

# BOROUGH OF WATCHUNG

## PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

**Regular Meeting  
December 15, 2020**

**OFFICIAL MINUTES  
Adopted January 19, 2021**

Chairwoman Tracee Schaefer called the Regular Meeting to order at 7:30 p.m. Board members present were Mr. Al Ellis, Ms. Karen Pennett, Councilman Pete Martino, Mayor Keith Balla, Ms. Ellen Spingler, Mr. Steve Pote, Mr. Paul Fiorilla and Mr. Troy Sims. Also present were Francis P. Linnus, Esq., Board Attorney, Thomas J. Herits, Board Engineer, Mr. Mark Healey, Board Planner and Theresa Snyder, Board Clerk.

Chairwoman Schaefer read the statement indicating the meeting was being held in compliance with N.J.S.A. 10:4-6 of the Open Public Meetings Act, the Municipal Land Use Law requirements, and the recording of the Minutes as required by law. She also stated that in order to comply with the executive orders signed by the governor, and in an effort to follow best practices recommended by the CDC, the meeting was being held virtually for all board members, board professionals, the applicant, the applicant's professionals, interested parties and members of the public. The Board members identified themselves for the record. She then led the flag salute to the American flag.

### **MINUTES**

On motion by Ms. Spingler, seconded by Ms. Pennett, the minutes/transcript from the October 20, 2020, Regular Meeting, were accepted and carried on voice vote.

On motion by Ms. Spingler, seconded by Mr. Pote, the minutes from the November 16, 2020, Special Meeting, were accepted and carried on voice vote.

On motion by Ms. Spingler, seconded by Ms. Pennett, the minutes/transcript from the November 17, 2020, Regular Meeting, were accepted and carried on voice vote.

### **CASE NO.: PB 19-02; THE LEARNING EXPERIENCE**

**100 UNION AVENUE**

**BLOCK: 7801 LOT: 1**

**BB ZONE**

**Expiration: 12/31/20**

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

**The contents of the hearing for the above referenced application is recorded in  
the below transcript prepared by:**

Angela C. Buonantuono, CCR, RPR, CLR

NJ State Board of Court Reporting

24 License No. 30XI00233100

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BOROUGH OF WATCHUNG PLANNING BOARD

COUNTY OF SOMERSET - STATE OF NEW JERSEY

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REGULAR MEETING FOR:

THE LEARNING EXPERIENCE

BLOCK 7801, LOT 1

100 UNION AVENUE

CASE NO. PB 19-02

- - - - -

TUESDAY, DECEMBER 15, 2020

COMMENCING AT 7:30 P.M.

TRANSCRIPT OF PROCEEDINGS

VIRTUAL PUBLIC HEARING

# BOROUGH OF WATCHUNG

## PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

### BOARD MEMBERS PRESENT:

TRACEE SCHAEFER, CHAIRPERSON  
DONALD SPEENEY, VICE-CHAIRMAN  
KEITH BALLA, MAYOR  
ALBERT ELLIS  
PAUL FIORILLA  
PIETRO MARTINO, COUNCILMAN  
KAREN PENNETT  
STEPHEN POTE  
ELLEN SPINGLER

TROY SIMS

### ALSO PRESENT:

FRANCIS LINNUS, ESQUIRE, BOARD ATTORNEY  
TOM HERITS, P.E., Board Engineer  
MARK HEALEY, P.P., Board Planner  
JOHN JAHR, P.E., Board Traffic Engineer  
THERESA SNYDER, Board Secretary

### STENOGRAPHICALLY REPORTED BY:

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# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

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A P P E A R A N C E S: (Via Video Conference)  
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--Counsel for the Applicant  
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--Counsel for the Objector, Weldon Materials, Inc.

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# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

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## I N D E X

FOR THE APPLICANT:

CREIGH RAHENKAMP, P.P. PAGE

BY MR. HEHL 7

BY MR. BUTLER 41

FOR THE OBJECTOR:

ALEXANDER LAPATKA, P.E. PAGE

BY MR. BUTLER 62

## E X H I B I T S

FOR THE APPLICANT:

EXHIBIT DESCRIPTION PAGE

A-5 Site plan - Sheet E-500 4

FOR THE OBJECTOR:

EXHIBIT DESCRIPTION PAGE

OW-1 Copy of Sheet 6A of Site Plan issued  
6/13/19, superimposed with lines,  
labels and notations

64

OW-2 Copy of Sheet 6A of Site Plan, with  
wetland transition area notation

94

OW-3 Map entitled, Tributary Flood Hazard  
Area & Overland Drainage Exhibit

72

OW-4 DEP Declaration of Restrictions for  
Modified Transition Area

89

4

1 (Exhibit A-5, Site plan, Sheet E-500,  
2 was marked prior to commencement.)

3 - - -

4 CHAIRPERSON SCHAEFER: I ask for a  
5 motion to waive the reading and approve the minutes  
6 of the transcripts of our regular meeting on  
7 November 17th, 2020.

8 MEMBER SPINGLER: So moved.

9 CHAIRPERSON SCHAEFER: Thank you,  
10 Ellen.

11 Second?

12 MEMBER PENNETT: Second.

13 CHAIRPERSON SCHAEFER: Thank you,  
14 Karen.

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

15 Discussion?

16 The chair calls for a voice vote. All

17 in favor state by saying "aye."

18 MEMBERS IN UNISON: Aye.

19 CHAIRPERSON SCHAEFER: Anyone opposed?

20 Anyone not voting?

21 Mr. Hehl, just so you know, although I

22 was not at two of those meetings, I did not only

23 read the transcripts, but I watched the video for

24 both meetings.

25 Okay?

5

1 ATTORNEY HEHL: Great. Thank you.

2 Thank you very much.

3 CHAIRPERSON SCHAEFER: Okay.

4 Okay. Ellen, can you please call...

5 MEMBER SPINGLER: Yes.

6 Case No. PB 19-02, The Learning

7 Experience, 100 Union Avenue, Block 7801, Lot 1, PB

8 zone, expiration 12/31/20.

9 CHAIRPERSON SCHAEFER: Thank you.

10 Mr. Hehl, before you begin, we have a

11 pretty lengthy executive session tonight. So I,

12 with your permission, would like to stop all

13 testimony at 9:30 so that we can go into our

14 executive session.

15 Are you okay with that?

16 ATTORNEY HEHL: Of course. We have to

17 accommodate the board.

18 We appreciate you doing these virtual

19 hearings and all volunteers and, you know,

20 appreciate your time and effort.

21 CHAIRPERSON SCHAEFER: Okay. Thank

22 you. Thank you.

23 Okay. So last I read and listened to,

24 it sounded like your next witness was going to be

25 your planner?

6

1 ATTORNEY HEHL: Yes. Yep.

2 CHAIRPERSON SCHAEFER: Okay.

3 ATTORNEY HEHL: Pretty much. And I'll

4 just give a brief recap.

5 Yeah, at the last hearing, we had

6 called Gerard Gesario, and then Matthew Jarmel, our

7 architect and operational provided testimony. We

8 then had both our environmental representative,

9 Leonard Cilli and Elizabeth Dolan, our traffic

10 engineer.

11 And you're 100 percent correct, our

12 next witness is our planner. And I see him -- I

13 feel like, what was that, the boxes, Hollywood

14 Squares -- I see him two boxes away from me, our

15 planner, Mr. Creigh Rahenkamp to provide the

16 planning testimony in connection with this

17 application.

18 ATTORNEY LINNUS: All right. Mr.

19 Rahenkamp, I see you. Do you want to raise your

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

20 right hand?

21 And I see you did.

22 MR. RAHENKAMP: Yes, sir.

23 ATTORNEY LINNUS: Do you swear that the  
24 testimony you're about to give will be the truth,  
25 the whole truth, and nothing but the truth?

Rahenkamp - Direct

7

1 MR. RAHENKAMP: I do.

2 ATTORNEY LINNUS: Do you want to state  
3 your name and address for the record, please?

4 MR. RAHENKAMP: Good evening. My name

5 is Creigh, C-R-E-I-G-H, Rahenkamp,

6 R-A-H-E-N-K-A-M-P. Business address is P.O. Box

7 222, Riverton, New Jersey 08077.

8 ATTORNEY LINNUS: Great.

9 Your witness, Counsel.

10 ATTORNEY HEHL: Thank you very much.

11 Mr. Rahenkamp --

12 CHAIRPERSON SCHAEFER: Before you  
13 continue, I'm going to ask everybody please to mute,  
14 except for Mr. Hehl and any of his witnesses,  
15 because there is feedback coming in.

16 If everybody can do that? Mr. Butler,

17 that includes you.

18 Thank you.

19 ATTORNEY HEHL: Great.

20 Thank you very much.

21 D I R E C T E X A M I N A T I O N

22 BY ATTORNEY HEHL:

23 Q. Mr. Rahenkamp, if you can please

24 provide the board with the benefit of your work,

25 educational experience, area of expertise, and

Rahenkamp - Direct

8

1 whether you have been accepted as a professional

2 planner before other boards or courts in the State

3 of New Jersey.

4 A. Sure.

5 I have been in the field for 39 years.

6 I have been a licensed professional planner in New

7 Jersey for 25. It is a currently valid license. I

8 have served as a court-appointed master and have

9 been qualified in over 100 hearings and trials here

10 at the trial courts in New Jersey. I have also been

11 qualified in the trial courts of five other states

12 and three Federal districts.

13 I serve as a lecturer at Rowan

14 University. I have been a past vice-president of

15 the APA New Jersey chapter. And I appear regularly

16 before planning and zoning boards throughout the

17 state.

18 ATTORNEY HEHL: Okay.

19 I would offer Mr. Rahenkamp as a

20 professional in the area of planning.

21 CHAIRPERSON SCHAEFER: He's accepted.

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

22 ATTORNEY HEHL: Great.

23 THE WITNESS: Thanks, Chairwoman.

24 BY ATTORNEY HEHL:

25 Q. All right.

Rahenkamp - Direct

9

1 So, Mr. Rahenkamp, I know you have been

2 at the -- at each of the hearings. If you could,

3 please provide the board with an overview of, first,

4 the site, and then provide the planning

5 justification for the variance associated with the

6 application.

7 A. I will.

8 Assuming I'm permitted to share, I will

9 give that a shot.

10 CHAIRPERSON SCHAEFER: Go for it.

11 THE WITNESS: Okay.

12 Are you seeing that site plan?

13 Q. Yep.

14 A. Okay. And I believe that's the one

15 that was marked A-5, but you can correct me if I

16 have that incorrect.

17 My role this evening, obviously, as the

18 planner is to link the testimony that you have heard

19 from the technical experts to the policy issues you

20 have with the variance and design waiver that we

21 have. The role is fairly limited because we do have

22 a permitted use by statute. It complies with all

23 but two of the bulk requirements, as I said with an

24 additional exception.

25 Let me start by shortening the evening

Rahenkamp - Direct

10

1 by adopting the testimony of Mr. Gesario,

2 Mr. Jarmel, and Ms. Dolan as if given by me in terms

3 of describing the site and where these discrepancies

4 actually occur. I will talk about them in a limited

5 amount, but to save some time and to not get in

6 trouble for who said what, I'll adopt their

7 testimony first.

8 I'm going to describe the site and the

9 reasons for the design deficiencies first and then

10 come back to the formal findings. The first is, if

11 you can see my hand indicator on Exhibit A-5 in the

12 lower left-hand corner, we have this odd-shaped lot

13 that has frontage on Union and then frontage on the

14 intersection of New Providence and Union.

15 And rather than get into a debate about

16 where one begins and where one ends, we took the

17 stop bar as the end of Union, which gives us more

18 than enough frontage to meet the ordinance along

19 Union but then gives us a short piece of frontage

20 that's essentially on the intersection at this

21 particular corner.



# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

22 In theory, it's another front. In  
23 theory, it should also have the required frontage  
24 there, 150 minimum. And we're at 40.28, which is a  
25 little over precise, given where you're measuring  
Rahenkamp - Direct

11

1 from. It's a little random. But, essentially, in  
2 this area, we have got a little bit more than  
3 40 feet that fronts more or less on the intersection  
4 and the small piece of what might be New Providence  
5 behind its stop bar -- or, actually, it doesn't have  
6 one, but somewhere in that area you would call New  
7 Providence as opposed to being in the intersection.  
8 The second issue we have is in the  
9 center of the site, where my hand is in the lower  
10 portion of the exhibit. And this is between the two  
11 entrances to the site. We have a row of head-in  
12 parking spaces. There is meant to be a ten-foot  
13 separation under the ordinance from the property  
14 line to that curblane. We do not have ten feet.  
15 The good news is, though, from a  
16 perception perspective is we have more than ten feet  
17 from the parking curb out to where the actual curb  
18 of the roadway is occurring down in this area. So  
19 there's plenty of green area. The spaces are not  
20 inappropriately close to the actual travel way of  
21 the road. But there is a discrepancy in terms of  
22 that distance.

23 And the reason for that and the reason  
24 for the design waiver -- and let me tell you what  
25 that design waiver is. We're meant to have a  
Rahenkamp - Direct

12

1 central island -- or any island is meant to be nine  
2 feet in width. In a traditional parking lot, width  
3 would be a relatively easy thing to understand. In  
4 this triangular shape width -- and I'm not sure  
5 where you would measure it from, but more to the  
6 point, by putting this parking space into it you,  
7 obviously don't have nine feet going in both  
8 directions from that parking space.  
9 So, clearly, we're deficient in terms  
10 of providing nine feet of width in this irregularly  
11 shaped island. And that's basically to accommodate  
12 the parking spaces. Although, if you didn't have  
13 that parking space, you could still argue there are  
14 places where it's not nine-foot wide, depending on  
15 where this irregular shape would be measured.  
16 So rather than get lost in trying to  
17 figure out where to measure it, we'll simply ask for  
18 the exception, and that exception then also allows  
19 us to accommodate the additional parking space. And  
20 I think that space is worth accommodating.

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

21 But the key issue here is the  
22 circulation. We have got the limited environmental  
23 constraints -- or the substantial environmental  
24 constraints that limit the development area of the  
25 site. To accommodate an appropriately scaled  
Rahenkamp - Direct

13

1 building, we want a parking lot that not only  
2 provides enough parking but provides circulation  
3 that brings you all the way back to the two-way  
4 entrance.  
5 Imagine if you're entering the site,  
6 you park, you take your child into the facility, you  
7 then wish to leave. It's perfectly fine if you're  
8 going to the right on Union and right on New  
9 Providence and heading up to the interstate or to  
10 the next community up. That's a perfectly good way  
11 to go. But if you want to go back to 22, you want  
12 to come here to make the left.

13 So we want people to be able to enter  
14 the site and choose to get to this intersection or  
15 this exit of our site, if that's the one they need  
16 to go in the direction they want to go. So you need  
17 the connection. You need to be able to go all the  
18 way around. And we, obviously, can't go into the  
19 environmental areas. So that constrains the size of  
20 the lot and the circulation within it, which is a  
21 condition, obviously, unique to the property.  
22 So let me get to the planning findings  
23 that go with the things we just talked about. I  
24 would classify the use as a c(1), both of the  
25 variances and the design exceptions as c(1)s.  
Rahenkamp - Direct

14

1 Clearly they're arising from the shape of the site.  
2 This particular feature down here is rather unique  
3 and special: Having frontage on the intersection;  
4 the environmental limitations essentially driving  
5 the parking to this area; the circulation, wanting  
6 to get the left from only one spot and not from  
7 both; drives the design that you have before you.  
8 So I think this is an exceptional  
9 situation, clearly, uniquely affecting this  
10 particular site. And, obviously, the strict  
11 application of those particular standards would  
12 result in more than practical difficulties to the  
13 proper design and use of the site.  
14 Let me, for belts and suspenders, also  
15 describe these as c(2) policy variances. It's very  
16 important for this particular use, not only is it  
17 rendered a permitted use by legislation, but there

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

18 are very specific findings in that legislation at  
19 40:55D-66.5a, subsections A through E, that identify  
20 why the state took the extraordinary step of making  
21 this a permitted use.

22 And it identifies -- and I won't read  
23 them all to you -- but, essentially, that there is a  
24 significant need for this use and that  
25 municipalities are called to do everything they can  
Rahenkamp - Direct

15

1 to eliminate barriers to achieving the ability to  
2 deliver this use.

3 So we have very strong policy support  
4 behind this particular use, the kind of support that  
5 you would look for in citing to purposes of the MLUL  
6 traditionally for a c(2) variance.

7 Grounding this in the purposes of the  
8 MLUL, I would suggest to you that there are two  
9 purposes. G, the variety of uses available to meet  
10 the needs of New Jersey citizens. Clearly, this is  
11 a use that has been identified as achieving that.

12 And Purpose M, the efficient use of  
13 land. This is a very long, vacant site trying to  
14 find an appropriate use. This use particularly fits  
15 in this site, works well on this site, and delivers  
16 on the legislative objectives of achieving more of  
17 this use close to where people live and work.

18 In terms of substantial detriments,  
19 clearly, we don't have any immediate neighbors and,  
20 certainly, no one who is going to be harmed in some  
21 way by the location of a day care facility,  
22 children, and circulation and the parking that would  
23 go with any particular use that would be on the  
24 site. We have multi-family to the north, a ball  
25 field to the south, end streets on two of our  
Rahenkamp - Direct

16

1 perimeters. So that I don't see any substantial  
2 detriment arising from this particular use.

3 Lastly, let me just touch gently on  
4 some broader concerns that have been part of this  
5 hearing. One is the proximity of this use to the  
6 quarry and concerns that that generates.

7 I take comfort from the fact that north  
8 of this site, in Scotch Plains, just over the  
9 border, is an inclusionary housing development.  
10 That was not only supported by its municipality, but  
11 it went through a very public process of being  
12 reviewed by Fair Share Housing Center and was  
13 subject to a fairness hearing, which determines the  
14 suitability of that site for residential.

15 So it's been determined by a whole

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

16 series of folks that it's appropriate for people to  
17 live in this particular area, to have their children  
18 play on the back decks and yards, barbecue, whatever  
19 people do in the back. And there are also  
20 single-family homes on Johnston, Woods, and Mareu  
21 that are all closer to the epicenter of the quarry  
22 than this particular use.

23 So while I understand the sensitivity  
24 of this use, it's not as if this is introducing some  
25 kind of lesser intense use to the area that isn't  
Rahenkamp - Direct

17  
1 already here. There are already residents closer to  
2 the epicenter of the quarry than this use would be.  
3 The second concern was contamination  
4 on-site. And, again, this is an area where I take  
5 comfort as a planner that there's a state agency  
6 looking at this. That licensing the facility --  
7 physically, the facility, not just like an assisted  
8 living permit, that goes to demand. They physically  
9 look at the design of the building, the soils, the  
10 conditions of the site. They'll be looking after  
11 those environmental issues.

12 And the last issue that has been  
13 discussed quite a bit are trucks on public streets,  
14 and I have to tell you that I do quite a lot of work  
15 for Amazon and others, Alfieri, Prologis, other  
16 large users, and this issue of trucks from all of  
17 these uses that are now trying to come closer and  
18 closer to their customers is something that I'm  
19 dealing with on a nightly basis.

20 There was an unreported decision not  
21 too long ago in which a judge made the comment that,  
22 "If we're going to stop development because of  
23 trucks on public streets, there won't be any  
24 development in New Jersey." Trucks on streets is  
25 something that is absolutely ubiquitous. It's part  
Rahenkamp - Direct

18  
1 of what happens on public streets. And here, we  
2 don't even share an intersection on the same street  
3 as the use that people were concerned about.

4 So as far as I'm concerned, these are  
5 professional drivers. Their driver's license is  
6 more like my planning license than it is like my  
7 driver's license. They have continuing education,  
8 training, all sorts of things that go with it, and  
9 it's an off-tract issue unrelated to our particular  
10 site plan.

11 So while I understand those concerns  
12 having been raised in the process, as a professional  
13 planner, I don't see those as reasons to either deny  
14 the variances or the use.  
15 I'm going to stop sharing the screen so

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TRACEE SCHAEFER, CHAIRWOMAN

16 I can see your faces. If I can figure out how to  
17 stop sharing.  
18 BOARD SECRETARY: Creigh, you will see  
19 on the bottom of your screen, and the one that says  
20 screen, just click that.  
21 THE WITNESS: My problem is I've lost  
22 the screen that has you folks on it.  
23 Ah, here it is.  
24 Well, while I'm failing at this, we can  
25 certainly continue with questions, Counsel, if you  
Rahenkamp - Direct  
19  
1 have any for me?  
2 ATTORNEY HEHL: I just -- let's pull  
3 that down, and then --  
4 THE WITNESS: Okay. I'm failing at  
5 it.  
6 I was so proud I managed to share  
7 appropriately. Now, I can't make it go away.  
8 ATTORNEY HEHL: Okay.  
9 CHAIRPERSON SCHAEFER: I think we lost  
10 him.  
11 BOARD SECRETARY: Yeah, he's gone.  
12 ATTORNEY HEHL: He'll be back, I'm  
13 sure.  
14 CHAIRPERSON SCHAEFER: Got to love  
15 technology.  
16 Theresa, do you see anybody trying to  
17 get in?  
18 BOARD SECRETARY: He would just be  
19 able to join because the meeting is open.  
20 ATTORNEY HEHL: And I'm sure he'll be  
21 back very shortly.  
22 BOARD SECRETARY: He's coming. Here  
23 he is.  
24 THE WITNESS: That was clearly not the  
25 right way to do it, but it appears to have worked.  
Rahenkamp - Direct  
20  
1 ATTORNEY BUTLER: Madam Chair, will we  
2 have a couple of minutes? I'd just like to make my  
3 appearance because there's a court stenographer.  
4 My name is Bill Butler from the firm of  
5 Butler & Butler. And I represent the objector,  
6 Weldon Materials, Inc.  
7 CHAIRPERSON SCHAEFER: Thank you,  
8 Mr. Butler.  
9 ATTORNEY BUTLER: Thank you, Madam  
10 Chair.  
11 BY ATTORNEY HEHL:  
12 Q. All right. Mr. Rahenkamp, have you --  
13 I just want to check, you had completed?  
14 A. I had, yes.  
15 Q. Yeah.

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

16 I just want to confirm, again, that you  
17 touched on both the variance and the design waivers  
18 associated with the application?  
19 A. Yes, two variances, the frontage on  
20 the intersection of New Providence, the parking  
21 setback, and the design waiver for the island. All  
22 three were mentioned in my testimony.  
23 Q. Okay. Great.  
24 Thank you.  
25 ATTORNEY HEHL: I have no further  
Rahenkamp - Direct  
21  
1 questions at this time of Mr. Rahenkamp.  
2 CHAIRPERSON SCHAEFER: Planning board  
3 members, does anybody have questions of  
4 Mr. Rahenkamp?  
5 Steve?  
6 Don?  
7 Don, you've got to unmute yourself,  
8 please.  
9 VICE-CHAIRMAN SPEENEY: I'm now  
10 unmuted.  
11 CHAIRPERSON SCHAEFER: Thank you.  
12 THE WITNESS: Good evening, sir.  
13 VICE-CHAIRMAN SPEENEY: You're  
14 welcome.  
15 Let's see. Mr. Rahenkamp, you've  
16 described the trucks on the street as being casual.  
17 And you are quoting the judge who has no idea what  
18 this particular intersection is like.  
19 Would you change your mind if you  
20 realized that this was the epicenter of major trucks  
21 coming to and from the Weldon quarry?  
22 THE WITNESS: I would not, but let me  
23 first apologize if you think I was being casual.  
24 And in quoting the judge, I wasn't  
25 quoting him for authority. It was just a line that  
Rahenkamp - Direct  
22  
1 I thought was particularly apt that I was sharing  
2 with the board. So I was not trying to impress you  
3 that it happened to be a judge. It was just I heard  
4 it in the last couple of days, and I thought it was  
5 an apt line.  
6 There are epicenters of trucks that  
7 happen a great deal. I can show you multiple Amazon  
8 last-mile facilities that I'm working on that have  
9 far more trucks coming off of them than this quarry  
10 into streets very similar to what we have here. So,  
11 no, I don't think the presence of trucks on public  
12 streets is a particular concern.  
13 It matters a lot in terms of  
14 intersection access and safety. If Ms. Dolan wasn't  
15 able to say that our intersections with Union

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

16 function safely, if your traffic engineer couldn't  
17 say that, that would be important, but once our  
18 vehicles are interacting with the public street in a  
19 safe manner accessing and leaving the site, what  
20 happens on public streets happens on public streets.

21 VICE-CHAIRMAN SPEENEY: All right.

22 I'm done.

23 CHAIRPERSON SCHAEFER: Any other

24 questions from board members?

25 COUNCILMAN MARTINO: Madam Chair,  
Rahenkamp - Direct

23

1 Councilman Martino.

2 CHAIRPERSON SCHAEFER: Yes, sir.

3 COUNCILMAN MARTINO: The only question

4 I have -- and I don't see it on any of these

5 designs, and maybe it's premature, but will there be

6 some type of guardrail along that intersection since

7 you don't have the setback requirements?

8 THE WITNESS: I don't believe there's

9 any proposed. And I would leave it to the design

10 engineer to figure that -- figure out the solution

11 there. I do understand that our traffic engineer

12 has been communicating with the county on some

13 changes to that intersection, but I don't believe a

14 guardrail was part of those discussions.

15 COUNCILMAN MARTINO: Okay.

16 I mean, I would always ask, you know,

17 for consideration in that. And even if it's only

18 just around the radius of that intersection.

19 Because you do have cars, you know, I mean, if

20 somebody stops short, they're going to go to the

21 right, they may go off the road.

22 I'm not 100 percent sure if it's

23 required, but I know it's not aesthetically

24 pleasing. But since you really are using less of a

25 setback, I may want to, you know, just recommend

Rahenkamp - Direct

24

1 that for consideration. And it would just be along

2 that radius because I think that's the most

3 important part. Because most motor vehicle

4 accidents happen in the intersection. I mean, I

5 think we can all agree on that. So I would be

6 concerned about the distance from the building back

7 from the curb.

8 Thank you.

9 CHAIRPERSON SCHAEFER: Is that

10 something that your applicant would consider,

11 Mr. Hehl?

12 ATTORNEY HEHL: Yeah. Yeah.

13 Certainly, when we have a break or

14 something, we'll discuss that, and we will --

15 although, I believe that the building, in fact, does

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

16 meet -- does meet the setbacks. But I think that  
17 that is a suggestion that the team will certainly  
18 consider and appreciate your comments.  
19 COUNCILMAN MARTINO: Thank you.  
20 MR. MAUTI: Steve?  
21 ATTORNEY HEHL: Yes? Who's that?  
22 MR. MAUTI: It's Al Mauti. I'm the  
23 applicant. Okay?  
24 I would recommend it.  
25 ATTORNEY HEHL: Wait. Al, you can't --  
Rahenkamp - Direct  
25  
1 unless you're sworn, you can't --  
2 MR. MAUTI: Okay.  
3 ATTORNEY HEHL: This is now questions.  
4 MR. MAUTI: Okay. Okay, no problem.  
5 THE WITNESS: But if this were a  
6 traditional hearing, we would say we turned and our  
7 client indicated he was in support of the idea.  
8 CHAIRPERSON SCHAEFER: Right. That's  
9 what I just heard.  
10 THE WITNESS: Yep. That's the one  
11 thing we miss in the in-person meetings, we can't  
12 turn around and see the high sign.  
13 CHAIRPERSON SCHAEFER: Yep. But I  
14 just heard it, so he --  
15 THE WITNESS: We all did.  
16 ATTORNEY HEHL: Great.  
17 Thanks, Al. Appreciate it.  
18 THE WITNESS: And I simply repeated it  
19 so you have the person who's under oath at the  
20 moment acknowledging that that's something that my  
21 client will support.  
22 MR. MAUTI: Sorry I interrupted.  
23 ATTORNEY HEHL: That's okay. No, when  
24 it's suggested and you agree to it, that's a great  
25 thing.  
Rahenkamp - Direct  
26  
1 MR. MAUTI: Yep.  
2 CHAIRPERSON SCHAEFER: I do have a  
3 question -- first a clarification and then a  
4 question.  
5 You mentioned two roads. One you  
6 called Johnston Woods. Do you mean Johnston Drive?  
7 THE WITNESS: No, there's two  
8 different roads. There's Johnston, and there's  
9 Woods. And then there's Mareu, if I'm pronouncing  
10 it correctly.  
11 CHAIRPERSON SCHAEFER: Mareu.  
12 THE WITNESS: They're three separate  
13 roads.  
14 CHAIRPERSON SCHAEFER: Gotcha.  
15 Johnston, Woods and Mareu.



# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

16 THE WITNESS: Thank you.

17 CHAIRPERSON SCHAEFER: And you're  
18 saying that you're using those as examples because  
19 they're located across the street from the quarry?

20 THE WITNESS: Yes. I am saying there  
21 are single-family homes on those streets that are  
22 closer to the epicenter of the quarry than this use,  
23 as well as the multi-family use that is immediately  
24 to the north of us.

25 CHAIRPERSON SCHAEFER: However, none  
Rahenkamp - Direct

27

1 of those streets have the quarry -- the trucks  
2 exiting in front of those streets, let alone in  
3 front of a daycare center.

4 So when those trucks are coming from  
5 the quarry -- and I know you're using an Amazon  
6 truck, which is, in my opinion, nowhere near the  
7 same weight as a quarry truck fully loaded coming  
8 out of the quarry -- coming down the slope to New  
9 Providence Road, picking up speed to get onto New  
10 Providence Road, how do you correlate that with an  
11 Amazon truck that is just dropping down the street?

12 THE WITNESS: Okay. There were two  
13 parts to that question. One was my identifying the  
14 single-family home had nothing to do with the truck  
15 traffic. That was simply proximity to the epicenter  
16 of the quarry and activity.

17 Related to the trucks, everything you  
18 just said is about the trucks entering on New  
19 Providence. And on New Providence is traffic not  
20 only from this use but from other uses.  
21 Our intersections are on Union. That's  
22 different. That's a significant difference. By the  
23 time our traffic is on New Providence, it's no  
24 different than any of the other automobile traffic  
25 that is on New Providence or making the right-hand  
Rahenkamp - Direct

28

1 turn at that intersection. Our traffic is no  
2 different than any other vehicle there.

3 CHAIRPERSON SCHAEFER: Okay. But I'm  
4 talking about -- you're talking about -- okay.  
5 Okay. I'm talking about the truck  
6 traffic that is coming down onto New Providence Road  
7 directly across the street from the daycare center.  
8 If the brakes fail or something fails, I don't care  
9 how good of a driver they are, it could go right  
10 into that daycare center.

11 THE WITNESS: I guess, yeah. They're  
12 coming into the side, jumping the road -- the  
13 entirety of the road, an adjoining property that  
14 isn't us, and then into us?

15 So I suppose it's physically possible

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

16 but certainly not a planning consideration that one  
17 would look at as a professional planner in  
18 determining whether or not this was an appropriate  
19 or permitted use. That is a traffic accident  
20 happening in a very strange way.  
21 CHAIRPERSON SCHAEFER: Okay.  
22 Other questions from board members?  
23 MEMBER PENNETT: I have a question.  
24 One of the -- within the package that  
25 we received last week, there was a picture of a  
Rahenkamp - Direct  
29  
1 flooded road. I'm assuming that was near the  
2 daycare center.  
3 Was that Union Avenue, or was that --  
4 THE WITNESS: I wasn't the source of  
5 the picture, so I can't answer that.  
6 ATTORNEY HEHL: Yeah, those were  
7 apparently submitted by Mr. Butler and not the  
8 development team.  
9 MEMBER PENNETT: Oh, okay.  
10 So I'm just curious of how often it  
11 floods and what is -- how is that going to affect  
12 the daycare center, and how is it going to be  
13 corrected if it needs to be?  
14 THE WITNESS: Mr. Gesario would have  
15 to answer your engineering questions as to how often  
16 it occurs and how often it would occur after the  
17 design is in place.  
18 MEMBER PENNETT: Okay.  
19 THE WITNESS: From a planning  
20 perspective, there are oftentimes when there are  
21 floods that buildings close and simply aren't open.  
22 Various weather conditions can cause that. So I --  
23 more than that, I can't say.  
24 MEMBER PENNETT: And so --  
25 MR. HEHL: Go ahead. I'm sorry.  
Rahenkamp - Direct  
30  
1 MEMBER PENNETT: So the center may  
2 close down due to flooding?  
3 THE WITNESS: It could, sure. If you  
4 don't have access to your parking lot and your  
5 people can't park, whether it's flooding or a  
6 snowstorm or some other weather event, that could  
7 happen.  
8 MEMBER PENNETT: Okay.  
9 CHAIRPERSON SCHAEFER: Let's let --  
10 COUNCILMAN MARTINO: Madam Chair?  
11 CHAIRPERSON SCHAEFER: One second.  
12 Let's let Mr. Pote --  
13 COUNCILMAN MARTINO: Oh, sorry.  
14 MEMBER POTE: Yes, thank you. A  
15 couple of questions.

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TRACEE SCHAEFER, CHAIRWOMAN

16 One is, at one point in your discussion  
17 you were talking about the flow of cars within the  
18 parking lot once you got in. And it is sort of a  
19 circle that you were talking about.

20 THE WITNESS: Yes, sir.

21 MEMBER POTE: So I'm talking

22 specifically about the first entry from the New  
23 Providence side. So that -- that entry is only an  
24 exit, correct, not an -- not an entry?

25 THE WITNESS: Correct. The one to the  
Rahenkamp - Direct

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1 left is an exit only. The one to the right is an  
2 entry and exit.

3 MEMBER POTE: Okay.

4 So -- and then you also pointed out  
5 that, let's say you go in the proper entryway and  
6 you make a left and now you're starting to go for  
7 one of those ten spots, right --

8 THE WITNESS: Yes, sir.

9 MEMBER POTE: -- the ten parking  
10 spaces there?

11 From an ordinance perspective, a legal  
12 perspective, is there enough room for that parking  
13 space and then the traffic going both ways behind  
14 that -- behind those parking spaces there?

15 I just have a hard time just seeing

16 that there's adequate distance. And if a car is  
17 pulling out, are they pulling out not only in one  
18 direction but are they pulling out across two  
19 directions? If that makes sense.

20 THE WITNESS: Yes. The width of the  
21 cartway is sufficiently wide for a standard parking  
22 lot, but if you want specific numbers, Mr. Gesario  
23 would have to address you on the specific site  
24 engineering of that arrangement.

25 CHAIRPERSON SCHAEFER: Okay.

Rahenkamp - Direct

32

1 THE WITNESS: But it is an appropriate  
2 width.

3 MEMBER POTE: Yeah.

4 The reason I ask that is just because  
5 I'm concerned about a car pulling out and now  
6 they're stopping not one way but two ways of  
7 traffic, you know, going around that circle. And  
8 during your peak times, you're just basically  
9 pulling -- you know, everything comes to a stop.

10 THE WITNESS: Sure. Well imagine any  
11 food store parking lot, when somebody is pulling  
12 out, the other cars have to stop and allow that  
13 movement to happen.

14 MEMBER POTE: Right. Right.

15 And so it's just a matter of where

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

16 you've got some buffer to allow for that. In a food  
17 market you have got -- eventually you have  
18 other -- other areas that, you know, you can allow  
19 for that buffer.

20 THE WITNESS: I will acknowledge that  
21 those are short throats, but the variance that we  
22 seek doesn't impact the length of the vehicle. It's  
23 the separation of the parking from the right-of-way,  
24 how much green space there would be.

25 MEMBER POTE: Okay.

Rahenkamp - Direct

33

1 The exit where you can't enter, the  
2 first one, I assume there would be signs --  
3 THE WITNESS: Yes, sir.

4 MEMBER POTE: -- on the outside of  
5 that saying, you know, "Not an entry," "Do not  
6 enter" type signage?

7 THE WITNESS: Absolutely.

8 And the curb has been designed to  
9 frustrate people trying to do the reverse. There's  
10 like a -- pork chop would be the wrong term. I'm  
11 sure somebody will kill me for calling it that, but  
12 the way the road has been angled was designed to  
13 prevent people from trying to cheat.

14 MEMBER POTE: Okay. Thank you.

15 And then one last comment and that was

16 back to the trucks, just to give my \$0.02 there.

17 Again, it is not only that it's not Amazon trucks;

18 right? It's those heavy trucks with lots of weight

19 on it, and it's dealing with kids. So it's a bad

20 combination of extremes in that -- in that area that

21 Tracey was talking about.

22 Thank you.

23 THE WITNESS: Thank you, sir.

24 CHAIRPERSON SCHAEFER: Councilman

25 Martino?

Rahenkamp - Direct

34

1 COUNCILMAN MARTINO: Thank you.

2 I received this document, OW-3, and

3 this map is probably the best one I have seen for a

4 -- more of a larger view. So you had a question

5 about the quarry entrance, and that actually has the

6 quarry entrance on it.

7 So if you really wanted to take a look

8 at where it is, in reality, that is -- if you look

9 at the blue line on the left side dead center, north

10 of that, you will see an opening, a throat. That is

11 the quarry entrance and exit.

12 ATTORNEY BUTLER: Councilman, this is

13 Bill Butler. That exhibit you're referring to is

14 the objector's exhibit.

15 COUNCILMAN MARTINO: Oh, okay.

# BOROUGH OF WATCHUNG PLANNING BOARD

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16 ATTORNEY BUTLER: Okay?  
17 We'll give testimony on that. I don't  
18 think it's fair to ask this planner about questions  
19 about our exhibits, in all fairness to him. And I'm  
20 going to cross-examine him, but you have to be fair.  
21 COUNCILMAN MARTINO: That's not a  
22 problem. There's nothing here that specifies that,  
23 so I'm just going by what I was delivered. So we  
24 can talk about it later, but I know that question  
25 came up.  
Rahenkamp - Direct  
35  
1 And somebody talked about pictures of a  
2 flood. So I guess we're not talking about that  
3 either, correct?  
4 CHAIRPERSON SCHAEFER: Correct.  
5 ATTORNEY BUTLER: We might get there  
6 tonight, we might not.  
7 They're marked OW-1. O for objector, W  
8 for Weldon, one for the number of the exhibit, just  
9 so there's no confusion between what I presented and  
10 what the applicant submitted.  
11 COUNCILMAN MARTINO: I'm sorry.  
12 Because I saw -- on the top right, that's why I  
13 assumed it was theirs. I'll hold off on that then.  
14 CHAIRPERSON SCHAEFER: Yeah.  
15 So, Pete, the flood had to do with  
16 Mr. Butler. Those pictures were from Mr. Butler's  
17 opposing side. That whole packet is Mr. Butler's.  
18 So we can address, I can address, anybody can  
19 address the truck traffic when Mr. Butler talks.  
20 But thank you, Peter.  
21 COUNCILMAN MARTINO: Very good. Not a  
22 problem. Thanks.  
23 ATTORNEY HEHL: Thank you for  
24 clarifying.  
25 CHAIRPERSON SCHAEFER: Any other  
Rahenkamp - Direct  
36  
1 questions?  
2 MEMBER PENNETT: Yeah. Tracey, I have  
3 a question.  
4 CHAIRPERSON SCHAEFER: Go ahead, Karen.  
5 MEMBER PENNETT: Okay.  
6 Mr. Rahenkamp, you just mentioned the  
7 one exit, you know, onto Union Avenue. That's just  
8 the exit. You have it designed so it's going to be  
9 difficult for people to enter?  
10 THE WITNESS: Correct.  
11 MEMBER PENNETT: Okay.  
12 Is it going to cause problems for  
13 people exiting turning right or left?  
14 THE WITNESS: They're only allowed to  
15 turn right in that location.  
16 MEMBER PENNETT: Okay.

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

17 THE WITNESS: So the barrier in terms  
18 of the curb shape prevents entering, and it prevents  
19 people from making a left.  
20 MEMBER PENNETT: Okay.  
21 I wasn't sure.  
22 Okay. Thank you.  
23 CHAIRPERSON SCHAEFER: Mark, did you  
24 have a question?  
25 BOARD PLANNER: Yes. I have one  
Rahenkamp - Direct  
37  
1 question.  
2 Mr. Rahenkamp, well, first, as far as  
3 the lot frontage variance, I would agree with your  
4 testimony that the lot frontage -- I would classify  
5 that as a technical variance in a way in that it's  
6 an existing condition and there's really nothing  
7 that your client can do to make that variance go  
8 away. And I don't believe it has any bearing on the  
9 viability of the site for development.  
10 The question that I do have is for the  
11 two other items of relief, one being the parking lot  
12 setback and the other being the width of the  
13 islands. Your testimony concentrated almost  
14 exclusively on the conditions of the site, the fact  
15 that a significant portion of the site is  
16 constrained by wetlands and associated buffers.  
17 But I would submit that a portion of  
18 the reason for the variances also relates to the  
19 scale of the development that your client has chosen  
20 to fit in the portion of development or the portion  
21 of the site that is developable. The site is -- or  
22 the use is 154 children and 20 employees.  
23 If the building was reduced in size,  
24 the parking lot demand -- or the parking demand  
25 would be reduced, and you would have the opportunity  
Rahenkamp - Direct  
38  
1 to shift the parking lot to have a compliant  
2 setback, parking lot setback, and you could address  
3 the design of the parking lot to have compliant  
4 parking islands.  
5 Do you have any testimony to contradict  
6 what I just stated?  
7 THE WITNESS: Good evening, Mr.  
8 Healey.  
9 BOARD PLANNER: Good evening.  
10 THE WITNESS: The issue I think is one  
11 of scale. It is certainly true that one could  
12 eliminate the front row of parking and eliminate the  
13 space in the island, and this variance and design  
14 exception go away. The amount of parking you would  
15 have left wouldn't just marginally reduce the use;  
16 it would dramatically reduce the use. It's a  
17 substantial amount of the parking.  
18 It gets to a point where a facility  
19 such as this wouldn't open. It wouldn't be

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

20 economically viable. It wouldn't make sense at half  
21 to three-quarters of its size. They are sized to  
22 meet a particular market, a particular operating  
23 pattern.

24 So it's not something that one can  
25 tweak. It's not as if you would lose one classroom,  
Rahenkamp - Direct  
39

1 and it would work. You're talking about a very  
2 significant reduction in the overall scale that I  
3 think would make the project non-viable.

4 CHAIRPERSON SCHAEFER: Anyone else?

5 VICE-CHAIRMAN SPEENEY: I do.

6 CHAIRPERSON SCHAEFER: Don't

7 VICE-CHAIRMAN SPEENEY: Yeah.

8 Relative to the layout of the parking,

9 can you explain how the site -- the parking sites

10 that are on the north end of the field work?

11 THE WITNESS: I'm not understanding

12 what the question means.

13 What aspect are you questioning?

14 VICE-CHAIRMAN SPEENEY: Well, there

15 are parking sites that are at -- that right angles

16 each other. And it doesn't appear to me that two

17 vehicles can park and negotiate, and I was wondering

18 whether that's just my view or whether that's a

19 good -- this is a good layout.

20 THE WITNESS: Well I'll let Mr.

21 Gesario talk about the geometry of the parking, but

22 it's not uncommon to have corners in parking lots

23 where two vehicles couldn't pull out on a 90-degree

24 angle from each other, for example.

25 In a residential development, it's

Rahenkamp - Direct

40

1 quite common to have a square parking lot that has

2 parking in the corners, and people take turns. So,

3 to me, I didn't see that as inappropriate. But as

4 to the, you know, turning radii of vehicles, I will

5 let our site engineer deal with those issues.

6 VICE-CHAIRMAN SPEENEY: All right.

7 I'm done.

8 THE WITNESS: Thank you, sir.

9 CHAIRPERSON SCHAEFER: Any other

10 questions?

11 THE WITNESS: And I apologize for not

12 re-sharing while you asked that very detailed

13 question, but I'm leery of trying to make it go away

14 again.

15 CHAIRPERSON SCHAEFER: It's okay.

16 MEMBER PENNETT: Tracey, just one

17 thing I wanted to double-check.

18 Now, fire trucks, garbage trucks,

19 recycling trucks, they can all make this radius

20 turn?

21 THE WITNESS: That was the prior

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

22 testimony --

23 MEMBER PENNETT: They can through this

24 parking lot?

25 THE WITNESS: -- but I'm not the

Rahenkamp - Cross

41

1 person to tell you that that's true, other than

2 remembering I heard the testimony.

3 CHAIRPERSON SCHAEFER: Karen, that

4 was already addressed and it was addressed more than

5 once by other experts.

6 MEMBER PENNETT: Okay.

7 CHAIRPERSON SCHAEFER: Okay.

8 ATTORNEY HEHL: Yeah, and we did get

9 the letter from the -- the subsequent letter from

10 the fire department.

11 MEMBER PENNETT: Okay.

12 CHAIRPERSON SCHAEFER: Okay. Mr.

13 Hehl, do you want to continue?

14 Or, actually, no.

15 Mr. Butler, do you have questions?

16 ATTORNEY BUTLER: Yes, I do.

17 C R O S S - E X A M I N A T I O N

18 BY ATTORNEY BUTLER:

19 Q. The first one I would like to make,

20 from what I gather from some of the testimony

21 tonight, there has been recently submitted exhibits

22 by the applicant that were never sent to me.

23 I would like to know why.

24 ATTORNEY HEHL: I don't know of any

25 exhibits that you're referring to.

Rahenkamp - Cross

42

1 BY ATTORNEY BUTLER:

2 Q. There's no recently submitted exhibits

3 from the applicant?

4 A. It was my intention in putting up the

5 drawing I did that it was A-5. So I believe it was

6 a prior marked exhibit.

7 Q. Okay. I'll pick up where Mr. Healey

8 left off.

9 In your preliminary testimony, you

10 indicated that this was a permitted use, it was an

11 inherently beneficial use?

12 A. I did not use the term "inherently

13 beneficial," sir.

14 Q. Okay. You indicated that it was a

15 permitted use?

16 A. Yes, by statute.

17 Q. By statute.

18 And that is -- and the statute is the

19 Municipal Land Use Law; is it not?

20 A. It is, sir.

21 Q. Okay. Now, does the Municipal Land Use



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TRACEE SCHAEFER, CHAIRWOMAN

22 Law say that this site is permitted for 154 units or  
23 100 units or 200 units or 20 units?

24 ATTORNEY HEHL: I would object. I

25 don't know what it means by "units."

Rahenkamp - Cross

43

1 ATTORNEY BUTLER: Well, I'm sorry.

2 Students. Students -- infants, toddlers.

3 THE WITNESS: The enabling statute does

4 not list facility sizes.

5 BY ATTORNEY BUTLER:

6 Q. So, in other words, the use is

7 permitted, but the number of students and toddlers,

8 that has to pass site plan scrutiny.

9 Is that true?

10 A. Generally, I would say yes.

11 Q. And in order to pass site plan

12 scrutiny, the planning board must take into

13 consideration the number of students and toddlers in

14 the site upon which it's proposed to be erected.

15 Is that correct?

16 A. I'm not sure it comes down to the

17 number of students, but certainly the size of the

18 facility, sure.

19 Q. Sure.

20 Now, I'm interested in talking to you

21 not about New Providence Road. I'm not worrying

22 about the frontage. I would like to talk to you

23 about the setback on the parking along Union Avenue.

24 A. Yes, sir.

25 Q. Okay.

Rahenkamp - Cross

44

1 Now, there are six spaces there; are

2 there not?

3 A. I believe so, yes.

4 Q. And our ordinance requires them to be

5 set back five feet, and the plan shows they're set

6 back 20 feet; is that correct?

7 A. Yes, sir.

8 Q. Now, you indicated that deviation of

9 the five feet versus the --

10 A. I'm sorry. Repeat that again, sir?

11 I think I may have said "yes" too

12 quickly.

13 ATTORNEY HEHL: I think it's the

14 reverse.

15 THE WITNESS: Yeah, exactly. It's the

16 reverse. It had the right numbers in it.

17 Q. Yeah, you're right.

18 The ordinance requires a setback of

19 20 feet, and the applicant proposes a setback of

20 five feet?

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

21 A. Right. At the smallest dimension,  
22 yes.  
23 Q. Right. Okay.  
24 And, now, you indicated that that  
25 requires a variance; did you not?  
Rahenkamp - Cross  
45  
1 A. I did.  
2 Q. Okay. And you indicated that you were  
3 relying on both c(1) and c(2).  
4 Is that correct?  
5 A. Yes, sir. I offered proofs both ways.  
6 Q. Okay.  
7 Now, on C(1)c, you have to prove a  
8 hardship; is that correct?  
9 A. C(1)a is hardship. C(1)c is a unique  
10 situation particularly affecting a property.  
11 So hardship is a traditional C(1) but  
12 it has three different components to it -- or three  
13 different approaches that can fit within C(1).  
14 Q. Let's talk about C(1) first. Okay?  
15 ATTORNEY HEHL: Wait, he just  
16 described that there's two c(1)s, so I think we need  
17 to focus on which one, the subsections.  
18 BY ATTORNEY BUTLER:  
19 Q. There's c(1), and there's c(2). I'm  
20 looking at 40:55D-70.  
21 A. Yes, sir. Within C(1), there's also  
22 sub A, B and C.  
23 Q. And you're relying upon C?  
24 A. Yes, sir.  
25 Q. Okay. And C --  
Rahenkamp - Cross  
46  
1 A. It's extraordinary and exceptional --  
2 for the rest of the board, "An extraordinary and  
3 exceptional situation uniquely affecting a specific  
4 piece of property."  
5 Q. Resulting in undue hardship?  
6 A. Yes, sir.  
7 Q. Okay.  
8 Now, that undue hardship, that can't be  
9 personal financial hardship to the applicant, can  
10 it?  
11 A. Actually, sir, it's not hardship. I  
12 had to double check. Hardship does not appear in C  
13 at all. "Result in peculiar and exceptional  
14 practical difficulties, or exceptional and undue  
15 hardship."  
16 So exceptional practical difficulties  
17 is sufficient by itself.

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TRACEE SCHAEFER, CHAIRWOMAN

18 Q. So, in other words, you're not relying  
19 upon hardship?

20 A. Hardship is more of an economic  
21 argument. I'm making the practical difficulties  
22 argument.

23 Q. So just to make it clear, you are not  
24 contending that this variance is supported because  
25 of the hardship experienced by the applicant?  
Rahenkamp - Cross

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1 A. I am testifying that the shape and  
2 nature of the site create a peculiar situation here  
3 that creates practical difficulties for the  
4 appropriate use of the site. I'm not making an  
5 economic hardship argument.

6 Q. Okay.

7 And, of course, if you didn't get that  
8 variance, you would be losing six spaces; is that  
9 correct?

10 A. At the very least, yes.

11 Q. And those six spaces would, in all  
12 probability, result in a smaller building; is that  
13 correct?

14 A. I certainly can't answer that  
15 question. Whether it would be a smaller building or  
16 whether it would be infeasible for a use of that  
17 scale to locate here is not a call I could make.  
18 That would be more appropriate for the future  
19 operator, whether they would be willing to operate a  
20 facility significantly smaller than this.

21 Q. Well, I mean, you're -- you're --  
22 you're --

23 A. This is not an onion, sir.

24 Q. You qualified as a planner. You can  
25 give opinion testimony. You've testified before.  
Rahenkamp - Cross

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1 You've qualified as an expert.

2 Isn't it --

3 CHAIRPERSON SCHAEFER: Mr. Butler --

4 ATTORNEY BUTLER: Well, I mean --

5 CHAIRPERSON SCHAEFER: Mr. Butler --

6 Mr. Butler, I'm going to stop you. I'm going to say  
7 he's answered the question to the best of his  
8 ability.

9 He cannot -- and correct me if I'm  
10 wrong, you cannot speak on behalf of the actual  
11 owner, correct.

12 THE WITNESS: Correct.

13 BY ATTORNEY BUTLER:

14 Q. No, but I'm asking him, isn't it

15 self-evident that you reduce the parking, you reduce

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

16 the building, and therefore, you reduce the number  
17 of infants and toddlers that would be utilizing this  
18 site?

19 A. If you are treating the use like an  
20 onion that you can peel layers away and it will  
21 still be an onion, that would be true. I'm very  
22 used --

23 Q. Well --

24 A. Sir, let me finish my answer, please.

25 I am very used to dealing with uses  
Rahenkamp - Cross

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1 that have minimum sizes below which they will not  
2 go. I don't have the expertise in this field to say  
3 what the smallest sized daycare facility would be  
4 that makes functional sense.

5 I can't tell you that if you take  
6 30 percent off this building, it's still going to be  
7 an appropriate daycare center.

8 Q. Okay. All right. Okay.

9 The Union Avenue -- you're familiar  
10 with Union Avenue?

11 A. I am, sir.

12 Q. It's a busy road, isn't it?

13 A. I wouldn't argue with that.

14 Q. Well, would you agree with me that it's  
15 an important link between traffic that wants to go  
16 from New Providence Road to Route 22?

17 A. And vice-versa. Yes, that's clearly

18 what the road's purpose is.

19 Q. And it's also a major link between  
20 traffic on Route 22 west that wants to go to New  
21 Providence Road?

22 ATTORNEY HEHL: I would object.

23 This was not -- we had a traffic

24 engineer that testified and answered all of the  
25 questions with respect to traffic.

Rahenkamp - Cross

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1 ATTORNEY BUTLER: This has to do with  
2 the variance. This has to do with the setback and  
3 the variance.

4 ATTORNEY HEHL: Okay.

5 If it could be tied into the --

6 ATTORNEY BUTLER: Absolutely.

7 ATTORNEY HEHL: -- the variance.

8 ATTORNEY BUTLER: Absolutely.

9 BY ATTORNEY BUTLER:

10 Q. Now, a busy road like that, do you  
11 think that might be possibly one of the reasons why  
12 this ordinance requires parking to be 20 feet set  
13 back from the right-of-way?

14 A. Typically not. There would not be a  
15 correlation between the busyness of the roadway and

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

16 the amount of landscaping that you might like to  
17 see. This was largely an aesthetic requirement, not  
18 a safety requirement.

19 Q. Well, how do you know?

20 A. How do I know what, sir?

21 Q. How do you know that it was an

22 aesthetic requirement, not a safety requirement?

23 A. As you said earlier, I am a

24 professional planner who has made a career of  
25 writing ordinances, and I understand what different  
Rahenkamp - Cross

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1 provisions try to accomplish. A setback from

2 parking here isn't going to do anything for safety.

3 It's for aesthetics.

4 CHAIRPERSON SCHAEFER: Mr. Butler, can

5 we just move on, please? I think he's answered

6 these questions --

7 ATTORNEY BUTLER: Okay.

8 CHAIRPERSON SCHAEFER: -- and I think

9 we can move on.

10 BY ATTORNEY BUTLER:

11 Q. Now, you also indicated you are relying

12 upon c(2); is that correct?

13 A. Yes, sir.

14 Q. Now c(2) calls for a variance if the

15 deviation results in a better plan than the zoning

16 ordinance; does it not?

17 A. That is one characterization of it,

18 yes. That's the Flexible "c". That's the zoning

19 alternative.

20 Q. That's the Flexible "c".

21 And -- and how can the setback of 5

22 feet be better than 20 feet?

23 A. Because the setback of 5 feet allows

24 for a functional parking lot, whereas the setback of

25 20 would not.

Rahenkamp - Cross

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1 Q. But that's for the benefit of the

2 applicant; that's not the benefit of the community

3 as a whole.

4 A. Sir, that's for the benefit of a use

5 that the legislature has determined is good for the

6 community as a whole.

7 Q. Well, just because it's -- yeah, but,

8 again, let me get back to the number of toddlers and

9 the babies. Legislature has said nothing about

10 that. That's strictly up to this board.

11 ATTORNEY HEHL: He already answered

12 that.

13 CHAIRPERSON SCHAEFER: Mr. Butler,

14 let's move on.

15 BY ATTORNEY BUTLER:

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TRACEE SCHAEFER, CHAIRWOMAN

16 Q. The Kaufman case, you're familiar with  
17 the Kaufmann case, aren't you?

18 A. Generally. If you're going to want me  
19 to quote from that, you're going to have to show me  
20 the --

21 Q. I'm going to quote from it.

22 A. All right. Thank you, sir.

23 Q. I'm going to quote from Kaufmann v.

24 Planning Board for Warren Township, 110 N.J. 551.

25 Would you agree with me that that's the  
Rahenkamp - Cross

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1 leading case on c(2) or Flexible "c"?

2 A. That's a pretty ancient case. I would

3 say there are some newer ones that are interesting,

4 but I would certainly say it's foundational.

5 Q. All right.

6 Let me read to you, on the bottom of

7 Page 563, in light of the answers that you have just  
8 given.

9 A. Yes, sir.

10 Q. The Supreme Court says this, and I

11 quote, "By definition then, no c(2) variance should  
12 be granted when merely the purpose of the owner will

13 be addressed. The grant of approval must actually

14 benefit the community in that it represents a better

15 zoning alternative for the property. The focus of a

16 c(2) case then will be not on the characteristics of

17 the land that, in light of the current zoning

18 requirements, creates a hardship on the owner

19 warranting a relaxation of the standards but on the

20 characteristics of the land that present an

21 opportunity for improved zoning and planning that

22 will benefit the community."

23 Now, how does this variance under c(2)

24 benefit the community?

25 ATTORNEY HEHL: I think he already

Rahenkamp - Cross

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1 answered that, but I will let him explain again.

2 THE WITNESS: All right.

3 First of all, there has been subsequent

4 cases that demonstrate community is not synonymous

5 with municipality. Community here are the interests

6 of people that would be served by this use. That

7 has happened in religious use cases, affordable

8 housing cases, if the nature of the use is

9 significant in terms of the benefit that it's

10 delivering to the community. And you look at the

11 totality of the circumstances of the site plan in

12 determining the validity of any single variance.

13 So, here, the totality of the site plan

14 that is before this board allows an appropriately

15 scaled daycare facility that serves an important

# BOROUGH OF WATCHUNG PLANNING BOARD

TRACEE SCHAEFER, CHAIRWOMAN

16 need in this region, in this area, and it  
17 accomplishes it on a particularly difficult site  
18 that has proven difficult for quite some period of  
19 time for any use to figure out how to be  
20 appropriately located here.  
21 And that this significantly fits in an  
22 appropriate way with two, what I would call, minor  
23 variances -- the corner that we've all agreed was  
24 minor and this, which is a largely aesthetic  
25 variance along the frontage where there is an overly  
Rahenkamp - Cross

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1 wide right-of-way that still provides ample area for  
2 landscaping to occur. So that the purpose of that  
3 ordinance provision ensuring that the parking spaces  
4 are not too close to the travel lane here on Union  
5 is being accomplished, even though a variance is  
6 necessary on the site because we're measuring from  
7 the right-of-way line.

8 So for those reasons, I think we are  
9 still advancing the purposes of the MLUL with this  
10 use and overall plan with this particular variance  
11 in place.

12 BY ATTORNEY BUTLER:

13 Q. Now, you mentioned that there's been no  
14 prior uses of this property just now, didn't you?

15 A. I did. I didn't put it that way, but  
16 yes, I did.

17 Q. Okay.

18 I represent to you, and the applicant  
19 for this case was the same as the applicant then,  
20 that in 2008 and 2009, this site was permitted for a  
21 car wash and a car spa.

22 CHAIRPERSON SCHAEFER: Mr. Butler, is  
23 this a question?

24 You can't give testimony.

25 Q. The question contradicts the fact that  
Rahenkamp - Cross

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1 it has never been used for anything. And I'm saying  
2 it was approved for a car wash and a car spa and it  
3 was never used for that.

4 A. Well, the fact that you're presenting  
5 me with, sir, is that it received a site plan  
6 approval. I don't know, and I don't know if you  
7 know, that it received all of the other outside  
8 agency permits necessary to construct it.

9 Q. Well, I know because I participated in  
10 it for Weldon, and we did not object to a car wash  
11 or a spa center.

12 CHAIRPERSON SCHAEFER: Mr. Butler, I'm  
13 going to stop you again. It's questions only,  
14 please.

15 If you want to bring this up during

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TRACEE SCHAEFER, CHAIRWOMAN

16 your -- when you give your case and your opposing  
17 case, fine, but this is questions. Please.

18 ATTORNEY BUTLER: I have no further  
19 questions.

20 THE WITNESS: Thank you, sir.

21 CHAIRPERSON SCHAEFER: I now open it  
22 to the public.

23 Is there anyone from the public who has  
24 a question of this particular expert?

25 Mr. Hehl, would you -- thank you, Mr.  
Rahenkamp - Cross

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1 -- I do bad with names, I'm telling you.

2 THE WITNESS: That's all right. No  
3 one gets mine right.

4 Thank you for trying.

5 CHAIRPERSON SCHAEFER: I finally get  
6 Mr. Hehl right.

7 THE WITNESS: Thank you for your  
8 courtesies.

9 CHAIRPERSON SCHAEFER: Mr. Hehl?

10 ATTORNEY HEHL: Yeah, we have no  
11 further witnesses at this time.

12 Obviously, all of our witnesses that  
13 have testified so far are available for further  
14 questions. And we would reserve the right -- I  
15 believe that Mr. Butler plans to put on some  
16 witnesses. We reserve the right to recall any of  
17 our previous witnesses for clarification or rebuttal  
18 testimony.

19 CHAIRPERSON SCHAEFER: Okay.

20 I know we have about an hour left, and  
21 Mr. Butler, you will now -- you know, you will  
22 proceed with your side.

23 But, Mr. Hehl, due to this meeting and,  
24 you know, where our constraints are time-wise, your  
25 application comes due the end of this month.

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1 Have you given -- has your applicant  
2 given consideration in giving us an extension?

3 ATTORNEY HEHL: Oh, certainly, yes.

4 We certainly would.

5 CHAIRPERSON SCHAEFER: Would you  
6 extend until the end of February at this point?

7 ATTORNEY HEHL: I don't -- especially  
8 with the winter months and things like what are  
9 supposed to roll in tomorrow, I don't think that  
10 that would be an issue at all.

11 CHAIRPERSON SCHAEFER: Frank, you're  
12 muted.

13 ATTORNEY LINNUS: I think, at this  
14 point, we also ought to point out that it was raised  
15 at the last meeting that this application would be  
16 judged on preliminary only.



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17 So the -- and I think the applicant  
18 agreed to that, and I think there is a letter that  
19 Mr. Hehl sent which indicated that he's amenable to  
20 that, meaning that the time within which the board  
21 has to act on this application would be for  
22 preliminary only and that a final -- a final  
23 application or a final presentation would be made  
24 once the conditions of preliminary have been met.  
25 Is that correct, Mr. Hehl?

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1 ATTORNEY HEHL: Yes. And I did send a  
2 letter to that effect.

3 I appreciate you bringing that up.

4 ATTORNEY LINNUS: Okay.

5 So, just to be clear, the extension of  
6 time does not apply to the final. In effect, there  
7 is no time limit for final at this point because the  
8 final plan has not been applied for or submitted?

9 ATTORNEY HEHL: Well, I guess,  
10 technically, it's been applied for, but it's held in  
11 abeyance. And we would stipulate that the time  
12 period would not have commenced on that portion yet.

13 ATTORNEY LINNUS: Okay. Thank you.

14 ATTORNEY HEHL: Thank you.

15 CHAIRPERSON SCHAEFER: Okay.

16 So just an agreement, February 28th  
17 we'll extend this application through until?

18 ATTORNEY HEHL: That's fine.

19 Thank you.

20 CHAIRPERSON SCHAEFER: Thank you.

21 Okay. So Mr. Butler will now present  
22 the opposer's witnesses or experts and their  
23 testimony. Once his particular expert has  
24 presented, I will allow the applicant's attorney,  
25 Mr. Hehl, to question that expert.

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1 Before that, we'll allow the planning  
2 board to ask their questions.  
3 Once those two have participated, then  
4 we're going to ask the public if they have any  
5 questions of that particular expert on the  
6 opposer's side, so forth and so on.

7 So, Mr. Butler, it's all yours.

8 ATTORNEY BUTLER: Thank you, Madam

9 Chair.

10 I call as my first witness, Al Lapatka.

11 Can he be sworn?

12 ATTORNEY LINNUS: Al, do I see you?

13 MR. LAPATKA: Yes, I am here.

14 ATTORNEY LINNUS: Okay.

15 You have raised your right hand. Do

16 you swear the testimony you're about to give will be  
17 the truth, the whole truth, and nothing but the  
18 truth?

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19 MR. LAPATKA: I do.

20 ATTORNEY LINNUS: Okay.

21 And do you want to state your name and

22 address for the record, please?

23 MR. LAPATKA: It's Alexander Lapatka --

24 hold on, please.

25 Alexander -- there's a lot of reword

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1 here.

2 CHAIRPERSON SCHAEFER: Are you using a

3 phone as well?

4 MR. LAPATKA: We have three people in

5 the same room.

6 Can you hear me now?

7 CHAIRPERSON SCHAEFER: Yes.

8 MR. LAPATKA: Okay.

9 My name is Alexander Lapatka,

10 L-A-P-A-T-K-A. 12 Route 17 North, Paramus, New

11 Jersey.

12 I am a professional engineer. I'm

13 licensed in New Jersey. I received a bachelor of

14 science in civil engineering in 1977. I have been

15 licensed as a professional engineer in New Jersey

16 since 1982. I have worked in the civil engineering

17 firm since 1977, specializing in land development

18 projects, from small projects to pretty large

19 projects.

20 I have worked on over a couple thousand

21 projects and have been accepted as an expert witness

22 before, you know, many, many times over -- over a

23 couple thousand times, probably a few thousand

24 times.

25 CHAIRPERSON SCHAEFER: I think we'll

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1 accept you. You're good. Let's move on.

2 Thank you.

3 D I R E C T E X A M I N A T I O N

4 BY ATTORNEY BUTLER:

5 Q. Now, Mr. Lapatka, you have a firm; do

6 you not?

7 A. Yes. Lapatka Associates, Inc.

8 Q. Does that firm draw site plans?

9 A. Yes.

10 Q. And does that firm represent

11 applicants?

12 A. Yes.

13 Q. Okay. And in all the experience that

14 you mentioned, the -- are you familiar with the

15 rules associated with wetlands and wetlands buffers?

16 A. Yes.

17 Q. And are you associated [sic] with the

18 rules and regulations associated with the 100-year

19 flood line?

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20 A. Yes.

21 Q. And are you familiar with the rules and  
22 regulations associated with a flood hazard area  
23 line?

24 A. Yes.

25 Q. And are you familiar with the riparian  
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1 zone or buffer associated with regulated streams?

2 A. Yes.

3 Q. Are you extensively familiar with all  
4 those statutes that deal essentially -- and I'll cup  
5 them together -- as water-related statutes?

6 A. Yes.

7 Q. Okay.

8 Now, you drafted -- we submitted to the  
9 board an exhibit called OW-1.

10 Is that correct?

11 A. That's correct.

12 Q. All right. Now, OW-1 are drawings that  
13 you placed upon the applicant's site plan sheet 6A;  
14 is that correct?

15 A. Yes. The underlying information on  
16 this plan is Sheet 6A of 17, and it has an issue  
17 date of 6/18/2019.

18 On that plan, I have placed certain  
19 lines and notations to basically depict the major  
20 environmental constraints.

21 ATTORNEY LINNUS: Mr. Lapatka, on what  
22 plan is this overlay? You mentioned it before.

23 THE WITNESS: Sheet 6A of 17.

24 ATTORNEY LINNUS: Thank you.

25 CHAIRPERSON SCHAEFER: Are you going  
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1 to put that sheet up?

2 THE WITNESS: Yes.

3 VICE-CHAIRMAN SPEENEY: Frank, does  
4 this have to be marked?

5 ATTORNEY LINNUS: Yes.

6 I think he's marking it as OW-1, but  
7 you're absolutely correct, Mr. Speeney, he should  
8 verbally identify the exhibit.

9 VICE-CHAIRMAN SPEENEY: And the date.

10 ATTORNEY HEHL: I thought I did that.

11 I thought I said OW-1.

12 ATTORNEY LINNUS: Well, Mr. Lapatka,  
13 who is going to be providing testimony with respect  
14 to the exhibit, should reiterate that.

15 ATTORNEY BUTLER: Okay.

16 Thank you, Mr. Linnus.

17 (Exhibit OW-1, copy of Sheet 6A of Site  
18 Plan issued 6/13/19, superimposed with lines,  
19 labels and notations, is marked.)

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TRACEE SCHAEFER, CHAIRWOMAN

20 THE WITNESS: First of all, does the  
21 exhibit show on your screens?

22 CHAIRPERSON SCHAEFER: Yes.

23 ATTORNEY LINNUS: I see it.

24 BY ATTORNEY BUTLER:

25 Q. Okay. Now, this exhibit is identified  
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1 as what?

2 A. It's labeled OW-1, Exhibit A. And  
3 what it is is a copy of Sheet 6A of 17 of the site  
4 plan set that has an issue date of 6/18/2019.

5 And I have superimposed on that plan  
6 certain lines and labels and wording to aid in the  
7 presentation purpose.

8 Q. And how does this exhibit, as you  
9 marked it up, help this board or assist this board  
10 in deciding this application?

11 A. Well, there's several things that I  
12 want to talk about regarding this exhibit.

13 First of all, the wetlands line and the  
14 wetlands transition area line -- or the wetlands  
15 buffer is shown. And for the most part, they do not  
16 play a crucial role in limiting development on this  
17 site, certainly as much as other factors do.

18 ATTORNEY HEHL: Excuse me for  
19 interrupting. I just have one quick question with  
20 respect to the exhibit, and I apologize for  
21 interrupting.

22 It shows, Mr. Lapatka, a date of  
23 10/9/20 and then a revision date of 12/7/20. And I  
24 just wanted to just briefly get clarification as to  
25 what was revised.

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1 And the reason I ask many times --

2 ATTORNEY BUTLER: This is for  
3 cross-examination. This is improper to interrupt  
4 direct examination with this type of question.

5 ATTORNEY LINNUS: I think it speaks --  
6 let me speak.

7 I think it speaks to the identification  
8 of the exhibit, and I think the question is quite  
9 appropriate. I think the witness has to explain the  
10 exhibit, which would include revisions.

11 THE WITNESS: I'm testifying on the  
12 exhibit as revised 12/7/2020. I do not recall what  
13 the exact revision was, but it was basically some  
14 notes and possibly some graphics.

15 ATTORNEY HEHL: All right.

16 If we could also be provided with the  
17 prior plan, the 10/9/20 plan, and then we can see  
18 what the revisions are.

19 We can continue now at this point, but

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20 Mr. Butler, if you could, please, have that provided  
21 to us.

22 ATTORNEY BUTLER: Well, I don't think  
23 I have to.

24 The OW-1 is not the 10/9/20 plan but  
25 it's the revised 12/7/20 plan. We revised the plan.  
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1 And the revised plan is what we're going to testify  
2 to and introduce into evidence.

3 I don't think you're entitled to our  
4 work product that got up to our final document.

5 ATTORNEY HEHL: Then he shouldn't have  
6 put the 10/9/20 date on it.

7 ATTORNEY BUTLER: He did that for  
8 purposes of transparency.

9 CHAIRPERSON SCHAEFER: Frank?

10 ATTORNEY LINNUS: I think we should  
11 allow the exhibit to be testified upon.

12 ATTORNEY HEHL: Yeah, I don't have an  
13 objection to that at all.

14 ATTORNEY BUTLER: Okay. Thank you.

15 ATTORNEY HEHL: I'm just requesting  
16 that we be provided with the backup on it.

17 THE WITNESS: So the wetlands and the  
18 wetlands buffer line is shown on the exhibit.

19 The wetlands do not play a crucial role  
20 in the development of this property. There are  
21 other more restrictive environmental factors here.  
22 However, it may come into play because some of the  
23 proposed riparian disturbance mitigation area falls  
24 within the wetlands and the wetlands buffer. And in  
25 order to qualify to even use that area, the  
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1 applicant would have to meet a higher hardship  
2 standard at DEP.

3 Now, I want to focus now on the  
4 100-year floodplain and the flood hazard area lines.

5 The site plan shows a line. It shows the 100-year  
6 floodplain line. However, it does not show the  
7 flood hazard line. When designing the site plans  
8 and applying for permits in as much as minimum floor  
9 elevations and fill in the floodplain goes, the  
10 flood hazard area line is the applicable one to use.

11 The 100-year flood line paints a, I  
12 guess, a nicer or a softer picture of the  
13 environmental constraints on the site, but it's  
14 really -- it's really not used for anything except  
15 maybe flood insurance.

16 So the flood hazard line, which is more  
17 restrictive, is the proper line to use, and that's  
18 not shown on the site plan. And you can see when  
19 you look at it, the orange line is the 100-year

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20 flood line. Okay?

21 CHAIRPERSON SCHAEFER: I'm sorry to

22 interrupt.

23 Do you have the ability -- because

24 there is public/residents on that may not understand

25 what you're talking about -- do you have the ability

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1 to point out the areas that you're discussing?

2 MEMBER POTE: Using the cursor.

3 THE WITNESS: Can you see my cursor?

4 CHAIRPERSON SCHAEFER: There you go.

5 Yep.

6 Thank you.

7 THE WITNESS: I'm calling it an orange

8 line. I'm not sure what color it would appear on

9 your screen, but mine is orange. Okay? That is the

10 100-year floodplain line. So everything between

11 that line and Green Brook is in the 100-year

12 floodplain.

13 However, what I am saying is that the

14 proper line to be using and to design by and to

15 apply for permits by is the flood hazard line. The

16 flood hazard elevation is a little bit higher than

17 the 100-year flood elevation, and therefore, in this

18 case, it comes further into the site. It intrudes

19 into the site more.

20 There's a red line on the drawing,

21 okay? And that is the flood hazard area line.

22 Okay, so that defines the real flood plain that you

23 should be using when designing this site.

24 BY ATTORNEY BUTLER:

25 Q. Al, the area --

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1 A. Let me just say one more thing.

2 Q. Okay.

3 A. The area between the flood hazard line

4 and the Green Brook is known as the flood hazard

5 area.

6 Q. Now that flood hazard line, okay, how

7 did you draw it? How do you know where to put that

8 red line?

9 A. Well, I believe it's -- as stated in

10 your own ordinances, we used basically the

11 applicable available studies from FEMA and DEP,

12 okay. And I believe your own ordinances say that

13 you're supposed to be using that.

14 So the reference, the FEMA study, and

15 DEP has indicated that in this area, they have

16 determined the flood hazard elevation to be about a

17 foot higher than the 100-year flood elevation.

18 Q. And does that line, that flood hazard

19 line, have anything to do with the Green Brook being

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20 a study brook?

21 A. Yes.

22 Q. Explain that.

23 A. Well, all brooks, whether they're

24 studied or not studied, have flood hazard lines as

25 long as there's drainage areas that, say, are

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1 greater than 50 acres.

2 Green Brook happens to be a studied

3 stream so -- and most of the larger streams and

4 rivers in New Jersey are studied. And what that

5 means is that a public agency -- you know, in this

6 case, FEMA and DEP -- took it upon themselves to

7 perform a flood study of Green Brook.

8 They performed a flood study. They

9 held public hearings on it, and they, thereafter,

10 adopted it. So that becomes the official flood

11 study for Green Brook. And associated with that

12 flood study is a flood hazard line. That is what we

13 have to use for permits and determining how much

14 fill you can put in the floodplain and floor

15 elevations of the proposed building.

16 Now, there are also streams that are

17 not studied. Okay? On this plan, there's a

18 narrower blue line. It's labeled Green Brook

19 tributary. Okay? That's an unstudied stream, I

20 will call it. Okay? It's still -- it still falls

21 under the DEP regulations just the same as Green

22 Brook does, but that stream was not studied.

23 Now, because it's not studied and it is

24 under the DEP regulations, it is incumbent upon the

25 applicant to perform their own study of -- their own

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1 flood study of the Green Brook tributary.

2 And one of the factors in making that

3 determination -- or the comment to my statement is

4 the fact that the drainage area of the Green Brook

5 tributary is over 50 acres. That's a threshold

6 number in the DEP regulations.

7 So there is a floodplain that is

8 associated with Green Brook, and there is another

9 floodplain that is associated with the Green Brook

10 Tributary. And because they come to a confluence,

11 you have the two -- there is two flood studies or

12 two floodplains that also come to a confluence.

13 So it's a little more difficult for

14 applicants to deal with unstudied streams because

15 they have to perform that study themselves. So it's

16 a little bit of extra work versus already having the

17 stream study report by someone else.

18 What I would like to do is to segue

19 into another exhibit, and then I want to come back

20 to here.

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21 I want to go to OW-3.

22 Let me see if I can --

23 (Exhibit OW-3, map entitled, Tributary

24 Flood Hazard Area & Overland Drainage

25 Exhibit, is marked.)

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1 CHAIRPERSON SCHAEFER: Where did he

2 go? Oh, there he is.

3 THE WITNESS: Is it up on the board?

4 CHAIRPERSON SCHAEFER: Yeah. Are you

5 going to pull that up?

6 THE WITNESS: Yes. Okay, can everyone

7 see it?

8 I lost the -- the boxes for the people,

9 but --

10 CHAIRPERSON SCHAEFER: No, it's not up

11 there.

12 THE WITNESS: Give me a second.

13 ATTORNEY BUTLER: While he's doing

14 that, Madam Chair, we had sent 15 copies of these

15 plans blown up. We distributed them to the

16 individual board members so they could look at it

17 without having it on the screen.

18 CHAIRPERSON SCHAEFER: We have it in

19 front of us. We have it, but it helps to have it on

20 the screen.

21 ATTORNEY BUTLER: Yeah, I just want to

22 make that comment. That's all.

23 CHAIRPERSON SCHAEFER: Yes, we do have

24 it, Mr. Butler.

25 ATTORNEY BUTLER: Thank you.

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1 THE WITNESS: Do you see it now?

2 CHAIRPERSON SCHAEFER: Well, it's cut

3 off.

4 THE WITNESS: And here we go, okay.

5 My screen-sharing got shut off somehow.

6 I probably did that.

7 ATTORNEY LINNUS: All right.

8 Mr. Lapatka, do you want to identify

9 this exhibit for the record?

10 THE WITNESS: Yes.

11 OW-3 is using -- it is using the

12 underlying information taken from Sheet 6 of 17 of

13 the site plan set, and it has an issue date of

14 9/4/2020 and a revision date of 8/31/2020. And on

15 that sheet, I have made certain markings, colorings,

16 and labels and arrows for my presentation purposes.

17 It's -- it's identified as OW-3 and it's entitled --

18 (Cross-talking.)

19 CHAIRPERSON SCHAEFER: One minute.

20 Mr. Hehl, did you have a --

21 ATTORNEY HEHL: No, I just know that

22 OW-1 was dated. This one -- are all the OW's the

23 same date, or is this one undated? I just want to



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24 clarify.

25 THE WITNESS: This one is undated.

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1 ATTORNEY HEHL: Okay.

2 THE WITNESS: Okay?

3 So OW-3 is entitled "Tributary Flood

4 Hazard Area and Overland Drainage Exhibit."

5 Now, in doing some research on the

6 Green Brook Tributary, we studied the drainage area,

7 and the drainage area exceeds 50 acres. Okay? It's

8 probably a little over 60 acres. And, therefore, a

9 flood study for the Green Brook tributary is

10 required.

11 We performed -- we did not do a

12 complete flood study. We performed some quick

13 estimates, and my conclusion is that the culvert

14 under New Providence Road cannot take all of the

15 flow in that tributary, okay, for a flood hazard

16 storm, a flood hazard event and that would be a --

17 CHAIRPERSON SCHAEFER: Can you point

18 that out for any public that is seeing this?

19 THE WITNESS: I'm sorry.

20 Okay, so the culvert is right here.

21 And the tributary flows from the bottom of the page,

22 through the culvert, towards the Green Brook, and

23 then into the Green Brook.

24 So this culvert here in New Providence

25 Road cannot take all the flow for a flood hazard

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1 event, okay. And it will overtop the road. And

2 because New Providence Road at that point is pitched

3 down to the south, the water will basically run down

4 to the south and then over land onto the subject

5 property. Okay? And I drew some typical flow

6 arrows that you would expect on the over land flow

7 part, you know, once it goes off the road.

8 So there's going to be some degree of

9 floodplain over here, and in order to comply with

10 the Watchung ordinances, this has to be studied and

11 quantified. Now, this flood elevation would also

12 effect things such as the minimum allowable

13 elevation of the building. It could also effect

14 whether or not you can place any fill in the

15 playground area or portions of the parking lot. The

16 flood elevation of that tributary is higher

17 certainly by New Providence Road than the flood

18 elevation of Green Brook.

19 So it's a complicated study that has to

20 be done and merged into the Green Brook study, but

21 it needs to be done in order to assess what you have

22 here.

23 And now I can -- let's see. I can go

24 back to OW-1. I hope I can do this.

25 ATTORNEY BUTLER: While Mr. Lapatka is

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1 trying to do whatever he's trying to do, I'll  
2 represent to the board that before his testimony is  
3 concluded, we will refer to those local ordinances  
4 that he referred to.

5 CHAIRPERSON SCHAEFER: Okay,  
6 Mr. Butler. Thank you.

7 ATTORNEY BUTLER: Thank you.

8 CHAIRPERSON SCHAEFER: And,  
9 Mr. Butler, you understand, too, that tonight we  
10 have to cut this off at 9:30?

11 ATTORNEY BUTLER: Absolutely.

12 CHAIRPERSON SCHAEFER: Thank you, sir.

13 ATTORNEY BUTLER: And, of course, we're  
14 not going to get through with Mr. Lapatka tonight,  
15 but that is certainly understandable.

16 I'm familiar with what's going to go on  
17 after the public meeting ends because I have been  
18 indirectly involved in it. I'm referring to your  
19 executive session.

20 CHAIRPERSON SCHAEFER: Thank you,  
21 Mr. Butler.

22 ATTORNEY BUTLER: And thank you for  
23 bearing with us.

24 This is -- this is a little -- it's  
25 novel for me, but it's even that difficult for  
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1 people who know a lot more about it than I do,  
2 putting this stuff up on the screen.  
3 CHAIRPERSON SCHAEFER: It's okay. But  
4 we need it on the screen so the public can see what  
5 we're talking about.

6 ATTORNEY BUTLER: I appreciate that.

7 THE WITNESS: This is freezing up on  
8 me.

9 ATTORNEY BUTLER: Do you want to go  
10 with Hal's?

11 THE WITNESS: It might be on the  
12 submissions. Bear with me a second.

13 Oh, boy.

14 CHAIRPERSON SCHAEFER: The map you  
15 had, at the bottom it had a zoom in and zoom out.

16 Would that have helped you, perhaps?

17 THE WITNESS: Hold on. I'm getting  
18 some technical help from our expert here.

19 No? There we go.

20 CHAIRPERSON SCHAEFER: Okay.

21 On the bottom, do you see it has the  
22 plus and the minus?

23 THE WITNESS: Yeah.

24 CHAIRPERSON SCHAEFER: Click on the  
25 minus.

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1 ATTORNEY BUTLER: You got it.

2 Madam Chair, thanks for your help.

3 THE WITNESS: I apologize. The

4 computer is just locking up.

5 BY ATTORNEY BUTLER:

6 Q. Okay. Now, did you want to continue

7 discussing OW-4 -- OW-1?

8 A. Yes.

9 So on OW-1, I shaded an area in, okay,

10 that shows the -- and I'm pointing the cursor at it

11 -- or circling the cursor around it. And it shows

12 the area of the parking lot and drive that is within

13 the flood hazard area, and there's also a portion of

14 the proposed playground in the flood hazard area.

15 Q. Wait a minute. Before you go on, we

16 have the flood hazard line, and then we have the 150

17 riparian zone.

18 Is that correct?

19 A. Yeah.

20 Q. Okay. Okay. Okay.

21 A. So I show some area shaded inside the

22 flood hazard line, okay, the playground over here

23 and the parking lot and driveway. And there is no

24 fill that would be allowed to be placed in that

25 area, okay, when you build your parking lot, unless

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1 you were to compensate for it elsewhere.

2 Q. Is that in the gray area?

3 A. Yes.

4 Q. Is that what you have gray?

5 A. Yes.

6 Q. Okay.

7 A. The gray area on the inside of the

8 flood hazard line. There's more gray area than

9 that.

10 And I don't see anywhere on the site

11 plan where that flood storage loss would be

12 compensated for. And your own -- your own

13 ordinances say that developed -- that development

14 should be reviewed so that it does not exacerbate

15 any flooding issues on other properties in the

16 community. And, in my opinion, this would increase

17 flooding on other properties. Probably not that

18 much, you know, I will admit, but it will be

19 increasing it and it does fly in the face of the

20 ordinance.

21 I have also on this -- okay. And this

22 flood hazard line, once the Green Brook tributary is

23 studied, will actually get larger, most likely.

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24 It's probably going to get larger when the Green  
25 Brook tributary is studied. This is only the flood  
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1 hazard area for Green Brook and not the tributary.  
2 I have drawn on here a couple of lines  
3 which represent the 300-foot transition area zone  
4 line. There's one parallel to Green Brook, one  
5 parallel to the tributary. That line is 150 feet  
6 from the top of bank of both of those waterways.  
7 Everything on the stream sides of those lines is  
8 regulated as to what you can do.  
9 And there is a sheet in the site plan  
10 set that shows that there is an intention to perform  
11 some mitigation in the remaining riparian zone to  
12 compensate for the disturbance that is down here.  
13 I'm trying to get another exhibit up.  
14 Q. Well, we still can work with that  
15 exhibit, Exhibit OW-1.  
16 A. Yeah.  
17 So the plans -- the site plan shows  
18 that there's a little over 10,000 square feet of  
19 disturbance in the riparian zones, and my  
20 calculations indicate that that's understated and  
21 it's actually closer to 13,000 square feet. And  
22 that comes into play because there's a suggestion on  
23 the site plan that the disturbance be compensated  
24 for, or mitigated for at a two-to-one ratio with  
25 DEP.

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1 And that, for certain circumstances, is  
2 a viable ratio for DEP. But I guess what I'm saying  
3 here is that the actual disturbance is, there's more  
4 than what is stated on the plan. And in addition to  
5 that, in order to get site distances along Union  
6 Avenue -- our traffic engineer could talk about that  
7 later -- more trees are going to have to get cut  
8 down. Because if you were to stand where that  
9 driveway is coming out onto Union Avenue right now  
10 and you were looking to the left, you would see that  
11 you can't see the oncoming traffic.  
12 So in order to comply with your own  
13 ordinances, on site distances, additional  
14 disturbance would be needed. And I -- I question  
15 whether or not this plan would even meet the  
16 thresholds of DEP where they would allow mitigation  
17 for off-site disturbance. If they did, okay. I  
18 don't think you would meet the, say, the two-to-one  
19 standard because the disturbance area is  
20 underestimated.

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21 Q. Mr. Lapatka, let me ask you a couple of  
22 questions.

23 You have two 150-foot riparian zones  
24 associated with two regulated streams, the Green  
25 Brook tributary and the Green Brook; is that  
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1 correct?

2 A. Yes.

3 Q. And you also show the flood hazard  
4 area; do you not?

5 A. Yes.

6 Q. And then you have a good part of OW-1  
7 marked in gray; do you not?

8 A. Yes.

9 Q. Now, tell me what that gray is all  
10 about.

11 A. Well, if you look at the 150-foot  
12 transition zone line, the gray on the stream sides  
13 of that line is -- represents the improvements that  
14 are proposed to be constructed in the riparian zone.  
15 Then in this corner of the parking lot, there is a  
16 little bit of gray area that is inside the flood  
17 hazard line but not on the other side of the  
18 riparian zone line. So most of the gray is riparian  
19 zone that is going to be covered by pavement.  
20 And in addition to that, the riparian  
21 zone actually extends out into Union Avenue. So not  
22 all the riparian zone disturbance is even  
23 calculated, and so my 13,000 square foot number  
24 would actually go up a little bit.

25 Now, one thing while we're on the  
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1 subject of floodplain storage, which was not really  
2 talked about during the site plan presentation, is  
3 the fact that the site plan proposes to raise the  
4 elevation of a stretch of Union Avenue in the  
5 vicinity of the new driveway, the exit-only driveway  
6 for about 150 feet. And at the greatest point, the  
7 roadway is proposed to be raised about a foot and a  
8 half.

9 Earlier versions of the site plan  
10 proposed to raise that roadway by two and a half  
11 feet. Now, that's further fill in the floodplain,  
12 okay, in the flood hazard area that must be  
13 compensated for, and there's no compensation shown  
14 for that or the other fill on the property.

15 Now, just as a practical point, I think  
16 everyone has to realize that when Union Avenue is  
17 raised in elevation by, say, a foot and a half, it's

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18 going to have -- it's going to have to be shut down  
19 for a short period of time.

20 Opposite, on the other side of Union  
21 Avenue, okay, there's some right-of-way beyond the  
22 edge of pavement and then there's a park. That  
23 grade right now generally drops off pretty sharply  
24 from the edge of pavement. It goes down to a park,  
25 it parks at a lower elevation than Union Avenue at  
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1 that point. When Union Avenue is raised a foot and  
2 a half, okay, there's going to have to be a  
3 transition down to that park, and the slopes are  
4 going to be pretty steep. And that's not really  
5 addressed on the site plan. That's kind of, I  
6 guess, ignored.

7 There's also a gravel driveway, and I  
8 believe there's two posts and a chain between them,  
9 which appears to be used for maintenance purposes  
10 for the park. And that driveway is going to be  
11 affected, okay, because the elevation of the  
12 driveway at the edge of the pavement is going to be  
13 raised about a foot and a half.

14 So now that you have to chase that  
15 grade -- it's already sloping down to the park,  
16 you're going to have to chase that grade in sloping  
17 down the driveway into the park. So there are some  
18 other ramifications of raising the elevation of  
19 Union Avenue.

20 Q. And, Mr. Lapatka, I want to go back to  
21 that area in gray that I'm very interested in. The  
22 -- that's within the riparian zones of both the  
23 Green Brook and the tributary as well as your flood  
24 hazard area. Everything effected by that is in  
25 gray.

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1 Would you verbally describe everything  
2 that is going to be affected by those two buffers  
3 and the flood hazard area?  
4 A. Well, there's about a -- there's the  
5 entrance-exit driveway, and there's about  
6 21 -- let's see -- I think it's about 20 parking  
7 spaces or so -- 20, 21 parking spaces, and a portion  
8 of the proposed playground.  
9 There is also -- not shaded in gray,  
10 there are some landscaped islands and things like  
11 that, end islands. They're not shaded, but they  
12 would be -- that would be work inside that zone,  
13 also.

14 Q. Did you say it's just a part of the

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15 outdoor playground area?

16 A. Well it's the greater portion of the

17 outdoor play area.

18 Q. Okay.

19 Now, that sheet OW-1, that's the NJDEP

20 Mitigation Plan. And I would like to read from you

21 -- to you, if I may, part of the 7/14/2020 report of

22 Tom Herits, the engineering consultant for the

23 planning board.

24 I'm going to start on the last

25 paragraph of his first page, and here is what he

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1 says. I'm going to ask you a question after I read

2 this.

3 Mr. Herits says, and I quote: However

4 of more importance is the location of said 150-foot

5 riparian buffer, which cuts across the playground

6 and parking area. Sheet 6A of 17 of the site plan

7 is an NJDEP mitigation plan. The applicant's

8 engineer shall review the said compensation areas

9 indicated on the mitigation plan and testify as to

10 said adherence to DEP regulations.

11 Now, were you here when the engineer

12 for the applicant and/or the architect for the

13 applicant testified?

14 A. Yes.

15 Q. Did they explain to you what this

16 mitigation is going to be, as suggested by

17 Mr. Herits?

18 A. No.

19 I believe they just said that they

20 would deal with it later.

21 And one thing I want to point out is

22 your own ordinances in the context of landscaping

23 and tree replacement call for some work that is not

24 shown on the site plan either. And that same

25 testimony that Mr. Butler just referred to said that

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1 those ordinances will be addressed based upon what

2 the DEP says.

3 And I want to point out something I

4 think is pretty obvious, is that there's a dual

5 jurisdiction here. Okay? DEP has jurisdiction, and

6 Watchung has jurisdiction. So just because DEP has

7 jurisdiction over, you know, particular parts of a

8 site does not mean that Watchung also does not and

9 they have to bow to whatever DEP says.

10 I think that both Watchung and DEP have

11 to review and rule on those issues, and I don't

12 think it's proper to say that DEP is basically

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13 overtaking Watchung's jurisdiction on those issues.  
14 Q. Okay. Now, continuing with OW-1 up in  
15 the left-hand corner, you have a black area with  
16 stripes in it; do you not?  
17 A. Yes.  
18 Q. And you have an arrow that indicates  
19 that's transition area compensation easement; do you  
20 not?  
21 A. Yes.  
22 Q. Now, I did a property search of this  
23 property; did I not?  
24 A. Yes.  
25 Q. And I gave you a deed entitled,  
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1 "Declaration of Restrictions for Modified Transition  
2 Area." And this was submitted to the board as OW-4,  
3 right?  
4 A. That's correct.  
5 (Exhibit OW-4, DEP Declaration of  
6 Restrictions for Modified Transition Area, is  
7 marked.)  
8 BY ATTORNEY BUTLER:  
9 Q. Now, have you had a chance to review  
10 this deed?  
11 A. Yes, I have.  
12 Q. Now, this deed is given by DiDonato to  
13 DiDonato; is that correct?  
14 A. Yes.  
15 Q. And DiDonato are the previous owner of  
16 this property?  
17 A. Yes.  
18 Q. Okay.  
19 A. And it was given for the benefit of  
20 DEP in the State of New Jersey.  
21 ATTORNEY LINNUS: Mr. Butler and  
22 Mr. Lapatka, I think what we need to see -- do you  
23 have the capability of displaying the deed so that  
24 the public can see it and we can see it?  
25 ATTORNEY BUTLER: Sure. We'll try to  
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1 do that, Frank.  
2 CHAIRPERSON SCHAEFER: It's several  
3 pages.  
4 ATTORNEY BUTLER: If we can do it.  
5 CHAIRPERSON SCHAEFER: It's several  
6 pages.  
7 Can you split the pages up on the  
8 screen?  
9 THE WITNESS: I could probably scroll  
10 through them.  
11 MEMBER PENNETT: Can you also enlarge  
12 it? That's not too bad. Because --



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13 THE WITNESS: Can you see that?  
14 ATTORNEY LINNUS: I don't see  
15 anything.  
16 CHAIRPERSON SCHAEFER: Oh, it's there.  
17 MEMBER PENNETT: I can see it.  
18 Can it be enlarged?  
19 THE WITNESS: Yes.  
20 MEMBER PENNETT: It's difficult to  
21 read.  
22 CHAIRPERSON SCHAEFER: Karen, do you  
23 have a copy of it?  
24 MEMBER PENNETT: Yes, I do.  
25 I wish the public could see it, though.  
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1 CHAIRPERSON SCHAEFER: Gotcha.  
2 ATTORNEY LINNUS: Okay.  
3 For purposes of the record,  
4 Mr. Lapatka, could you identify what you're  
5 exhibiting as OW-4?  
6 THE WITNESS: OW-4 is a certain  
7 document. It's entitled, "Declaration of  
8 Restriction For Modified Transition Area," and it is  
9 dated -- I believe it's June 18th, 2003.  
10 ATTORNEY LINNUS: Okay.  
11 And so how many pages does it consist  
12 of?  
13 THE WITNESS: I'll count it.  
14 ATTORNEY BUTLER: One, two, three --  
15 THE WITNESS: So it's a recorded  
16 document that came up in a title search.  
17 ATTORNEY BUTLER: -- four, five,  
18 six -- seven pages, Frank.  
19 ATTORNEY LINNUS: Okay.  
20 ATTORNEY BUTLER: And can I ask him  
21 for his interpretation as to what the deed does?  
22 ATTORNEY LINNUS: I don't understand  
23 the question: Interpretation as to what the deed  
24 does?  
25 ATTORNEY BUTLER: Yeah.  
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1 ATTORNEY LINNUS: Try asking your  
2 question, Mr. Butler, and let's see if Mr. Hehl has  
3 any objections. And then I can chime in.  
4 ATTORNEY BUTLER: Okay.  
5 BY ATTORNEY BUTLER:  
6 Q. What is OW-4?  
7 A. OW-4 is a -- it's a recorded document  
8 entitled, "Declaration of Restriction For Modified  
9 Transition Area." As I said before, it was dated  
10 2003.  
11 And back around that time, the  
12 multi-family housing project across Green Brook was

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13 undergoing their approvals, and they evidently  
14 needed more area as compensation, okay, to offset  
15 some things that they were doing on their property.  
16 So I guess due to having some control  
17 over this property, this parcel of land was  
18 dedicated -- essentially did what you would call a  
19 conservation easement. Okay? And this document  
20 goes into saying things like, The following activity  
21 shall not occur within the modified transition area  
22 unless the department makes the finding specified  
23 below, and it's removal, excavation, disturbance of  
24 soil, destruction of plant life. And basically, the  
25 document is saying you have to leave it alone.  
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1 Q. All right. Now --

2 A. Also, part of that -- part of the  
3 transition area/compensation area is this, I'll call  
4 it, conservation easement.

5 So the rights for this have already  
6 been given away for another project, and this plan  
7 proposes to give away the same area again and get  
8 credit for it. So I think, you know, something is  
9 not right there.

10 If I can go back to OW-1. Does that  
11 show?

12 CHAIRPERSON SCHAEFER: Yes.

13 THE WITNESS: Okay. So it's -- this  
14 black crosshatched area is the area that's described  
15 in that document. So that was given away as a  
16 conservation easement for the fact of securing DEP  
17 approvals for that housing project across Green  
18 Brook.

19 BY ATTORNEY BUTLER:

20 Q. Okay. Is there anything else that you  
21 would like to discuss regarding OW-1?

22 A. No, I think that's it. I believe  
23 that's it.

24 Q. Okay.

25 Now, the next document you submitted to  
Lapatka - Direct  
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1 the board was OW-2. Would you describe that  
2 document for us?

3 A. Yes.

4 (Exhibit OW-2, copy of Sheet 6A of Site  
5 Plan issued 6/13/19, with wetland transition  
6 area notation, is marked.)

7 THE WITNESS: Okay, that should be on  
8 the screen now.

9 OW-2 uses Sheet 6A of 17 of the site  
10 plan set, issue date 6/13/19 as the background  
11 information.

12 And I want to make one correction. I

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13 may have said on OW-1 that it was -- the date was  
14 6/18/19, and it is really 6/13/19. On my OW-1, the  
15 font was not as clear.

16 At any rate, on this plan that I  
17 mentioned, I made certain markings, colors, and  
18 notes, you know, for presentation purposes. And I  
19 spoke about this a little bit before. And basically  
20 over here, okay, there is a legend -- and I'm  
21 circling it with the cursor right now -- it says the  
22 area of compensation -- well, it says the area of  
23 disturbance is 10,836 square feet and that the area  
24 of compensation is twice that, or 21,672 square  
25 feet.

Lapatka - Direct

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1 And a couple of things I want to point  
2 out. I believe that the disturbance area of  
3 10,836 square feet is understated, and it's really  
4 closer to 13,000. And, also, the compensation area  
5 might be overstated, okay, because this conversation  
6 easement that was previously given away is counted  
7 as moot compensation area for a second time.  
8 In addition to that, what's not taken  
9 into account here is the fact that in order to work  
10 on some of those compensation areas, which are  
11 clouded on the site plan, the equipment would have  
12 to cross the wetlands, wetlands buffers, and  
13 riparian zones, and there would be additional  
14 disturbance there. And DEP counts that disturbance.  
15 I know that from previous applications. So that's  
16 another reason why the disturbance area might be  
17 further limited.

18 So I think that's all I have to say

19 about OW-2.

20 CHAIRPERSON SCHAEFER: Mr. Butler, do  
21 you have other questions on this page? Because I  
22 think this should be a breaking point for us. I  
23 apologize.

24 ATTORNEY BUTLER: No. No. No. You  
25 don't have to apologize.

Lapatka - Direct

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1 We'll continue at the next meeting.

2 CHAIRPERSON SCHAEFER: Do you have any  
3 questions on this page, though? I don't want to  
4 stop your train of questions.

5 ATTORNEY BUTLER: No. No. No. He  
6 said -- the witness said that he had nothing further  
7 to add to OW-2. And I just have one quick question.

8 BY ATTORNEY BUTLER:

9 Q. The area in orange where it says "area  
10 of disturbance," is that self-evident?

11 A. It is, and that's the area that is  
12 proposed to be disturbed. And that I calculate out  
13 in the 13,000 square feet.

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14 Q. Okay, fine.

15 ATTORNEY BUTLER: I have no further  
16 questions.

17 THE WITNESS: It's the area within the  
18 riparian that's to be disturbed.

19 CHAIRPERSON SCHAEFER: Okay.

20 Thank you, Mr. Butler. And, again, I  
21 apologize, but we want to -- we just have a lengthy  
22 executive.

23 So where we'll pick up is a  
24 continuation of Mr. -- of the opposer, Mr. Butler's,  
25 professional engineer. Then we'll open it up for  
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1 Mr. Hehl for your questions. And then the planning  
2 board will ask their questions. And we'll move on  
3 to his next expert, so forth and so on.

4 You're good with that, Mr. Hehl?

5 ATTORNEY HEHL: Yeah.

6 I just have one question before we talk  
7 about the next hearing. I think that Mr. Butler  
8 indicated that he would advise -- or his witness  
9 would advise as to what specific ordinances of  
10 Watchung he was relying upon?

11 CHAIRPERSON SCHAEFER: Mr. Butler, can  
12 you --

13 ATTORNEY BUTLER: I -- I indicated he  
14 would do so within his testimony. It will probably  
15 come near the end of his testimony.

16 ATTORNEY HEHL: It would be helpful.

17 CHAIRPERSON SCHAEFER: Mr. Butler, is  
18 there a way you can at least give them that  
19 particular information prior to the next meeting?

20 ATTORNEY BUTLER: If -- if I have to.  
21 It's very unusual to give an adversary  
22 ammunition for cross-examination before a witness  
23 has testified to it. It's never done in Superior  
24 Court that I can see.

25 CHAIRPERSON SCHAEFER: Okay.  
98

1 I'm going to go on the advice of my  
2 planning board attorney. Frank?

3 ATTORNEY LINNUS: It's not required.

4 ATTORNEY BUTLER: Thank you.

5 CHAIRPERSON SCHAEFER: Sorry,  
6 Mr. Hehl.

7 ATTORNEY HEHL: Well, let me just say  
8 again if they're -- I just think that it would  
9 benefit both the board and the applicant for  
10 everyone to be prepared for what sections.

11 I think it's a simple question. He has  
12 testified at length right now as to compliance with  
13 ordinances of Watchung, and I think that it should  
14 be something that is supplied just for preparation  
15 for the next hearing.

16 ATTORNEY LINNUS: I would agree with  
17 Mr. Hehl. Although it's not required, it certainly  
18 would be appropriate and would move things along in

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19 this, in this hearing. After all, we're not in a  
20 situation where we're not disclosing things.  
21 ATTORNEY HEHL: And it's not --  
22 ATTORNEY LINNUS: We would need the  
23 agreement of Mr. Butler.  
24 CHAIRPERSON SCHAEFER: Yeah, Mr.  
25 Butler, in light of everything that has been going  
99  
1 on, you know, with COVID and so forth, I have to  
2 agree with our attorney, and I do take the side of  
3 Mr. Hehl. I would tell him the same thing if the  
4 roles were reversed for you.  
5 So if you would be gracious enough to  
6 please share those ordinances with him prior to our  
7 next meeting, I would greatly appreciate that.  
8 ATTORNEY BUTLER: I object to it. I  
9 protest to it. But I will do it because,  
10 apparently, there has been a reversal in the  
11 decision made by the attorney for the board.  
12 ATTORNEY LINNUS: No, there's no  
13 reversal. I said it was not required.  
14 ATTORNEY BUTLER: But it appears to me  
15 I am being required.  
16 CHAIRPERSON SCHAEFER: I'm not  
17 requiring you. I'm just asking you, would you  
18 please.  
19 ATTORNEY BUTLER: Okay.  
20 CHAIRPERSON SCHAEFER: If roles were  
21 reversed with Mr. Hehl, I would have asked him the  
22 same exact question. I'm not requiring you to. I'm  
23 just asking, would you please. That's simply --  
24 ATTORNEY BUTLER: Let me consult with  
25 my client.  
100  
1 CHAIRPERSON SCHAEFER: Okay.  
2 ATTORNEY BUTLER: I hear what you're  
3 saying. I know what you want.  
4 CHAIRPERSON SCHAEFER: I'm just trying  
5 to move this along expeditiously. But again, it's  
6 entirely up to you. I'm just asking if you will.  
7 I'm not stating you have to. Okay?  
8 ATTORNEY BUTLER: Okay. I appreciate  
9 it. Okay. Let me consult with Weldon.  
10 ATTORNEY LINNUS: And, Mr. Butler,  
11 there's a reason behind that. Let's assume you do  
12 not provide that information and we reconvene, and  
13 at the time you present whatever you're presenting,  
14 certainly this board will give more time to the  
15 applicant's attorney, if he needs it, to convene at  
16 a later date.  
17 So it's a matter of convenience. It's  
18 not required legally, but the board has requested  
19 it.  
20 ATTORNEY BUTLER: I understand.  
21 ATTORNEY LINNUS: All right.  
22 CHAIRPERSON SCHAEFER: Okay. Thank

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23 you.

24 ATTORNEY LINNUS: Madam Chairperson,  
25 we have a couple of issues. This is our last  
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1 meeting of the year, and there are no scheduled  
2 meetings for next year.

3 CHAIRPERSON SCHAEFER: Theresa?

4 BOARD SECRETARY: I did notice already  
5 for our January 19th reorganizational meeting at  
6 7:00 p.m. with the regular meeting to immediately  
7 follow, so that has been noticed already.

8 ATTORNEY LINNUS: Great. Okay.

9 So this hearing will be continued to  
10 the regular meeting of January 19th, 2021 at 7:30, I  
11 guess.

12 CHAIRPERSON SCHAEFER: Well, no.

13 Let's -- our reorg starts at 7:00, and  
14 then we will immediately go into our regular meeting  
15 after reorg is done, rather than -- if it only takes  
16 15 minutes, we're not going to wait 15 minutes to  
17 start a regular meeting at 7:30. We'll go  
18 immediately into it.

19 ATTORNEY LINNUS: All right.

20 So for purposes of the continuation of  
21 this hearing, our notice to the public is that this  
22 public hearing is continued to January 21st, 2021,  
23 at 7:00 p.m.

24 BOARD SECRETARY: January 19th.

25 ATTORNEY BUTLER: January 21st or the  
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1 19th?

2 CHAIRPERSON SCHAEFER: January 19.

3 ATTORNEY LINNUS: I have been  
4 corrected. It's January 19th at 7:00 p.m.  
5 And the public is certainly invited to  
6 participate again in these proceedings. This  
7 pronouncement will mean that you're not getting any  
8 further notice either by personal service, certified  
9 mail, or newspaper notice. This is your notice.

10 ATTORNEY BUTLER: Now, when will the  
11 application be continued, at 7:30?

12 CHAIRPERSON SCHAEFER: No. We're  
13 saying our meeting will start at 7:00. We're doing  
14 our reorg at that point. Once we're done with our  
15 reorg, we're going immediately into our meeting. I  
16 would say probably 7:15 we'll be ready to start.

17 ATTORNEY BUTLER: Thank you.

18 CHAIRPERSON SCHAEFER: Get there at  
19 7:00. You can see all the new members.

20 ATTORNEY BUTLER: Okay. Thank you.

21 ATTORNEY HEHL: All right. Well,  
22 thank you very much. I appreciate your time and  
23 consideration this evening. Hope your executive  
24 session does not go too late and wish everyone, as

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25 best as possible, a safe and healthy and happy  
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1 holiday season.

2 ATTORNEY LINNUS: All right. You,

3 too, Mr. Hehl.

4 And you have indicated on the record

5 that you have extended the time to February 28th, I

6 think it is, next year.

7 ATTORNEY HEHL: That's fine.

8 ATTORNEY LINNUS: Do you want to just

9 put that in writing just so we have a record of it?

10 ATTORNEY HEHL: I will send that over

11 to Theresa.

12 ATTORNEY LINNUS: Thank you.

13 CHAIRPERSON SCHAEFER: Thank you,

14 Mr. Hehl. Thank you, Mr. Butler.

15 Thank you to all the experts out there.

16 Happy holidays to all of you.

17 ATTORNEY HEHL: Same. Have a great

18 night. Thank you.

19 ATTORNEY BUTLER: Same to you on

20 behalf of us and Weldon. Thank you.

21

22 (Meeting adjourned at 9:35 p.m.)

23

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

2

3 I, ANGELA C. BUONANTUONO, a Notary Public and

4 Certified Court Reporter of the State of New Jersey

5 and Registered Professional Reporter, do hereby

6 certify that prior to the commencement, the witness

7 was duly sworn to testify the truth, the whole truth

8 and nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing is a

10 true and accurate transcript of the deposition as

11 taken stenographically by and before me at the time,

12 place and on the date hereinbefore set forth.

13 I DO FURTHER CERTIFY that I am neither a

14 relative, nor employee, nor attorney, nor counsel of

15 any of the parties to this action, and that I am

16 neither a relative, nor employee of such attorney or

17 counsel, and that I am not financially interested in

18 the action.

19

20

21

22

23 Angela C. Buonantuono, CCR, RPR, CLR

NJ State Board of Court Reporting

24 License No. 30XI00233100

25 Dated: January 13, 2021

# BOROUGH OF WATCHUNG

## PLANNING BOARD

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### EXECUTIVE SESSION

Ms. Spingler read the Resolution PB 20-R19 into the record.

On motion by Mr. Speeney, seconded by Ms. Pennett, the Board entered executive session based on the following roll call vote:

Roll Call:

Ayes: Ms. Spingler, Mr. Ellis, Councilman Martino,  
Ms. Pennett, Mayor Balla, Mr. Speeney, Mr. Pote  
Mr. Fiorilla, Mr. Sims and Madam Chair

Nays:

Not Eligible:

Abstain:

Absent:

The Executive Session was closed, and upon entering open session, the Board called the roll.

On motion by Mr. Fiorilla, seconded by Mr. Pote, the Board directed Mr. Linnus to respond to Mr. Coakley as agreed upon in executive session based on the following roll call vote:

Roll Call:

Ayes: Ms. Spingler, Mr. Ellis, Councilman Martino,  
Ms. Pennett, Mayor Balla, Mr. Speeney, Mr. Pote  
Mr. Fiorilla, Mr. Sims and Madam Chair

Nays:

Not Eligible:

Abstain:

Absent:



**BOROUGH OF WATCHUNG**  
**PLANNING BOARD**  
TRACEE SCHAEFER, CHAIRWOMAN

**PUBLIC COMMENT**

The meeting was open to the public. There were no comments from the public.

**ADJOURN**

The Board unanimously voted to adjourn the meeting at 10:34 pm.

Respectfully Submitted,



Theresa Snyder  
Board Clerk