road egress, Howell Drive and even the one, at 21 The Grand, would have to be cleared. Would have to be 22 cleared for emergency. Any emergency incident. Has to 23 be a condition. 24 CHAIRMAN BAGOFF: Okay. 25 MR. KLEIN: The hydrants.	84 1 the extent, you know, where it extends, where that 2 traffic flow ends up and we're assessing public safety. 3 So I'm just probability versus possibly, and how we're 4 supposed to look at that? 5 MS. MCGOVERN: When you listen to experts 6 speak you listen to whether they're giving you an 7 opinion to a reasonable degree of probability or are we 8 just hearing this might be possible, this might be 9 possible. Now, you're indicating you've seen some 10 examples of road closures, so that's within your in 11 experience of a person, not necessarily just living 12 something in this town, but you know the area, of what 13 things that you find are potential probable hazards that 14 have to be considered. A meteorite hitting this site is 15 a possibility, that you can't concern. But something 16 less than that you would have to -- 17 COUNCILWOMAN SCARPA: A tree falling, 18 certainly within the realm -- 19 MS. MCGOVERN: Potentially, but you also 20 have to weigh it and you have to weigh the 21 reasonableness of what can be done in that situation. 22 Temporary restraints versus a problem that would create 23 a danger to peoples lives. 24 COUNCILWOMAN SCARPA: Well, we heard the 25 resident testimony from Marea and we're concerned about

85 1 fire safety and you could only must think in a fire, it 2 could be life or death. 3 MR. CARDOZA: Well, we know that one point 4 of ingress for the fire department is actually only for 5 Essex Fells, if I'm recalling correctly. 6 MS. McGOVERN: Well, Oval Road, they have an 7 agreement which was provided that in the event of an 8 emergency that would be opened up. What has not been 9 defined is what rises to the level of an emergency and I 10 believe it's your, your services, your police department 11 and your fire department in connection with their fire 12 and police that make that decision because they're the 13 excerpts in those cases. 14 MR. CARDOZA: Okay. 15 MS. McGOVERN: Similarly you heard that 16 there's that emergency access out through Howell. 17 Again, that would be a decision made by those experts, 18 what constitutes an emergency to allow people to utilize 19 that or is it just emergency access for fire, police and 20 ambulance, if that's necessary. These are the things 21 that you consider in terms of your own experience in 22 life and what would be necessary. 23 MR. CARDOZA: Appreciate that. 24 So my next question would be, the extent to 25 which we can consider environmental impacts, because,	87 1 case that that specifically speaks to the effect of the 2 environment on the environment, other than those 3 categories that we mentioned, stormwater management, 4 sewer disposal, water supply, traffic circulation, 5 safety. Now, because you can't get into the position 6 where you are second guessing the passing of this 7 ordinance, that was done. So your decision has to be 8 based on, you're looking at the site plan, does it meet 9 the definition of the site plan requirements under our 10 ordinance and does it meet the feasibility qualities 11 required for stormwater management and drainage, sewer 12 disposal, water supply, traffic circulation, and I threw 13 in geotechnical stability. That's all I can answer to 14 you. If you feel as though it rises to the level over 15 and above based upon the ordinance and whether they've 16 supplied site plan information that takes it out of the 17 realm of what the ordinance requires somehow, then that 18 would be your decision. 19 MR. CARDOZA: So thank you. That was 20 clarified. That's really all I had. I just wanted to 21 better contextualize everything that we heard and follow 22 up on my fellow board members problems with that. 23 CHAIRMAN BAGOFF: Okay. 24 Go around the board again. 25 Mayor McCartney, do you have any questions
86 1 you know, you laid out our charge in stormwater 2 management and drainage, sewage disposal, water supply, 3 traffic circulation safety and the additional 4 geotechnical stability. We heard a lot of testimony 5 from, I should say our, the objectors experts regarding 6 environmental impacts but then, you know, juxtapose that 7 with Mayor McCartney brought us through how 8 preservation, as she stated, is really not within the 9 purview of the board being that this is private 10 property. So the extent to which we consider it, 11 because we've also, over 29 meetings we've done this, 12 we're getting into the weeds in the law and we've had 13 some dueling attorney, how should I say, dialogue back 14 and forth, and so are we to consider, the extent that we 15 can consider environmental impacts as a matter of law is 16 it so, is it shoehorned into this narrow expense of the 17 public's health and welfare or can it be, if we're to, 18 you know, do to the letter of the law it can be broader 19 in any capacity? 20 MS. McGOVERN: I'm going to direct you to 21 two things. I'm going to direct you to the ordinance 22 which allows this area to be developed, and that was a 23 decision made a while ago. So you're being handed an 24 ordinance for you to review to see if this site plan 25 matches up with that. And I do not find anything in any	88 1 or comments? 2 MAYOR McCARTNEY: So, we just raised that 3 question about what constitutes an emergency. How do we 4 define that? Is this -- 5 CHAIRMAN BAGOFF: Police department. We've 6 had testimony, police department and the fire department 7 are the two agencies that determine that. The ambulance 8 is a function of the fire department, so that's who 9 would determine emergency. 10 MR. KLEIN: So who will decide whether to 11 open up the access to Howell Drive or not? 12 CHAIRMAN BAGOFF: Apparently that's the way 13 it works from previous testimony. Or Essex Fells. 14 MR. KLEIN: Oh, the other one. 15 CHAIRMAN BAGOFF: And there'll be a Knox Box 16 box. Supposed to be a Knox Box on both sites. 17 MR. KLEIN: What about the Marie Terrace 18 one? 19 CHAIRMAN BAGOFF: I'm sorry. 20 MR. KLEIN: The other, Marie Terrace, that 21 was always a part of this? 22 MS. McCARTNEY: I don't remember Marie 23 Terrace. I don't remember that. 24 MR. KLEIN: It's not, right? 25 MR. ALPER: I suggested it because I've seen

89 1 it. 2 MR. KLEIN: Yeah, no, I know. I don't know 3 why we never talked about it. 4 MAYOR McCARTNEY: That's a conversation with 5 the fire department that that is there. 6 MR. KLEIN: Okay. Again, never used it. 7 Not that we know of. 8 MR. ALPER: And there's curbs there, so it 9 could be used, Marie and Blakely, it could be used for 10 fire trucks that come in, but that's in any way suitable 11 to be an emergency evacuation in an egress situation 12 where a building is on fire, God forbid, and people need 13 to leave. I mean, maybe -- 14 MR. KLEIN: You're saying only a fire truck 15 can come in? Cars can't leave? 16 MR. ALPER: I don't think it's designed for 17 that, I mean, there's -- 18 MR. KLEIN: It's designed for a fire truck? 19 MS. KAPFERER: It has curbs. You have to 20 know, I'm sorry, it has mountable curbs. 21 MR. KLEIN: Oh, oh, it's one with separate 22 -- 23 MR. ALPER: Like, we're across from NJPAC, 24 not NJPAC, OzPAK, where there's the -- 25 MR. KLEIN: Oh, okay.	91 1 knowing they would have to get an additional DEP permit. 2 MR. KLEIN: Can I -- are you finished? 3 MS. KAPFERER: I have one more. 4 MR. KLEIN: Same subject, I'm going to 5 follow up on that. 6 So can I follow up own that. All right. So 7 without the buildings and the parking lots there, water 8 is flowing into the wetlands? 9 MR. MacNEILL: Yeah. It's sheet flowing in. 10 MR. KLEIN: Right. When you put in the 11 buildings -- 12 CHAIRMAN BAGOFF: Can you point out where 13 that is right now, so we can see. 14 MR. KLEIN: Yeah, I got my pointer. 15 MAYOR McCARTNEY: He's going to do it. 16 MR. KLEIN: So, when these aren't here. I 17 guess the high point is still way over, right. So it's 18 going to, all this is going to flow into this and we're 19 talking about this area of the wetlands? 20 MR. MacNEILL: Yeah. Yeah. 21 MR. KLEIN: So when you put the buildings in 22 you're cutting off this amount of water, this amount of 23 water, right? You still have all this water that's 24 still going to go in? 25 MR. MacNEILL: Yeah. You will still have
90 1 MR. ALPER: The post in the road that could 2 be lifted off and anything could run through, it's not 3 like that. 4 MR. KLEIN: Well, they'd have to take them 5 out to get the fire truck in and then when they're out 6 people could drive away. 7 MS. KAPFERER: You have to -- there's no -- 8 there's a mountable curb there. 9 MR. KLEIN: Oh, okay. 10 MR. BAGOFF: Mr. Klein. 11 MR. KLEIN: No, I'm good. 12 CHAIRMAN BAGOFF: Okay. 13 Ms. Kapferer. 14 MS. KAPFERER: I just have a couple 15 questions on stormwater. 16 CHAIRMAN BAGOFF: Go ahead. 17 MS. KAPFERER: So if Mr. MacNeill, if we did 18 go back and ask the applicant to revisit directing, you 19 know, roof runoff to the wetlands, would they need to go 20 back to DEP for permit approval? 21 MR. MacNEILL: In most cases, yes. That 22 would change their design which would require a new 23 permit. So knowing that, again, I don't want to speak 24 for the applicant, I'm not sure how far down that path 25 they would want to go, it would be up to the board,	92 1 the majority of that open space area that's disturbed, 2 but, yeah, the building areas, the parking areas is 3 what's piped down to the basins. 4 MR. KLEIN: Right. And that's going to 5 reduce the flow into the wetlands and over time they 6 could dry up. 7 MR. MacNEILL: That was the testimony 8 provided. Yeah. 9 MR. KLEIN: Yeah. Okay. 10 CHAIRMAN BAGOFF: Okay. 11 Ms. Kapferer. 12 MS. KAPFERER: Yeah, my other stormwater 13 question, I just can't remember if this was ever 14 resolved. I think Mr. Walsh brought up a concern about 15 the case of conditions, time of concentration being to 16 fast or faster than what he thought it should be which 17 would result in the higher existing conditions. Do you 18 remember if that was resolved? I can look into it if, 19 if not. 20 MR. MacNEILL: So we do have those open 21 comments as well that applicants engineer would have to 22 address. Yeah. 23 MS. KAPFERER: Okay. Great. Thank you. 24 CHAIRMAN BAGOFF: Vice Chairman Guarino? 25 VICE CHAIRMAN GUARINO: No, I'm okay.

93 1 CHAIRMAN BAGOFF: Mr. Alper. 2 MR. ALPER: I don't want to get too far into 3 geotechnical because there was so much on but I think 4 it's worth asking if there are unresolved geotechnical 5 controversies, or if there are unresolved geotechnical 6 comments that you think need to be resolved, one or the 7 other, before we make a decision as opposed to things 8 that would have to be dealt with in, you know, like 9 blasting plans, would obviously be a post approval thin, 10 sort of things that we need to deal with before 11 approval? 12 MR. MacNEILL: Yeah, so just to clarify, I'm 13 not an expert in geotechnical engineering. But in 14 consultation with Sam Kleinberg of my office, he is 15 comfortable with the board going to a decision with what 16 was currently presented. However, the project should 17 be, we recommend those conditions that I outlined 18 previously. Nothing currently open prior to a decision, 19 but obviously additional reviews that would be needed 20 prior to any construction on-site. 21 CHAIRMAN BAGOFF: Mr. Cardoza. 22 MR. CARDOZA: Yeah. So to my mind 23 everything -- well, all questions that I've had, 24 whether, you know, I asked them or another member of the 25 board did and there was discussion, there's been either	95 1 about community. Putting a capital C back in community, 2 instead of just thinking from our own selfish points of 3 view, we need to think about the impact we have on the 4 world around us, on our neighbors, and I am still not 5 sure that this won't negatively impact our neighbors, 6 particularly with the Canoe Brook and the water quality 7 concerns and all those things we've heard and all the 8 environmental groups that testified. 9 CHAIRMAN BAGOFF: Thank you. 10 So I'd like to speak last -- oh, I'm sorry. 11 Mayor, go right ahead and then Ms. Kapferer. 12 MAYOR McCARTNEY: I feel like I'm playing 13 jeopardy now, I want to go to a new category. And this 14 one is about landscaping. So this in the ordinance that 15 we're asking, the ordinance reads, "A developer shall 16 plant new trees and landscaping along the near southern 17 border of the tract for the purpose of supplementing and 18 buffering the nearest residential units to the north." 19 However, I don't know if this is for Mr. MacNeill. What 20 we talked about there are 212 -- again, in the ordinance 21 in says 212 trees, the number of trees that are coming 22 down, where did we talk about the replacement of those 23 trees, not just in this one provision, that said there 24 would be additional trees. So, you know, so many trees 25 are coming down how many are being replaced?
94 1 a resolution of some sort, or someway to address them, 2 or they require further investigation. Everything 3 except for the one road aspect of Oval and Kuzak, which, 4 again, Mr. Alper did such a great job summarizing it, so 5 I would say personally that I would benefit from hearing 6 that again, not necessarily now, but at some point 7 today, you know, tonight before we conclude, because I 8 just want to hear that again. And that's it for me. 9 CHAIRMAN BAGOFF: Thank you. 10 Council President Scarpa. 11 COUNCILWOMAN SCARPA: Yeah. The other area 12 that I had difficulty with was all of the testimony we 13 heard from our surrounding communities about the impact 14 on them, you know, everything from the flooding, the 15 Canoe Brook and the water quality and all of these 16 issues, you know, we have a responsibility to our 17 neighboring communities and to maintain the public 18 trust. Residents have shown up, they've done their 19 homework. They raised legitimate, well documented 20 concerns and when a community engages at this level I 21 think it's our duty to actively listen and synthesis 22 this information and to act with integrity. I'm just, 23 you know, we can't forget we have to be good neighbors 24 and we can't destroy or negatively impact our neighbors 25 properties. I think about that all the time. You know,	96 1 MR. MacNEILL: So I will say the tree 2 replacement was outside say CME's purview with Wayne 3 DeFeo is handling that, so I don't want to comment on 4 tree replacement. Yeah, I don't want to comment on 5 something that I'm not an expert in. 6 CHAIRMAN BAGOFF: We had testimony, I just 7 don't recall. 8 MAYOR McCARTNEY: I just wanted to find out. 9 CHAIRMAN BAGOFF: There is a tree 10 replacement plan. 11 MAYOR McCARTNEY: I, all right. I need to 12 know. 13 CHAIRMAN BAGOFF: And we can condition it, 14 we can condition it based on whatever we found in the -- 15 okay. While Ms. McGovern looks, let's go on. 16 Ms. Kapferer. 17 MS. KAPFERER: One other question, Mr. 18 MacNeill, for you. I think, is there any concern where 19 the development will come out on Oval Road, there's a 20 culvert there. Is there any concern about like the 21 capacity of the culvert, condition of the culvert, 22 anything like that or if that was looked at? 23 MR. MacNEILL: So it was -- it' off-site 24 improvement. So it's currently not on this site. What 25 they are required to do is reduce the flow to that point

97 1 per the NJDEP regulations, which they have complied 2 with. There is, to my knowledge, hasn't been any 3 capacity analysis currently done on that culvert, at 4 least that I'm aware by the applicant, but again, they 5 met their reductions at that point of analysis, so 6 they're essentially reducing their flow to that point. 7 MS. KAPFERER: Okay. Yeah, I don't recall 8 anyone testify or, you know, suggesting that it's an 9 issue. I'm just curious, you know, if it's like a sole 10 access point, typically you would ensure that it's above 11 the flood elevation, it may be not an issue but just was 12 curious. 13 MR. MacNEILL: Yeah, so in that case if it 14 is undersized or under capacity right now the only thing 15 this development would be doing would be reducing that 16 flow. So a lot of times you see, if we're making a 17 situation that's already noncompliant a little bit 18 better by reducing that flow. 19 MS. KAPFERER: Okay. Thank you. 20 CHAIRMAN BAGOFF: Any other members of the 21 board? 22 Ms. McGovern. 23 MS. McGOVERN: I have some information from 24 -- Mr. DeFeo wrote a report dated July 2024, where he 25 makes reference to plantings -- planting species where	99 1 don't know, maybe there's a, if it's just a part of 2 their site plan, I don't know that we can break it out 3 by looking at the agenda at this point without going 4 through it. 5 COUNCIL WOMAN SCARPA: Now that we bring it 6 up, I have one other condition. 7 CHAIRMAN BAGOFF: Council Person Scarpa. 8 Council President Scarpa. 9 COUNCILWOMAN SCARPA: I wasn't going to 10 bring up the whole deer fencing thing, but since we're 11 on it. The deer fencing is unlikely to regrow the 12 forest, you know, so like why do it. I can't wrap my 13 hand around this whole plan and the Duke Forest Study, 14 you know, came back with replanting as the way to do 15 that. I think letting the developer take down all these 16 trees and, you know, all the wildlife that's there, the 17 deer, the coyotes, the foxes and the other wildlife, you 18 know, where -- they're out of their natural habitat, 19 where are they going. You know, we got a deer on every 20 avenue. They roam the streets. It just doesn't make 21 sense to me. 22 CHAIRMAN BAGOFF: Okay. 23 So I didn't want to taint anybody's view, so 24 I'll speak last. 25 We saw the Vermule survey of the 1880,
98 1 he reviewed a plan. "Planting species appear to be all 2 requirements, as only native species are proposed. 3 Applicant may wish to substitute certain species to 4 respond to changes in the USDA planting zone map found: 5 And it gives the site. "Updated planting plan to be 6 reviewed for consistency with proposed planting numbers. 7 There appears to be a discrepancy of 69 plants of two 8 sheets." Confirm -- then it went into porous pavements 9 and other environmental issues. So there was a planting 10 plan reviewed by Mr. DeFeo and is commented on his 11 report. 12 There's another report dated July 2024 where 13 he reviews, "Implemented tree preservation or 14 replacement plan in accordance that the following 15 parameters, and he provides tree density equals 212 16 trees per acre as per the tree study." And he says, 17 "Applicant is proposing LOD of 27.5 acres" and goes into 18 details there. I believe the conditions, one of the 19 conditions that was proposed was to comply with Mr. 20 DeFeo's report. I can double check that. Other than 21 that, I don't know -- I mean, he gave two days of 22 testimony, so I don't remember anything more specific. 23 MS. McCARTNEY: It's okay. I don't need 24 that. 25 MS. McGOVERN: If we look at the agenda, I	100 1 Roseland, Maplewood, Essex Fells were all trees. Howell 2 Drive was all trees. People cut them down. They 3 weren't good neighbors to us or they followed what our 4 country has been doing, is building, so people can live 5 in those areas. So if we use your concept, they 6 shouldn't have built there. They shouldn't have cut 7 those trees down. They weren't good neighbors to us. 8 Being that this is the last piece of land another thing 9 under the law is zoning inutility. So it is the plan, 10 but if we say, you can't do it, and why, because 11 everybody else did it first. They cut the waterway, 12 they cut the wetlands, they cut the trees down, they 13 built houses. There was testimony about the topography 14 of the land and things over 30 degrees by someone I 15 think was from the College Of New Jersey. And a small 16 area of this applications over 30 degrees, but 17 everything on Howell Drive is over 30 degrees. A golf 18 course was built, they cut down a whole bunch of trees, 19 all the trees, they built a golf course. They didn't 20 put back all those trees. I'm not saying it's bad, I'm 21 saying, as I said if before, the nature of our country 22 is we build so people can live. So if we extrapolate 23 and say, well, you, you can't do this because everybody 24 else did it first, that violates the Municipal Land Use 25 Law of the State of New Jersey. You have to be careful

101 1 when we do this. So everybody has the right. 2 Somebody's paying taxes on this land, it's private 3 property, whether an offer to purchase that land was 4 made or not, there's an application before us, so we 5 have to, again, follow the law. It's for superior legal 6 minds to work these things out. Our job is that. Okay. 7 Stormwater management, we've heard about the 8 stormwater management, I believe that CME, because 9 they're our independent engineers, reviewed it and they 10 have made comments about the stormwater management. 11 They're a licensed firm in the State of New Jersey and 12 New York. I trust what they've done for us and I 13 understand that the stormwater management would be 14 mitigated and there are stopgaps in the system that will 15 be evaluated along the way, that's set up in the 16 conditioning. 17 The sewer system has to be evaluated, not 18 only by the applicant but by the township. If there's 19 not enough capacity in the township then the application 20 may not go forward. I don't know, that is beyond what 21 we are here to talk about. We can condition the 22 applicant to make sure that every five years they comes 23 back to the town and say the sewer system has been 24 evaluated and maintained. 25 The water is by New Jersey American Water,	103 1 that's not what we're about. We have to come up with 2 the middle ground, and make sure that our neighbors are 3 happy, but they built first. We have to make sure our 4 people in town are safe. So the issue that I have, I 5 think this is a good application. I think my major 6 issue is, I can't see, I can't get over the amount of 7 cars that will be coming down Oval Road. I can't see 8 it. It is, I don't know that it's a cul-de-sac, but I 9 think that if you put 500 units you're going to have 10 over a 1000 trips a day plus you have three other 11 communities that empty out into that collector road, and 12 if Howell Drive was a full road and the road into the 13 opposite end of Oval Road was a road into Essex Fells, 14 and I would say my thought is to ask the applicant to 15 find one more roadway. That's me. You don't you have 16 to agree with me, I understand that. I think that our 17 experts have shown that this can be a good application. 18 If we look at the first part of West Essex Highlands it 19 was flatter but a similar, similar forest and they built 20 a beautiful community, beautiful, thriving community. 21 There's a waterway that goes through it, there's a 22 retention pond, every house is owned. They're 23 upgrading, they're doing exactly what our Master Plan 24 says. We may not like that as a community saying we're 25 going to lose some more forested land, I understand
102 1 they have an obligation to provide water to certain 2 pressure that's set by statute. The fire department 3 will, at their appropriate intervals, evaluate the fire 4 suppression system, both in the buildings and because 5 the buildings are sprinklered, and on the fire 6 suppression apparatus in the area. 7 Oval Road is the main collector road. This 8 is an application within an application, and that's what 9 the issue is. The -- if possible, I would like to see 10 the wetlands maintained. I'm sure something can be done 11 that may not cause the applicant to go back to the DE. 12 The applicant on the other hand has been, I 13 think, in my estimation from all the time I've sat on 14 the Planning Board, they have given us everything we've 15 asked for and just about every condition that was on 16 their property and things even not on their property, 17 they're providing a traffic light, they're mitigating 18 traffic flow. They are upgrading and advancing and they 19 are consistent with our Master Plan. They're consistent 20 with the Master Plan of the State of New Jersey. They 21 are maintaining over 90 plus acres of this land. Again, 22 their land, last guys on the block to build on it, you 23 have to remember that government is not allowed to take 24 without reason. We can't apply and say, you can do 25 anything but you can't build there. That's not fair and	104 1 that. However, we're also adding new people in town and 2 we have to look at it and say, if you control that or 3 you lose control of that. Things to think about. 4 I'm going to ask for five-minute break and 5 we're going to come back and see where we go. 6 (Whereupon, a short recess is taken.) 7 CHAIRMAN BAGOFF: Thank you. Welcome back. 8 So I think we've deliberated and -- 9 MAYOR MCCARTNEY: And what are you saying? 10 CHAIRMAN BAGOFF: There's three options. I 11 didn't mean to distract. There's three options, and 12 each board member should say their peace, my peace, you 13 either vote it up, you vote it down or give the 14 applicant time to come back and say, we need another 15 means of egress. And give them two months and come back 16 and if they so no, then we're back to where we were. 17 There are a number of additional conditions that we have 18 discussed that are safety conditions and one is 19 stormwater management and the wetlands, and it may not 20 be possible to move anything to hydrate the upper 21 portion of the wetlands, I understand that. But the 22 thing that, again, I want to drive home is we have a 23 zone plan, the IH-1 zone. This is an application within 24 another area that was an application. So as Mr. 25 MacNeill said, the RSIS is satisfied with the flow of

105 1 traffic in there. However, my concern is the flow of 2 traffic with three other, three other groups coming into 3 that Oval Road, and it's the only major ingress and 4 egress and we can't do anything about that, it is not a 5 road that we have any sway over. Again, the applicant 6 has been very, very kind and listening to change, and 7 move and help the public -- and they've listened to the 8 public comment and they've done a lot of things to 9 ameliorate, mitigate issues and there are certain things 10 that we can't do. This is the way it is, and staying 11 away from the wetlands maintaining as many trees as 12 possible and keeping that environment. They have 13 condensed the application to 27 acres, which I think is 14 commendable. 15 Again, we have to consider building. So for 16 me I would -- well, the board has to vote on this one 17 way or the other. My recommendation is we say to the 18 applicant, we will give you two months, come back, you 19 need a second means of egress, a real roadway. However 20 you do it, you need a real roadway. 21 MR. KLEIN: You're talking full-time 22 roadway? 23 CHAIRMAN BAGOFF: Full time roadway. 24 Regular roadway where cars can go. 25 Mr. Klein.	107 1 But the would never deny someone if they had an 2 emergency. They would always, right. 3 MR. CARDOZA: But signals get crossed in a 4 moments of -- 5 MR. KLEIN: Right. Sure, sure, sure. 6 MR. ALPER: But for me -- 7 CHAIRMAN BAGOFF: Mr. Alper. 8 MR. ALPER: For it's a circulation issue 9 even more so. I think emergencies can be figured out 10 during the emergency, especially if there's a good plan, 11 but I think that the circulation problem is going to be 12 a daily situation problem without a second real means of 13 ingress and egress. 14 MR. KLEIN: See, I don't have a problem with 15 -- Oval Road on a beautiful sunny day, no emergencies, 16 the signal, operation of the signal at Eagle Rock, it's 17 going to be a level of service of C. 18 COUNCILWOMAN SCARPA: How about at rush 19 hour? 20 MR. KLEIN: What's that? 21 COUNCILWOMAN SCARPA: How about at rush 22 hour? 23 MR. KLEIN: Yeah, that's what they analyzed, 24 the AM peak hour, and the PM peak hour. I don't know if 25 they did Saturday. I think they just did weekday AM and
106 1 MR. KLEIN: I don't know if I agree with 2 that. I just think that we need a better emergency 3 plan, let's say. So if that woman came out and saw 4 there was a fire, the road was closed, was she supposed 5 to go talk to a police officer and say, how do I get out 6 of here. Was she supposed to ask the fire chief who was 7 on the scene. Like maybe she didn't ask the right 8 question. They didn't realize that they have Oval Road. 9 I mean, maybe they just need an update on the plans to 10 say, yeah, you can go out Oval, I guess Howell would be 11 the second choice, right. Because Howell's got the 12 steepness of it. 13 MR. CARDOZA: Well, then they can -- we 14 could say everything up to and including the additional 15 access points, you know, and up to and including would 16 be those types of plans. Those considerations. 17 CHAIRMAN BAGOFF: And maybe the people don't 18 know that is an emergency road that they could get out 19 of. 20 MR. KLEIN: Right. And that's what I'm 21 saying. For whatever reason the guy who was on duty 22 didn't realize that it was. You know, it's just -- 23 maybe bad communication, because it hadn't been used in 24 30 years, so. 25 MAYOR McCARTNEY: That's what they said.	108 1 PM peak hour. 2 MR. CARDOZA: Well, I agree with Mr. Alper, 3 but if we were to say, you have two months, then I would 4 also want to put a time line or a stopwatch on the, you 5 know, some of those other conditions or unanswered 6 questions, such as the sewer pipe line or the stormwater 7 basin. I would want, you know, to see that because we 8 brought that up kind of, I don't want to say midway, 9 maybe late into, you know, mid into -- 10 MR. ALPER: In the teens. 11 MR. CARDOZA: Yeah, yeah. And so it's been 12 some time and I'm surprised that we haven't seen that 13 revision. So, you know, if we're going to extend the 14 time for this one specific aspect that I know we're all 15 very focussed on then we should also put a stopwatch on 16 anything else that's left unresolved. 17 CHAIRMAN BAGOFF: So let's make a list of 18 the unresolved issues you have now and then, remember, 19 this is up to the applicant. We still have to offer the 20 applicant an up or down vote or this time. So let's 21 come up with now the issues that we have and then we'll, 22 the applicants right here, we'll speak to the applicant. 23 That's part of the public process. 24 Mayor McCartney. 25 MAYOR McCARTNEY: Yeah. My unanswered

109 1 question was about the replacement plan. Tree 2 replacement plan. 3 CHAIRMAN BAGOFF: Okay. Tree replacement 4 plan. 5 MAYOR McCARTNEY: That wasn't really spelled 6 out in that Mr. DeFeo report. 7 CHAIRMAN BAGOFF: Okay. 8 Mr. Alper. 9 MAYOR McCARTNEY: And it's not in the 10 ordinance, or a tree fund. 11 MR. ALPER: The, the sanitary sewer through 12 the stormwater basin, the water tower question, you 13 know, there's more time maybe just get a more concrete 14 answer on that. A second road possibility. What am I 15 forgetting. 16 MS. KAPFERER: The sanitary. 17 MR. ALPER: Right. Sanitary. Water and 18 sewer. I think, I think those are my main things. 19 CHAIRMAN BAGOFF: Oh, Ms. Kapferer. 20 MS. KAPFERER: Yeah, sanitary conveyance, 21 like the working township engineer. 22 MR. ALPER: Oh, right, the sewer capacity 23 for the township. 24 CHAIRMAN BAGOFF: You have to get an answer 25 from the township engineer.	111 1 there seems to be a shifting of -- 2 CHAIRMAN BAGOFF: Yes. 3 Okay. Council President Scarpa. 4 COUNCILWOMAN SCARPA: I would just like to 5 see something that they're going absorb the cost of all 6 this infrastructure, stormwater. 7 CHAIRMAN BAGOFF: Okay. I believe that 8 anything that the applicant is going to have to do as 9 far as stormwater management is for them. They'll have 10 to pay for it. 11 COUNCILWOMAN SCARPA: As long as it's 12 clearly spelled out. 13 CHAIRMAN BAGOFF: Okay. 14 Ms. McGovern. 15 MS. MCGOVERN: You know, the board can vote 16 on preliminary site plan approval and hold off on final, 17 which all of these things that are required can be 18 presented, and this way the applicant, if it was 19 approved preliminarily, it was approved, they would have 20 to satisfy all of these things before final site plan 21 would be granted. The one thing that's different that 22 you just brought up, is this extra exit situation. So 23 that's new, and I think that you have to ask the 24 applicants attorney about that in terms of timing. They 25 may have made inquiry into that, I don't know. We never
110 1 MR. ALPER: And to the extent that we had 2 conversation about the Canoe Brook, the upper part of 3 the wetlands, if there's any, you know, response on 4 that. 5 CHAIRMAN BAGOFF: Mr. Cardoza. 6 MR. CARDOZA: This might not be entirely be 7 on the applicant, because I think, at least the first 8 leg, requires research on our part, but tracking down 9 the information on the smell affecting the residents? 10 CHAIRMAN BAGOFF: Yeah, I said that. 11 MR. CARDOZA: I understand. 12 CHAIRMAN BAGOFF: I agree. We're going to 13 talk to the building department tomorrow. 14 MR. ALPER: Not just capacity, but also -- 15 MR. CARDOZA: Yeah, yeah. But I'm saying 16 that because if something, if we are to determine that 17 something then responsibility, then a certain amount of 18 responsibility rests with the applicant, then we should 19 factor that in. 20 CHAIRMAN BAGOFF: As I recall everything is 21 draining downwards to Blakely and it's not going up to 22 Howell, but it should be, whatever's going on there 23 should be addressed. 24 MR. CARDOZA: Yes. Yes. At least a 25 clarification, because we heard from the residents that	112 1 asked for it after 20 something, 30 hearings it's not 2 been brought up, as far as I recall. But all of these 3 other things would all be required before final site 4 plan and what you typically do, and this is not a 5 typical case by any stretch of the imagination, is that 6 on other cases where CME has written a report that said 7 items A, B and C have to be done, the board has granted 8 preliminary and final site plan knowing that subsequent 9 that the engineers will check those things off before a 10 building can begin. So that is an option for the board 11 and when things are technical and there are things that 12 are complicated, the board can withhold that. And then 13 when it is reported to the board that they've satisfied 14 all of these things then on notice to the community they 15 come back for a final site plan, all though no one wants 16 another 30 days of hearing, I know that, but it should 17 be a lot -- it would be a lot more circumscribed because 18 it would be those items have been completed, the board 19 would check on them to see that they were done to your 20 satisfaction and that would be a simpler vote. But 21 that's your choice, whether you want to hold this off 22 because you don't feel as though there's enough here for 23 you to vote on, that you want to see these things ahead 24 of time, or if you want to bifurcate it in a sense that 25 you take vote on preliminary, or if you, this extra

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1 street thing is so important at this point that you
2 don't even want to get to that point. These are for you
3 to discuss.

4 MR. CARDOZA: Maybe Mr. Chairman, you can
5 just poll the board on the extra street?

6 CHAIRMAN BAGOFF: I think we should ask the
7 applicants attorney first. If that's the only thing
8 that's holding up preliminary.

9 MS. MCGOVERN: He can't answer that.

10 MR. PLOCKER: Yeah, I wouldn't be able to
11 answer that now obviously. I have a client
12 representative here with me, we don't have any
13 professionals. Like Ms. McGovern said, it was the first
14 time during the almost 30 hearings that the issue was
15 brought up. Or, you know, or even casually mentioned.
16 So, I don't think it would be proper for me to respond
17 right now, if it's something we're first hearing
18 tonight. We appreciate it though. Thank you.

19 MR. AFRAN: Mr. Chairman, you can't hear one
20 side and not the other.

21 MR. PLOCKER: Yes, he can.

22 CHAIRMAN BAGOFF: Stop. Stop. Stop. All
23 he said was, he can't answer right now. That's okay.
24 If you want to say, you can't answer right now too,
25 that's okay too.

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1 MR. AFRAN: No, I want to say --

2 CHAIRMAN BAGOFF: Stop right there. Stop.

3 MR. AFRAN: This is a legal issue.

4 CHAIRMAN BAGOFF: Hang on one second. I
5 have to speak to the attorney before you talk over me,
6 please.

7 What is it in relation to?

8 MR. AFRAN: What Ms. McGovern just
9 suggested. As a matter of law we do not wish to be seen
10 as remaining silent on the idea that these very major
11 additional pieces of information can be left for final
12 approval, and for one important reason. When
13 preliminary site plan approval is granted the applicant
14 can start building. These major items need to be known
15 now. They are not things that can be left for final.
16 If they're not known now they are fundamental elements
17 as to feasibility. If you allow that to be done through
18 final you're allowing the applicant to start building
19 before all this information is known.

20 CHAIRMAN BAGOFF: Before you go down this
21 roadway, maybe you should hear what -- I'm sorry.
22 Go ahead.

23 MS. MCGOVERN: A condition can be added,
24 that would be that no improvements begin until final
25 site plan has been approved.

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1 MR. AFRAN: Well, that's answering my
2 question. In other words, but improvements would also
3 have to mean you're not cutting the forest down, just
4 because you got preliminary.

5 CHAIRMAN BAGOFF: Before you -- we have
6 everything in hand, sir.

7 MR. AFRAN: I don't know because
8 improvements and tree cutting are not necessarily the
9 same.

10 CHAIRMAN BAGOFF: Okay. Then we're in the
11 middle of the story.

12 MR. AFRAN: Okay.

13 CHAIRMAN BAGOFF: Wait for the next chapter
14 and then you --

15 MR. AFRAN: But it's important for me to set
16 this point, because it's an important question. If the
17 applicant can get preliminary, then cut down 27 acres of
18 trees, that doesn't do much good even though you got a
19 final coming. So the question is if --

20 MS. MCGOVERN: You can't argue anymore about
21 this. The board heard your position and they'll make a
22 decision.

23 CHAIRMAN BAGOFF: Thank you.

24 MS. MCGOVERN: You made your point.

25 MR. AFRAN: Well, I made my point but it's

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1 important that these things be heard from the parties as
2 you're going forward on legal issues.

3 MS. MCGOVERN: Understood.

4 MR. PLOCKER: Chairman Bagoff, may I.

5 CHAIRMAN BAGOFF: Thank you.

6 Mr. Plocker.

7 MR. PLOCKER: Yeah. I could short circuit,
8 at least in the short-term. It would be my
9 recommendation as the applicant, I know it's up to the
10 board, but one of the options that you floated was to
11 not have a vote tonight and for us to consider some of
12 the things that were mentioned here and we are willing
13 to do that.

14 CHAIRMAN BAGOFF: Okay.

15 MR. AFRAN: That would solve my concern.

16 MAYOR MCCARTNEY: Mine too.

17 CHAIRMAN BAGOFF: Thank you for letting me
18 finish. You know, you haven't trusted me the whole
19 thing. The whole time here. You got to give me --

20 MR. AFRAN: I do trust you, but I have a
21 duty.

22 CHAIRMAN BAGOFF: I appreciate that, but you
23 have to give me the opportunity to be wrong. Okay.
24 Thank you.

25 MR. AFRAN: I withdraw any rush.

117 1 CHAIRMAN BAGOFF: I appreciate that. 2 So what I'm going to do is, I'm going to 3 poll the board. Okay. I'm going to poll the board. 4 I'm going to ask each one of you to say, yes, give the 5 application two months to come back, they have the list, 6 Ms. McGovern will provided them a list of concerns we 7 have. They will come back in two months at a meeting. 8 Okay. And we'll go forward from there, unless they 9 satisfy things earlier and they will notify the board. 10 MS. MCGOVERN: Okay. I need clarification. 11 Concerns versus site plan issues that would have to be 12 satisfied before final site plan. It would be -- what 13 we're talking about is the tree plan, the sewer plan, 14 these revisions that were required by the experts on 15 these subjects you mentioned? 16 CHAIRMAN BAGOFF: Yes. 17 MS. MCGOVERN: Okay. 18 CHAIRMAN BAGOFF: Any additional things that 19 could be done beforehand by the reports that were 20 provided. 21 MS. MCGOVERN: Okay. Got it. When you say, 22 two months, because there's a lot of people who get 23 nervous. 24 CHAIRMAN BAGOFF: Right. 25 MS. MCGOVERN: To preserve their notice, we	119 1 the tree replacement plan, is that correct? 2 MAYOR MCCARTNEY: Yes. 3 MS. MCGOVERN: I'm not going to write a 4 letter, I'm am going to do it now so that everybody in 5 the public hears it. 6 MR. AFRAN: My only question is, did I hear 7 the Chair say, that when we resume in June that there 8 will be no comment from the public. That's an 9 impossibility. There's are new elements that are being 10 added back to the plan. You can't stop the objector or 11 public. 12 13 CHAIRMAN BAGOFF: Well, they're being 14 satisfied. The only thing that's new is the potential 15 additional roadway. Everything else are things that 16 have been brought up that are being satisfied, correct? 17 MR. AFRAN: Well, then I need to preserve 18 our position. These are major elements that are things 19 of a conditional approval. 20 CHAIRMAN BAGOFF: We're working on it. Give 21 us a minute to talk this through. 22 MS. MCGOVERN: Okay. If this application 23 were theoretically granted final -- preliminary and 24 final, these items would be submitted to the board 25 engineer and when they met the board engineers approval
118 1 can cary it to our next regular meeting, which is April 2 15, like we did once before, where we carried it just 3 for our -- and so let's talk about, then you carry it 4 again to May, to the May regular meeting, we put it on 5 the agenda and then we figure out a time in June where 6 we'd advertise if it's going to be special meeting 7 or we'll have it at the June regular meeting. 8 CHAIRMAN BAGOFF: Yes. 9 MS. MCGOVERN: Okay. I just want that to be 10 clear. For the applicant and for the opposition, the 11 next two months, if the board decides to go that way, 12 it'll be carrying it just to preserve notice. 13 MR. AFRAN: Exactly like we have done. 14 CHAIRMAN BAGOFF: Correct. Done previously. 15 And the meeting where we come back will be in person. 16 Okay. Good. 17 There will be no comment, there will be no 18 additional comments from the public at that meeting. 19 MR. KLEIN: Is somebody going to write a 20 letter with these things in it or are we going to speak 21 it out and he's going to write it down. 22 CHAIRMAN BAGOFF: Ms. McGovern. 23 MR. KLEIN: Write a letter. Like you want 24 to go over it now exactly -- 25 MS. MCGOVERN: Okay. Yeah. Let's, you want	120 1 they'd be checked off as satisfied. 2 The board here is going to be working with 3 the engineer and if these items are checked off we'll 4 get a report form, we're not going to hear testimony, as 5 I understand it, but we'll get a report from the board 6 engineer as to whether they satisfy those items. The 7 only thing left open, as I understand it, would be this 8 potential other exit/entrance roadway. I think that 9 that that would have to have further discussion. 10 CHAIRMAN BAGOFF: Yeah. 11 MS. MCGOVERN: Okay. 12 MR. AFRAN: That certainly is a different 13 issue or position. Just so I am clear, because there's 14 a lot of back and forth on the issue. Many of these 15 conditions as well, call for the sake of argument, are 16 fundamental. Sewer capacity is fundamental on the field 17 for them. So I don't think issues like that the board 18 can say in June when we hear that report back there can 19 be no public comment. So we don't think these can be 20 conditions of approval because they're fundamental and 21 once the proof that it can be done comes in the public 22 has a right to comment. 23 MS. MCGOVERN: Okay. I'm going to say, why 24 don't we see what they come back with and we'll play it 25 by ear in terms what opposition there really is.

121 1 MR. AFRAN: It's my job to preserve -- 2 MS. McGOVERN: Understood. 3 CHAIRMAN BAGOFF: Thank you. Okay. Good. 4 MS. McGOVERN: Okay. So what we need done, 5 I'm not writing a letter, we're doing this in public 6 because everybody should know, the tree replacement 7 plan. If it's already been provided and they just 8 missed it, please highlight it for us. If it wasn't 9 done with any specificity please provide that. 10 The sanitary sewer, in terms of where you're 11 laying it out so it avoids the issues that were 12 described by our engineer. 13 MR. KLEIN: The pipe under the detention 14 basin? 15 MS. McGOVERN: Right, the pipe under the 16 detention basin. 17 And the capacity issues. To demonstrate 18 that your plan satisfies the capacity needs for this 19 development, and how you go about satisfying capacity 20 needs. If you have to put in a holding tank or 21 whatever. 22 The water tower question. If the -- it may 23 have already been satisfied with your permit that you 24 got, I don't know, but if you could clarify that to make 25 sure that we have that.	123 1 MS. McGOVERN: Are responsible. We can put 2 a condition on, but there's not proofs that are needed 3 for that. 4 MR. MacNEILL: Yeah, and the performance 5 bond and inspection fee escrow essentially outlines 6 that. 7 MS. McGOVERN: Perfect. 8 MR. MacNEILL: They don't install the 9 project per plan, then they wouldn't get that 10 performance bond. 11 MS. McGOVERN: And also Council President 12 you should know that, typically a developer's agreement 13 is done on these things and that also includes the 14 performance bond and the issues regarding that. So that 15 protects the township. 16 And the last thing is the potential other 17 exit. 18 MR. KLEIN: Can you do a straw poll to see 19 if that was a good idea. To see if everybody really 20 wants that. 21 MS. McGOVERN: Right. Right. Okay. That's 22 what you're going to be voting on. That's what you're 23 going to be voting on. 24 MR. KLEIN: Just now to make sure we are a 25 majority I guess.
122 1 Whether your engineer can revise the plan to 2 redirect the water without going back to DEP to continue 3 to keep the wetlands wet in that one area that was 4 described. 5 And in terms of costs absorbed, I think 6 that's already covered under the ordinance. No? 7 MAYOR McCARTNEY: The agreement -- 8 MS. McGOVERN: It would be what? 9 MR. PLOCKER: Any off tract contributions 10 are limited to the traffic light, that's in the 11 settlement agreement. 12 MS. McGOVERN: Right. 13 MR. PLOCKER: That's in the settlement 14 agreement. 15 MS. McGOVERN: The off tract improvements -- 16 MR. PLOCKER: Correct. 17 MS. McGOVERN: -- but the internal ones I 18 think our engineer sets that. Right, Ryan? 19 MR. PLOCKER: That's all on our -- 20 whatever's on our property we're responsible for 21 maintaining at our cost. 22 MS. McGOVERN: Right. 23 MR. PLOCKER: Absolutely. 24 MR. MacNEILL: All on-site improvements are 25 on the applicant.	124 1 MS. McGOVERN: Okay. But those are the open 2 items, so Mr. Klein is calling for a vote just for -- 3 all right. But otherwise the board and then the second, 4 are you doing a second vote to see if want -- 5 CHAIRMAN BAGOFF: Yes. 6 MS. McGOVERN: But we're going to hold off 7 on this vote. 8 CHAIRMAN BAGOFF: Yes, we're going to start 9 with -- 10 MS. McGOVERN: All right, you figure it out. 11 MAYOR McCARTNEY: Wait, I have a question 12 first. 13 CHAIRMAN BAGOFF: Mayor McCartney. 14 MAYOR McCARTNEY: Please. What was just 15 stated was that say this sanitary sewer system is 16 on-site, is there any responsibility if it goes off-site 17 and what's going to happen? 18 CHAIRMAN BAGOFF: Well, the borough 19 attorney -- the borough attorney. The borough engineer 20 has to say, is there enough capacity in the sewer system 21 to take whatever's coming off there. 22 MAYOR McCARTNEY: That's what I'm saying. 23 CHAIRMAN BAGOFF: There's a certain amount 24 of units and I'm sure there's some calculation that the 25 engineers have to say, well, based on X amount of human

125 1 beings -- 2 COUNCILWOMAN SCARPA: If it's not, there's 3 only -- 4 CHAIRMAN BAGOFF: Well, if it's not, then 5 the whole -- and we have to figure it out. 6 COUNCILWOMAN SCARPA: That's what I don't 7 like. That's a problem. 8 CHAIRMAN BAGOFF: And then the applicant has 9 to figure it out. 10 MAYOR MCCARTNEY: Yeah, I'm questioning the 11 cost and the expense of that. 12 CHAIRMAN BAGOFF: Guys, the applicant has to 13 figure it out. 14 COUNCILWOMAN SCARPA: Who's going to figure 15 out the cost. 16 MS. MCGOVERN: The applicant pays for the 17 sewer system on their property. 18 COUNCILWOMAN SCARPA: Yeah, but what about 19 if it's not on the property? 20 MS. MCGOVERN: Well, we don't pay. They 21 don't -- nobody -- no applicant, nobody is required to 22 pay for something off-site. 23 COUNCILWOMAN SCARPA: Because we don't have 24 the infrastructure. 25 CHAIRMAN BAGOFF: We have asked --	127 1 we don't know. We don't know, so we'll going to find 2 out and that will be for Zayibeth, and our consulting 3 agent. Okay. 4 MR. PLOCKER: Dr. Bagoff. 5 CHAIRMAN BAGOFF: Yes, sir. 6 MR. PLOCKER: And with all due respect, the 7 settlement agreement does say the town does need to 8 cooperate with us in precuring all off site utilities. 9 Not the board, I meant the town. 10 CHAIRMAN BAGOFF: Okay. We're doing out 11 part. 12 MR. PLOCKER: I'm differentiating. 13 CHAIRMAN BAGOFF: Yes, I appreciate that. 14 Thank you. 15 Okay. So we'll work on it. 16 Let's see what Ms. Carballo has to say about 17 that and we'll deal with it from there. Make sense? 18 Sometimes I make sense. Okay. Good. 19 MR. MacNEILL: Just t provide some clarity 20 -- 21 CHAIRMAN BAGOFF: Mr. MacNeill. 22 MR. MacNEILL: So we do open have an open 23 sanitary sewer review dated December 8, 2025, so it 24 makes the most sense for the applicant to address that 25 letter upon resubmission to the township engineer in my
126 1 COUNCILWOMAN SCARPA: That's my big problem. 2 CHAIRMAN BAGOFF: We asked our township 3 engineer to opine on this. Okay. That's the next place 4 to go. 5 MS. MCGOVERN: Okay. I just have to address 6 one thing. Any effects that a project has off-site, for 7 example, you're worried about more traffic on Eagle Rock 8 Avenue because of these cars, new people coming in. More 9 children going to school. These things you can't -- 10 this is not what the Planning Board can use for denial 11 of an application, because it's part of the overall plan 12 that was decided when the ordinance was put into affect. 13 The law presumes that when the council put this 14 ordinance together that these overriding conditions for 15 the entire community were considered and approved when 16 this ordinance was approved. So we are here, we, the 17 Planning Board, are here to decide this site and the 18 only off-site improvement, which is as per the 19 settlement agreement, is that traffic light. Otherwise 20 everything that we talk about is on the site and only on 21 the site. That's what the law allows the us, the 22 Planning Board to do. 23 CHAIRMAN BAGOFF: We have to ask our 24 engineer, can the sewer system there take this. If not 25 what needs to be done to mitigate it. It may be okay,	128 1 office. It just would make it cleaner. 2 CHAIRMAN BAGOFF: Okay. Good. We'll add 3 that to the list. 4 MS. MCGOVERN: The sewer -- 5 MR. MacNEILL: It's really instead of like 6 it should just be addressing our December 8, 2025 7 letter. 8 MS. MCGOVERN: Okay. 9 CHAIRMAN BAGOFF: Okay. Okay. So the next 10 thing is -- 11 MR. CARDOZA: Is the December 20, but not, 12 that's not discounting the sewer pipe line through 13 the -- 14 CHAIRMAN BAGOFF: No. 15 MS. MCGOVERN: But that was in their report. 16 What they suggested was that this be changed and they 17 have to abide by the recommendations of that official 18 report. 19 CHAIRMAN BAGOFF: Okay. 20 MR. MacNEILL: Yeah. Again, I think what 21 Mr. Cardoza was indicating was the sewer odor was the 22 secondary maybe issue that maybe you wanted, I think 23 that was less on the applicant and more of an internal 24 discussion -- 25 CHAIRMAN BAGOFF: That was on Howell Drive.

129 1 MR. MacNEILL: -- on whether needed it was 2 remedied or not. 3 CHAIRMAN BAGOFF: Yes. 4 Okay. Now, so -- 5 MAYOR McCARTNEY: We're voting on extending 6 the two months, is that what we're voting? 7 CHAIRMAN BAGOFF: I'm sorry. 8 MAYOR McCARTNEY: We're voting on extending 9 the two months. 10 CHAIRMAN BAGOFF: No, no. We're voting to 11 start out with, do people want a second means of ingress 12 or egress or not. Okay. So I'm asking you, so these 13 are the things we have to ask the applicant. Do you 14 think it's necessary to have a second means of ingress 15 and egress, as we had discussed. "Yes" or "no?" 16 MAYOR McCARTNEY: I would like to see a plan 17 for that, yes. 18 19 CHAIRMAN BAGOFF: Okay. Mayor says, yes. 20 Mr. Klein. 21 MR. KLEIN: I don't think it's necessary for 22 full time secondary means of ingress. I'd like to see a 23 better emergency access plan. 24 CHAIRMAN BAGOFF: Okay. Okay. 25 MR. KLEIN: I think RSIS says they don't	131 1 CHAIRMAN BAGOFF: Ms. Kapferer is yes. 2 Vice Chairman Guarino. 3 VICE CHAIRMAN GUARINO: Yes, Mr. Chairman. 4 CHAIRMAN BAGOFF: Vice Chairman is yes. 5 Mr. Alper. 6 MR. ALPER: Yes. 7 CHAIRMAN BAGOFF: Mr. Alper is yes. 8 Mr. Cardoza. 9 MR. CARDOZA: Yes. 10 CHAIRMAN BAGOFF: Mr. Cardoza is yes. 11 Council President Scarpa. 12 COUNCILWOMAN SCARPA: The number one is 13 safety issue, yes. 14 CHAIRMAN BAGOFF: Council President Scarpa 15 is yes. 16 And I am a yes. 17 Okay. So a recommendation is to add that to 18 the list of things. Okay. 19 So now, guys, now I'm going to ask, will the 20 board agree to give the applicant two months to come 21 back to us with the -- this information to a public 22 meeting and we will carry this application, so there 23 will be no more notice required. 24 Mayor McCartney. 25 MAYOR McCARTNEY: I'm going to say yes and
130 1 need that secondary means of ingress. 2 CHAIRMAN BAGOFF: Because the applicant -- 3 the applications it is an application within an 4 application. 5 MR. KLEIN: Right. 6 CHAIRMAN BAGOFF: And I understand. I 7 understand and we have other concerns. 8 MR. KLEIN: Right. So I don't -- I think 9 they'll probably push back on the secondary means of 10 full time ingress, but like I said, I'd like to see a 11 better plan for emergencies. 12 CHAIRMAN BAGOFF: Let's put that on the 13 list. A better -- and improved plan for emergency 14 egress. 15 MR. KLEIN: Right. Police, fire department. 16 MS. McGOVERN: Improved plan for fire -- 17 CHAIRMAN BAGOFF: Ambulance and police. 18 Okay. 19 MS. McGOVERN: For emergencies. 20 CHAIRMAN BAGOFF: Ms. Kapferer. 21 MS. KAPFERER: So what are we voting on? 22 CHAIRMAN BAGOFF: Second means of ingress 23 and egress. 24 MS. KAPFERER: Considering public safety, 25 yes, I do.	132 1 that all of those unanswered questions. 2 CHAIRMAN BAGOFF: Yes. Mayor McCartney says 3 yes. 4 Mr. Klein. 5 MR. KLEIN: Yes. 6 CHAIRMAN BAGOFF: Mr. Klein says yes. 7 Ms. Kapferer. 8 MS. KAPFERER: Yes. 9 CHAIRMAN BAGOFF: Ms. Kapferer says yes. 10 Vice Chairman Guarino. 11 VICE CHAIRMAN GUARINO: Yes. 12 CHAIRMAN BAGOFF: Vice Chairman Guarino says 13 yes. 14 CHAIRMAN BAGOFF: Mr. Alper. 15 MR. ALPER: Yes. 16 CHAIRMAN BAGOFF: Mr. Alper says yes. 17 Mr. Cardoza. 18 MR. CARDOZA: Yes. 19 CHAIRMAN BAGOFF: Mr. Cardoza says yes. 20 CHAIRMAN BAGOFF: Council President Scarpa. 21 COUNCILWOMAN SCARPA: Yes. 22 CHAIRMAN BAGOFF: Council President Scarpa 23 says yes. 24 And I vote yes. 25 Okay. Yes. Okay. I'm sorry, Ms. McGovern.

133 1 MS. McGOVERN: I just want to be clear then, 2 this matters going to be carried to our next regular 3 meeting, which is April 15, but I want the public to be 4 aware that our meeting originally for our regular 5 meeting was April 1, but it conflicted with Passover, so 6 when we looked up the scheduling, that's why there's 7 going to be a revision of our regular schedule. That's 8 why our next regular meeting isn't until April 15 and 9 our regular meetings, when we're not dealing with this 10 application are on zoom. So we are going to be on zoom 11 on April 15 at 7:30 PM. And this will just be on this 12 calendar to be carried to our next regular meeting in 13 May, which will also be on zoom, and then it'll be 14 announced when it's actually going to be put down for in 15 person meeting, whether it's at the June regular 16 meeting, which will then be converted to in person, or 17 if it's going to be at a special meeting in June. 18 Now, I want to add one more thing. Should 19 the applicant require more time in terms of we're close 20 to working out a potential other exit or we need more 21 time for this, but we're close and they need a month, 22 another month, if they write a letter to the board Chair 23 that would be publically put on the agenda, the board 24 would consider that. Correct? 25 CHAIRMAN BAGOFF: Absolutely.	135 1 C E R T I F I C A T E 2 I, ERIC S. FISHMAN, a Shorthand Reporter 3 and Notary Public of the State of New Jersey do hereby 4 certify that the foregoing is a true and accurate 5 transcript of the testimony as taken stenographically by 6 and before me at the time, place and on the date 7 hereinbefore set forth, to the best of my ability. 8 I DO FURTHER CERTIFY that I am neither a 9 relative nor employee nor attorney nor counsel of any of 10 the parties to the action; and that I am neither a 11 relative nor employee of such attorney or counsel; and 12 that I am not financially interested in the action. 13 14  15 16 ERIC S. FISHMAN, S.R. 17 18 Dated: <u>3/12/2026</u> 19 20 21 22 23 24 25
134 1 MS. McGOVERN: So that the public would know 2 that as well. So they're is hopefully in two months but 3 if the applicant requires more time the board will 4 consider that. 5 MR. AFRAN: One quick question. Could CME, 6 if CME is getting documentation from the applicant could 7 CME make sure to send it to me for the benefit of zoom 8 -- if CME's getting any of this new documentation from 9 the applicant, could CME make sure to send it to me 10 because in the past we haven't always gotten it. If it 11 goes to Ms. McGovern I know you'll send it to me. 12 MS. McGOVERN: It'll be sent to both of us 13 and I'll make sure you get it. 14 MR. AFRAN: Thank you very much. 15 CHAIRMAN BAGOFF: Okay. We would like to 16 thank the applicant, Mr. Afran, the public, the people 17 on zoom. 18 (Hearing concludes at 10:00 PM.) 19 20 21 22 23 24 25	136 1 SIGNATURE PAGE/ERRATA SHEET 2 3 WITNESS: 4 CASE REFERENCE: 5 6 INSTRUCTIONS TO WITNESS 7 After you have read your transcript, please note any errors in transcript 8 on this page. Do not mark on the transcript itself. Please sign and date this sheet as 9 indicated below. If additional lines are required for corrections, attach additional sheets. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 ----- Page Line ----- ----- I have read my transcript and subscribed to its accuracy, to include the corrections or amendments noted above or hereto attached: ----- Signature of Witness Date

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