

BOROUGH OF WATCHUNG PLANNING BOARD
COUNTY OF SOMERSET - STATE OF NEW JERSEY

SPECIAL MEETING FOR:
BONNIE BURN ROAD REDEVELOPMENT
BLOCK 7402/7403, LOT 19.01, 19.02, 5 AND 10
BONNIE BURN/BNE
APPLICATION NO. PB 19-01

TUESDAY, OCTOBER 19, 2021
COMMENCING AT 6:30 P.M.

TRANSCRIPT OF PROCEEDINGS
VIRTUAL PUBLIC HEARING

BOARD MEMBERS PRESENT:

TRACEE SCHAEFER, CHAIRPERSON
KEITH S. BALLA, MAYOR
AL ELLIS
PAUL FIORILLA
PIETRO MARTINO, COUNCILMAN
YVETTE NORA
KAREN PENNETT
STEPHEN POTE
TROY SIMS
DONALD SPEENEY, VICE-CHAIRPERSON
ELLEN SPINGLER

ALSO PRESENT:

FRANCIS P. LINNUS, ESQUIRE, BOARD ATTORNEY
RICARDO MATIAS, P.E., BOARD ENGINEER
MARK HEALEY, P.P., BOARD PLANNER
JOHN JAHR, P.E., PTP, TSOS, BOARD TRAFFIC ENGINEER
THERESA SNYDER, BOARD SECRETARY

STENOGRAPHICALLY REPORTED BY:

ANGELA BUONANTUONO, CCR, RPR, License No. 30XI00233100

1 A P P E A R A N C E S: (Via Video Conference)

2 CONNELL FOLEY

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12 --Counsel for the Objector, Weldon Materials, Inc.

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18
19 ALSO PRESENT:

20 Nicholas Hollenbeck, Sterling Properties

I N D E X

WITNESSES	PAGE
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None .

PUBLIC COMMENT:

NAME	ADDRESS	PAGE
Karen Graboyes	54 Tuttle Road	155

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
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None .

1 CHAIRPERSON SCHAEFER: I'm calling the
2 Borough of Watchung Planning Board meeting of
3 October 19, 2021 to order.

4 Notice of this regular meeting has
5 been given pursuant to Open Public Meetings Act
6 N.J.S.A. 10:4-6 -- I'm going to ask everyone to
7 please mute because I am getting a lot of feedback.

8 In order to comply with the Executive
9 Orders signed by the Governor, and in an effort to
10 follow best practices recommended by the CDC, and in
11 compliance with the DCA requirements for emergency
12 meeting protocol, this meeting is being held
13 virtually for all board members, board
14 professionals, the applicant, the applicant's
15 professionals, interested parties and members of the
16 public.

17 Any remote public meeting where sworn
18 testimony is being taken shall --

19 (Stenographer interruption.)

20 CHAIRPERSON SCHAEFER: Don, you're the
21 only one who's not muted. Don, please stay muted
22 unless you need to say something because there's a
23 lot of feedback from your side.

24 So back to calling to order. Any
25 remote public meeting where sworn testimony is being

1 taken shall be broadcast by video, as well as audio.
2 And all individuals giving sworn testimony shall
3 appear by video. Because of the quasi-judicial
4 nature of the hearing, written public comment and
5 questions cannot be accepted prior to the hearing,
6 as per our Resolution PB 20-R14.

7 Notice has been posted on the Borough
8 website, at Borough Hall in compliance with the DCA
9 requirements for all emergency meeting protocol, and
10 has been given to the Echoes Sentinel, Courier News
11 and The Star Ledger. Notice has been filed with the
12 Borough clerk.

13 And now we're going to please stand and
14 salute the flag.

15 (Pledge of Allegiance.)

16 CHAIRPERSON SCHAEFER: Thank you.

17 I just want to confirm, the court
18 reporter can hear us?

19 THE STENOGRAPHER: Yes, Madam
20 Chairwoman, I can hear you.

21 CHAIRPERSON SCHAEFER: Okay. Thank
22 you.

23 All right. Roll-call please, Theresa.
24 You have no volume? We'll give it a
25 second.

1 (Board discusses technological issue.)

2 CHAIRWOMAN SCHAEFER: What we're going
3 to do is try to work this out where I will now
4 become -- Theresa, how can I do this?

5 COUNCILMAN MARTINO: Madam Chair, can
6 she call in? Because I had to do that a couple of
7 times in the beginning.

8 CHAIRPERSON SCHAEFER: Well, it's not
9 that simple. She's trying to make me the
10 administrator and --

11 COUNCILMAN MARTINO: All right. She's
12 having a problem -- she's having a problem with the
13 whole system then.

14 CHAIRPERSON SCHAEFER: The whole
15 system.

16 COUNCILMAN MARTINO: Okay.

17 CHAIRPERSON SCHAEFER: And it won't let
18 me -- it won't let me be the administrator.

19 COUNCILMAN MARTINO: What's the chances
20 of starting all over again?

21 CHAIRPERSON SCHAEFER: That's what I'm
22 going to try to figure out.

23 Theresa, can we all log out and then
24 log back in?

25 She's going to end the meeting. Okay,

1 she's going to end the meeting and then we're going
2 to need to all log in in about 1 to 2 minutes. And
3 she's going to try to log back in.

4 And if not, we'll figure something out.

5 KAREN GRABOYES: Maybe this is why we
6 should have in-person meetings.

7 CHAIRPERSON SCHAEFER: I'm sorry?

8 ATTORNEY BUTLER: Madam Chair --

9 KAREN GRABOYES: Maybe this is why we
10 should have in-person meetings.

11 CHAIRPERSON SCHAEFER: And who is
12 speaking?

13 ATTORNEY BUTLER: Bill Butler.

14 KAREN GRABOYES: Karen Graboyes.

15 ATTORNEY BUTLER: Do I call in in five
16 minutes, or what?

17 CHAIRPERSON SCHAEFER: Yes. We're
18 going to end the meeting and then she's going to
19 come back on. So everybody --

20 ATTORNEY BUTLER: So in a couple of
21 minutes I call in like I did ten minutes ago?

22 CHAIRPERSON SCHAEFER: Yes.

23 MEMBER PENNETT: Tracee, should we
24 leave the meeting?

25 CHAIRPERSON SCHAEFER: Everybody leave

1 the meeting. Log back in in about -- at
2 about -- give it about five minutes and then log
3 back in.

4 ATTORNEY BUTLER: Thank you, Madam
5 Chair.

6 MEMBER PENNETT: Thank you.

7 (A brief pause is taken.)

8 CHAIRPERSON SCHAEFER: Before I
9 continue on with this meeting, I know someone from
10 the public made a comment this is why we should be
11 doing live meetings. We are following what the
12 Borough is asking of all committees to do and hence
13 this is why we're doing it as a GoToMeeting.

14 This is beyond our control. It is not
15 our decision to make the decision to go live. So
16 it's going to be up to the mayor and council when
17 it's time. They will let us know and then we will
18 be going live at sometime in the future.

19 So with that being said, we did flag
20 salute. So now we're going to go to roll-call
21 please.

22 BOARD SECRETARY: Mr. Ellis?

23 MEMBER ELLIS: Here.

24 BOARD SECRETARY: Ms. Pennett? Karen?

25 MEMBER PENNETT: Here.

1 BOARD SECRETARY: Councilman Martino?

2 COUNCILMAN MARTINO: Present --

3 CHAIRPERSON SCHAEFER: Everyone is
4 going to need to mute themselves.

5 MEMBER PENNETT: I unmuted.

6 BOARD SECRETARY: Mayor Balla?

7 MAYOR BALLA: Here.

8 BOARD SECRETARY: Mr. Speeney?

9 VICE-CHAIRMAN SPEENEY: Here.

10 BOARD SECRETARY: Ms. Spingler?

11 MEMBER SPINGLER: Yes.

12 BOARD SECRETARY: Mr. Pote?

13 MEMBER POTE: Here.

14 BOARD SECRETARY: Mr. Fiorilla?

15 MEMBER FIORILLA: Here.

16 BOARD SECRETARY: Mr. Sims?

17 MEMBER SIMS: Here.

18 BOARD SECRETARY: Ms. Nora?

19 MEMBER NORA: Here.

20 BOARD SECRETARY: Madam Chair?

21 CHAIRPERSON SCHAEFER: Here.

22 BOARD SECRETARY: Mr. Linnus?

23 ATTORNEY LINNUS: Wait a second.

24 Here.

25 BOARD SECRETARY: Mr. Matias?

1 BOARD ENGINEER: Here.

2 BOARD SECRETARY: Mr. Healey?

3 BOARD PLANNER: Here.

4 BOARD SECRETARY: Mr. Jahr?

5 BOARD TRAFFIC CONSULTANT: Here.

6 CHAIRPERSON SCHAEFER: Okay, thank
7 you. Please indicate that we have a quorum to
8 conduct business.

9 (Board continues with agenda items.)

10 (Proceedings, 6:52 p.m.)

11 CHAIRPERSON SCHAEFER: Okay. Ellen,
12 can you please call the next agenda item.
13 Resolution PB21-R12, Case Number PB19-01 Bonnie
14 Burn/BNE, Bonnie Burn Road Redevelopment, Block
15 7402/7403, Lot 19.01, 19.02, 5, and 10 represented
16 by Nicole B. Dory, Esquire. BB/RRA Zone, expiration
17 12/26/21.

18 ATTORNEY LINNUS: All right. Madam
19 Chairperson, before we proceed with the resolution,
20 this differs a little bit from the resolution that
21 was just read into the record on the prior
22 application. That was a memorialization of an
23 action taken.

24 Tonight the resolution you have before
25 you is merely a resolution that the board authorized

1 me to prepare and submit for review tonight. No
2 action has yet been taken. The public hearing has
3 been closed. And the procedure tonight would be to
4 read the resolution into the record, if the board
5 chooses to do so, with changes. The board can make
6 comments, changes. The board professionals can make
7 comments and changes because no action has been
8 taken.

9 So basically at this point in time the
10 resolution can start to be read into the record.
11 There's a couple of changes in the preliminary
12 portion of the resolution that we can go through,
13 and then Ellen can read the rest of the resolution.

14 So without further ado, the only change
15 that I have in the preliminary statement of the
16 resolution -- actually, Mark Healey has a request
17 for a change, and that would be Roman numeral VI on
18 page 8 in reference to the testimony of Eric Keller,
19 the applicant's civil engineer and traffic engineer.

20 Mark?

21 BOARD PLANNER: Yes. So the change
22 really is -- and this is a section where it talks
23 about the testimony. I think the more critical part
24 is the condition of the approval which is on page 8
25 -- well it's my page 18. It's Condition Number 46.

1 CHAIRPERSON SCHAEFER: Mark, before
2 you continue, I just want to stop everybody because
3 I do want to make a comment tagging off of Frank.
4 As you know, we normally read a resolution into the
5 record, and then we have a motion, and a second, and
6 discussion. Because this is such an intense
7 resolution, we're going to change it up a bit, and
8 we're going to have Ellen read the conditions of the
9 resolution.

10 And we're going to proceed with --
11 after Frank does his thing, we're going to proceed
12 with having any applicants who have -- sorry, not
13 applicants -- any professionals who have changes to
14 the conditions and/or additions to the conditions,
15 we'll have them speak. We'll have the planning
16 board members ask their questions, make their
17 comments.

18 Ms. Dory, you can certainly, you know,
19 chime in any time that you believe you have a need to
20 do that.

21 And at that point we will then have
22 Theresa, in the meantime, taking dubious(sic) notes
23 because inevitably we are going to be making
24 changes, and adding, and deleting, what have you.

25 At the end, we will then seek a motion,

1 and we will have Theresa read all of those
2 conditions that are now placed within this
3 resolution, which is, you know, not part of the
4 resolution as we see it right now.

5 ATTORNEY LINNUS: Yeah, that's
6 correct, Madam Chairperson. So basically we could
7 start on Page 13 because none of the professionals
8 had any additional comments on the first 13 pages.

9 CHAIRPERSON SCHAEFER: You said on
10 Page 8?

11 ATTORNEY LINNUS: I thought Mr. Healey
12 had a comment on Page 8, but he's waiting for the
13 condition to be read.

14 CHAIRPERSON SCHAEFER: Okay.

15 ATTORNEY DORY: I'm sorry. Madam
16 Chair? It's Ms. Dory.

17 CHAIRPERSON SCHAEFER: Yes.

18 ATTORNEY DORY: May I ask a question?

19 CHAIRPERSON SCHAEFER: Yeah.

20 ATTORNEY DORY: Can you tell me which
21 version of the resolution you're working off of? I
22 had sent in a letter with comments, so I was just
23 wondering --

24 ATTORNEY LINNUS: Nicole, I responded
25 to you this afternoon that the version of the

1 resolution before the board is the latest resolution
2 that -- with your changes.

3 ATTORNEY DORY: Okay. Okay. I just
4 wanted to make sure that --

5 ATTORNEY LINNUS: That's the document
6 that the board is reviewing.

7 ATTORNEY DORY: Okay. Thank you.

8 ATTORNEY BUTLER: Frank, this is Bill
9 Butler. I would like to make a comment to the Madam
10 Chair.

11 Apparently the resolution was sent to
12 the attorney for the applicant, and the attorney for
13 the objector didn't get a copy of the resolution. I
14 think that's improper, I think it's wrong, and I
15 object to it. And I want my objection put on the
16 record.

17 It's not fair that the attorney for the
18 applicant has a document that you are going to
19 discuss and she has seen and reviewed and I haven't.
20 That's wrong.

21 CHAIRPERSON SCHAEFER: Frank, do you
22 want to respond?

23 ATTORNEY LINNUS: Yeah, you certainly
24 can -- Bill, you certainly can make comment to the
25 draft resolution. And I was authorized to prepare

1 the resolution in the affirmative, and that's what I
2 did. And since the resolution was authorized to be
3 drafted in the affirmative, it was sent to the board
4 attorney -- the applicant's attorney, which is quite
5 common in this situation.

6 But you certainly feel free to comment
7 on -- the resolution is going to be read, so you
8 certainly feel free to comment on the resolution and
9 provide your comments.

10 ATTORNEY BUTLER: Okay. That
11 satisfaction -- does not satisfy me. I haven't had
12 a chance to read and study it. I'm not looking to
13 interfere with tonight's hearing. You go right
14 ahead. But it's not fair that one side had
15 something to review and make comments or changes and
16 I haven't.

17 And I think it's irrelevant that the
18 resolution was requested by Mr. Speeney to be in
19 favor of the applicant. There has been no action
20 taken by this board one way or the other, and that's
21 why I think that procedure is totally incorrect.
22 And in all due respect, it's reversible error.

23 I want that on the record.

24 ATTORNEY LINNUS: Your statements are
25 on the record.

1 Do you want to respond to that,
2 Ms. Dory?

3 ATTORNEY DORY: You know, I think
4 you've already adequately responded, so I don't have
5 any additional response. Thank you.

6 CHAIRPERSON SCHAEFER: Are we moving
7 on, Frank?

8 ATTORNEY LINNUS: You can move on.

9 CHAIRPERSON SCHAEFER: Okay. So with
10 all that being said, we will have Ellen read from
11 Page 13 starting at "whereas."

12 ATTORNEY LINNUS: Unless the -- Madam
13 Chairperson, now we're hearing from the attorney for
14 the objector, and attorney for the objector has
15 placed a statement on the record. And I assume that
16 if the board adopts the resolution tonight, the
17 attorney for the objector may -- may use that in
18 part of any challenge to the approval of the board.

19 So since we do have time, I'm going to
20 leave it up to -- I can't guarantee that the
21 procedure that we're following tonight would not be
22 bulletproof from such a claim. He's made a
23 statement on the record, and if the board wishes to
24 just review the resolution in the affirmative but
25 take no action tonight until Mr. Butler has had a

1 chance to review it, that would be fine.

2 So it's really a decision by the board
3 tonight either to go forward or to defer.

4 VICE-CHAIRMAN SPEENEY: I'd like to
5 make a recommendation that we go forward, read it
6 into the record. At any point after that we could
7 table this if there's a reason to table. But once
8 it's read in the record, it really saves a lot of
9 time.

10 MAYOR BALLA: Madam Chair?

11 CHAIRPERSON SCHAEFER: Who's speaking?

12 ATTORNEY LINNUS: What Mr. Speeney is
13 saying is correct; you don't have to vote on the
14 resolution tonight, but certainly to expedite the
15 matter, and in fairness to the applicant as well as
16 objector, and the time constraints that the board is
17 under, reading the resolution into the record
18 tonight with or without action taken is productive.

19 CHAIRPERSON SCHAEFER: Mayor?

20 MAYOR BALLA: Yes. I would recommend
21 that we read the entire resolution and also post it
22 up on your shared screen so anybody can see it, as
23 well. It would be easier to follow that way.

24 CHAIRPERSON SCHAEFER: Okay. The
25 entire resolution from Page 1 or from what the

1 actual conditions are? We typically -- I'm sorry?

2 MAYOR BALLA: From Page 1.

3 CHAIRPERSON SCHAEFER: Okay. We
4 typically don't do that, Mayor, but if that's what
5 you want, we will do that.

6 Theresa, can you put it on the screen?
7 Are you able to?

8 BOARD SECRETARY: Yeah. Give me a
9 minute, please.

10 Anybody else have comments on this?

11 Paul?

12 MEMBER FIORILLA: Yeah. Just a
13 question about the normal procedure. Mr. Linnus,
14 you said that it's -- normally if you draft a
15 resolution in the affirmative, that it's not -- it's
16 normal to allow the applicant to review, but is it
17 also normal for objectors to get to review in that
18 situation?

19 And does that -- in your opinion, you
20 know, is that a, you know -- a serious error? Is
21 there case law about such things?

22 ATTORNEY LINNUS: I don't think
23 there's any case law, Paul, but I do think that
24 Mr. Butler's objection is well-noted. And in an
25 effort to avoid any potential attack on the

1 resolution, perhaps the board should take into
2 account after the resolution is read perhaps
3 deferring action until the next meeting. But it
4 would be productive tonight, since the resolution
5 was drafted and since the board authorized me to
6 prepare a resolution in the affirmative, to proceed
7 as follows.

8 I think Mr. Speeney's suggestion and
9 the mayor's suggestions are well-taken. Let's go
10 through the resolution, and then the board can
11 determine whether they would like to take action at
12 the next meeting or whether they want to take action
13 tonight. But to err on the side of caution is
14 usually what we should do, so we'll have to wait
15 until the resolution is read and see where the board
16 takes us.

17 CHAIRPERSON SCHAEFER: So we will have
18 the resolution from Page 1 read into the record. My
19 intention --

20 MEMBER FIORILLA: Should we vote on
21 that?

22 CHAIRPERSON SCHAEFER: Excuse me?

23 MEMBER FIORILLA: Should we vote on,
24 you know, whether to read -- start reading at Page 1
25 or just the, you know -- what we were planning to do

1 originally?

2 CHAIRPERSON SCHAEFER: Well, I'm going
3 to go with what our mayor is requesting because it
4 is our mayor, so I will have him -- I will have
5 Ellen read from Page 1.

6 Once this is read into the record, we
7 then will have -- continue. We will have our
8 professionals make their comments. We will have
9 whatever changes need to be made so that we have a
10 document ready to go, and then we make a decision if
11 we just wait until the next meeting to give
12 Mr. Butler, you know, the opposer, Weldon, the
13 opposer, the opportunity to review it.

14 I think that's probably the best avenue
15 to take this evening rather than moving forward and
16 placing a vote.

17 ATTORNEY BUTLER: Madam Chair, this is
18 Bill Butler. I appreciate the comments about what
19 you just made by Mr. Speeney and the mayor. The
20 only problem is tonight when you're discussing this
21 resolution -- I haven't seen it, and my adversary
22 has seen it, and that makes my participation all but
23 moot for tonight. I'm a listener. I'm not active
24 at all, whereas the attorney for the applicant has
25 been offered and requested to make comments on it

1 and -- and -- and I think Frank was right when he
2 said this is a little different because no action
3 has been taken up until now. So that's why I should
4 have been given a copy of this resolution as well as
5 the attorney for the objector -- excuse me -- the
6 applicant or neither one of us.

7 And quite frankly, I didn't think that
8 either one of us would have a copy of this
9 resolution, and I'm shocked, and I'm disappointed
10 that one side was given it and the other side
11 wasn't.

12 CHAIRPERSON SCHAEFER: Well,
13 Mr. Butler, how would you suggest we move forward?
14 Whether I listen to it or not, what do you suggest?

15 ATTORNEY BUTLER: I respectfully
16 suggest that I be sent a copy of that resolution and
17 I have a chance to review it with my client, just as
18 attorney for the applicant, and that no action be
19 taken tonight, and that the action be deferred and
20 the resolution discussed at the next meeting. And
21 that could be a special meeting, and it could be as
22 quick as possible as notice requires.

23 ATTORNEY DORY: Madam Chair?

24 CHAIRPERSON SCHAEFER: Ms. Dory, I'm
25 sorry. Just hold one second.

1 Frank, what is -- why could we not go
2 over this resolution tonight --

3 ATTORNEY LINNUS: You absolutely can
4 go over this resolution, but if you're going to err
5 on the side of caution, then at the conclusion of
6 tonight's meeting, after the resolution is offered,
7 defer action to your next meeting.

8 Mr. Butler will get a copy of the
9 resolution that will be offered for adoption at the
10 next meeting, and he'll have every opportunity at
11 that time to voice his comments.

12 CHAIRPERSON SCHAEFER: Ms. Dory?

13 ATTORNEY DORY: Yes. Thank you. You
14 know, I very much agree with Mr. Linnus that I'm not
15 aware of any case law where an objector gets to
16 review a resolution, and I don't believe that's any
17 grounds for, you know, an appeal or to challenge the
18 board's action in this case. I believe it's a very
19 irregular process, actually, to provide a draft
20 resolution to an objector's attorney.

21 So -- and given the fact that you
22 actually have the resolution on the screen and will
23 be reading the entire resolution into the record,
24 you know, I think that gives Mr. Butler more than an
25 adequate opportunity to review the resolution and

1 respond to anything at the meeting this evening.

2 So the applicant would very much urge
3 the board to move forward with the resolution and
4 take action by voting this evening.

5 CHAIRPERSON SCHAEFER: I think I
6 want --

7 ATTORNEY LINNUS: Madam Chair, let's
8 take the first step and go through the resolution.

9 CHAIRPERSON SCHAEFER: Okay. All
10 right. We're going to start from Page 1. It's on
11 the screen. Ellen, if you could please read the
12 entire resolution into the record.

13 MEMBER SPINGLER: Resolution
14 PB-21-R12, granting preliminary site plan, variance
15 design exceptions, and de minimis exception from the
16 RSIS standards for Bonnie Burn Redevelopers Urban
17 Renewal, LLC located on Bonnie Burn Road, Block
18 7402, Lots 19.01 and 19.02, and Block 7403, Lots 5
19 and 10.

20 Whereas, Bonnie Burn Redevelopers Urban
21 Renewal, LLC ("the Applicant") has applied to the
22 planning board for the Borough of Watchung for
23 preliminary and final major site plan approval to
24 construct an inclusionary multifamily housing
25 development on property located at Bonnie Burn Road,

1 also identified on the Borough of Watchung tax map
2 as Block 7402, Lots 19.01 and 19.02, and Block 7403,
3 Lots 5 and 10 (collectively, "The Property"). The
4 property is subject to the Bonnie Burn Redevelopment
5 Plan that was adopted by the Borough of Watchung on
6 November 19th, 2018, by Ordinance Number OR-18-20 as
7 amended by Ordinance Number OR-20/06 adopted on
8 December 17th, 2020, as most recently amended by
9 Ordinance Number OR-21/08 on July 15th, 2021, and as
10 may be further amended.

11 Whereas, the Property is vacant with
12 the exception of one abandoned residence. The
13 Applicant proposes to construct an inclusionary
14 multifamily housing development consisting of six
15 residential buildings containing 230 units of which
16 46 units are to be set aside for low, very low and
17 moderate income households together with associated
18 common areas and amenities space, including a
19 clubhouse, outdoor swimming pool, dog run,
20 children's recreational area, parking spaces,
21 landscaping, stormwater management improvements and
22 other and related site improvements. The Applicant
23 is also proposing off tract, including but not
24 limited to the installation of a traffic signal at
25 the intersection of Bonnie Burn Road and the site

1 entrance road.

2 Whereas, the Applicant is seeking a
3 design exception to permit the removal of topsoil
4 from the property where no topsoil is permitted to
5 be removed from the site or used as fill; a design
6 exception to permit single stall parking striping
7 where hairpin striping is required; and a de minimis
8 exception from the New Jersey Residential Site
9 Improvement Standard (RSIS) to permit sidewalks to
10 be located on one side of the loop road -- only on
11 one side of the loop road.

12 Whereas, the Applicant has properly
13 complied with all the procedural notification
14 requirements of the Borough of Watchung Land
15 Development Ordinance (LDO) and Municipal Land Use
16 Law (MLUL), thereby vesting the Board with
17 jurisdiction to hear and act upon the application;
18 and,

19 Whereas, Nicole B. Dory, Esquire, of
20 the Connell Foley, LLP law firm, attorney for the
21 Applicant appeared at the public hearings and
22 presented the testimony of the following witnesses:

23 One, John [sic] Raker, AIA from Minno
24 Wasko Architects for the Project;

25 Two, Nick Hollenbeck, a representative

1 of the Applicant;

2 Three, Peter Keller, P.E., the
3 Applicant's Civil Engineer and Traffic Engineer;

4 Four, Peter A. Hansen of EcolSciences,
5 Incorporated, the Environmental Consultants for the
6 project; and,

7 Five, John McDonough, PP, AICP, the
8 Applicant's Professional Planner.

9 Whereas, William Butler, Esquire of the
10 law firm of Butler and Butler representing Weldon
11 Materials, Incorporated (hereinafter "Weldon" or
12 "the Objector"), appeared at the public hearings and
13 presented Hal Simoff, P.E. of Simoff Engineering
14 Associates, Incorporated as Weldon's Traffic
15 Engineer; and,

16 Whereas, public hearings were held on
17 October 15th, 2019; November 19th, 2019;
18 January 29th, 2020; February 18th, 2020; May 19th,
19 2020; June 16th, 2020; June 29th, 2021; July 13th,
20 2021; August 10th, 2021, and September 14th, 2021;
21 and,

22 Whereas, as part of the application the
23 prior applicant previously submitted plans and
24 documents for the application in 2019 and 2020 that
25 were made part of the record and are incorporated

1 herein by reference; and,

2 Whereas, as part of the application the
3 applicant also submitted the following plans and
4 documents which were made part of the record:

5 Number one, Preliminary Site Plans for
6 Bonnie Burn Road Redevelopment, Block 7402, Lots
7 19.01, 19.02, and Block 7403, Lots 5 and 10,
8 prepared by Bowman Consulting, dated May 1st, 2019,
9 and last revised July 23rd, 2021;

10 Two, Boundary Topographic and Wetlands
11 Survey, Block 7402, Lots 19.01 and 19.02, and Block
12 7403, Lots 5 and 10, prepared by Kenny L. Kenyon at
13 PLS, dated March 8th, 2021;

14 Three, Watchung Residential
15 (Architectural Drawings), prepared by Minno & Wasko
16 Architects and Planners, dated July 12th, 2019 and
17 last revised June 10th, 2021;

18 Four, Correspondence Letter, prepared
19 by Bowman Consulting, dated May 11th, 2021;

20 Five, Correspondence Letter, prepared
21 by Bowman Consulting, dated June 11th, 2021;

22 Six, Correspondence Letter, prepared by
23 Bowman Consulting, dated November 19th, 2019;

24 Seven, Correspondence Letter by Bowman
25 Consulting, dated October 1st, 2019;

1 Eight, Transmittal Letter, prepared by
2 Connell Foley, dated May 11th, 2021;

3 Nine, Transmittal Letter, prepared by
4 Connell Foley, dated June 11th, 2021;

5 Ten, Transmittal Letter, prepared by
6 Connell Foley, dated July 29th, 2021;

7 Eleven, Stormwater Management Report,
8 prepared by Bowman Consulting, dated May 1st, 2019,
9 and most recently revised on December 23rd, 2020;

10 Twelve, [this listed below under Board
11 professional reports] Environmental Impact Statement
12 for Block 7402, Lots 19.01 and 19.02, and Block
13 7403, Lots 5 and 10, prepared by EcolSciences,
14 Incorporated, dated May 9th, 2019;

15 Thirteen, One Sheet "Average Grade and
16 Building Height Exhibit" prepared by Bowman
17 Consulting, dated September 30th, 2019;

18 Fourteen, Six-Page "Landscape
19 Maintenance Plan."

20 Whereas, the following reports and
21 review letters were submitted by the Board's
22 Professionals, the Board Site Review Committee, and
23 the Borough Staff and were made part of the record:

24 Number one, Site Plan/Subdivision
25 Committee report, dated June 29th, 2019;

1 Two, Engineering Review Memo, prepared
2 by Tom Herits of Maser Consulting, dated July 18th,
3 2019;

4 Three, Engineering Review Memo,
5 prepared by Thomas Herits of Maser Consulting, dated
6 October 14th, 2019;

7 Number four, May 22nd, 2021,
8 Engineering Review Number One (third engineering
9 review overall), prepared by Ricardo Matias, PE,
10 CEM [sic], CFM of Bright View Engineering, Planning
11 Board Engineer;

12 Five, October 19th, 2021, memorandum,
13 prepared by Mark Healey, P.P./AICP, planning board
14 professional planner;

15 Six, May 20, 2021, memorandum, prepared
16 by Mark Healey, P.P./AICP, planning board
17 professional planner;

18 Seven, traffic review memorandum (sixth
19 traffic review overall), prepared by Joe Fishinger
20 of Bright View Engineering, dated May 21st, 2021;

21 Whereas, the following exhibits were
22 identified in the hearings which took place in 2019
23 and 2020 are made part of the record, Exhibit A-1
24 through Exhibit A-31, and are incorporated herein
25 reference -- in reference; and,

1 Whereas, pursuant to a Court Order
2 dated March 23rd, 2021, the applicant continued the
3 application by submission dated May 11th, 2021;
4 June 11th, 2021; and July 29th, 2021, and the matter
5 proceeded before the planning board during hearings
6 on June 29th, 2021; July 13th, 2021; August 10th,
7 2021; and September 14th, 2021; and,

8 Whereas, the following exhibits were
9 referred by the applicant's witnesses during the
10 hearings and were marked as follows:

11 Exhibit A-32, representative image of
12 unit interior of kitchen;

13 Exhibit A-33, representative image of
14 unit interior from kitchen;

15 Exhibit A-34, clubhouse plans, Sheet
16 A-13;

17 Exhibit A-35, clubhouse elevation
18 front;

19 Exhibit A-36, clubhouse elevation rear;

20 Exhibit A-37, representative clubhouse
21 photograph at kitchen area;

22 Exhibit A-38, representative clubhouse
23 photograph at work spaces;

24 Exhibit A-39, representative fitness
25 area photograph;

1 Exhibit A-40, representative conference
2 area photograph;

3 Exhibit A-41, representative private
4 area clubhouse photograph;

5 Exhibit A-42, representative conference
6 area photograph, second view;

7 Exhibit A-43, representative pet wash
8 area photograph;

9 Exhibit A-44, representative trellis
10 seating area photograph;

11 Exhibit A-45, additional trellis
12 seating area photograph;

13 Exhibit A-46, representative pool area
14 photograph;

15 Exhibit A-47, photo from Oakwood Road
16 East;

17 Exhibit A-48, photo from Oakwood Road
18 East with landscaping and fence added;

19 Exhibit A-49, photo from Woods Lane;

20 Exhibit A-50, flood hazard and fresh
21 water wetlands permit issued by DEP on 6/17/21;

22 Exhibit A-51, Somerset Union Soil
23 Conservation District certification received
24 5/27/21;

25 Exhibit A-52, fencing color palette;

1 Exhibit A-53, fencing extension
2 exhibit;

3 Exhibit A-54, pump station exhibit;

4 Exhibit A-55, sewer schematic, Sheet 1;

5 Exhibit A-56, sewer schematic, Sheet 2.

6 Whereas, the following exhibits were
7 referred by the objector's witness Hal Simoff during
8 the presentation and were marked as follows:

9 Exhibit OW-1, traffic report of Hal
10 Simoff dated July 29, 2021;

11 Exhibit OW-2, vehicle queuing stacking
12 report;

13 Exhibit OW-3, University of Florida
14 Highway Capacity Software, dated 2021;

15 Exhibit OW-4, vehicle queuing report
16 reflecting the numbers from the University of
17 Florida, 2021;

18 Exhibit OW [sic], supplemental traffic
19 report of Hal Simoff, dated September 1st, 2021.

20 Whereas, the following information,
21 testimony and evidence was presented to the board:

22 June 29th, 2021, hearing.

23 Nicole B. Dory, Esquire, applicant's
24 attorney provided the background information to the
25 board:

1 A, the application represented a
2 continuation of the public hearings which took place
3 before the board on October 15th, 2019;
4 November 19th, 2019; January 29th, 2020;
5 February 18th, 2020; May 19th, 2020; and June 16th,
6 2020. The board accepted the transcripts of those
7 hearings as part of the record in these proceedings.

8 B, on May 11th, 2021, the applicant
9 submitted revised plans and documents.

10 C, the project has a flood hazard area
11 permit and a wetlands permit from the New Jersey
12 Department of Environmental Protection, dated
13 June 17th, 2021, as well as a certification from the
14 Somerset Union Soil Conservation District, dated
15 May 27th, 2021.

16 D, the Applicant has also made a
17 submission to the Union County Engineering
18 Department for approval to install a traffic light
19 at the intersection of the project entrance and
20 Bonnie Burn Road.

21 E, the application is an "as of right
22 application" since it complies with the
23 redevelopment plan. However, the Applicant requires
24 construction and design exceptions regarding removal
25 of topsoil, use of single-line parking stall

1 striping, as well as a de minimis exception from
2 RSIS to permit sidewalks to be located on only one
3 side of the loop road.

4 F, on behalf of the Applicant, Ms. Dory
5 agreed to a condition of approval that any approval
6 by the planning board, if granted, would be
7 conditioned upon Union County's approval of the
8 traffic signal, and that if the traffic signal was
9 not approved by the county, the Applicant would
10 return to the board with a new site plan obtaining
11 alternate traffic controls.

12 G, Ms. Dory agreed on behalf of the
13 Applicant that if the Board were to approve the
14 application, the Applicant was agreeable to the
15 following conditions:

16 Number one, the Applicant should
17 provide additional fencing to prevent trespassing
18 and provide screening to nearby properties. A
19 6-foot privacy fence shall be provided extending
20 around the bend in the access drive in the right
21 rear corner of the site (to supplement the screening
22 to the homes on Oakwood Road East) and extending the
23 length of the access drive (to supplement the
24 screening to the homes on Mareu Drive) up to the
25 basin in the front right corner of the site.

1 Landscaped buffering shall be provided in the back
2 right corner (behind the bend in the access road) as
3 addressed in testimony and shown via exhibit.

4 Two, the Applicant should provide
5 conservation easements as set forth in A-7 that will
6 be deed restricted as open space.

7 Three, the applicant agreed to comply
8 with October 4th, 2019, memorandum of Tom Herits,
9 who was then the board engineer, except where then
10 as modified by the Applicant's testimony.

11 Four, with respect to the October 10th,
12 2019, board planner's report, the applicant agreed
13 that all light fixtures would be LED and dark-sky
14 compliant with full color fixtures in all lights and
15 would operate only from dusk to dawn.

16 Five, the Applicant will comply with
17 all Uniform Housing Affordability Controls (UHAC)
18 regulations.

19 Six, the Applicant agreed to a
20 condition that the dens would not be used as a
21 bedroom and would prohibit the same in all leases.
22 Furthermore, the applicant would conduct annual
23 occupancy checks to monitor this condition.

24 Seven, the Applicant agreed to provide
25 a copy of the Applicant's form lease to prohibit the

1 use of a den as a bedroom.

2 Eight, the Applicant agreed to use only
3 organic pesticides as part of landscaping
4 maintenance as well as notify the residents when the
5 applicant is spraying chemicals.

6 Nine, the Applicant shall at least once
7 a year provide to the borough the name, address, and
8 contact information for all of the residents as a
9 safety measure based primarily on the pandemic and
10 other potential emergencies.

11 Ten, maintenance of this site should be
12 done -- would be done through the on-site
13 superintendent, (who shall be provided one of the
14 230 apartments), and the Applicant would also have
15 an on-site team to provide the occupancy checks.

16 Eleven, all leases will prohibit
17 subleasing.

18 Twelve, the applicant agreed to notify
19 all tenants in their leases that their units are
20 located proximate to the Weldon Quarry.

21 Number 2, Jack Raker of Minno and
22 Wasko, the Applicant's architect testified as
23 follows:

24 A, he provided an overview of the
25 clubhouse, patio area, and pool and testified that

1 the layout of the clubhouse conforms to the
2 redevelopment plan and that the amenities are
3 consistent with the redevelopment plan.

4 B, the Applicant [sic] complies with
5 UHAC regulations.

6 C, the architectural plan submission
7 has addressed all of the comments in the board
8 planner's reports.

9 D, the Applicant has submitted an
10 affordable housing deed restriction which will be
11 subject to the review and approval of the borough
12 attorney and the planning board attorney.

13 E, the Applicant agreed to provide the
14 actual unit numbers for the affordable units as a
15 condition of approval, which units shall be
16 identified at the time of final site plan approval.

17 F, all buildings will have at least one
18 affordable housing unit within the building.

19 Three, public comment.

20 Members of the public expressed
21 concerns about landscaping, screening, privacy,
22 color, and type of fencing as well as the height of
23 the fencing. The Applicant agreed to provide an
24 earth tone fence. Public comment also included a
25 concern for the schoolchildren to be generated by

1 the project and whether the clubhouse would be able
2 to accommodate a school bus coming in to pick up all
3 of the children.

4 July 13th, 2021, hearing.

5 Four, Eric Keller, applicant's civil
6 engineer and traffic engineer, testified as follows:

7 He presented Exhibit A-50 which is
8 recorded -- the recorded flood hazard and fresh
9 water wetlands permit issued by the NJDEP on
10 June 17th, 2021.

11 B, he introduced Exhibit A-51 and
12 testified that the Union County Soil Conservation
13 District granted approval for the project on
14 May 27th, 2021.

15 C, he represented the Applicant revised
16 -- revised its plan, and he addressed all of the
17 comments to the May 22nd, 2021, Bright View
18 Engineering letter and on behalf of the Applicant
19 agreed to comply with the report except for the
20 following:

21 One, with respect to Item Number 22 on
22 page 5 of the third engineering memorandum, he
23 testified that having an inlet in that area would
24 not benefit or capture any more runoff, and the
25 board engineer agreed he had no problem with that

1 position.

2 Two, with respect to Item 24 on page 5
3 of the third engineering memorandum, he testified
4 that the inlets meet RSIS requirements. However,
5 the Applicant did add two more additional inlets
6 along the southwestern portion of the loop road
7 which reduced the gutter flows. The board engineer
8 agreed.

9 Three, with respect to Number 25 of the
10 board engineer's report, the Applicant has detailed
11 on the plans the gas main under the sidewalk at its
12 best location. However, the final location will be
13 set by PSE&G. The board attorney had no issue with
14 that response.

15 Four, Number 32 on page 6 of the
16 engineer's report deals with lighting at the
17 crosswalks. The Applicant agreed to work with the
18 board engineer to ensure a sufficient amount of
19 light be provided.

20 D, the board engineer reported the
21 Applicant agreed to a condition to provide notice to
22 residents whenever there is any type of disruption
23 that is caused due to construction. He further
24 reported that the Applicant agreed to a condition
25 should there be any issues with landscaping or light

1 spillage onto neighboring properties or neighboring
2 street, the Applicant agreed to stipulate a time
3 frame for both of those issues.

4 E, the Applicant shall obtain sanitary
5 sewer service from PARSA (the Plainfield Area
6 Regional Sewer Authority).

7 F, the witness presented Exhibit A-52
8 demonstrating the proposed tract lighting --
9 fencing. The fencing shall be an earth-colored
10 variety, which could either be saddle or woodland
11 brown.

12 G, he further agreed on behalf of the
13 Applicant to the following conditions should the
14 Board approve its application:

15 One, the Applicant shall revise its
16 plan to extend the fence such that a 6-foot privacy
17 fence shall be provided extending around the bend in
18 the access drive in the rear -- right rear corner of
19 the site (to supplement the screening to the homes
20 on Oakwood Road East) and extending the length of
21 the access drive (to supplement the screening to the
22 homes on Mareu Drive) up to the basin in the front
23 right corner of the site.

24 Two, the Applicant will remove the
25 walking path in the back of the property for privacy

1 reasons.

2 Three, the Applicant will add sidewalks
3 along the rear of the parking area behind Building 3
4 to Building 6.

5 Four, the Applicant agreed to add more
6 sidewalk behind the clubhouse and to provide
7 lighting of the sidewalk to the satisfaction of the
8 planning board engineer.

9 Five, the Applicant will coordinate
10 fence installation with borough professionals to
11 make sure that no trees are damaged.

12 Six, the Applicant agreed to revise its
13 landscaping plan and will plant Serbian spruce trees
14 at a minimum height of 8 to 10 feet and American
15 holly trees at a minimum of 7 to 8 feet in the
16 buffer areas adjoining Mareu Drive and Oakwood Road
17 East as to reduce the visibility concerns of
18 Mr. and Mrs. Malhotra of 157 Oakwood Road and has
19 agreed to meet with Mr. and Mrs. Malhotra at the
20 time of tree selection.

21 Seven, the Applicant agreed with the
22 Board that the fence to be provided in the buffer
23 will be saddle-colored fence.

24 Eight, he testified that Berkley
25 Heights has not been responsible -- responsive about

1 extending the sewer for the entire project. The
2 MCUA has indicated they have treatment capacity for
3 the project. The local conveyance system would be
4 through the borough. PARSA would be the secondary
5 conveyer, and Middlesex County would operate as the
6 treatment facility.

7 Nine, the Applicant will connect to the
8 existing borough sewer main at Johnston Drive and
9 will provide a pump station for that connection as
10 per Exhibit A-54.

11 Ten, the Applicant agreed that the
12 sewer system to be installed will be subject to the
13 review and approval of the planning board engineer.

14 Eleven, due to the mayor's concerns
15 regarding the weight of the development upon the
16 existing rock formations, the Applicant agreed that
17 prior to the issuance of a building permit, the
18 Applicant will submit geotechnical subsurface
19 compaction reports to the building department to
20 ensure the structural integrity of the buildings.

21 Number 12, a superintendent's apartment
22 will be one of the 230 units to be provided, and
23 there will be a community manager on-site working
24 40 hours per week.

25 Five, Eric Keller, the Applicant's

1 traffic engineer testified as follows:

2 A, he prepared a traffic study dated
3 May 1st, 2019, revised October 7th, 2019. The study
4 covers the intersection of the Bonnie Burn Road with
5 Valley Road, New Providence Road, and Park Avenue
6 down by Route 22. The Applicant used data supplied
7 by the objector's expert.

8 B, he provided a "no build analysis."
9 Everything remains the same except the northbound
10 Valley Road through right movement degrades to a
11 level of service F from E during the morning peak
12 hour.

13 C, the additional traffic to be
14 generated by the proposed development is generally
15 minimal and will not impact operations as viewed by
16 the general public.

17 D, the reasonable and feasible
18 mitigation if implemented by Union County is a
19 traffic signal to be installed at the entrance of
20 the site.

21 E, in summary, he testified that there
22 is sufficient capacity to accommodate the additional
23 traffic generated by the proposed redevelopment of
24 the site. A traffic signal is warranted at this
25 location.

1 F, if a traffic signal is allowed by
2 the county, the site driveway will operate at a
3 level of service of D or better which provides for
4 safe and efficient traffic movements out of the
5 development.

6 G, if the county approves the traffic
7 signal, the Applicant agreed to give signal control
8 to the chemical engineer fire station across the
9 street from the site.

10 Six, John Jahr, PE of Bright View
11 Engineering, the planning board's traffic
12 consultant.

13 A, he advised the Board that the
14 Applicant has addressed all of the comments issued
15 in his May 21st, 2021, report.

16 B, upon his suggestion, the Applicant
17 agreed to share with the planning board traffic
18 consultant the entire traffic impact study submitted
19 to the county.

20 C, the Applicant agreed that the
21 geometric configuration of the intersection will be
22 dictated by the county who has jurisdiction over the
23 intersection. However, the Applicant has agreed to
24 submit the geometric configuration to the Board's
25 traffic engineer for a review prior to final

1 approval by the county.

2 D, all provided reports (applicants,
3 objectors, and board) shall be provided to the
4 county engineer to assist in the county's review.

5 E, the Applicant agreed that it shall
6 be solely responsible for all costs associated with
7 the installation and maintenance of the traffic
8 signal.

9 Seven, public comment.

10 In response to a member of the public,
11 the Applicant testified that children will be picked
12 up by a school bus at the clubhouse.

13 Eight, Peter Hansen, VP and principal
14 of EcolSciences, Incorporated, the Applicant's
15 environmental expert testified as follows:

16 A, he testified that there were three
17 areas of concern on the site, but that these areas
18 would be remediated and the Applicant would accept
19 an RAO (Remediation Action Outcome) for the two
20 areas on the site requiring an RAO.

21 B, the Applicant agreed that a copy of
22 the RAO would be provided prior to the issuance of
23 final project CO.

24 With respect to the -- C, with respect
25 to the threatened endangered species issues raised

1 by the mayor, he testified that the state in its
2 June 17th, 2021, letter the state issued wetlands
3 permits for the project and that the NJDEP would not
4 issue permits without reviewing threatened and
5 endangered species occurrences.

6 D, the Applicant agreed to a tree
7 clearing restriction as required by the NJDEP.

8 Number 9, John McDonough, PP, AICP, the
9 Applicant's planner testified as follows:

10 A, no variances are required. However,
11 there are design exceptions for parking striping and
12 the removal of topsoil as well as an RSIS waiver for
13 sidewalks on one side of the loop road are required.

14 B, he concluded that the Applicant has
15 met the requirements of the redevelopment plan and
16 provided support for its design exceptions as its
17 RSIS exception.

18 C, regarding the design exceptions, he
19 testified that the site plan still functions safely
20 and efficiency notwithstanding these -- those
21 deviations.

22 D, soil replacement is appropriate.

23 E, single striped parking is aimed at
24 nonresidential use where there is a high turnover.
25 That is not the case in a residential setting.

1 F, sidewalks are reasonable on one side
2 of the street for pedestrian safety. Additional
3 sidewalks on both sides of the loop road would be
4 redundant, excessive, and not necessary.

5 G, he testified that strict or literal
6 compliance with the design standards would serve no
7 practical planning purpose in the context of this
8 application.

9 H, in response to Councilman Martino's
10 concern that the Applicant would remove the total
11 perimeter sidewalk, the Applicant's attorney stated
12 that the plans have been revised to show additional
13 sidewalks between Buildings 3 and 6, and the
14 Applicant will further agree to revise its plans to
15 eliminate the walking path.

16 I, the Applicant agreed to a condition
17 that the Applicant would work with the board
18 engineer to see if there are other areas where
19 sidewalks could be added.

20 J, the Applicant proposed to a
21 condition to add exercise stations near the
22 clubhouse to provide additional recreational
23 amenities for the residents of the community and
24 will work with the board engineer to designate a
25 path with exercise stations as an alternative to

1 keep the path further away from the neighbors, but
2 that was not accepted by the Board.

3 K, the Applicant further proposed to a
4 condition that the Applicant will work with the
5 Board and the board engineer to add additional
6 walking space that will satisfy the privacy concerns
7 of the existing neighbors and give the new residents
8 ample space to circulate around the site whenever
9 it's possible.

10 L, in response to Board Member
11 Speeney's concerns regarding preliminary approval
12 only, in returning to the Board for final approval
13 the Applicant agreed if the Board granted approval,
14 it would be for preliminary approval only, and the
15 Applicant would return to the Board for final
16 approval based on the approved preliminary plans.

17 Ten, August 10th, 2021, hearing.

18 A, applicant's attorney provided an
19 update for the Board and announced that the
20 redevelopment plan amendment was adopted on second
21 reading by Borough Council on July 15th, 2021,
22 changing the sewer service related to the
23 application.

24 B, the Applicant's attorney and the
25 Board discussed the issue of preliminary approval

1 only.

2 C, the board's attorney opined that in
3 order to accommodate the board's policy concerns to
4 separate preliminary and final, that a condition of
5 any preliminary approval would be that prior to
6 final approval by the Board, the Applicant would be
7 required to satisfy all conditions of preliminary
8 approval that relate to the approval of the
9 preliminary plans. The Applicant would not be
10 required to file an application for final since the
11 Applicant's original application included an
12 application for final and the Applicant agreed to
13 bifurcate. As long as the final plan was consistent
14 with the preliminary plans approved, no MLUL notice
15 would be required for final.

16 D, the Applicant's attorney approved of
17 the process outlined by the board attorney.

18 E, the Applicant's attorney stated that
19 the sidewalk -- the Applicant's July 29, 2021,
20 submission included revised plans with additional
21 sidewalks to address the Board's concerns at the
22 last meeting for additional walking space.

23 And F, the board engineer said the
24 Applicant should consider additional lighting on the
25 areas of the new sidewalks on the buildings and that

1 it could be accommodated by adding a couple of
2 lights to some of the side of the buildings, the
3 front and rear of the buildings, and the Applicant
4 agreed to consider the comments of the board
5 engineer for additional lighting and included same
6 in its next submission to the Board.

7 September 14th, 2021, hearing.

8 Hal Simoff, the objector's traffic
9 engineer, testified as follows:

10 A, he noted that the Applicant's site
11 plan entitled "Layout and Dimension Plan," dated
12 June 4th, 2021, detailed one driveway at the entry
13 to the site with a center divider.

14 B, the driveway was 20 feet wide on
15 each side, and each side is a single lane.

16 C, the plan does not show a traffic
17 light on Bonnie Burn Road.

18 D, there is a contour issue with the
19 driveway in that it is not straight and level which
20 interferes with sight distance.

21 E, the site plan shows a widening on
22 the westbound lane of Bonnie Burn Road so as to
23 include a left turn into the site.

24 F, he introduced Exhibit OW-1, dated
25 July 29th, 2021, consisting of six pages.

1 G, he testified that currently it is
2 difficult to make a left-hand turn out of the quarry
3 because of backups on New Providence and Bonnie Burn
4 Road.

5 H, as a result of all the traffic
6 studies on Bonnie Burn Road, the witness concluded
7 that there was significant traffic on Bonnie Burn
8 Road during the a.m. peak hour.

9 I, even if a traffic signal were
10 approved and installed, the light would stop traffic
11 on Bonnie Burn Road for 12 seconds, which results in
12 a 31-vehicle backup and an uncorrected level of
13 service F.

14 J, he also noted that the Section HC-5
15 of the Bowman report contains serious
16 inconsistencies.

17 K, OW --

18 ATTORNEY LINNUS: Ellen, before we go
19 to K, that's Roman Numeral IIC-5.

20 MEMBER SPINGLER: Sorry.

21 He also pointed out that Section IIC-5
22 of the Bowman report contains serious
23 inconsistencies.

24 K, OW-1 demonstrates the best care
25 scenario for initial queuing which will increase at

1 each cycle if the project is built.

2 L, OW-2 demonstrates the backup of 31
3 vehicles on the site.

4 M, OW-3 depicts the latest University
5 of Florida Highway Capacity Software (2021) which
6 was not used by the Applicant.

7 N, OW-4 depicts the alignment of Bonnie
8 Burn Road uphill traveling westbound. In this lane
9 the road curves and creates a hazardous and unsafe
10 situation. He concludes that the capacity of Bonnie
11 Burn Road would be exceeded by the proposed project
12 and result in an unsafe intersection. In addition,
13 the proposed project, if built, will have a
14 significant negative impact on the operations of the
15 quarry.

16 O, he further concludes that there is
17 an unsafe and inadequate sight distance at the entry
18 to the project as well as excessive stacking of
19 vehicles on-site, all of which results in a hazard
20 to the safe operation of the motoring public.

21 P, he finally concluded that the
22 project as proposed was unsafe due to the traffic
23 issues presented.

24 12, comments by the board traffic
25 consultant, John Jahr.

1 A, Mr. Simoff's testimony does not
2 change or alter his opinion as set forth in his
3 May 4th, 2021, traffic evaluation and site plan
4 review and is confident that the guidance will come
5 from the county regarding the traffic signal or
6 other off-site needs to let Union County resolve the
7 improvements which may be necessary.

8 B, the same traffic that would go
9 through the new traffic light proposed is currently
10 going through the lights at Bonnie Burn Road and New
11 Providence Road and Bonnie Burn Road and --

12 ATTORNEY LINNUS: Let's go back to A.
13 Mr. Jahr, is that a correct date, May 4th, or is it
14 May 20th? The report. Do you know?

15 BOARD TRAFFIC ENGINEER: I don't -- I
16 don't know off the top of my head, Frank. I can
17 double-check that date. Let me double-check it. I
18 think you're correct; it's May 20th. I'll have a
19 look here. I have everything right here.

20 ATTORNEY LINNUS: Okay. While John is
21 looking for that, Ellen, you can continue.

22 MEMBER SPINGLER: I thought you were
23 giving me a break, Frank.

24 ATTORNEY LINNUS: If you need a break,
25 you've got it.

1 MEMBER SPINGLER: B, the same traffic
2 that would go through the new traffic light proposed
3 is currently going through the lights at Bonnie Burn
4 Road and New Providence Road and Bonnie Burn Road
5 and Valley Road.

6 C, the Board needs to let Union County
7 resolve the traffic issues on Bonnie Burn Road.

8 D, whether there are one or two lanes
9 out of the driveway will probably be the subject of
10 the county's design requirements for the project.

11 E, in the event there are any changes
12 to the plan regarding one lane at the site, the
13 Applicant needs to return to the Board with a
14 revised plan for the Board's consideration. He
15 recommended a condition of approval restricting full
16 certificate of occupancy until the traffic signal is
17 in its place.

18 F, he recommended that he continue to
19 be involved in the project to be certain that the
20 traffic signal affecting this site be time -- site
21 be time-coordinated with the other nearby traffic
22 signals.

23 G --

24 BOARD TRAFFIC ENGINEER: Correction.
25 It's May the 21st, Frank.

1 ATTORNEY LINNUS: Okay. So A will be
2 May 23rd.

3 BOARD TRAFFIC ENGINEER: Two one,
4 May 21st. Okay. Sorry.

5 ATTORNEY LINNUS: It's okay.

6 MEMBER SPINGLER: G, the Applicant
7 agreed to a condition should the Board approve this
8 application that the Board engineer remain in
9 contact with the county engineer on behalf of the
10 Board as the traffic issues are presented and
11 reviewed by the county.

12 13, public comment.

13 A, a neighbor raised concerns about
14 getting out of her driveway if the project were
15 built.

16 And B, another neighbor was concerned
17 about the scale of the development and the addition
18 of 230 homes to the community.

19 At the conclusion of the public
20 comments, the Board chair closed the public hearing,
21 and the Applicant's attorney and the objector's
22 attorney advanced closing arguments.

23 CHAIRPERSON SCHAEFER: Ellen, I'm
24 going to stop you. I'll take over. You've read so
25 many pages, so I'll continue. Give you a rest.

1 MEMBER SPINGLER: Thank you very much.

2 CHAIRPERSON SCHAEFER: Whereas, the
3 Board makes the following ultimate findings of fact
4 and conclusions of law:

5 One, all jurisdictional requirements
6 have been met.

7 Two, the application conforms to the
8 requirements of the redevelopment plan and the land
9 development ordinance.

10 Three, there are no variances required
11 by the application.

12 Four, with respect to the design
13 exceptions and RSIS exception, the Applicant has
14 demonstrated and submitted satisfactory proof that
15 the design exceptions and the RSIS exception are
16 reasonable and within the general purpose and intent
17 of the site plan and subdivision review and approval
18 in that the literal enforcement of one or more
19 provisions of the ordinances is impracticable or
20 will exact undue hardship because of peculiar
21 conditions pertaining to the land in question.

22 Five, the RSIS de minimis exception
23 requested by the Applicant to construct a sidewalk
24 on one side of the street is reasonable and within
25 the general purpose and intent of the RSIS standards

1 and is:

2 A, consistent with the standards of the
3 residential site improvement act;

4 B, reasonable, limited, and not unduly
5 burdensome;

6 C, meets the needs of the public health
7 and safety;

8 D, takes into account existing
9 infrastructure and possible surrounding future
10 development.

11 Six, the approval of this application
12 will substantially address the Borough's obligation
13 to provide affordable housing consistent with the
14 Borough's settlement with the Applicant, the
15 settlement with the Fair Share Housing Center, as
16 required by the Redevelopment Agreement between the
17 Borough and the Applicant, and certification of the
18 Borough Housing Element and Fair Share Plan by the
19 Superior Court of New Jersey Law Division, Somerset
20 County Docket Number SOM-L-902-15.

21 Seven, the Applicant has satisfactorily
22 addressed the major concerns of the Board and its
23 consultants and the public.

24 Eight, the testimony references above
25 are hereby incorporated into the findings of the

1 Board.

2 Nine, the Applicant will comply with
3 all UHAC requirements relating to the affordable
4 housing units.

5 Ten, the Board specifically finds that
6 the traffic issue will be resolved satisfactorily in
7 the event Union County approves the traffic signal
8 at the site entrance. If a traffic signal is not
9 approved, the Applicant or county requires any
10 changes to the site plan, the Applicant must return
11 to the Board with an alternate site plan to address
12 traffic issues presented by the project.

13 Eleven, the Applicant's agreement to
14 proceed with preliminary site plan only at this time
15 reflects the cooperation of the Applicant with the
16 planning board so that the planning board may review
17 the final site plan prior to the Applicant being
18 allowed to proceed with the project.

19 Whereas, at the conclusion of the
20 hearing on September 14th, 2021, the planning board
21 directed that this resolution be prepared and at the
22 conclusion of the hearing on October 19th, 2021, the
23 planning board has taken action by voting on said
24 application and, in accordance with N.J.S.A.

25 40:55D-10 --

1 ATTORNEY LINNUS: Tracee, let me
2 interrupt you. That would be (g)(1). We have to
3 add a 1 after that. 40:55D-10(g)(1) of the Land Use
4 Law has directed that this resolution be prepared.

5 Now, the resolution was drafted. Let
6 me stop you at this point or interrupt you. The
7 resolution was prepared as if the Board were going
8 to adopt it tonight. Once again, it's the board's
9 decision as to whether you're going to adopt the
10 resolution tonight or not.

11 Okay. You can proceed.

12 CHAIRPERSON SCHAEFER: Okay. Should I
13 start at that "now, therefore, be it resolved"?

14 ATTORNEY LINNUS: That's also a clause
15 that would be determined -- would be effective if
16 you're going to adopt the resolution so it need not
17 be written but you can read the proposed conditions
18 which of course are the conditions that could be
19 changed because you haven't taken action on
20 anything.

21 CHAIRPERSON SCHAEFER: Okay. So I'm
22 will go to the conditions.

23 Item Number 1, the Applicant shall
24 comply with any and all conditions, requirements,
25 and agreements as set forth within this resolution,

1 as well as any and all representations made to the
2 Board, both orally and in writing, whether contained
3 in this resolution or not.

4 2, the Applicant shall obtain any and
5 all approvals required by any other governmental
6 agency and shall not undertake any construction
7 activities with the exception demolition and tree
8 clearing --

9 ATTORNEY LINNUS: Let me stop you
10 there, Tracee. I think Mark wanted to make a
11 comment or Rick wanted to make a comment about tree
12 clearing.

13 Rick, mark, are you there?

14 BOARD ENGINEER: Yeah. This is Rick,
15 Rick Matias. I'm here. Yeah, my comment was to
16 expand a bit on this -- on this condition and
17 stipulate that the tree clearing be done after final
18 site plan approval.

19 ATTORNEY LINNUS: All right. So
20 you're suggesting, Rick, I take it, that the
21 clause "and tree clearing" be deleted; is that
22 correct?

23 BOARD ENGINEER: Correct.

24 ATTORNEY LINNUS: Okay.

25 ATTORNEY DORY: Madam Chair, may I

1 just interject and respond to that?

2 CHAIRPERSON SCHAEFER: Sure.

3 ATTORNEY DORY: The reason that we had
4 included that provision about tree clearing is
5 because there is actually a fairly short window with
6 the DEP permit to do tree clearing. I think there's
7 a restriction from the like April 1st to September.
8 So if -- if we could, I guess, maybe clarify that
9 that could be a condition of final approval instead
10 of deleting it?

11 BOARD ENGINEER: I wouldn't have a
12 problem with that if it's stipulated as a condition
13 of final approval. And, of course, the required
14 bonding and performance guarantees would have to be
15 posted subsequent to the final approval for any of
16 that work to begin.

17 ATTORNEY DORY: Certainly. And we
18 would agree to that.

19 CHAIRPERSON SCHAEFER: Okay. So can
20 someone give me verbiage to put in here? Rick?

21 ATTORNEY LINNUS: I guess you can keep
22 -- if Rick is satisfied, you keep "entry clearing"
23 in there, and then the sentence can say "these
24 conditions." "Shall carry over to be a condition of
25 final -- be conditions of final approval." Is that

1 what you mean, Rick?

2 BOARD ENGINEER: Yes. And then we can
3 add "after final site plan approval and the posting
4 of bonds and performance guarantees."

5 ATTORNEY LINNUS: "And the posting of
6 bonds and performance guarantees"?

7 BOARD ENGINEER: Yes.

8 ATTORNEY LINNUS: Theresa, you have
9 that?

10 BOARD SECRETARY: Yes.

11 ATTORNEY LINNUS: Okay. All right,
12 Tracee, Number 3.

13 CHAIRPERSON SCHAEFER: Okay. 3, all
14 conditions contained in this resolution and in the
15 record of the proceedings in this matter, including
16 any agreements made by the Applicant, were essential
17 to the Board's decision to grant the approvals set
18 forth herein.

19 4, the development of this property
20 shall be implemented in accordance with the plans
21 submitted and as approved. In the event that the
22 Applicant shall make or propose any changes, except
23 minor field changes as allowed by the planning board
24 engineer, to the project or structures on the
25 property from those shown on the revised and

1 approved plans and exhibits approved for this
2 application, whether such changes are voluntarily
3 undertaken or required by any other regulatory
4 agency, Applicant shall resubmit any such changes to
5 this board for review and determination.

6 5, the borough reserves the right to
7 request additional site improvements should actual
8 field conditions vary from what is depicted on the
9 plans and/or is indicated by the designs.

10 6, site work, with the exception
11 demolition and tree clearing, shall not commence
12 prior to the terms and conditions set forth herein
13 and prior to obtaining unconditional final site plan
14 approval.

15 Rick, does that --

16 BOARD ENGINEER: Madam Chair -- yes.
17 So that the language here would have to mimic the
18 Condition Number 2. So at the end of "approval," we
19 can also say -- we can also add "and the posting of
20 bonds and performance guarantees."

21 ATTORNEY DORY: Madam Chair?

22 CHAIRPERSON SCHAEFER: Yes.

23 ATTORNEY DORY: I just wanted to
24 clarify the word "unconditional" there." I don't
25 know if that should be removed. I just wanted to

1 make sure that I have the same understanding that
2 you do. You know, I -- my understanding is that if
3 the board voted to grant final site plan approval,
4 you know, after that vote, that as long as we had
5 the necessary performance guarantees we could
6 proceed with tree clearing. So I just was uncertain
7 what "unconditional" meant in paragraph 6.

8 CHAIRPERSON SCHAEFER: I'm going to go
9 refer to Frank.

10 ATTORNEY LINNUS: May I suggest that
11 "unconditional" be deleted? I don't see a problem
12 with that.

13 ATTORNEY DORY: Yes. Okay. Thank
14 you.

15 ATTORNEY LINNUS: As long as the
16 language regarding "and the posting of bonds and
17 performance guarantees" remains.

18 BOARD ENGINEER: I agree.

19 ATTORNEY LINNUS: Okay.

20 ATTORNEY DORY: Yes. Thank you.

21 MEMBER PENNETT: Excuse me. Tracee,
22 are we -- are board members allowed to ask questions
23 or say anything at this point in time?

24 CHAIRPERSON SCHAEFER: No. Let's --

25 ATTORNEY LINNUS: Absolutely, Karen.

1 Yes. Again, no action has yet been taken. I was
2 only authorized to prepare a resolution in the
3 affirmative. It's subject to everyone's comments.

4 CHAIRPERSON SCHAEFER: Frank, I would
5 like our planning board comments at the end of this
6 rather than --

7 ATTORNEY LINNUS: Okay.

8 CHAIRPERSON SCHAEFER: -- intermixed.
9 I think that we should just first go through this,
10 let the changes be made for our professionals, and
11 Nicole, and you, and then come back and -- and
12 revisit all this language with our planning board.
13 Okay?

14 MEMBER PENNETT: Okay.

15 ATTORNEY LINNUS: That's fine.

16 MEMBER PENNETT: Okay. So I'll remain
17 quiet.

18 CHAIRPERSON SCHAEFER: Yeah, just
19 until end.

20 ATTORNEY LINNUS: Make a note of it,
21 Karen.

22 MEMBER PENNETT: Yeah.

23 CHAIRPERSON SCHAEFER: 7, the
24 Applicant is required to post performance guarantees
25 and inspection fees subject to the approval of the

1 borough attorney and the borough engineer as
2 required by the Municipal Land Use Law. This
3 condition shall carry over to be a condition of
4 final approval and need not be satisfied for the
5 Board to consider plans for final site plan
6 approval.

7 8, the grant of the site plan approval
8 specified herein shall not be construed to include
9 satisfaction with the Uniform Construction Code of
10 the state of New Jersey.

11 9, the Applicant shall provide the
12 planning board clerk with eight sets of final plans
13 for on-site and/or off-tract improvements, revised
14 in accordance with the all conditions of the
15 planning board approval. This condition shall carry
16 over to be a condition of final approval and need
17 not be satisfied for the Board to consider plans for
18 the final site plan approval.

19 10, payment of all professional escrow
20 and engineering review fees associated with this
21 application within 30 days of invoicing.

22 11, prior to obtaining building permit,
23 Applicant shall obtain a land disturbance permit.

24 12, the Applicant shall submit --

25 ATTORNEY DORY: Madam Chair -- I'm

1 sorry. Madam Chair, this is Nicole Dory. I just
2 wanted to ask about Condition 11. I understood that
3 we had to submit that land disturbance permit, and I
4 was just wondering, you know -- the Applicant is
5 prepared to submit that if -- if the board grants
6 preliminary approval soon thereafter, but I don't
7 know how long those applications take to -- to, you
8 know, grant, or be approved by the borough. So, you
9 know, I was wondering if we could clarify in
10 Condition 11 that the grant of that application
11 could carry over as a condition of final site plan
12 approval, but we would certainly submit the
13 application when we submit the final plans to the
14 board.

15 CHAIRPERSON SCHAEFER: Rick?

16 BOARD ENGINEER: Yeah. This is Rick
17 Matias. I can interject here. So the Chapter 23 of
18 the borough code actually stipulates that the land
19 disturbance permit would be a submission after the
20 final site plan approval. So you can certainly
21 stipulate it as a -- as a condition of final site
22 plan approval to be carried over to the final site
23 plan submission, but you would not be submitting
24 just after preliminary approval.

25 ATTORNEY LINNUS: Well, the condition

1 states "prior to obtaining a building permit."

2 BOARD ENGINEER: Right. So we can
3 change that -- they can certainly apply for the land
4 disturbance permit prior to getting building
5 permits. Most developers do those in unison once
6 the final site plan is approved. So once the final,
7 it will be -- it will carry over to the final site
8 plan.

9 ATTORNEY LINNUS: So can we state
10 "after final site plan approval and prior to
11 obtaining a building permit"?

12 BOARD ENGINEER: "Or in conjunction
13 with," I would add that language.

14 ATTORNEY LINNUS: "And in conjunction
15 with"?

16 BOARD ENGINEER: Yeah.

17 ATTORNEY DORY: Thank you.

18 CHAIRPERSON SCHAEFER: Can you please,
19 Frank --

20 ATTORNEY LINNUS: Sure. "After final
21 site plan approval and in conjunction with obtaining
22 a building permit."

23 You have that, Theresa?

24 BOARD SECRETARY: Yes.

25 ATTORNEY LINNUS: Okay. 12.

1 CHAIRPERSON SCHAEFER: Applicant shall
2 submit a grading plan subject to the approval of the
3 borough engineer at the time of application for a
4 building permit.

5 13, approval of a building address
6 shall be obtained from the Borough of Watchung
7 postmaster.

8 14, the Applicant shall provide and
9 copy the borough engineer with all correspondence
10 with the NJDEP and Somerset County relating to this
11 application.

12 15, compliance with all professional
13 reports and recommendations from the Environmental
14 Commission and the site plan review committee
15 including, but not limited to the board traffic
16 consultant, the board engineers, and the board
17 planner except as specifically modified or waived
18 herein.

19 16, this approval is for preliminary
20 site plan only.

21 17, the Applicant shall return to the
22 Board for final site plan approval after adoption of
23 this resolution.

24 (Interruption.)

25 CHAIRPERSON SCHAEFER: I don't know

1 who's speaking, but whoever is, please mute
2 yourself. Thank you.

3 18, the Applicant shall enter into a
4 redevelopment agreement with the borough that is
5 satisfactory to --

6 ATTORNEY LINNUS: Madam Chairperson,
7 we have had some discussion, the professionals this
8 afternoon, and perhaps 18 should state, "The
9 Applicant shall enter into a developer's agreement
10 and/or a redevelopment agreement as required by the
11 borough." That is satisfactory to the borough
12 attorney.

13 CHAIRPERSON SCHAEFER: Okay. So can
14 you read that again for, Theresa?

15 ATTORNEY LINNUS: Yes. The
16 introduction would be "The Applicant shall enter
17 into a developer's agreement and/or a redevelopment
18 agreement as required by the borough." And the
19 reason for that is on a typical application, site
20 plan application, I think the ordinance does require
21 that the developer enter into a developer's
22 agreement, but we also have the extra added
23 attraction that this is also a redevelopment
24 project, and it's typical to have redevelopment
25 agreements. So rather than limit it to a

1 redevelopment agreement, it should state
2 "developer's agreement and/or redevelopment
3 agreement."

4 CHAIRPERSON SCHAEFER: That is
5 satisfactory?

6 ATTORNEY LINNUS: Yep.

7 CHAIRPERSON SCHAEFER: You got it?

8 Okay. 19, the Applicant shall revise
9 its plans consistent with all board professionals
10 reports and as agreed to on the record.

11 20, all taxes shall be current.

12 21, the Applicant shall comply with all
13 applicable affordable housing requirements as
14 required by borough ordinances which have been
15 adopted to implement UHAC regulations including, but
16 not limited to, income distribution, phasing of the
17 affordable units, heating source, accessibility and
18 adaptability, amenities, size of units and bedrooms,
19 appointment of an experienced administration agent
20 to handle affirmative marketing, et cetera,
21 development of marketing plan for the affordable
22 units except as same may be modified by the
23 redevelopment agreement.

24 22, with respect to the affordability
25 control period for the units, the Applicant shall

1 submit deed restrictions provided that the newly
2 constructed affordable units shall, pursuant to
3 N.J.A.C. 5:80-26.11 and Borough Ordinance Number
4 18-1697, remain affordable to very low, low and
5 moderate income households for a period of --

6 ATTORNEY LINNUS: Madam Chairperson,
7 it should be for a period of at least 30 years and
8 until terminated by the municipality. Mr. Healey
9 and I had a discussion this afternoon that the UHAC
10 regulation talks about a minimum of 30 years or
11 terminated by the municipality.

12 So, Mark, you're suggesting or agreeing
13 with me that it should be for a period of at least
14 30 years and until terminated by the municipality?

15 BOARD PLANNER: Yes. That is the
16 language that's in the New Jersey Administrative
17 Code. 5:80-26.11 uses the terminology at least
18 30 years as does the standard mandatory deed
19 restriction on the UHAC site.

20 ATTORNEY LINNUS: Okay.

21 ATTORNEY DORY: Madam Chair?

22 CHAIRPERSON SCHAEFER: Yes, Ms. Dory.

23 ATTORNEY DORY: I just wanted to
24 respond to that. The Applicant had actually
25 stricken -- asked to strike the language "at

1 least" because the redevelopment ordinance actually
2 specifies that the period is exactly 30 years. It
3 doesn't have the "at least" language in the
4 redevelopment ordinance.

5 And I do acknowledge that the UHAC
6 regulations speak to at least 30 years in section
7 26.11; however, you know, that language is not in
8 the mandatory provisions of a deed restriction that
9 is in Appendix E of the UHAC regulations.

10 So the Applicant is still asking for
11 that "at least" phrase to be omitted. I think it
12 interjects some uncertainty. We have added in the
13 provision that the deed restriction needs to be
14 terminated by the municipality, so we understand
15 that the period is 30 years and then we have to wait
16 for the municipality to terminate it. So I think
17 that addresses the issue.

18 CHAIRPERSON SCHAEFER: I'll leave that
19 to Frank and Mark.

20 BOARD PLANNER: I have the mandatory
21 deed restriction on my screen, and the terminology
22 "at least" is right in there. So I'm not -- right
23 on their website. One thing that the board can do
24 is the redevelopment agreement is a document --
25 Frank, you can correct me, but that's a document

1 between the redeveloper and the borough council --

2 ATTORNEY LINNUS: Correct.

3 BOARD PLANNER: -- as to
4 redevelopments. And the deed restriction is going
5 to have to be reviewed by the borough attorney prior
6 to being filed. So I would suggest we keep the
7 language consistent with the law, and if the borough
8 attorney feels fine to change that language
9 consistent with what's in the redevelopment plan and
10 agreement, then he can do that.

11 ATTORNEY LINNUS: I agree. I think we
12 should follow the UHAC language.

13 CHAIRPERSON SCHAEFER: Okay, Ms. Dory?

14 ATTORNEY DORY: Okay. That's -- I
15 guess if we could add that it would be acceptable to
16 the borough attorney, that's acceptable to the
17 applicant.

18 CHAIRPERSON SCHAEFER: So what do you
19 want it as, Ms. Dory?

20 BOARD PLANNER: I think there is -- I
21 think there is language in there that says it needs
22 to be reviewed by the borough attorney prior to
23 filing. I'm pretty sure that's somewhere in here.

24 CHAIRPERSON SCHAEFER: Yeah. I think
25 it's in Item 24.

1 ATTORNEY DORY: Okay. Yes. So I
2 think we're covered. That's fine.

3 CHAIRPERSON SCHAEFER: Okay. Number
4 23, in the event that approval by some other board
5 or governmental agency or compliance with any other
6 conditions of the approval herein provides for
7 material changes in the plans heretofore submitted,
8 the Board reserves the right to review such changes.

9 24, all documents required to be
10 prepared by the Applicant -- by the Applicant by
11 borough ordinances as set forth in this resolution
12 shall before execution be submitted and approved by
13 the borough attorney, board attorney, and board
14 engineer.

15 25, the Applicant shall comply with all
16 federal, state, and local laws, rules, and
17 regulations and obtain other governmental approvals
18 in the implementation of this approval.

19 26, this approval is specifically
20 conditioned upon Union County's approval of the
21 traffic signal at the entrance to the site, and if
22 the traffic signal is not approved by the county or
23 if the county requires other site plan changes, the
24 Applicant shall return to the Board with a new site
25 plan depicting all alternate traffic controls to be

1 reviewed by the Board. This condition shall carry
2 over to be a condition of final approval and need
3 not be satisfied for the Board to consider plans for
4 final site plan approval.

5 27, the Applicant will provide
6 additional fencing to prevent trespassing and to
7 provide privacy to the neighboring properties. A
8 6-foot privacy -- we should add "fence."

9 ATTORNEY LINNUS: Yes.

10 CHAIRPERSON SCHAEFER: A 6-foot
11 privacy fence shall be provided extending around the
12 bend in the access drive in the right rear corner of
13 the site (to supplement the screening to the homes
14 on Oakwood Road East) and extending to the length of
15 the access drive (to supplement the screening to the
16 homes on Mareu Drive) up to the basin in the right
17 front -- in the front right corner of the site.

18 28, the Applicant will provide
19 conservation easements --

20 BOARD SECRETARY: Tracee, this is
21 Theresa. On 27 you're adding what language?

22 CHAIRPERSON SCHAEFER: In sentence
23 two, after "a 6-foot privacy" should be "fence."

24 BOARD SECRETARY: Okay. Got it.
25 Thank you.

1 CHAIRPERSON SCHAEFER: Okay. 28, the
2 Applicant will provide conservation easements as set
3 forth in Exhibit A-7 that will be deed-restricted
4 open space subject to the approval of the borough
5 attorney and borough engineer. This condition shall
6 carry over to be a condition of final approval and
7 need not be satisfied for the board to consider
8 plans for final site plan approval.

9 29, the Applicant shall comply with the
10 October 4th, 2019, memorandum of Tom Herits, the
11 former board engineer, except as modified by the
12 Applicant's testimony.

13 30, all light fixtures will be LED and
14 dark-sky compliant with full color fixtures in all
15 lights and will operate only from dusk to dawn.

16 31, any dens depicted on the plans will
17 not be used as bedrooms, and this prohibition will
18 be disclosed in all leases. Furthermore, the
19 Applicant shall conduct annual occupancy checks to
20 monitor this condition.

21 32, the Applicant shall submit a copy
22 of the Applicant's form lease to the planning board
23 prohibiting the use of dens as bedrooms.

24 33, the Applicant shall use only
25 organic pesticides as part of landscaping

1 maintenance and will notify the neighbors when the
2 Applicant is spraying chemicals.

3 34, the Applicant shall provide to the
4 borough on an annual basis the name, address, and
5 contact information of all residents of the
6 community as a safety measure.

7 35, maintenance of the site will be
8 supervised by the on-site superintendent, and the
9 Applicant will also have an outside team to
10 supervise the occupancy checks. The superintendent
11 will reside in one of the 230 apartments in the
12 development. Prior to the issuance of the first
13 residential building TCO or CO, the Applicant shall
14 identify the apartment to be provided to the
15 superintendent.

16 ATTORNEY LINNUS: Madam Chairperson,
17 we had a discussion with Mr. Healey. He may want a
18 change in the -- in this particular condition.

19 BOARD PLANNER: It just seems to make
20 more sense to me to have this as a condition of
21 building permits since that's when the plans are
22 actually provided prior to construction. CO or TCO
23 is when the building is being inspected after the
24 fact.

25 ATTORNEY LINNUS: Right. So I suspect

1 that the language could be "prior to the issuance of
2 the first residential building permit" and delete
3 TCO or CCO -- or CO?

4 BOARD PLANNER: That's my -- yes.

5 CHAIRPERSON SCHAEFER: Ms. Dory?

6 ATTORNEY DORY: Yes, that's fine.

7 Thank you.

8 CHAIRPERSON SCHAEFER: Okay.

9 ATTORNEY LINNUS: All right. Theresa,
10 did you get that?

11 BOARD SECRETARY: No. Can you -- so
12 can you --

13 ATTORNEY LINNUS: The last sentence
14 should read "prior to the issuance of the first
15 residential building permit." Delete "TC or CO" and
16 then continue with "the Applicant shall identify."

17 BOARD SECRETARY: Got it. Thank you.

18 CHAIRPERSON SCHAEFER: 36, the leases
19 will not permit subleasing.

20 37, the Applicant agreed to their -- in
21 their leases -- I'm sorry. 37, the Applicant agreed
22 to in their leases notify all tenants that their
23 units are located proximate to the Weldon Quarry.

24 38, affordable housing deed
25 restrictions will be subject to the review and

1 approval of the borough attorney, the planning board
2 attorney, and the planning board planner. The deed
3 restriction shall be consistent with the mandatory
4 deed restriction for rental properties per UHAC and
5 shall contain the information outlined in Comment
6 Number 51 of the board planner's report including,
7 but not limited to, a listing identifying each of
8 the affordable units by unit number, number of
9 bedrooms, and income level (very low, low, or
10 moderate.) This condition shall carry over to be a
11 condition of final approval and need not be
12 satisfied for the board to consider plans for the
13 site -- final site plan approval.

14 ATTORNEY LINNUS: Excuse me. Mark,
15 are you comfortable with that?

16 BOARD PLANNER: I am, yes.

17 ATTORNEY LINNUS: Okay.

18 CHAIRPERSON SCHAEFER: 39, the
19 affordable housing deed restriction shall be
20 recorded prior to the issuance of the first building
21 permit for the development.

22 Number 40, all buildings will have at
23 least one affordable housing unit within the
24 building.

25 Mark?

1 BOARD PLANNER: That's what was
2 testified to.

3 ATTORNEY LINNUS: Yes.

4 CHAIRPERSON SCHAEFER: No. I didn't
5 know if you raised your hand. Sorry.

6 41, in the event there is any
7 disruption caused by the Applicant's construction of
8 the site, the Applicant shall provide notice to the
9 neighbors.

10 42, subject to the Applicant obtaining
11 sanitary sewer service from the parcel providing
12 sewer connections for the project, this condition
13 shall carry over to be a condition of final approval
14 and need not be satisfied for the Board to consider
15 plans for final site plan approval.

16 43, the fencing to be provided in the
17 buffer areas will be of an earth-colored variety
18 (Trex brand, saddle brown color, or available brand
19 and equivalent color).

20 44, the Applicant shall revise its
21 plans to: Extend the fence such that a 6-foot
22 privacy fence will be provided extending around the
23 bend in the access drive in the right rear corner of
24 the site (to supplement the screening to the homes
25 on Oakwood Road East) and extend the length of the

1 access drive (to supplement the screening to the
2 homes on Mareu Drive) up to the basin in the right
3 -- in the front right corner of the site, removing
4 the walking path in the back of the property, and
5 add sidewalks along the rear of the parking areas
6 behind to the walking trail through the woods that
7 runs from Building 3 to Building 6, all as indicated
8 in testimony and shown via exhibits.

9 BOARD ENGINEER: Madam Chair, the term
10 "walking trail" should be removed, and the Applicant
11 agreed that the walking trail would be removed
12 through the woods so that -- and the current plans
13 do not show that, so it is accurate. So let's -- so
14 the language here, "remove the walking path from the
15 back of the property and add sidewalks from the rear
16 parking areas to the areas between Buildings 3 and
17 6."

18 CHAIRPERSON SCHAEFER: So we're
19 removing -- we're keeping "and add sidewalks" --

20 BOARD ENGINEER: No. That all comes
21 out. That all comes out. "Parking areas behind --
22 to the walking trail through the woods," that all
23 comes out. So I'll re-read it the way I had it
24 written here.

25 "And add sidewalks along" -- no, wait.

1 "And add sidewalks from the rear parking areas to
2 the areas between Buildings 3 to Building 6."

3 ATTORNEY LINNUS: "All as indicated in
4 testimony and shown via exhibits."

5 BOARD ENGINEER: Yes, that remains.

6 ATTORNEY LINNUS: So you're deleting
7 "behind the walking trail through the woods that
8 runs"?

9 BOARD ENGINEER: Correct.

10 ATTORNEY LINNUS: Theresa, did you get
11 that.

12 BOARD SECRETARY: Yes.

13 BOARD ENGINEER: Okay. Thank you.

14 CHAIRPERSON SCHAEFER: 45, the
15 Applicant will coordinate the installation of the
16 fence with the borough professionals to make sure
17 that no trees are damaged.

18 46, the Applicant agreed to revise its
19 landscaping plan and will plant Serbian spruce trees
20 at a minimum height of 8 to 10 feet and American
21 holly trees at a minimum of --

22 ATTORNEY LINNUS: Minimum height, yes.

23 CHAIRPERSON SCHAEFER: So we're
24 keeping "height"?

25 ATTORNEY LINNUS: Yes.

1 CHAIRPERSON SCHAEFER: Okay. Because
2 that was crossed out.

3 ATTORNEY LINNUS: Right.

4 CHAIRPERSON SCHAEFER: At a minimum
5 height of 7 to 8 feet in the buffer areas adjoining
6 the residents on Mareu Drive and Oakwood Road East
7 so as to reduce the visibility concerns of
8 Mr. and Mrs. Malhotra of 157 Oakwood Road and has
9 agreed to meet with Mr. and Mrs. Malhotra at the
10 time of tree selection.

11 Theresa, did you get the one, that
12 "height" remains?

13 BOARD SECRETARY: Yes.

14 CHAIRPERSON SCHAEFER: Okay. 47, the
15 Applicant will connect to the existing borough sewer
16 main at Johnston Drive and will install a pump
17 station for that connection as per Exhibit A-54.
18 This condition shall carry over to be a condition of
19 final approval and need not be satisfied for the
20 Board to consider plans for final site plan
21 approval.

22 48, the sanitary sewer system to be
23 installed will be subject to review and approval of
24 the planning board engineer. The Applicant shall
25 obtain a treatment work approval from NJDEP. This

1 condition shall carry over to be a condition of
2 final approval and need not be satisfied for the
3 Board to consider plans for final site plan
4 approval.

5 49, prior to the issuance of a building
6 permit the Applicant will submit geotechnical
7 subsurface compaction reports to the building
8 department to ensure the structural integrity of the
9 buildings.

10 50, maintenance of the site will be
11 supervised by the on-site superintendent, and the
12 Applicant will also have an outside team to
13 supervise the occupancy checks. The superintendent
14 will reside in one of the 230 apartments in the
15 development prior to the issuance of the first --

16 What are we adding in here, Mark? The
17 first --

18 BOARD PLANNER: Madam Chair, I think
19 this is a complete duplicate of Number 35. So I
20 think -- I think Number 50 can just come out.

21 CHAIRPERSON SCHAEFER: Yep. So I'm
22 going to start renumbering. So Number 50 is
23 deleted. 51 --

24 ATTORNEY LINNUS: 51 becomes 50, yep.
25 Okay.

1 CHAIRPERSON SCHAEFER: In the event
2 Union County approves the traffic signal prepared by
3 the Applicant, the Applicant shall give signal
4 control to the chemical engine fire station across
5 the street from the site.

6 52 becomes 51. The Applicant shall
7 submit to the planning board traffic consultant all
8 traffic impact studies submitted to Union County.

9 53 becomes 52. The geometric
10 configuration of the intersection will be dictated
11 by Union County. However, the Applicant has agreed
12 to submit the geometric configuration to the board
13 traffic engineer for the board traffic engineer's
14 review prior to the final approval by the county.

15 54 becomes 53. The Applicant will
16 revise its plans consistent with all of the
17 agreements the Applicant has made herein above.

18 55 becomes 54. The Applicant shall
19 obtain all necessary approvals from PARSA and all
20 other required agencies to secure sanitary sewer
21 capacity and sewer connections for the project.
22 This condition shall carry over to be a condition of
23 final approval and need not be satisfied for the
24 Board to consider plans for final site plan
25 approval.

1 56 should be 55. Any and all children
2 being picked up via school buses are to be picked up
3 at the property clubhouse.

4 57 shall become 56. Trash and
5 recycling chutes shall be located within each
6 building.

7 58 will become 57. All leases shall
8 provide for occupancy limit of two persons per
9 bedroom.

10 59 shall be 58. In addition to the
11 list of tenants to be provided to the borough, the
12 proper information for all administrative support
13 staff and regular staff must also be provided.

14 60 will become 59. A security camera
15 system is to be installed at each entry door and
16 public space.

17 61 will become 60. The clubhouse and
18 all public spaces are to be smoke-free.

19 62 will become 61. Trash and recycling
20 to be available at the outdoor spaces near and
21 around the clubhouse.

22 63 will become 62. The income
23 designations for COAH obligations are to be included
24 in the deed restrictions.

25 64 shall become 63. There shall be a

1 limit of two pets per apartment. Weight and breed
2 limitations shall be set forth in all leases.

3 65 shall become 64. A construction
4 staging plan is to be submitted to the borough and
5 board engineer with the submission of construction
6 permits.

7 66 shall become 65. There shall be no
8 project phasing. The entire project is to be
9 constructed in one phase with construction permits.
10 TCOs and COs may be obtained building by building.

11 67 shall become 66. There shall be a
12 24-month landscaping jurisdiction period to replace
13 any and all landscaping that does not survive or
14 satisfactorily satisfy the approval.

15 68 shall become 67. There shall be a
16 12-month light jurisdiction period to make any
17 necessary lighting adjustments to rectify any light
18 spillage.

19 69 will become 68. The lighting
20 conduit layout plan is to be provided to the
21 building department with the submission of
22 construction permits.

23 70 shall become 69. There shall be no
24 bedrooms in the maintenance or clubhouse offices.

25 71 shall become 70. The ownership of

1 the proposed pump station shall remain with the
2 property owner and not the borough.

3 72 shall become 71. The ownership of
4 the force main, gravity sewer, and all necessary
5 infrastructure of the sewage conveyance system on
6 the property shall remain with the property owner
7 and not the borough.

8 ATTORNEY LINNUS: I think Rick has a
9 comment to Condition 72.

10 BOARD ENGINEER: So I would want to
11 add -- after "on the property," we can add "and in
12 the right-of-way." So the entire force main from
13 private property to the connection on Johnston Drive
14 would be owned and operated by the owner of the
15 property and not the borough. So I move to add "and
16 in the right-of-way" after "on the property."

17 CHAIRPERSON SCHAEFER: Ms. Dory?

18 ATTORNEY DORY: That's acceptable to
19 the applicant.

20 CHAIRPERSON SCHAEFER: Thank you.

21 BOARD SECRETARY: Are we talking about
22 71, previously 72?

23 CHAIRPERSON SCHAEFER: Correct.

24 BOARD ENGINEER: Correct.

25 ATTORNEY LINNUS: "And in the

1 right-of-way."

2 BOARD SECRETARY: Yep. Got it.

3 Thanks.

4 BOARD ENGINEER: Thank you.

5 CHAIRPERSON SCHAEFER: 73 is now the
6 new 72. The clubhouse and the pump station shall be
7 served by an appropriately sized generator, and the
8 pump station shall have backup pumps, system check,
9 warning signals, additional mobile bypass pumps, and
10 a 24-hour emergency contact readily available.

11 74 shall become 73. The sewer
12 conveyance system shall be designed with the known
13 fact that blasting occurs at the adjacent quarry.

14 75 shall become 74. The property owner
15 shall be responsible to make any and all repairs to
16 the conveyance system in a timely fashion.

17 75 -- nope. 76 shall become the new
18 75. Prior to the submission of construction
19 permits, the downstream sanitary sewer capacity
20 shall be verified to the satisfaction of the
21 planning board engineer to accommodate the
22 additional flow from the proposed development.

23 ATTORNEY LINNUS: All right. Madam
24 Chair, I have one condition to ask -- to add after
25 discussing it with Mr. Jahr, and that would be

1 Proposed Condition 76. And the condition could
2 read:

3 Should the county approve the
4 installation of a traffic signal or require any
5 off-site or off-tract improvements, the applicant
6 shall be solely responsible for all costs and
7 maintenance associated with those improvements.

8 VICE-CHAIRMAN SPEENEY: Chair?

9 CHAIRPERSON SCHAEFER: One minute,
10 Don.

11 Ms. Dory?

12 ATTORNEY LINNUS: Well, first, John
13 Jahr, you're in agreement with that, correct?

14 BOARD TRAFFIC ENGINEER: Yes, sir.
15 That's exactly what we'd like to have added.

16 ATTORNEY LINNUS: Okay.

17 BOARD SECRETARY: Frank, I'm going to
18 need you to repeat that. Sorry.

19 ATTORNEY LINNUS: Okay. Should the
20 county approve the installation of a traffic signal
21 or require any off-site or off-tract improvements,
22 the applicant shall be solely responsible for all
23 costs and maintenance associated with those
24 improvements.

25 That speaks to the issue of whether the

1 county will require any improvements to Bonnie Burn
2 Road, including any widening, or expansion, or any
3 off-tract improvement relating to the traffic
4 issues.

5 ATTORNEY DORY: That's acceptable to
6 the applicant.

7 BOARD SECRETARY: I can't write that
8 fast. I have, "Should the county approve the
9 installation of a traffic signal or require" --

10 ATTORNEY LINNUS: Require any off-site
11 or off-tract improvements, the applicant shall be
12 solely responsible for all costs and maintenance
13 associated with those improvements.

14 BOARD SECRETARY: Okay. Thank you.

15 CHAIRPERSON SCHAEFER: Anything else,
16 Frank?

17 ATTORNEY LINNUS: That's all I had.

18 VICE-CHAIRMAN SPEENEY: Tracee?

19 CHAIRPERSON SCHAEFER: Go ahead, Don.

20 VICE-CHAIRMAN SPEENEY: The same
21 comment about the traffic light maintenance costs,
22 et cetera. I'm going to ask a question about the
23 applicant being responsible for any ongoing fees
24 that might be associated with that light, and I
25 would like to have that included.

1 CHAIRPERSON SCHAEFER: Don, before we
2 get to that point, let me just finish with our
3 professionals, and then I'll get to that.

4 Was there anything else from our
5 professionals that had any additional comments or
6 additions that they wanted?

7 BOARD PLANNER: I had nothing else.

8 BOARD ENGINEER: Same here. This is
9 Rick. All my comments were addressed. Thank you.

10 CHAIRPERSON SCHAEFER: Thank you.

11 All right, Don. I'm sorry. Go ahead.

12 BOARD TRAFFIC ENGINEER: All my
13 comments were addressed and added.

14 CHAIRPERSON SCHAEFER: Go ahead, Don.

15 VICE-CHAIRMAN SPEENEY: The last item
16 that was raised, which is now Number 76, I'm
17 basically saying that there may be some ongoing fees
18 associated with the traffic light, as well, from
19 Union County. And I think that that sentence should
20 be modified to include the words "and any fees" --
21 "any ongoing fees associated with the traffic
22 signal."

23 CHAIRPERSON SCHAEFER: Ms. Dory?

24 ATTORNEY DORY: I have no objection.
25 That's fine.

1 ATTORNEY LINNUS: All right. So I
2 guess the language could be modified to say -- pick
3 this up, Theresa -- "responsible for all costs and
4 fees -- and ongoing fees."

5 CHAIRPERSON SCHAEFER: Any ongoing
6 costs and fees.

7 ATTORNEY LINNUS: Well, all costs and
8 any ongoing fees. I feel more comfortable with the
9 word "all."

10 BOARD PLANNER: I agree.

11 CHAIRPERSON SCHAEFER: Don, are you
12 okay with that?

13 VICE-CHAIRMAN SPEENEY: Yeah, I'm
14 okay.

15 CHAIRPERSON SCHAEFER: Okay. So now
16 I'm going to open it up to the planning board
17 members. Does anybody want --

18 VICE-CHAIRMAN SPEENEY: Tracee, can I
19 continue?

20 CHAIRPERSON SCHAEFER: Let me finish
21 my sentence, and you're more than happy to continue.
22 I just want to go one by one. I'm not going to be
23 going from one to another.

24 So we can start with Don.

25 VICE-CHAIRMAN SPEENEY: Yeah. The

1 issue about the traffic light and fees was one of my
2 issues that was taken care of.

3 One other editorial thing on page --
4 what is my original Page 10, 9 -- Number 9-E talks
5 about single-striped parking is aimed at
6 nonresidential use. I think that single-striped
7 parking is for residential setting, and I just think
8 the sentence is out of whack. Because
9 single-striped parking is not aimed at residential
10 use -- nonresidential use.

11 CHAIRPERSON SCHAEFER: This was
12 testimony by John McDonough.

13 VICE-CHAIRMAN SPEENEY: Well, it may
14 be testimony, but I think it's backwards. I find it
15 confusing that --

16 CHAIRPERSON SCHAEFER: But I'm not
17 going to -- I think we need to have Frank check into
18 this. Is this indeed what the testimony was. If it
19 is the testimony, then it needs to remain. We can't
20 redo his testimony.

21 ATTORNEY LINNUS: Ms. Dory, do you
22 have any recollection of Mr. McDonough's testimony
23 as we stand here tonight?

24 ATTORNEY DORY: I'll have to look at
25 the transcript. I can look at that.

1 But, you know, we were looking for a
2 design waiver to permit single-line parking stall
3 striping where hairpin striping is required.

4 ATTORNEY LINNUS: Right.

5 BOARD PLANNER: This is Mark speaking.
6 I think Don is correct. I think -- I don't know if
7 he said this, but I think what he would have meant
8 is hairpin striping is aimed at nonresidential use.

9 ATTORNEY DORY: Right.

10 CHAIRPERSON SCHAEFER: And not that
11 I'm disagreeing, but I don't want to change his
12 testimony if that's, indeed, what he testified.

13 So, Ms. Dory, if you can check into
14 that, please?

15 ATTORNEY DORY: Sure. I will look at
16 the transcript.

17 CHAIRPERSON SCHAEFER: Okay.

18 What else, Don?

19 VICE-CHAIRMAN SPEENEY: Thank you.

20 CHAIRPERSON SCHAEFER: Is that it,
21 Don?

22 VICE-CHAIRMAN SPEENEY: Tracee, for
23 now. Thank you. Yes.

24 CHAIRPERSON SCHAEFER: I'm only going
25 one by one.

1 Okay. Next up? Karen.

2 MEMBER PENNETT: Okay. Yeah. I'm
3 concerned about the Number 2 and Number 6 which will
4 be allowing the tree clearing prior to final site
5 approval.

6 CHAIRPERSON SCHAEFER: What page are
7 you on, Karen?

8 MEMBER PENNETT: Page 15, I believe.

9 CHAIRPERSON SCHAEFER: Okay.

10 MEMBER PENNETT: Okay. In each case
11 with the exception, demolition and tree clearing, is
12 waived prior to final site approval. I would like
13 to remove the tree clearing because, you know, there
14 is a tentative light going up and sewers. Neither
15 are finalized, so changes could be happening. Now,
16 once you start clearing trees, the trees are gone.
17 And if site plans have to be revised because they
18 did not get approval for the light or because sewer
19 systems are changing, well, the trees are gone. You
20 can't bring them back.

21 So I don't think the trees should be
22 removed until everything is finalized.

23 CHAIRPERSON SCHAEFER: Comments?

24 BOARD ENGINEER: Well, I can jump in
25 here. This is Rick Matias. So the language that we

1 amended earlier was to include that the tree
2 clearing can only occur after final site plan
3 approval. So this is the -- this would be
4 preliminary. Final would be subsequent.

5 It would be, you know, up to the board
6 if they would want to make something a little bit
7 more -- more stringent.

8 MEMBER PENNETT: Well, I don't think
9 you want to let everybody take all the trees down,
10 you know, do their clear cutting, so to speak, and
11 then all of a sudden realize, "Whoops, we have to
12 make changes. So, yeah, we took all these trees
13 down, but now we have to take these, but we didn't
14 have to take those."

15 And I, you know -- we're losing enough
16 trees in this area due to the emerald ash borer and
17 due to the spotted lanternfly. I don't think you
18 should be taking more trees down than necessary.

19 ATTORNEY LINNUS: Right. Theresa,
20 perhaps you can -- excuse me, Karen -- Theresa,
21 perhaps you could, to put this in proper
22 perspective, can you read what Condition Number 2
23 would say?

24 BOARD SECRETARY: Sure. The whole
25 thing?

1 ATTORNEY LINNUS: Yeah, I think so.

2 BOARD SECRETARY: Okay. The applicant
3 shall obtain any and all approvals required by any
4 other governmental agency and shall not undertake
5 any construction activities with the exception
6 demolition and tree clearing, until all approvals
7 have been obtained. These conditions shall carry
8 over to be a condition of the final approval and
9 need not be satisfied for the board to consider
10 plans for final site plan approval and the posting
11 of bonds and performance guarantees.

12 ATTORNEY LINNUS: Does that help you,
13 Karen, or --

14 MEMBER PENNETT: But -- but it's still
15 saying, "Okay. You can clear the trees before final
16 approval."

17 CHAIRPERSON SCHAEFER: No. They're
18 not getting final approval.

19 Rick, can you explain that, please?

20 MEMBER PENNETT: This says "with the
21 exception of."

22 BOARD ENGINEER: With the exception of
23 demolition and tree clearing until all approvals
24 have been obtained, this condition shall carry over
25 to be a condition of final approval.

1 Frank, if they get preliminary, can
2 they post bonds and performance escrows? No, right?
3 They have to get final approval.

4 ATTORNEY LINNUS: Yeah. I think they
5 have to wait until final.

6 BOARD ENGINEER: Right. So the adding
7 -- that was kind of the catchall. Because in theory
8 they could go ahead and get the demolition permits
9 to knock down the house, which you don't need formal
10 approval from a board to do that; you just need the
11 necessary shutoff letters from utilities. But they
12 can't post -- adding that additional language there
13 at the end, the "and the posting of bonds and
14 performance guarantees," they cannot do that until
15 they get a final approval.

16 So we can continue -- we can amend the
17 entire language a little bit more to make it a
18 little bit more clearer, certainly. That definitely
19 catches it because they can't get tree-clearing
20 permits until they post all of the bonding, and that
21 won't happen until they get final approval.

22 CHAIRPERSON SCHAEFER: Okay. I think
23 Karen is concerned with -- and, Karen, correct me if
24 I'm wrong -- is that you don't want them clearing
25 trees until they have all their agency approvals?

1 MEMBER PENNETT: Agency approvals,
2 traffic light approval, yes.

3 CHAIRPERSON SCHAEFER: That's what
4 Karen is getting at.

5 MEMBER PENNETT: Right. When you say
6 "the exception of demolition and tree clearing," I'm
7 getting the impression that they can go ahead and
8 start doing the clearing of the trees prior to.

9 CHAIRPERSON SCHAEFER: Rick, your take
10 on it?

11 BOARD ENGINEER: Yeah. I see the
12 point. I see the comment. I guess the concern is
13 what if the county, for example, denies the
14 installation of the traffic signal? You know, I
15 would -- I think, actually, I would defer to Ms.
16 Dory and see if she would accept or entertain
17 removing the words "tree clearing" and just leaving
18 in "with the exception of demolition."

19 I think you mentioned there was
20 restriction on the tree clearing anyway which was up
21 to September. We're now almost into November, so,
22 you know, you're past the window anyway for this
23 season. So you're well into the following season
24 anyway, and maybe by then you would have all your
25 agency approvals.

1 ATTORNEY DORY: Well I think it's
2 pretty typical to allow an applicant to start these
3 types of site-preparation activities after they
4 receive final approval, before they have gotten all
5 their outside agency approvals since that can take a
6 long time. I do understand the point. However, I
7 just would like to note that there is a pretty
8 significant conservation easement being proposed for
9 this site. I think it's over, like, 60 percent of
10 the property. And we do have the tree-clearing
11 limitation as well as posting the performance
12 guarantees. So in the event that some tree was
13 taken down that wasn't supposed to be, I mean, we
14 would restore it.

15 MEMBER PENNETT: Yeah, but when you
16 restore it, you would take an old tree of, you know,
17 50 years old, and you replace it with a new little
18 sapling and, you know, there's quite a difference
19 there. Once you take a tree down, you can -- you
20 can replace but you can't, you know -- it's a
21 different tree. And we're having enough problems
22 with the trees, and the environment, and erosion
23 that --

24 CHAIRPERSON SCHAEFER: Karen, I think
25 what I'm hearing you say is that you want to see

1 them having all of their -- all of their approvals
2 before --

3 MEMBER PENNETT: Just to make sure
4 they're not making more changes and then taking more
5 down.

6 CHAIRPERSON SCHAEFER: Mr. Hollenbeck,
7 you were waving?

8 NICHOLAS HOLLENBECK: Yes. I'd like
9 to -- I'd like to just mention that, I understand
10 Karen's point, but the driveway is -- isn't going to
11 change whether there's a traffic light there or not.
12 So the trees that are going to be coming down at the
13 driveway location and the majority of where the
14 buildings are, are located, is not going to change.

15 The one thing that we could agree to
16 is, you know, where the sewer comes out through the
17 conservation out to Bonnie Burn Road, we could
18 restrict any clearing in that area until -- until
19 that work is done.

20 But the big issue really -- the major
21 concern on this, from the developer and the
22 applicant's standpoint, has to do with the Indiana
23 bats. So there's a restriction -- there's a
24 restriction on clearing between -- I believe the
25 date is April 1st to November 15th. So if we are

1 unable to -- to clear by that date, then that's a
2 seven-and-a-half-month window where we -- where we
3 would be completely handcuffed and would not be able
4 to perform any work.

5 CHAIRPERSON SCHAEFER: Karen, I think
6 it's a compromise that if we -- like he said,
7 they're clearing regardless, and it's at that
8 location. I think it's a compromise if we clear --
9 if they're saying that they won't clear with the
10 sewer line, there's nothing we can do. You know, I
11 think that's a nice compromise.

12 MEMBER PENNETT: Yeah. I'll agree
13 with that.

14 CHAIRPERSON SCHAEFER: Okay. You're
15 good with that, Mr. Hollenbeck?

16 NICHOLAS HOLLENBECK: Yes. Thank you.

17 ATTORNEY DORY: Thank you.

18 CHAIRPERSON SCHAEFER: Frank, how do
19 we word that?

20 ATTORNEY LINNUS: I think we have the
21 wording. I don't know if there is any required
22 changes. As I understand it, they still have to get
23 final, and they still have to post the appropriate
24 bonds and inspection fees.

25 CHAIRPERSON SCHAEFER: Restricting

1 them in taking trees down -- currently restricting
2 them in taking trees down where the sewer lines may
3 come -- may be. We're restricting that tree
4 removal.

5 BOARD ENGINEER: Yeah, I think -- this
6 is Rick Matias. I think we can probably add some
7 additional language after "tree clearing" and just
8 say -- I'm just thinking off the cuff here, so "with
9 the exception of demolition and tree clearing, minus
10 the area" --

11 MEMBER PENNETT: Tree clearing for the
12 entranceway, you know, only; entranceway and exit
13 way. You know, if you put the entranceway or the,
14 you know -- only. You could put "clearance for the
15 entranceway only."

16 ATTORNEY DORY: Perhaps you could say
17 -- this is Ms. Dory -- "With the exception of
18 demolition and tree clearing in the area of the site
19 driveway."

20 CHAIRPERSON SCHAEFER: Okay.

21 BOARD ENGINEER: Yes.

22 CHAIRPERSON SCHAEFER: That works.

23 ATTORNEY LINNUS: That seems to work.

24 CHAIRPERSON SCHAEFER: So, Theresa,
25 did you get that?

1 BOARD SECRETARY: I have, "With the
2 exception of demolition and tree clearing in the
3 area of the site driveway."

4 CHAIRPERSON SCHAEFER: Okay. Karen,
5 any other comments?

6 BOARD ENGINEER: Madam Chair --

7 MEMBER PENNETT: I think that's all
8 for right now.

9 BOARD ENGINEER: Karen, just we have
10 to double up on that language for Item Number 6.

11 MEMBER PENNETT: Yes.

12 BOARD ENGINEER: I just wanted to make
13 that clear.

14 MEMBER PENNETT: Yes. Thank you.

15 BOARD ENGINEER: Thank you.

16 ATTORNEY LINNUS: All right. Theresa,
17 you've got to add that language to Number 6.

18 BOARD SECRETARY: Got it. Thanks.

19 CHAIRPERSON SCHAEFER: Okay.

20 NICHOLAS HOLLENBECK: I'm sorry, I
21 just would like a little clarification on that.

22 So essentially what we're saying is we
23 would not be able to do any tree clearing until we
24 have final approval and we have posted our
25 performance guarantees. And at that point, we would

1 limit any tree clearing to -- basically to the site
2 plan, except in the areas where there's a
3 conservation easement or a utility run through a
4 conservation easement; is that correct?

5 ATTORNEY LINNUS: Well, I think the
6 terms of the conservation easement need to be
7 approved by the borough attorney. And it may
8 restrict you from tree clearance -- it probably does
9 and will, restrict you from tree clearance in the
10 conservation area.

11 NICHOLAS HOLLENBECK: Of course.
12 That's the whole point of the conservation easement,
13 is to protect.

14 ATTORNEY LINNUS: Exactly.

15 NICHOLAS HOLLENBECK: So I guess --

16 BOARD ENGINEER: Maybe we should read
17 the condition from the beginning just, I guess, so
18 we're all on the same page.

19 CHAIRPERSON SCHAEFER: Theresa?

20 BOARD SECRETARY: "Condition Number 2,
21 the applicant shall obtain any and all approvals
22 required by any other government agency and shall
23 not undertake any construction activities with the
24 exception demolition and tree clearing in the area
25 of the site driveway until all approvals have been

1 obtained. These conditions shall carry over to be a
2 condition of final approval and need not be
3 satisfied for the board to consider plans for final
4 site plan approval and the posting of bonds and
5 performance guarantees."

6 ATTORNEY LINNUS: So it sounds like
7 you're allowed to clear trees in the area of the
8 site driveway. Unless somebody has a different
9 reading.

10 BOARD ENGINEER: And I assume
11 Mr. Hollenbeck wants to be able to clear the entire
12 site except for the area of the sewer.

13 NICHOLAS HOLLENBECK: That's correct.
14 Yes, except -- we would like to be able to clear the
15 entire site with the exception of the conservation
16 easements and any utility run that goes through that
17 conservation easement until those plans are -- have
18 final approval.

19 ATTORNEY DORY: Madam Chair?

20 CHAIRPERSON SCHAEFER: Yes.

21 ATTORNEY DORY: Can I just propose an
22 alternative to address Mr. Hollenbeck's concerns?
23 Instead of saying "with the exception of demolition
24 and tree clearing in the site driveway," perhaps we
25 could say "with the exception of demolition and tree

1 clearing except for tree clearing in the area of the
2 sewer easement or the sewer lines"?

3 CHAIRPERSON SCHAEFER: That's really
4 what I thought we had agreed to.

5 ATTORNEY DORY: I think it's a little
6 bit different, though, because there might be some
7 areas outside of the site driveway that are not in
8 the area of the sewer line that are outside of the
9 conservation area that may also need to be cleared.

10 BOARD ENGINEER: Yes. And to be
11 clear, there's two sewers, right? We have the force
12 main, the sanitary sewer force main, which is going
13 through the site driveway, and then we have a storm
14 sewer overflow, which is a standard for storm sewer
15 designs of this nature, that does run through the
16 conservation area and then out to Bonnie Burn Road.

17 So that is the area that Mr. Hollenbeck
18 is referencing, not the area in the driveway.

19 NICHOLAS HOLLENBECK: Correct.

20 CHAIRPERSON SCHAEFER: So, Karen,
21 again, I do still think it's a compromise. They're
22 not going to be clearing -- they're clearing trees
23 in areas that are specific, that are not going to
24 change. They're not going to clear where the sewer
25 or, you know, the utilities would be running until

1 they have finals on those.

2 MEMBER PENNETT: Right. Okay. As
3 long as they don't do the clear cutting -- removing
4 until it's finalized.

5 CHAIRPERSON SCHAEFER: But it's going
6 to be the driveway and the property of where the
7 building will be.

8 MEMBER PENNETT: The driveway, yes.

9 CHAIRPERSON SCHAEFER: It will not
10 obviously be conservation; it will not be where
11 utilities are running through. Correct, Ms. Dory?
12 Mr. Hollenbeck?

13 Mr. Hollenbeck is nodding his head yes.

14 NICHOLAS HOLLENBECK: Yes.

15 MEMBER PENNETT: Yeah. So I just
16 don't want them to clear a line for the sewer, and
17 then the sewer's not going to go where they cleared.

18 BOARD ENGINEER: Right. So for
19 Theresa's information, instead of "site driveway,"
20 we should add something to the effect of "for the
21 sewer within the conservation easement."

22 CHAIRPERSON SCHAEFER: No. We're
23 allowing them to do demolition and tree clearing,
24 and then we should put "with the exception of the
25 conservation and sewer line," right?

1 BOARD ENGINEER: Yes. So that's just
2 -- we're basically just saying it in a different
3 term -- in a different way than what is currently
4 written on the draft.

5 ATTORNEY DORY: Madam Chair, this is
6 Nicole. If I could just propose perhaps to leave
7 Number 2 as written, and then add at the end what
8 we're discussing so there's no confusion that the
9 applicant shall obtain any and all approvals
10 required by other governmental agencies and shall
11 not undertake tree clearing in the conservation area
12 or in the area of the sewer line.

13 CHAIRPERSON SCHAEFER: I think that's
14 good, but you're going to have to re-read it for
15 Theresa.

16 ATTORNEY DORY: Okay.

17 ATTORNEY LINNUS: I think if we simply
18 add a sentence -- and I'm open to suggestions -- at
19 the end, "notwithstanding the above, the applicant
20 shall not be allowed -- shall be allowed tree
21 clearance in the conservation area and area" -- not
22 be allowed or what are we doing? Allowing or not
23 allowing?

24 MEMBER PENNETT: Not allowing.

25 CHAIRPERSON SCHAEFER: Will not be

1 allowed.

2 ATTORNEY LINNUS: Shall not be allowed
3 tree clearance in the area of the conservation
4 easement and the area of the sewer line.

5 BOARD ENGINEER: Yes.

6 ATTORNEY LINNUS: Notwithstanding the
7 above.

8 ATTORNEY DORY: Right. Okay, I would
9 just add to that, "notwithstanding the above, the
10 applicant shall not be allowed to undertake tree
11 clearing in the conservation area or the sewer line
12 prior to obtaining any necessary approvals."

13 CHAIRPERSON SCHAEFER: Conservation
14 area and what was the other? I'm sorry.

15 ATTORNEY DORY: The area of the sewer
16 line.

17 BOARD ENGINEER: Call it the "sewer
18 run."

19 CHAIRPERSON SCHAEFER: Sewer run,
20 okay.

21 CHAIRPERSON SCHAEFER: Theresa, did
22 you get that?

23 BOARD SECRETARY: Almost. If Ms. Dory
24 could just read one more time. Notwithstanding the
25 above...

1 ATTORNEY DORY: Notwithstanding the
2 above, the applicant shall not be allowed to conduct
3 tree clearing in the area of the conservation
4 easement or in the area of the sewer run before
5 obtaining required approvals.

6 BOARD SECRETARY: I'm sorry.

7 ATTORNEY DORY: One more time?

8 BOARD SECRETARY: Yeah. Will not be
9 allowed to conduct tree clearing...

10 ATTORNEY DORY: In the conservation
11 easement or in the area of the sewer run before
12 obtaining required approvals.

13 CHAIRPERSON SCHAEFER: You got it,
14 Theresa?

15 BOARD SECRETARY: Yes. Thank you.

16 MEMBER PENNETT: And that's for Number
17 2 and Number 6.

18 CHAIRPERSON SCHAEFER: Right.

19 BOARD ENGINEER: Correct.

20 CHAIRPERSON SCHAEFER: On Page 15.

21 Okay. Karen, are you good?

22 MEMBER PENNETT: Yeah, so far. I'll
23 go through some more of my notes.

24 CHAIRPERSON SCHAEFER: Do you want me
25 to move on?

1 MEMBER PENNETT: Sure, yes.

2 CHAIRPERSON SCHAEFER: Anyone else?

3 Steve Pote.

4 MEMBER POTE: Madam Chair, I have a
5 couple quick questions.

6 First, thank you, thank you for
7 answering the question about the trees. I feel
8 better about how that was put together.

9 Just for the record, there has not been
10 any communication between the applicant and Union
11 County regarding traffic since our last meeting?

12 CHAIRPERSON SCHAEFER: John?

13 BOARD TRAFFIC ENGINEER: Could you
14 repeat the question again?

15 MEMBER POTE: I just want to go on
16 record that there has not been any communication
17 between Union County and the applicant or the
18 borough with regards to the traffic signal or what's
19 next?

20 BOARD TRAFFIC ENGINEER: That's not
21 entirely accurate. The objector and the applicant
22 have both submitted all of their materials to the
23 Union County engineer's office. One of my staff
24 reached out, and the county engineer indicated that
25 he will not undertake any review of anything having

1 to do with this project until the Watchung Planning
2 Board renders their final decision.

3 So although he has received mostly
4 everything -- I will make certain that he does -- he
5 is not looking at anything and has indicated that he
6 is not willing to meet with me or see me until such
7 time as the board acts. We'll be happy to get him
8 everything.

9 MEMBER POTE: You said until we
10 rendered final approval.

11 BOARD TRAFFIC ENGINEER: Correct.

12 MEMBER POTE: What does that
13 technically mean, then? Final site plan?

14 BOARD TRAFFIC ENGINEER: Yes.

15 MEMBER POTE: So we're sort of between
16 a rock and a hard place, right?

17 BOARD TRAFFIC ENGINEER: Well,
18 remember, the approval you're going to grant here --
19 if you're going to approve this application, of
20 course -- is contingent upon them getting those
21 outside agency approvals.

22 Not only do they have county approval,
23 they have DEP, and, you know, sewer, and a bunch of
24 other stuff has got to get done. This is just the
25 same as all the other ones that have to get done.

1 So nothing uncommon about this.

2 MEMBER POTE: Okay. My other question
3 was -- let's see. On Page 8, Roman numeral XII, it
4 talks about apartment building supervisor living
5 on-site, and then it said 40 hours -- I guess the
6 individual is working 40 hours, but is available
7 during the other time period should there be an
8 issue with the apartment building?

9 I'm just a little bit unclear as to the
10 person's responsibilities from a time perspective.

11 NICHOLAS HOLLENBECK: I can answer
12 that question, Mr. Pote.

13 So there's two separate, two separate
14 individuals. There's the on-site maintenance super
15 who will reside in one of the apartments. He is
16 available on-call 24 hours a day, 7 days a week in
17 the event of an emergency. His typical work
18 schedule is 40 hours a week.

19 There's an additional on-site property
20 manager, who does not reside on-site, who will work
21 in the clubhouse. And that person is the community
22 manager. They'll have a work schedule of 40 hours a
23 week.

24 So there is two different people.

25 MEMBER POTE: Two different people.

1 And then how do they overlap? Are they overlapping
2 most of the day?

3 NICHOLAS HOLLENBECK: Yeah, they
4 overlap quite often. The only time they don't
5 overlap is usually on a Saturday. But they're in
6 constant communication with each other, taking care
7 of any resident work orders that need to be filled,
8 you know, just day-to-day upkeep of the property,
9 maintenance, turnovers for, you know, if somebody is
10 moving out of an apartment or moving into an
11 apartment, making sure they're prepped. That type
12 of coordination and work.

13 MEMBER POTE: So on Sunday at 3:00 in
14 the morning, one of those two people has the
15 responsibility to be on-call in case there's an
16 issue.

17 NICHOLAS HOLLENBECK: Yes. That would
18 be -- any emergency issue outside of normal business
19 hours, that's what the resident super is there for.
20 That's why he lives on the property.

21 MEMBER POTE: Okay. Thank you.

22 And I guess my last question was -- I'm
23 trying to go through my notes from past meetings
24 and, again, I just look to the board and anybody
25 else from, eventually, the public when asked to be

1 addressed by our chairwoman, and that's in regards
2 on Page 18, really 44 through 46, just talking about
3 the fencing and the -- the extension to try to
4 create some level of privacy and protection of
5 visibility.

6 So I just wanted to make sure that that
7 was being covered again by some of us, you know,
8 just taking a look from memory on those -- on those
9 pieces.

10 CHAIRPERSON SCHAEFER: Steve, I had
11 actually -- when this was originally distributed to
12 the professionals and I got a copy, I brought that
13 up, and Rick had answered it, and that's why the
14 language is the way it is.

15 MEMBER POTE: Okay.

16 CHAIRPERSON SCHAEFER: We definitely
17 covered that.

18 MEMBER POTE: Okay, thank you. And
19 that was the last of my questions.

20 CHAIRPERSON SCHAEFER: Anyone else?

21 MEMBER PENNETT: Tracee, I do have one
22 other question.

23 CHAIRPERSON SCHAEFER: Go ahead,
24 Karen.

25 MEMBER PENNETT: Number 37 where it

1 says, "The Applicant agreed" --

2 CHAIRPERSON SCHAEFER: On what page?

3 MEMBER PENNETT: Page 17.

4 CHAIRPERSON SCHAEFER: Okay.

5 MEMBER PENNETT: "The Applicant agreed
6 to in their leases notify all tenants that their
7 units are located proximate to the Weldon Quarry."

8 Should it also explain that it's an
9 active quarry where explosions -- should we go into
10 more detail? Because, you know, people who are
11 moving in may not really understand what a quarry is
12 or is doing. So should we put there, you know,
13 maybe sound of explosions, that it is an active
14 quarry? Just being more specific.

15 CHAIRPERSON SCHAEFER: I don't know if
16 I would say "explosions," but maybe state a little
17 bit more that it is an active quarry.

18 MEMBER PENNETT: Yeah. Just to make
19 sure that people understand what they'll be hearing
20 once in a while.

21 CHAIRPERSON SCHAEFER: Ms. Dory?

22 ATTORNEY DORY: I just wanted to note
23 that we did agree to a provision in the lease
24 regarding this issue, so I think that kind of
25 specificity would be in the lease, which would be

1 submitted also for review.

2 CHAIRPERSON SCHAEFER: Which we're
3 going to get a copy of, Karen, according to this
4 resolution for review.

5 MEMBER PENNETT: I mean, are you
6 saying that you're just -- they'll be near the
7 quarry, or they're going to be near the quarry where
8 you will be hearing explosions, you know?

9 MEMBER ELLIS: Just put the word
10 "active" in there.

11 CHAIRPERSON SCHAEFER: Yeah. It's
12 located near an active quarry, across the street
13 from an active quarry.

14 ATTORNEY LINNUS: Well, you might want
15 to -- you might want to add which notification shall
16 be approved by the planning board attorney. But
17 either way is okay. I think "an active quarry" does
18 the trick.

19 BOARD SECRETARY: Removing "Weldon
20 Quarry" and putting in "active quarry"?

21 MEMBER ELLIS: I'm sure they will.

22 CHAIRPERSON SCHAEFER: So how do we
23 word this, Frank?

24 ATTORNEY LINNUS: Well, I tried to
25 capture it. "The Applicant agreed to in their

1 leases notify all tenants that their units are
2 located proximate to Weldon Quarry, which is an
3 active quarry."

4 BOARD SECRETARY: Got it. Thank you.

5 CHAIRPERSON SCHAEFER: I want to add
6 two comments.

7 MEMBER PENNETT: Tracee, the Mayor is
8 also waving.

9 CHAIRPERSON SCHAEFER: Okay, Mayor,
10 I'll be right with you.

11 I had two comments. One was that it
12 was actually testified February 18th of 2020, you
13 agreed to use calcium chloride. So I would like
14 that part of the resolution.

15 And secondly, on the retention walls I
16 would like --

17 ATTORNEY LINNUS: All right, let's
18 stick with -- let's stick with that first, Tracee.
19 What are you suggesting? That a condition be added,
20 perhaps Condition 77, to state what?

21 CHAIRPERSON SCHAEFER: That they will
22 be using calcium chloride.

23 BOARD SECRETARY: You want that part
24 of Number -- Condition 33? The applicant shall use
25 only organic pesticides?

1 CHAIRPERSON SCHAEFER: Yeah. We could
2 add it to that, sure. And will be using calcium
3 chloride.

4 ATTORNEY LINNUS: So the suggestion
5 is, on 33, "The Applicant shall use only pesticides
6 and calcium chloride." Does that work?

7 CHAIRPERSON SCHAEFER: Ms. Dory?

8 ATTORNEY DORY: Yes, that's
9 acceptable.

10 CHAIRPERSON SCHAEFER: And the other
11 one I had was a minor thing, but the retention
12 walls. I would like in there that they'll be of an
13 earth tone modular block. That is what was agreed
14 to. Can we add that in? I know it's minor, but I
15 just want to know T's are crossed and I's dotted.

16 Is there anywhere in there we can add
17 that, or do we create a separate condition? Frank?

18 ATTORNEY LINNUS: Unless it doesn't --
19 I didn't memorize all of the conditions with
20 reference or related reference. Perhaps we should
21 craft an additional condition.

22 CHAIRPERSON SCHAEFER: I would craft
23 an additional one because there's nothing
24 specifically about retention walls.

25 ATTORNEY LINNUS: So then what would

1 you like to say?

2 CHAIRPERSON SCHAEFER: That retention
3 walls -- all retention walls will be comprised of
4 modular block and of an earth tone color.

5 ATTORNEY LINNUS: Did you get that,
6 Theresa?

7 BOARD SECRETARY: Modular, what,
8 block?

9 CHAIRPERSON SCHAEFER: Modular block
10 of an earth tone color.

11 BOARD SECRETARY: Okay. Thank you.

12 ATTORNEY LINNUS: And that would be
13 Condition -- Proposed Condition Number 77?

14 CHAIRPERSON SCHAEFER: Correct.

15 ATTORNEY LINNUS: Okay.

16 CHAIRPERSON SCHAEFER: Mayor?

17 MAYOR BALLA: Yes. My question goes
18 back to the quarry activity. Is there a state law
19 that requires the quarry owner to notify those
20 residents in the area when they will be blasting?

21 MEMBER ELLIS: No.

22 BOARD ENGINEER: None that I'm aware
23 of. This is Rick Matias. None that I'm aware of.

24 MAYOR BALLA: Is there anything that
25 would require the quarry entity to notify the

1 adjoining properties of the blasting?

2 ATTORNEY LINNUS: Mayor, the quarry's
3 not an applicant. I don't know how you can impose
4 an obligation on a non-applicant.

5 I know their attorney is here, and if
6 he's agreeable to that condition on behalf of his
7 objector, we can certainly include it.

8 MAYOR BALLA: I just thought New
9 Jersey would have a law, but I guess --

10 ATTORNEY BUTLER: Mr. Linnus, this is
11 Bill Butler, and I want to -- I want to address the
12 issue that you just raised. And before this hearing
13 is concluded, I want to make a statement not
14 repeating my objections, but adding to them.

15 But right now what we do -- and the
16 word "explosion" is improper. We do blasting under
17 the jurisdiction of the Department of Labor. And
18 they put seismographs at our property line, and it's
19 a public record as to any vibrations, and they keep
20 records of noises.

21 But what we do right now, Mr. Linnus,
22 is we, approximately 15 to a half an hour -- or
23 15 minutes to half an hour before we blast, we
24 notify about 30, 35 people.

25 You know, I'm going to object to this

1 if this is approved, and I'm going to say a little
2 more about that later. But if it eventually goes
3 through, the applicant could give us a name and
4 telephone number of a proper person to notify, and
5 we'd notify that person before we blast, just like
6 we notify 30 or 35 other people right now.

7 It in no way concedes anything I have
8 said up until now during these hearings and for
9 tonight. But I'm just responding to Mr. Linnus'
10 sort of request for a comment by me on that, and
11 that is the comment that I have.

12 ATTORNEY LINNUS: Yeah. I think if
13 state law requires the quarry to do anything in
14 terms of notification, that we can't interfere with
15 that, nor can we --

16 ATTORNEY BUTLER: They don't.

17 ATTORNEY LINNUS: Excuse me?

18 ATTORNEY BUTLER: They don't. They
19 don't.

20 ATTORNEY LINNUS: Okay.

21 ATTORNEY BUTLER: But we do.

22 CHAIRPERSON SCHAEFER: Mayor, I think
23 what Frank is saying is that we can't -- Weldon is
24 not the applicant, and we can't require anything of
25 them.

1 MAYOR BALLA: I wasn't in any way
2 trying to require Weldon to do that. I thought
3 there may have been a state law already requiring
4 that, just as a public safety measure. But
5 obviously New Jersey doesn't have one of those
6 public safety measures.

7 ATTORNEY BUTLER: If the resolution
8 goes through and this thing gets built, you know,
9 the applicant should give us some contact
10 information and, you know, we'll notify somebody
11 that, the head of the department association or
12 somebody on behalf of the owner. We'll do, that,
13 like we have been doing that. Because when you're
14 prepared for something, you know, it's -- it's not
15 as traumatic.

16 And we're not unsympathetic. If we
17 eventually lose this case after the courts -- and I
18 stress "courts." If we're going to have to live
19 with it, well we're not going to try to make
20 people's lives unbearable or their quality of life
21 more difficult than it is. We're going to
22 cooperate, and that notification is going to be part
23 of that.

24 And I don't know -- I don't -- I have
25 to look up a little bit more about reverse 911. I

1 don't know whether you all are familiar with that,
2 but, you know, maybe a reverse 911 with technology,
3 we can notify all of the apartment owners. I don't
4 know.

5 I mean, when the towel is thrown in and
6 if we lose, if we lose -- we're not babies. We're
7 grown adults. We have been there for a long time.
8 I'll look into the reverse 911 and talk to my
9 client, Weldon. But I know Weldon will -- will go
10 out of his way to notify people before we blast.

11 CHAIRPERSON SCHAEFER: Okay. Thank
12 you, Mr. Butler.

13 Mayor, do you have any other questions
14 or concerns?

15 MAYOR BALLA: No other questions.

16 CHAIRPERSON SCHAEFER: Anyone else on
17 the planning board?

18 Yvette. We can't hear you, Yvette.
19 Can't hear you.

20 ATTORNEY LINNUS: I want to point out
21 that Yvette is the second alternate. And if we have
22 nine members here tonight, obviously Yvette cannot
23 vote, but certainly as a board member she can
24 participate in these proceedings, and that would be
25 the extent of what she can and can't do.

1 So having said that, Yvette, you
2 certainly can participate.

3 CHAIRPERSON SCHAEFER: Yvette, we
4 can't hear you. We cannot hear you.

5 While Yvette's trying to -- can you
6 call in, Yvette?

7 MEMBER NORA: Can you hear me now?

8 CHAIRPERSON SCHAEFER: Yes.

9 MEMBER NORA: Okay. Thank you.

10 Yeah. So most of my questions have
11 been addressed. The only outstanding ones would be
12 regarding the sewer conveyance. So that would be, I
13 guess, now Number 73 and 74 on Page 20. I think
14 there's -- you've got at least half a mile of sewer
15 and waste being transported from the location to
16 Johnston Drive, so it's very vague right now. So
17 the sewer conveyance system shall be designed with
18 the known fact that blasting occurs at the adjacent
19 quarry, but there's no mention, I think anywhere
20 throughout the document, you know, what conditions
21 or what requirements are for the sewer.

22 Can we be more specific, you know, that
23 it's going to meet whatever permits and regulations
24 there? I just get worried that it's on Union
25 County --

1 CHAIRPERSON SCHAEFER: I'm going to
2 let Rick answer that because there are approvals
3 required.

4 Rick?

5 BOARD ENGINEER: We could add, to
6 satisfy that concern, for Number 73, the new 73,
7 "The sewer conveyance system shall be designed with
8 the known fact that blasting occurs at the adjacent
9 quarry and subject to all PARSA and DEP
10 regulations." Because they do obviously have to get
11 approvals from PARSA, and they will have to apply
12 for a Treatment Works application through the DEP,
13 and they have their own requirements for a force
14 main.

15 So we can certainly add that to satisfy
16 that concern.

17 MEMBER NORA: Okay. That would be
18 great.

19 ATTORNEY LINNUS: Rick, would you be
20 satisfied with this language? I'm reading now what
21 I think 73 might say: "The sewer conveyance system
22 shall be designed with the known fact that blasting
23 occurs at the adjacent quarry and subject to all
24 applicable regulations."

25 BOARD ENGINEER: I would be fine with

1 that.

2 ATTORNEY LINNUS: Yvette, are you okay
3 with that?

4 MEMBER NORA: Yeah. No, that's good.
5 Thank you.

6 CHAIRPERSON SCHAEFER: Wait a minute
7 before you go on.

8 Ms. Dory, you're good?

9 ATTORNEY DORY: Yes. That's
10 acceptable to the applicant.

11 Theresa, did you get that?

12 BOARD SECRETARY: Yes.

13 CHAIRPERSON SCHAEFER: Okay, Yvette.

14 MEMBER NORA: Yeah. The next one
15 would be 74 -- what is now 74. Can we define
16 "timely fashion" better there? It's just you
17 have --

18 CHAIRPERSON SCHAEFER: An open-ended.

19 MEMBER NORA: Yeah. Hundreds of
20 people depending on that system, you know, what is
21 reasonable?

22 BOARD ENGINEER: I think it's a little
23 difficult to define "timely fashion" so -- and I
24 certainly understand your concern. I think -- and
25 maybe just collectively we can come up with some

1 language here. Because if there's a -- for example,
2 if there's a break in the system, you know, however
3 many years from now, it could be as minor as a small
4 spot repair that would only require, you know, a
5 4-by-4 or a 5-by-5 road opening, or it could be a
6 run of 20 or 30 feet that needs to be replaced. So
7 obviously that run of replacement will take a lot
8 longer than just a small spot repair.

9 So -- and, again, I'm just kind of
10 thinking out loud here to satisfy that concern.

11 "The property owner shall be responsible to make any
12 and all repairs to the conveyance system immediately
13 upon being made aware of any damage." I'm open to
14 any other suggestions but --

15 ATTORNEY DORY: Madam Chair?

16 CHAIRPERSON SCHAEFER: Yes, Ms. Dory.

17 ATTORNEY DORY: I agree with
18 Mr. Matias; it's difficult to anticipate what is
19 going to happen in the future. I do understand the
20 concern, though. Perhaps something a little bit
21 different might be -- might be a way to address
22 this. We could state, "The property owner shall be
23 responsible to make any and all repairs to the
24 conveyance system in a timely fashion and to ensure
25 that sewer service is expeditiously restored to the

1 occupants or residents."

2 CHAIRPERSON SCHAEFER: Can you say
3 that again?

4 ATTORNEY DORY: Sure. So I would just
5 add to the end of what is now 74, "and to ensure
6 that sewer service is expeditiously restored to the
7 occupants."

8 CHAIRPERSON SCHAEFER: Yvette, is that
9 good?

10 MEMBER NORA: Yes. And I think least
11 impact to traffic if we're talking about closing off
12 Bonnie Burn Road.

13 CHAIRPERSON SCHAEFER: Yeah, but that
14 is something beyond anybody's control.

15 MEMBER NORA: Okay.

16 CHAIRPERSON SCHAEFER: I understand
17 where you're coming from, but I think --

18 ATTORNEY LINNUS: Yeah. That might
19 involve the police and other agencies, et cetera.

20 BOARD ENGINEER: And county.

21 ATTORNEY LINNUS: County, yeah. And
22 definitely the county.

23 MEMBER NORA: Yeah.

24 CHAIRPERSON SCHAEFER: Theresa, did
25 you get that?

1 BOARD SECRETARY: Yes.

2 CHAIRPERSON SCHAEFER: Okay. Anything
3 else?

4 Yvette, are you good?

5 MEMBER NORA: I'm good. Thank you.

6 CHAIRPERSON SCHAEFER: Okay. Any
7 other members? Okay.

8 ATTORNEY BUTLER: Madam Chair, before
9 there's a decision on this resolution, may I be
10 briefly heard? Bill Butler --

11 CHAIRPERSON SCHAEFER: Yes.

12 ATTORNEY BUTLER: -- on behalf of
13 Objector Weldon.

14 CHAIRPERSON SCHAEFER: Yes,
15 Mr. Butler.

16 ATTORNEY BUTLER: And, Madam Chair, I
17 will be brief.

18 After having heard tonight's hearing, I
19 have to correct myself. In the beginning of the
20 hearing I said me not getting the resolution and my
21 adversary getting the resolution was reversible
22 error. Now I'm taking the position that it is
23 irreversible error. This cannot be reversed. This
24 was a -- a mistake of proportions that I haven't
25 seen in 54 years of practicing law. It's just so

1 unfair.

2 And I appreciate Mr. Linnus'
3 suggestion, "Butler can talk." Well, that's like
4 giving snow away in the winter. What can I talk
5 about? I heard the resolution read over the
6 telephone which I'm listening to. That's not like
7 having it in my little finger, greasy hands, and
8 going over it, and studying it, and making notes,
9 like I have been doing for 54 years. And so, I
10 mean, to say that I can say what I want and I can
11 participate is meaningless.

12 Now, having said this is irreversible
13 error, not just reversible error, irreversible
14 error. And I point out, you can see how quiet I was
15 during this hearing. I was quiet because I was
16 stupid. I didn't know what was going on.

17 Now, take a look at the attorney for
18 the applicant. She commented throughout it. She
19 had the document in front of her. She requested
20 revisions. Revisions were requested of her. She
21 was asked to agree to certain things that they put
22 in revisions.

23 I mean, this was hopelessly prejudicial
24 to the Weldon objector and to me, Bill Butler, as
25 the attorney. And I say that in all sincerity. I'm

1 not trying to be a wise guy. I'm just shocked at
2 the whole thing, the way it was handled.

3 And while I say it's irreversible, I
4 make this request now, which I think a court should
5 know the answer to this request:

6 I request all the drafts of the
7 resolutions up until the final, number one.

8 Number 2, I request all the
9 correspondence between Frank Linnus and the attorney
10 for the applicant.

11 I mean, this is unbelievable that my
12 adversary can have access to the attorney for the
13 board on a resolution, and I'm kept in the dark.
14 And this is a resolution that has not yet been
15 approved. This is not a memorialization of an
16 approval. This is not a memorialization of a
17 resolution. This is supposedly -- although it
18 sounds a little different to me at the hearing --
19 that this hasn't been voted on, that this hasn't
20 been agreed to.

21 So the -- I make those two requests,
22 the resolutions -- the draft resolutions that were
23 sent to the attorney for the applicant and the
24 correspondence between Mr. Linnus and the attorney
25 for the applicant.

1 May I have an answer to those requests,
2 please, for the record?

3 ATTORNEY LINNUS: All right. Before
4 the board takes any action tonight, let me indicate,
5 first of all, that the terms of a resolution are
6 clearly, squarely, within the jurisdiction of the
7 board and not the parties.

8 It is common practice to distribute
9 drafts of resolutions to the applicant's attorney,
10 especially when the board indicates that they have
11 asked your attorney -- that's me -- to prepare an
12 affirmative resolution.

13 There is absolutely no prejudice
14 whatsoever to Mr. Butler or his client as to the
15 procedure that has been employed so far and because
16 we have not taken any action tonight, nor are you
17 required to take any action tonight. Certainly one
18 of your options is to transmit -- not take any
19 action tonight. Everybody knows what the board is
20 thinking of in terms of a resolution if you approve
21 it with the conditions that you've worked on, which
22 is purely and solely within the jurisdiction of the
23 board at this point, because Mr. Butler's remedy,
24 his client's remedy, after things are done and after
25 a resolution is adopted, if a favorable resolution

1 is adopted -- and there's been no indication that
2 there is going to be a favorable resolution -- would
3 have all of his options available to him. He's
4 threatened court, and I'm sure that if any
5 resolution of approval is adopted, it does appear
6 that there will be a court challenge.

7 But to take away his issue -- to take
8 away his issue of whether he had a chance to look at
9 a resolution, the board certainly does not have to
10 take action tonight and could certainly direct that
11 the resolution, as finalized by Theresa, be sent to
12 Mr. Butler for his review and comment, for what it's
13 worth. And then you could reconvene at the next
14 meeting and take action, whichever way you want to
15 take it, on the resolution.

16 The point is there's been no prejudice
17 to Mr. Butler or his -- or his client at this time
18 simply because the board has not taken any action
19 whatsoever other than to review a resolution that
20 you directed me to prepare.

21 ATTORNEY BUTLER: Can I please respond
22 to that, Madam Chair?

23 MEMBER FIORILLA: Can I ask a
24 question? Can I ask a question?

25 ATTORNEY BUTLER: May I respond to

1 Mr. Linnus?

2 ATTORNEY LINNUS: No. Let
3 Mr. Fiorilla -- this is a board proceeding, a
4 planning board proceeding, Mr. Butler. You
5 certainly have every opportunity to comment, and
6 respond, and do whatever, but Mr. Fiorilla has a
7 question.

8 MEMBER FIORILLA: Yeah.

9 ATTORNEY LINNUS: Go ahead, Paul.

10 MEMBER FIORILLA: And this is kind of
11 related to what I was saying before.

12 Is there any requirement for the board
13 to show objectors materials in advance of hearings?

14 ATTORNEY LINNUS: Not that -- not that
15 I'm aware of. And I don't think the applicant's
16 attorney or Mr. Butler can point to any case which
17 requires that.

18 MEMBER FIORILLA: The other thing is,
19 is there a legal distinction between objectors who
20 have attorneys and objectors who don't?

21 ATTORNEY LINNUS: No.

22 MEMBER FIORILLA: So, you know, let's
23 say -- there's theoretically 20 people that object
24 to this, you know, people who live in the community.
25 Would we be -- you know, according to this theory,

1 this legal theory, would we be required to send our
2 resolutions to every resident in town who may or may
3 not object?

4 I mean, you can -- you know, the
5 implications of this are, it seems to me, a little
6 bit, you know, far-reaching. And, I mean, you can
7 -- you know, whatever we do, I suppose, it can be
8 challenged anyway, but I just can't imagine what the
9 precedence is here.

10 ATTORNEY LINNUS: Yeah. You're
11 entirely correct, Paul. I know of no case law
12 precedent to support Mr. Butler's contention, nor
13 have I heard any case law precedent other than his
14 own theory as to the proceedings.

15 But the bottom line is that the board
16 has not taken any action whatsoever on this
17 application, and we're within our time period to
18 take the action. And his client, therefore, is not
19 prejudiced one iota.

20 ATTORNEY BUTLER: May I respond?

21 ATTORNEY DORY: Madam Chair --

22 MEMBER FIORILLA: I have one other
23 question about the procedure that we were talking
24 about before. So if the -- where we were talking
25 about the traffic light and the final approval,

1 would they be -- would there be a proceeding with
2 the traffic light issue with Union County between
3 our preliminary approval and the final approval, or
4 does that not start until after the final approval?

5 I was under the impression that once we
6 get the preliminary approval, then they could start
7 the application and complete that, and then the
8 final approval would be contingent on what happened
9 -- partially what happened in that regard.

10 Am I mistaken there?

11 ATTORNEY LINNUS: That's correct. You
12 received an update from Mr. Jahr. The county has
13 made it clear that they're not going to consider the
14 traffic signal issue or traffic unless or until the
15 board takes action. And from what I heard, he
16 indicated that the county -- and he can speak better
17 than me because I haven't talked to the county at
18 all -- that it would come after final approval.

19 But you're protected -- the board is
20 protected, in the event you're going to approve
21 this, because any approval you make will be subject
22 to Union County's jurisdiction over the county road.
23 And we have had a lot of discussion about that
24 during the course of the hearing, that Union County
25 drives the bus here in terms of traffic. And any

1 approval you give would be subject to the approval
2 of Union County for a traffic signal.

3 And if they never approve a traffic
4 signal or some other type of traffic control device
5 that we need to take a look at, then it comes back
6 to the board for review.

7 MEMBER FIORILLA: Thank you.

8 CHAIRPERSON SCHAEFER: Don?

9 ATTORNEY BUTLER: Madam Chair, may
10 Bill Butler finally be heard?

11 CHAIRPERSON SCHAEFER: No.

12 Mr. Butler, you've got to hold off first. I want my
13 planning board members --

14 VICE-CHAIRMAN SPEENEY: Thank you,
15 Tracee.

16 The board voted to direct the attorney
17 to draft -- draft a resolution in the affirmative.
18 And it was also stated that once that was done and
19 if we continued with it, we could vote yea or nay on
20 that resolution. So it wasn't like, "Oh, we could
21 vote yes." That wasn't the case. The case was you
22 create a document that will aid the board in making
23 its decisions, and you can vote yea or nay.

24 And that's pretty much what Frank did.
25 He created this resolution as a draft. And we were

1 able to use this resolution that he drafted to
2 create learning tonight. And I certainly appreciate
3 the way this thing was written. I appreciate having
4 it. And I, at this point, am willing to suspend
5 developing the document so that we could give Mr.
6 Butler his due at the next meeting.

7 But anyway, I believe that this
8 particular document was extremely informative. And
9 thank you.

10 CHAIRPERSON SCHAEFER: Other planning
11 board member comments? Councilman Martino? Okay.

12 Mayor?

13 MAYOR BALLA: I would like to thank
14 Ellen and our chairperson, for reading through the
15 lengthy document. I think it was much appreciated
16 and helped everyone else understand the entire
17 application in the process.

18 So I thank you for going through that
19 and I apologize for anybody who felt they had to
20 endure it, but I think it was worthwhile.

21 CHAIRPERSON SCHAEFER: Steve?

22 Thank you, Mayor.

23 Steve?

24 MEMBER POTE: I'm sorry. I had a
25 question as a follow-up to something that Paul had

1 asked. And I'm not sure if the question was
2 answered or not.

3 But I think, Paul, if I understood you
4 correctly, you asked the question, is there a
5 distinction between an objector who brings legal
6 counsel and just a generic objector in town; if I
7 got that correct. And that was a question I didn't
8 hear the answer to.

9 ATTORNEY LINNUS: And the answer is
10 no. There is no distinction.

11 MEMBER POTE: Okay. Thank you.

12 And thank you for the preparation of
13 these documents, as well. I do appreciate it.

14 CHAIRPERSON SCHAEFER: So we have a
15 choice here. We can either move to vote on this
16 resolution this evening --

17 ATTORNEY BUTLER: Can I be heard
18 before that decision is made, Madam Chair?

19 CHAIRPERSON SCHAEFER: Yes, you will,
20 but give me a moment, Mr. Butler. I'll tell you
21 when you can speak.

22 ATTORNEY BUTLER: I don't want to
23 speak after a decision by the board has been made.
24 I think --

25 CHAIRPERSON SCHAEFER: Nobody is

1 making a decision, Mr. Butler. Please let me
2 finish. I will tell you when you can speak. There
3 are still other people who want to speak that are
4 involved in this application.

5 I am making a recommendation to my
6 planning board members, Mr. Butler, that they can
7 vote on this tonight, if they so choose, do they
8 want to sit on it until our next meeting and
9 possibly do a special meeting next week, which gives
10 Mr. Butler opportunity to review it, or do we sit on
11 it till our regular meeting in November?

12 And that is a question -- I'm opening
13 it up to the planning board members.

14 ATTORNEY DORY: Madam Chair, this is
15 Ms. Dory. Can I just briefly respond to
16 Mr. Butler's comments before you --

17 ATTORNEY BUTLER: I haven't made the
18 comments. I haven't been able to make my comments.

19 CHAIRPERSON SCHAEFER: You will make
20 your comments shortly.

21 Go ahead, Ms. Dory.

22 ATTORNEY BUTLER: May I make the
23 comments now?

24 CHAIRPERSON SCHAEFER: No. I want
25 Ms. Dory to speak. Then I will come to you,

1 Mr. Butler.

2 ATTORNEY BUTLER: You're going to let
3 her respond to me before I talk?

4 CHAIRPERSON SCHAEFER: Mr. Butler,
5 she's responding to what you said before. Let her
6 have the opportunity to speak. I will then come
7 back to you, and you can then have the table and
8 tell us all what it is you want to say.

9 Ms. Dory, go ahead.

10 ATTORNEY DORY: Thank you very much
11 for the opportunity to speak.

12 So I just wanted to echo my agreement
13 with the statements made by Mr. Linnus and also
14 Mr. Speeney, that this is a very -- there's nothing
15 nefarious about what is going on here.

16 The board directed the resolution to be
17 prepared. It's very typical for the applicant's
18 attorney to provide comment on a proposed
19 resolution. I'm sure Mr. Butler is very familiar,
20 as an objector's attorney. I don't think there's
21 any case that he has where he's actually gotten a
22 resolution beforehand.

23 He chose during this hearing, even
24 though the board offered to read the entire
25 resolution and present it on the screen line by line

1 for him, he chose to participate by phone. So, you
2 know, he has really been given every opportunity by
3 this board to object to this application. We have
4 had several hearings that were cut short as a result
5 of accommodating him, which we have done. He's
6 really been given every single opportunity. And at
7 this point we have very thoroughly gone through the
8 resolution. The applicant would very much like the
9 board to take action at the hearing this evening
10 given the amount of time that has passed.

11 It's the applicant's intent to submit
12 plans for final approval as soon as possible after
13 the board adopts the resolution on preliminary
14 approval so that we can immediately proceed to
15 submit plans to the board for final approval so that
16 the board can take action on final approval before
17 December 26th, which is the date that was agreed to
18 in the settlement agreement.

19 So, you know, I know that there's been
20 discussion of outside agency approvals, but, you
21 know, Section 22 of the MLUL requires this board to
22 act on the application and make it subject to
23 outside agency approvals. That's the requirement
24 under the MLUL.

25 So we have really done everything we

1 could to wrap up this application for the board. I
2 think we have provided extremely detailed plans,
3 gone through the resolution now with a fine-toothed
4 comb, and we would ask that the board please take
5 action this evening. And I think it would be an
6 extremely irregular procedure to delay this again so
7 that Mr. Butler could comment on the resolution.

8 Thank you.

9 CHAIRPERSON SCHAEFER: Okay.

10 Mr. Butler, what did you want to say?

11 ATTORNEY BUTLER: I have no problem
12 with Mr. Linnus preparing a resolution as he was
13 directed to by Mr. Speeney and agreed to by the rest
14 of the board members. My problem, as I said, is he
15 shared that with my adversary, and he didn't share
16 it with me.

17 Now, let me mention -- let me mention
18 this: An objector to an application has just as
19 much rights to the applicant for the application.
20 There should be no misunderstanding of that. And
21 whether or not that applicant or that objector -- if
22 that objector has an attorney or not, it's
23 irrelevant.

24 But I'm an attorney and I have been
25 involved in this case, and I have been sending

1 everybody -- the clerk of the court has always sent
2 me religiously -- and that's why she's so good; she
3 sent me all reports. But yet I never got this one,
4 and she was obviously advised not to tell me about
5 it, not to let me know about it but to specifically
6 send it to the attorney for the applicant.

7 And if Mr. Linnus has said it once, he
8 has said it five times, that the application
9 preceded no oral vote by the board. So this
10 resolution, as it stands now, it's not a
11 memorialization of a resolution, and that's my
12 problem.

13 I have in the past -- I agree that when
14 a board orally makes a decision, an application is
15 made, very often the attorney for the board will
16 send it to the attorney for the applicant who knows
17 more about the application. I have no problem with
18 that. But in this case, this is not a
19 memorialization of a resolution pursuant to an oral
20 vote. An oral vote hasn't been taken, but yet the
21 attorney for the objector has been given an edge.
22 It borders on conspiracy.

23 I want to know, am I going to be given
24 the -- I want a yes-or-no answer. For the record,
25 am I going to be given the correspondence between

1 Mr. Linnus and the attorney for the applicant, and I
2 am going to be given the drafts of the resolution
3 before this final one?

4 May I please have the answer to that
5 for the record?

6 ATTORNEY DORY: Madam Chair, can I
7 respond to that?

8 CHAIRPERSON SCHAEFER: Sure.

9 ATTORNEY DORY: I just would like to
10 echo again that the applicant would very much like
11 the board to act on the application this evening.
12 And I don't believe Mr. Butler has provided any
13 authority for his position. I don't know that he
14 actually requested anything from the board before
15 this meeting, so I don't think that there was
16 anything wrong with this procedure.

17 I ask that the board please take action
18 this evening.

19 CHAIRPERSON SCHAEFER: Frank, what is
20 your opinion, or do you want to answer --

21 ATTORNEY LINNUS: Yes. The law is not
22 an exact science; everybody should know that.

23 I think the procedure that the board
24 initiated, which was to ask me to draft a
25 resolution, which I did, and present it to the

1 board. I think it was quite appropriate for me to
2 send a courtesy copy to Ms. Dory for comments.
3 She's the attorney for the applicant. That's done
4 all the time.

5 However -- and there's no prejudice to
6 Mr. Butler because the board has not taken action --
7 if the board wants to act conservatively and avoid
8 some type of preliminary court action -- it seems
9 pretty clear that no matter what the board does, if
10 the board eventually approves the application, it
11 will be challenged in court. So perhaps to take
12 away any issue, the board might consider deferring
13 action on the resolution.

14 You have already gone through the
15 resolution very carefully and authorized me to send
16 a copy of the resolution -- or Theresa to send a
17 copy of the resolution as it currently exists to
18 Mr. Butler, and in short order ask for his comments.
19 He has heard everything that needs to be heard. The
20 resolution was presented tonight as a
21 work-in-progress, if you will. And perhaps the
22 prudent thing to do would be to authorize the
23 sending of the draft resolution to Mr. Butler to
24 take away that issue.

25 Having said that, the board can

1 certainly adopt the resolution or reject the
2 resolution tonight. I think Mr. Speeney's entirely
3 correct; the fact that the board asks an attorney to
4 prepare a resolution in the affirmative does not
5 guarantee that the resolution will be adopted by the
6 board because one member of the board, and less than
7 a majority of the board, has no authority to pass a
8 resolution. It has to be done by a majority of the
9 board. And that's why we're here tonight, and
10 that's where we spent the last, I guess, going on
11 three hours -- three and a half hours.

12 So basically, that's the decision the
13 board can make. I think whatever decision you make,
14 you will make. And I think whatever you do, there
15 will ultimately be a court action initiated by
16 Mr. Butler, at least from what I'm gathering.

17 ATTORNEY BUTLER: And to add to that,
18 no matter what you do tonight, it's not reversible
19 error; in my opinion, it's irreversible error.

20 Mr. Linnus, I know you are a great
21 lawyer --

22 ATTORNEY LINNUS: Excuse me,
23 Mr. Butler, but I vehemently disagree.

24 ATTORNEY BUTLER: Please let me
25 finish. I know you're a good lawyer.

1 ATTORNEY LINNUS: Wait a second,
2 Mr. Butler. Certainly you could finish, but let me
3 talk, please. Okay?

4 ATTORNEY BUTLER: Yeah. Well, why
5 should you be able to interrupt me like that? Do I
6 interrupt you?

7 ATTORNEY LINNUS: Mr. Butler, I was
8 speaking. Okay?

9 ATTORNEY BUTLER: No. I was speaking
10 and you interrupted me.

11 ATTORNEY LINNUS: Mr. Butler --

12 ATTORNEY BUTLER: And you made a fatal
13 mistake by how you handled the resolution, by
14 sending it to my adversary and not sending it to me.
15 It's your fault. I'm sorry. You're going to read
16 it. You're going to read it in a complaint. I'm
17 sorry, Mr. Linnus. You goofed.

18 CHAIRPERSON SCHAEFER: Okay. I'm
19 going to just ask -- I'm going to poll the planning
20 board members.

21 Are you prepared to vote on this
22 resolution tonight, or would you prefer to put this
23 off to perhaps a special meeting, which the only
24 time we have is next week, which would be
25 October 27th, which is a Wednesday, or push it off

1 until our regular meeting in November?

2 I'm going to kind of take a straw vote
3 here and just a quick.

4 ATTORNEY DORY: Madam Chair, this is
5 Ms. Dory. Can I just briefly just comment on that
6 before you take the poll of the board?

7 CHAIRPERSON SCHAEFER: Go ahead.

8 ATTORNEY DORY: The reason -- I just
9 wanted to reiterate that the reason that the
10 applicant is asking for the board to take action
11 this evening is so that they can submit their plans
12 for final approval --

13 CHAIRPERSON SCHAEFER: Ms. Dory, I
14 totally understand that. I'm going to stop you.
15 That's why I said next week is the first available
16 night, and if we can get everybody to convene next
17 Wednesday, the 27th, that's one week. I don't think
18 one week is going to kill you or Mr. Butler, but
19 it's giving him an opportunity -- I don't agree with
20 him that he is not -- he's an opposer. I don't
21 agree that he should have received a copy of the
22 resolution. I don't agree with that. I agree with
23 every facet of what we have done thus far. We have
24 treated everybody as fairly as possible.

25 I do want to poll my board. I want to

1 find out what their thoughts are. For all I know,
2 they all may want to vote tonight. I don't know.

3 ATTORNEY BUTLER: I consider
4 October 27th not giving me a proper time to do what
5 I'm supposed to --

6 CHAIRPERSON SCHAEFER: You know what,
7 Mr. Butler, I'm going to stop you there because none
8 of us were given proper time. We got a week to
9 review this. So you would have had a week, as well,
10 to review it. So I am calling you out on that one.

11 ATTORNEY BUTLER: Madam Chair, your
12 situation is different than mine.

13 CHAIRPERSON SCHAEFER: We only had one
14 week, Mr. Butler, one week, to review it between all
15 of our professionals. Our planning board members
16 just got it this week. So, no. I'm sorry. You
17 wouldn't have had -- you wouldn't have had anymore
18 time than my professionals have had. You would have
19 had no more time than them.

20 ATTORNEY BUTLER: No matter how much
21 time you give me, as I said, it's irreversible --

22 (Transmission distortion.)

23 CHAIRPERSON SCHAEFER: Then it doesn't
24 really matter if you have the resolution or not;
25 that's what you're saying to me right now. I was

1 going to give you an opportunity --

2 MS. GRABOYES: Excuse me. To this
3 board --

4 CHAIRPERSON SCHAEFER: Excuse me?

5 ATTORNEY BUTLER: I didn't say
6 anything, Madam Chair.

7 KAREN GRABOYES: Excuse me. This is
8 Karen. May I make a comment, please?

9 CHAIRPERSON SCHAEFER: Who is this?

10 KAREN GRABOYES: This is Karen
11 Graboyes at 54 Tuttle Road. I'm a resident --

12 BOARD MEMBER: Public session?

13 KAREN GRABOYES: Pardon me?

14 BOARD MEMBER: Are we open to the
15 public, Madam Chair?

16 CHAIRPERSON SCHAEFER: No, we're not
17 open to the public.

18 BOARD MEMBER: Thank you.

19 KAREN GRABOYES: Well, if we allow
20 Mr. Butler to speak --

21 CHAIRPERSON SCHAEFER: Mr. Butler is
22 an opposer. Mr. Butler has been submitting
23 testimony as an opposer, and that is why Mr. Butler
24 is allowed to speak.

25 All public comment was actually last

1 month when the case was closed and closing arguments
2 were given. So the public session had been closed
3 as of last month. We tonight --

4 KAREN GRABOYES: There's no public --
5 but then why do you post it as a public meeting and
6 us to be able to attend when there's no ability for
7 the residents of this town to comment? And also for
8 the board to be approaching this when documents are
9 not posted on the website?

10 So how is the public supposed to be
11 able to -- as a board --

12 CHAIRPERSON SCHAEFER: Well, I --

13 KAREN GRABOYES: Excuse me. May I
14 continue for a moment?

15 CHAIRPERSON SCHAEFER: No, you cannot
16 because this is not a public session. Okay?

17 KAREN GRABOYES: Then why is it listed
18 as a public meeting on the board -- on the borough
19 website?

20 CHAIRPERSON SCHAEFER: If you look at
21 the agenda, there is no public comment for this
22 particular application. That public comment ended
23 last month. You should have been on that --

24 KAREN GRABOYES: It's not public at
25 any point of the meeting then?

1 CHAIRPERSON SCHAEFER: There is at the
2 very, very end. But for this particular session --
3 and I am giving you latitude in even talking because
4 we wouldn't normally allow public to talk right now.

5 KAREN GRABOYES: But then you should
6 -- okay. But excuse me, Madam Chairwoman. Then you
7 should make it very clear on your website that the
8 public is not allowed to comment.

9 And when the documents have not been
10 publicly posted on the website for --

11 CHAIRPERSON SCHAEFER: Ma'am --

12 KAREN GRABOYES: -- other people to see
13 those along the way -- no. I can talk --

14 CHAIRPERSON SCHAEFER: I'm going to
15 stop you now, or I will have my secretary mute you.
16 Your choice.

17 The documents, all documents, have been
18 posted on the website with the exception of the
19 resolution because the resolution had not been gone
20 over or even voted on. All other documents, all
21 other exhibits, all other, you know, facts of this
22 case are online. They are on the --

23 KAREN GRABOYES: You should check your
24 website.

25 CHAIRPERSON SCHAEFER: -- on the

1 website.

2 KAREN GRABOYES: You should check your
3 website.

4 CHAIRPERSON SCHAEFER: I'm sorry?

5 KAREN GRABOYES: You should check your
6 website. You should check your website.

7 CHAIRPERSON SCHAEFER: My secretary
8 tells me that everything is online --

9 KAREN GRABOYES: Before you make that
10 comment. Before you make that comment, you should
11 check your website to try to open up all the
12 documents.

13 CHAIRPERSON SCHAEFER: Okay.

14 KAREN GRABOYES: You are board
15 members, who are the townspeople of this town, you
16 should be aware.

17 CHAIRPERSON SCHAEFER: Okay. And I
18 apologize if they're not there. Then that is
19 something I don't know. I've always -- whenever I
20 have gone on, they have been there. I have been
21 able to open everything.

22 Putting that aside, the public, if you
23 had been following and been coming to every meeting,
24 you would have known you could have made comment at
25 every single meeting. The last meeting that --

1 KAREN GRABOYES: If the meetings were
2 open to the public --

3 CHAIRPERSON SCHAEFER: They were.

4 KAREN GRABOYES: -- in an open forum.
5 No. Having a Zoom meeting where you can't even get
6 your Zoom meetings to work --

7 CHAIRPERSON SCHAEFER: But that's not
8 my fault. I can't -- this is how I'm being directed
9 by the town, by the borough, to have Zoom meetings.
10 I'm not allowed to go into Borough Hall.

11 That's something you have to take up
12 with the mayor and council. That has nothing to do
13 with planning board. We are following the edict of
14 what is coming -- what is being told to us by the
15 powers to be of this town. That is what we are
16 following. We don't have the privilege to say, Oh,
17 we're just going to go back into public -- you know,
18 a public meeting. We don't have that ability to do
19 it. We need approval to do that.

20 As far as being public on Zoom, we have
21 been public clearly on Zoom. We have had many
22 people speak on -- actually, GoToMeeting. We have
23 had many people speak on it. We have had many
24 public respond, and this has been going on for
25 several months.

1 And last month was the final month of
2 the hearing. That was it. They gave their closing
3 arguments. Public was allowed to speak, and they
4 were allowed to give, you know, their comments,
5 their questions. As every -- as every witness to
6 the applicant was introduced, public was allowed to
7 ask questions. No one was ever stopped.

8 When we actually even recapped the
9 entire process of this particular application, which
10 has been going on for years, and when this applicant
11 took over, we -- they gave a recap, as did I give a
12 recap of day, and date, and time, right down to the
13 time of when certain things had been discussed and
14 who discussed what, and what was still outstanding,
15 and we allowed the public to ask questions as we
16 were going through that process.

17 So to sit there and say to me public is
18 not allowed, that's an absolutely false statement.
19 To sit there and say to me the documents are not
20 online, I apologize to you if they are not online.
21 Every time I have gone online, they have been there.
22 The only exception is this resolution. No, that is
23 not online because it has not been voted on.

24 But I give exception to everything else
25 that you have stated at this meeting. I am allowing

1 you to have this conversation with me, which I don't
2 need to do, but you are a resident, as am I, as is
3 everyone else on this planning board. So I am
4 giving you that latitude, but you will not tell me
5 that you have never had the opportunity because
6 there have been years of opportunity. Thank you.

7 Now I'm going to open it up to our
8 planning board members, and I want to hear what
9 their feeling is. Do they want to push this off for
10 a week, a month, or do they want to vote tonight?
11 I'm going to go down the line.

12 Councilman Martino, you're first.

13 COUNCILMAN MARTINO: Real quick,
14 Mr. Linnus. I got a quick question for you before I
15 give you my opinion.

16 ATTORNEY LINNUS: Sure.

17 COUNCILMAN MARTINO: If Mr. Butler
18 receives this draft resolution, what is his input?
19 What is -- is he allowed to make input on it? Is he
20 required to have input on it? Or is this just
21 covering more bases for the future?

22 ATTORNEY LINNUS: Yeah, it's more like
23 covering your bases for the future. His input is
24 basically -- can be accepted by the board or not
25 accepted by the board.

1 COUNCILMAN MARTINO: Okay. My
2 personal opinion on this, after sitting here for the
3 last, I guess --

4 ATTORNEY LINNUS: Three-plus hours.

5 COUNCILMAN MARTINO: No. I'm talking
6 about the last 22 months. Let's forget about the
7 last three and a half hours. And, again, I do
8 take -- and I'm going to be honest. Okay? I have
9 to take a little bit of offense when people make
10 accusations about this board. This board has been
11 diligent. This board has been hard-working. This
12 board has tried to cover their bases as much as
13 possible, just like the decision we're going to make
14 right now to extend this another week to cover us.

15 Listen, we've been here. I make these
16 announcements at the council meetings. Everybody
17 knows when these meetings are. The minutes are out
18 there. The videos are out there. I wish everybody
19 would have the -- give us their opinion as this has
20 been going on, because that's what helps us.

21 Listen, we're only a group. Okay?
22 We're supposed to be driving this vehicle for the
23 future of this borough. But if nobody is giving us
24 input, you know, we have to go out and beat the
25 pavement ourselves, which I do pretty much every

1 day. And anybody can call me at any time and give
2 me their opinion, which I haven't received too much
3 backflow.

4 So my opinion on this is I would love
5 to allow a week to give Mr. Butler his dream of
6 reviewing this resolution. I look forward to if --
7 hearing his opinion on it. But, again, I do believe
8 in transparency. I do believe in giving everybody
9 their opportunity.

10 So it's been a long haul, and I think
11 one more week -- I know it's frustration on Ms. Dory
12 and Mr. Hollenbeck's side; I understand that, but I
13 would really like to -- if you can give us a week,
14 keep an open mind, and understand it from our point
15 of view, I'd like to see the extra week given to
16 cover our bases. So that's my opinion.

17 CHAIRPERSON SCHAEFER: Thank you,
18 Councilman.

19 Mayor?

20 MAYOR BALLA: I have sat through all
21 of these for -- it's over two years now, all the
22 hearings from October of '19 until today, and the
23 countless thousands of documents we have gone
24 through, and the testimony. But I would afford
25 Mr. Butler the opportunity to review this proposed

1 resolution. And I would agree to defer to next
2 Wednesday, the 27th, for a vote and special meeting.

3 CHAIRPERSON SCHAEFER: Thank you,
4 Mayor.

5 Karen?

6 MEMBER PENNETT: I'm really split on
7 the issue. I think we -- I really think we should
8 vote tonight. It's been for so long. You know, I'm
9 not sure by Mr. Butler reading things what he can
10 really add or what changes that he can make.

11 And if I'm outvoted, I would prefer to
12 meet on Tuesday night rather than Wednesday, but
13 that's --

14 CHAIRPERSON SCHAEFER: Unfortunately,
15 the only date available is Wednesday. Thank you,
16 Karen.

17 Yvette?

18 MEMBER NORA: Out of an abundance of
19 caution, I think a week is not going to hurt us.

20 CHAIRPERSON SCHAEFER: Thank you.

21 Paul?

22 MEMBER FIORILLA: You know, I think we
23 should vote tonight, too. We have had public
24 hearings on this for, you know, over the course of
25 years. The resolution in question that we're

1 talking about was read in painstaking detail at a
2 public meeting. These meetings are all public.
3 There's no legal doctrine that objectors have to get
4 materials in advance. I just am not aware of this.

5 You know, at a criminal trial, the
6 prosecution has to share evidence with, you know,
7 the defendants. But this is not that, right? This
8 is a totally different kind of law. I have never
9 heard of any legal document that we have to seek out
10 objectors and send them material. It just doesn't
11 make any sense to me.

12 And whatever -- I don't think that
13 would -- the vote is going to change, you know, our
14 legal position and whether the legal position of
15 the -- you know, if this is approved, I guess there
16 will probably be a lawsuit, and I don't think when
17 we vote is going to change, you know, the likelihood
18 of that lawsuit, to win or lose it.

19 So for all those reasons, I think we
20 should vote tonight.

21 CHAIRPERSON SCHAEFER: Thank you.

22 Troy?

23 MEMBER SIMS: I really do want to vote
24 tonight, but I think if we give the extra week,
25 maybe that would lessen the likelihood of a lawsuit

1 if this is approved. I understand the applicant
2 wants to -- wants to move this along because of
3 time, but seven days may be the difference between
4 Mr. Butler having an opportunity to review the
5 documents, and he may concede that he may not want
6 to go forward with the lawsuit. I don't know what
7 that entails, but I just would rather cover all the
8 bases so he has the same opportunity that we had to
9 look at it, and, you know, even though he wasn't
10 entitled to it, that is one less thing that he can
11 bring up if he wants to go to court, that he still
12 had the same opportunity that everyone else had to
13 look at it.

14 So I vote to stay it until next week.

15 CHAIRPERSON SCHAEFER: Steve?

16 Thank you, Troy.

17 Steve?

18 MEMBER POTE: I think we should wait
19 an extra week. We have a draft that has been
20 written in the affirmative. It's very helpful. I
21 think I learned a lot tonight. But as you said,
22 Madam Chairman, we weren't given proper time either
23 from the standpoint of having enough time to digest
24 and go through this.

25 So I would like to hear the objector.

1 I have no problem with a special meeting in the next
2 week. And I believe that it would minimize any
3 potential other litigation, et cetera. I think we
4 have done a great job going through this over the
5 course of the last couple of years, and I think
6 waiting an extra week to make sure we can at least
7 dot this I or cross this T is the right thing.

8 CHAIRPERSON SCHAEFER: Okay, Steve.
9 Thank you.

10 Don?

11 VICE-CHAIRMAN SPEENEY: Thank you,
12 Tracee. I think we should wait the week for a
13 couple of reasons; one, I would like to get a
14 cleaned-up version to read. And if we can get that
15 quickly, that will go over well with me in terms of
16 dotting I's and crossing T's.

17 I do believe that extending it a week
18 offers Mr. Butler an opportunity to read. And it
19 recognizes also that he, representing Weldon, has
20 been here at a lot of meetings. So it's not like
21 he's not familiar with what's going on.

22 And I believe with the cleaned-up copy
23 for me, I would be able to make an easy, breathable
24 decision in about a week.

25 Thank you.

1 CHAIRPERSON SCHAEFER: Thank you.

2 Al Ellis, please. You're muted, Al.

3 MEMBER ELLIS: I want to thank you
4 personally, Madam Chair, for your patience with all
5 of us and particularly the public. And I want to
6 specifically thank Frank for the great work that he
7 did in proposing --in presenting this proposal.

8 I agree with several of us who have
9 given the opportunity for Mr. Butler to have another
10 shot at his presentation. I don't think one more
11 week is going to make a great bit of difference, but
12 the Weldon corporation has been a great -- has been
13 a great service to this community, and I think
14 Mr. Butler understands that, and I would be more
15 than happy to give him the opportunity for one more
16 week to take a look at it.

17 Thank you.

18 CHAIRPERSON SCHAEFER: Okay. I know,
19 Mr. Hollenbeck, you have been -- I know you're
20 upset, and I apologize --

21 MEMBER SPINGLER: Did you forget me?

22 CHAIRPERSON SCHAEFER: Oh, Ellen, I'm
23 so sorry.

24 MEMBER SPINGLER: Are you tired of
25 hearing my voice tonight?

1 CHAIRPERSON SCHAEFER: Ellen, go.

2 MEMBER SPINGLER: I would concur with
3 waiting a week. We have gone so far and so
4 cautiously and careful through this whole procedure,
5 and sometimes process becomes more important, and so
6 let's go through the process and wait one more week
7 and give Mr. Butler his opportunity to speak.

8 CHAIRPERSON SCHAEFER: Thank you,
9 Ellen. Well said.

10 MEMBER FIORILLA: Can I ask one more
11 question, please?

12 CHAIRPERSON SCHAEFER: Yes.

13 MEMBER FIORILLA: If we come back --
14 it seems like what the board is going to decide here
15 is to come back another week. Will there be like a
16 comment period at the next meeting, or will we just
17 vote, or, you know, what's the -- what will be the
18 agenda?

19 Because we're coming back next week
20 kind of on the premise that we'll give the objectors
21 a chance to rebut something, you know, but I
22 don't -- but is that what we're going to do? Is
23 that what the meeting is going to be about, or are
24 we just going to vote?

25 ATTORNEY LINNUS: I think if you --

1 I'll answer that, Paul. I think if you do vote to
2 defer action, I think what would happen is tomorrow
3 Theresa would send a clean copy of what you reviewed
4 tonight to the board members for their review and
5 also to Mr. Butler.

6 Now, at this meeting Mr. Butler will do
7 what Mr. Butler does. He'll either show up and make
8 comment, he'll either submit written comments, or
9 he'll do nothing. And that will be totally up to
10 him. But whatever comments he does make, I'm sure
11 the board will consider based on the record because,
12 after all, this resolution is supposed to be
13 reflective of the record. As a matter of fact,
14 that's why it's very comprehensive. There's an
15 objector involved, and the courts will be looking at
16 your findings, your conclusions, and your conditions
17 of approval if you vote to approve it. So that's
18 why there's a lot of care taken with respect to the
19 drafting of a resolution for consideration.

20 So to answer your question directly, if
21 the board votes to defer, a copy of the draft
22 resolution -- and that's what it is -- a draft
23 resolution should go to Mr. Butler for whatever he
24 wants to do with it, and that's what I see happening
25 within the next week.

1 ATTORNEY DORY: Madam Chair?

2 CHAIRPERSON SCHAEFER: Yes.

3 ATTORNEY DORY: May I just briefly
4 comment before the board decides its next steps?

5 CHAIRPERSON SCHAEFER: Yeah. Go
6 ahead, Ms. Dory.

7 ATTORNEY DORY: I just wanted to
8 respond. I know the board -- you have heard from
9 the board members now, but I just wanted to make
10 sure that the board members understand that each
11 week you give to Mr. Butler takes away one week for
12 this board and its professionals to review the final
13 plans for this application.

14 So we are working under a court-ordered
15 deadline of December 26th. And I think Mr. Butler
16 has already stated that even if he had another week,
17 he wouldn't have enough time. His only issue this
18 entire time has been traffic. So it's a very small
19 portion of the resolution that actually deals with
20 those issues. I'm not sure what type of comment
21 he's going to be providing.

22 I do reiterate that this is a highly
23 unusual process to delay an applicant again so that
24 an objector may comment on a resolution. I have
25 never seen that happen before. There's no case law

1 out there on it at all.

2 So I believe that what Mr. Butler is
3 asking you to do makes it more unlikely for this
4 board to be able to comply with the court order and
5 I think that the board should consider that. I
6 think it's very important.

7 This application has been going on for
8 a very long time. It's part of the borough's
9 affordable housing obligation. I know that the
10 board is very diligent about the application, but I
11 think the board should consider those points in
12 making its decision.

13 So we appreciate very much all of the
14 time and attention that the board has given to this
15 application particularly this evening in going over
16 the resolution. And the board went through it for
17 such a long time because of Mr. Butler's points.
18 And now after all of this time, spending four hours
19 about going through this resolution, now we're going
20 to go and give him an extra week where he has
21 already said that that's not even enough time for
22 him.

23 So I do think that it's just another
24 delay. And litigation will be filed by Weldon
25 whatever action this board takes. So we ask that

1 the board please take action on the application this
2 evening so the applicant can proceed with submitting
3 final plans to the board, so that the board and its
4 professionals have enough time to go through those
5 plans before the board acts on final approval, which
6 is what we have been discussing for the past few
7 meetings.

8 So thank you very much, and that's all
9 I have to say.

10 ATTORNEY BUTLER: Madam Chair --

11 CHAIRPERSON SCHAEFER: Wait a minute,
12 Mr. Butler.

13 ATTORNEY BUTLER: -- the case was held
14 up a month because the applicant gave a defective
15 notice. That wasn't my fault; that was her fault.

16 CHAIRPERSON SCHAEFER: Mr. Butler,
17 there were a lot of faults here. It was -- and I'm
18 not even going to say it's a fault with Mr. Simoff
19 getting sick, but we delayed for Mr. Simoff because
20 he was legitimately sick with COVID.

21 ATTORNEY BUTLER: He couldn't help
22 that.

23 CHAIRPERSON SCHAEFER: And I just said
24 that, Mr. Butler, that it wasn't his fault.

25 ATTORNEY BUTLER: But a defective

1 notice is the fault of the attorney.

2 ATTORNEY DORY: 180 days does not --

3 CHAIRPERSON SCHAEFER: Everybody stop.
4 Everybody stop. Everybody stop.

5 I am not negating what you are saying,
6 Mr. Butler. Yes, there was the notice which was
7 incorrect; Mr. Simoff was ill; we couldn't get all
8 of our professionals together. We've all been
9 working extremely hard in trying to move this
10 application forward. We're meeting every
11 Tuesday -- well, every second Tuesday of the month.
12 We are meeting, when we have the ability, at our
13 regular meetings.

14 What I'm going to say next is that I do
15 think that we should put this off for one week. I
16 apologize, Ms. Dory, but I do feel that. I feel
17 that the planning board members need time to now see
18 it completely in black and white because, I will be
19 honest with you, all my pages have so much
20 handwriting and cross-outs, notwithstanding you were
21 saying that you were coming to us in November anyway
22 at our regular meeting for your final. So it's not
23 going to affect anything on your end. You were
24 coming to us in November at our regular meeting.

25 Okay? So I can't see where one week is

1 going to hurt it one way or the other because you
2 are still coming to us in November. And that's just
3 a statement. You said it in your letter.

4 So I think that this board should take
5 the one week, come in next Wednesday, the 27th. We
6 will start it at 6:30. It should not be a very long
7 meeting. It will give Mr. Butler his opportunity.

8 Mr. Butler, we're giving you the leeway
9 again. This board has been nothing but gracious
10 with you. And you know that, Mr. Butler. You know
11 that.

12 ATTORNEY BUTLER: So let me tell you
13 this, I don't think what you're doing corrects your
14 irreversible error. Okay? I don't want anybody to
15 give me a week thinking that that's going to all of
16 a sudden cover up for the sins of the past. It
17 doesn't. And --

18 CHAIRPERSON SCHAEFER: Mr. Butler.

19 ATTORNEY BUTLER: -- my position is
20 going to be the same whether we do it on the 27th or
21 not.

22 CHAIRPERSON SCHAEFER: Mr. Butler --

23 ATTORNEY BUTLER: You might want to
24 reconsider your vote with that. I don't care.
25 Please don't think I'm trying to lull you into a

1 sense that if you give me the 27th, I still don't
2 think this is irreversible error. I do think it is.

3 CHAIRPERSON SCHAEFER: But I'm going
4 to say to you, Mr. Butler, when we got the
5 resolution, it was the same amount of time as you
6 will have to review the resolution. You aren't
7 getting any more or any less time than the board
8 got.

9 ATTORNEY BUTLER: But my adversary was
10 also given the resolution. You keep on forgetting
11 about that.

12 CHAIRPERSON SCHAEFER: But she wasn't
13 given it until the end of last week. Okay?

14 ATTORNEY BUTLER: I was never given
15 it.

16 CHAIRPERSON SCHAEFER: What I'm saying
17 to you, Mr. Butler, is she had less than a week from
18 the end of last week until tonight to review. Our
19 professionals had less than a week to review. We
20 are giving you a full week less a day to review.
21 You're the one who's getting the most time to review
22 the resolution out of everybody -- my professionals,
23 Ms. Dory, all of us. You are getting more time --
24 on the record, more time to review it than if you
25 had been given it when Ms. Dory was given it.

1 So that's -- go ahead, I'm sorry.

2 ATTORNEY BUTLER: Go ahead. I'm sorry
3 to interrupt you. I apologize.

4 CHAIRPERSON SCHAEFER: Go ahead,
5 Mr. Butler.

6 ATTORNEY BUTLER: The fact that my
7 adversary had the resolution put her on third base
8 in this case. And I was quiet because I had nothing
9 to talk about because I had nothing to read and
10 study for. It was patently unfair to me and Weldon.

11 CHAIRPERSON SCHAEFER: Mr. Weldon, how
12 is it unfair --

13 MEMBER FIORILLA: Do we have to keep
14 listening to the same thing? Can we please, you
15 know, just stop repeating ourselves and just --

16 CHAIRPERSON SCHAEFER: Mr. Butler,
17 Mr. Butler, how can it be unfair if we're not voting
18 tonight?

19 ATTORNEY BUTLER: Well, because I
20 didn't get to participate in tonight like my
21 adversary.

22 CHAIRPERSON SCHAEFER: Mr. Butler --

23 ATTORNEY BUTLER: My adversary
24 participated in this case --

25 CHAIRPERSON SCHAEFER: Mr. Butler --

1 ATTORNEY BUTLER: -- asked for the
2 resolution, asked for revisions, got revisions, made
3 comments, was heard, made arguments, got things
4 postponed from preliminary to final. She had an -- she
5 participated in this case, and I didn't.

6 CHAIRPERSON SCHAEFER: All right.
7 Mr. Butler, you will be able to review the
8 resolution. We are going to meet next Wednesday at
9 6:30, and you have more time than this board or Ms.
10 -- or the applicant had to review the resolution.
11 We are not voting on it tonight. So in my opinion,
12 you are not being given -- you know, you're not
13 behind the eight ball. You are now being given the
14 opportunity. You are being given the same amount of
15 opportunity -- and, in fact, Mr. Butler, you're
16 being given even more opportunity because we all
17 went over this resolution and we -- there's more
18 pieces to it than any of us had before tonight. So
19 I think you're in the driver's seat, Mr. Butler.

20 You know, Ms. Dory, I think that next
21 Wednesday, the 27th, this application will be
22 continued. I plan -- I will make this statement,
23 Mr. Butler -- we do plan on voting on the 27th.

24 ATTORNEY BUTLER: And I assume that I
25 will not be given the correspondence between

1 Mr. Linnus and the attorney for the applicant
2 regarding the resolution; is that correct?

3 CHAIRPERSON SCHAEFER: Well, that's up
4 to Frank.

5 Frank?

6 ATTORNEY LINNUS: Yeah. I don't think
7 there's any mystery. I think Ms. Dory requested a
8 draft of the resolution when it was finalized by the
9 staff and my office, and she was provided with that,
10 I think, sometime last week. Maybe the 12th --
11 seems to ring a bell, 12th through the 13th. And
12 she reviewed it and sent me a letter with requested
13 changes. And the resolution that you went over
14 tonight had her markups on it. So that's, to the
15 best of my knowledge, the only resolution changes,
16 if you will, that were in the proceedings. So --

17 ATTORNEY BUTLER: I repeat --

18 ATTORNEY LINNUS: Excuse me. Excuse
19 me, Mr. Butler. I'm talking. Now you're
20 interrupting me. Okay?

21 ATTORNEY BUTLER: Oh, I'm sorry.

22 ATTORNEY LINNUS: That's okay. But
23 let me talk, please.

24 ATTORNEY BUTLER: Sure. Absolutely.

25 ATTORNEY LINNUS: All right. So I

1 don't have any objection to Theresa sending the
2 clean version of what we did tonight along with the
3 marked-up version to Mr. Butler which represents, I
4 believe, Ms. Dory's comments.

5 Is that accurate, Ms. Dory?

6 ATTORNEY DORY: Yes, yes. I have no
7 objection to whatever I sent to you being sent to
8 Mr. Butler.

9 ATTORNEY LINNUS: Okay.

10 CHAIRPERSON SCHAEFER: Okay,
11 Mr. Butler?

12 ATTORNEY BUTLER: Thank you.

13 ATTORNEY LINNUS: Theresa, you could
14 also send the cover letter from Ms. Dory.

15 ATTORNEY BUTLER: Frank, I apologize
16 for interrupting you.

17 ATTORNEY LINNUS: Okay.

18 CHAIRPERSON SCHAEFER: Mr. Butler,
19 you're going to get the cover letter from Ms. Dory
20 that she had sent out with the marked-up resolution,
21 her marked-up resolution. You will get a copy of
22 the resolution that was initially distributed.
23 There's not much more there.

24 Actually, the marked-up resolution is
25 the original resolution.

1 ATTORNEY LINNUS: It's what the board
2 reviewed, that is correct.

3 CHAIRPERSON SCHAEFER: Right. So you
4 will get it, Mr. Butler. And you will have more
5 time than any anybody else.

6 ATTORNEY BUTLER: I guess -- I know
7 Theresa is so busy, and she's been so good -- I
8 guess I will get everything tomorrow, if that's
9 possible.

10 CHAIRPERSON SCHAEFER: Yes. She's
11 nodding her head yes.

12 Okay. So this will be next Wednesday,
13 the 27th, at 6:30. We will reconvene on this
14 application. Mr. Butler can make his comments, but
15 I will say, everybody please be prepared to vote.

16 ATTORNEY LINNUS: Theresa, this is a
17 special meeting, so you will take care of the
18 special meeting notice requirements under the Open
19 Public Meetings Act?

20 BOARD SECRETARY: Absolutely.

21 CHAIRPERSON SCHAEFER: Okay. So I am
22 now going to open it up to public, if anyone from
23 the public has a comment.

24 Hearing none, I close the public
25 session.

1 Okay. So this meeting is adjourned,
2 and this will serve as notice that we are going to
3 have a special meeting next Wednesday, the 27th,
4 starting at 6:30 on this application, and it will be
5 virtual. That's it.

6 ATTORNEY BUTLER: Thank you, Madam
7 Chair.

8 ATTORNEY LINNUS: Okay. Good night.

9
10 (Application adjourned at 10:20 p.m.)
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C E R T I F I C A T E

I, ANGELA C. BUONANTUONO, a Notary Public and Certified Court Reporter of the State of New Jersey and Registered Professional Reporter, do hereby certify that prior to the commencement, the witness was duly sworn to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the deposition as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative, nor employee, nor attorney, nor counsel of any of the parties to this action, and that I am neither a relative, nor employee of such attorney or counsel, and that I am not financially interested in the action.



Angela C. Buonantuono, CCR, RPR, CLR

NJ State Board of Court Reporting

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Dated: October 26, 2021

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