

**THE BOROUGH OF WATCHUNG**  
**Planning Board**  
**Regular Meeting**  
**April 20, 2021**

**OFFICIAL MINUTES**  
**Approved 6/15/21**

Chairwoman Tracee Schaefer called the Regular Meeting to order at 6:30 p.m.

**ROLL CALL**

Ms. Tracee Schaefer, Chairwoman  
Mr. Donald Speeney, Vice Chairman  
Mr. Keith Balla, Mayor  
Mr. Pietro Martino, Councilman  
Ms. Ellen Spingler, Secretary  
Mr. Al Ellis (arriving 7:54 pm)  
Ms. Karen Pennett  
Mr. Steve Pote  
Mr. Paul Fiorilla

Mr. Troy Sims  
Ms. Yvette Nora  
Mr. Francis P. Linnus, Esq.  
Mr. Mark Healey, PP  
Mr. Ricardo Matias, PE, Engineer  
Mr. John Jahr, Traffic Engineer  
Mr. Joe Fishinger, Traffic Engineer  
Ms. Theresa Snyder, Board Clerk

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

**DISCUSSION**

**Cannabis Subcommittee Report**

Chairwoman Schaefer read the Cannabis Subcommittee Report into the record. The subcommittee held a virtual meeting on Friday, April 9, 2021, to discuss recommendations to present to the Borough Council in response to the Council's request from the board to consider the implementation of cannabis within the Borough.

Mr. Speeney opened the discussion to board members.

On question of Mr. Fiorilla about school zones, Mr. Linnus responded that the issue requires investigation. Mr. Linnus advised the Board that the opt-out option would allow the Borough to look at other municipalities and other states for guidance.

Mr. Pote thought it wise to opt-out for the present time.

Madam Chair reminded the Board that the option to opt-out did not preclude anyone in the Borough to have cannabis brought to their home. She further opined at the present stage there was too much to figure out in a three month time period, and she would like to hear input from the Board of Education, the Board of Health, Police, Fire, and Environmental.

Councilman Martino said this was step one. He informed those present of the possibility of a special town hall meeting to further discuss the issue.

The Mayor confirmed that a town hall meeting was scheduled for May 12, 2021.

Mr. Speeney suggested that the opt-out decision would allow the Borough to move slowly, but failure to act would result in any and all uses being allowed. He expressed concern that someone should be watching the clock.

On motion by Ms. Spingler, seconded by Mr. Speeney, the board directed Ms. Snyder to send a letter along with the subcommittee report and zoning map to the Mayor and Council in response to the Council's request [Resolution R-15] for a cannabis review.

Roll Call:

|               |                                                                                                                                   |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Ayes:         | Ms. Spingler, Councilman Martino, Ms. Pennett, Mayor Balla, Mr. Speeney, Mr. Pote, Mr. Fiorilla, Mr. Sims and Chairwoman Schaefer |
| Nays:         |                                                                                                                                   |
| Not Eligible: | Ms. Nora                                                                                                                          |
| Abstain:      |                                                                                                                                   |
| Absent:       | Mr. Ellis                                                                                                                         |

#### MINUTES

On motion by Mr. Pote, seconded by Ms. Pennett, the minutes and transcript from the meeting held on March 23, 2021, were accepted and carried on voice vote.

#### APPLICATIONS

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

100 UNION AVENUE

BLOCK: 7801 LOT: 1

REPRESENTED BY: Stephen F. Hehl, Esq.

BB ZONE

Expiration Date: 4/30/21

***The contents of the hearing for the above referenced application is recorded in the below transcript.***

ADJOURN

The Board unanimously voted to adjourn the meeting.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Theresa Snyder', is written over the printed name.

Theresa Snyder  
Board Clerk

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

-----  
REGULAR MEETING FOR:  
THE LEARNING EXPERIENCE  
BLOCK 7801, LOT 1  
100 UNION AVENUE  
CASE NO. PB 19-02  
-----

TUESDAY, APRIL 20, 2021  
COMMENCING AT 6:30 P.M.  
TRANSCRIPT OF PROCEEDINGS  
VIRTUAL PUBLIC HEARING  
BOARD MEMBERS PRESENT:  
TRACEE SCHAEFER, CHAIRPERSON  
KEITH S. BALLA, MAYOR  
ALBERT ELLIS (arriving at 7:54 p.m.)  
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

JOSEPH FISHINGER, P.E., P.P., PTOE, TRAFFIC ENGINEER

JOHN JAHR, P.E., PTP, TSOS, BOARD TRAFFIC ENGINEER

THERESA SNYDER, BOARD SECRETARY

STENOGRAPHICALLY REPORTED BY:

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

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

JAVERBAUM WURGAFT HICKS KAHN WIKSTROM & SININS, P.C.

BY: STEPHEN F. HEHL, ESQUIRE

370 Chestnut Street

Union, New Jersey 07083

T: (908) 687-7000

F: (908) 687-7028

Email: shehl@lawjw.com  
--Counsel for the Applicant  
BUTLER & BUTLER  
BY: WILLIAM B. BUTLER, ESQUIRE  
501 Lenox Avenue  
Westfield, New Jersey 07090  
T: (908)233-4400  
F: (908)233-4465  
Email: cb@butlerlawnj.com  
--Counsel for the Objector, Weldon Materials, Inc.

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I N D E X  
FOR THE OBJECTOR:  
PETER STECK, P.P. PAGE  
DIRECT BY MR. BUTLER 10  
CROSS BY MR. HEHL 86  
PUBLIC COMMENT:  
NAME ADDRESS PAGE  
None.

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1 EXHIBITS  
2  
FOR THE OBJECTOR:  
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EXHIBIT DESCRIPTION PAGE  
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O W - 2 7 Photograph labeled Slide No. 1 15

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 O W - 2 8 Photograph labeled Slide No. 2 16  
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 O W - 2 9 Photograph labeled Slide No. 3 17  
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 O W - 3 1 Photograph labeled Slide No. 4 19  
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 O W - 3 2 Photograph labeled Slide No. 5 20  
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 O W - 3 3 Photograph labeled Slide No. 6 28  
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 O W - 3 4 Photograph labeled Slide No. 7 32  
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 O W - 3 5 Photograph labeled Slide No. 8 36  
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 25 EXHIBITS NOT RETAINED BY REPORTER  
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 1 CHAIRPERSON SCHAEFER: So now we're  
 2 going to go into the next part of our meeting. So I  
 3 ask for a motion to waive the reading and include  
 4 the transcripts of our regular meeting on  
 5 March 23rd, 2021.  
 6 Do I have a motion to waive?  
 7 BOARD MEMBER: So moved.  
 8 CHAIRPERSON SCHAEFER: Thank you.  
 9 MEMBER PENNETT: Second.  
 10 CHAIRPERSON SCHAEFER: Second?  
 11 MEMBER PENNETT: Second.  
 12 CHAIRPERSON SCHAEFER: Thank you,  
 13 Karen.  
 14 Discussion? I'm going to call for a  
 15 voice vote. All in favor, state by saying "aye."  
 16 BOARD IN UNISON: Aye.  
 17 CHAIRPERSON SCHAEFER: Anyone opposed?  
 18 Anyone not voting?  
 19 Okay. Thank you.  
 20 All right, our next -- Ellen, can you  
 21 please call our next application?  
 22 MEMBER SPINGLER: Yes. Case Number PB  
 23 19-02, The Learning Experience, 100 Union Avenue,  
 24 Block 7801, Lot 1, BB zone. Expiration 4/30/21.  
 25 CHAIRPERSON SCHAEFER: Thank you.  
 6  
 1 So last month we had left off with  
 2 Mr. Butler saying that he would present Mr. Simoff,  
 3 his traffic engineer, first, but his lineup has now  
 4 changed, and he will be starting with Mr. Steck, his  
 5 planner, followed by Mr. Simoff.  
 6 After each testimony, questions will  
 7 follow, as you know, by the planning board, our  
 8 professionals, Mr. Hehl, and the public. I also  
 9 understand that Mr. Weldon will be testifying at  
 10 some point, and we also have some updated reports  
 11 from our professionals for the applicant to address.  
 12 Because I want to move this along  
 13 expeditiously, Mr. Butler, I'm going to ask you,  
 14 unless you have new reports in from our engineer and  
 15 from our planner that were apparently redone based  
 16 on testimony from your experts in questions that  
 17 came up and so forth. But I will leave it to you.

18 What I would like is to have Mr. Hehl be able to  
19 question -- or answer the questions on those two  
20 reports and then go into your continuing testimony  
21 of your experts.

22 Are you okay with that or -- because it  
23 might help you. You know, additional questions  
24 might come up for you. Mr. Butler?

25 ATTORNEY BUTLER: I don't understand

7

1 the question. I thought that I was continuing my  
2 objection --

3 CHAIRPERSON SCHAEFER: You are. And

4 I'm asking you, do you mind if I switch it up a  
5 little and have Mr. Hehl just answer the questions  
6 on Mr. Healey, our planner, and Mr. Matias, our  
7 engineer, on their two latest reports that they  
8 submitted and then move on to you?

9 If you are not fine with that, then

10 we'll go directly to you.

11 ATTORNEY BUTLER: All right. I would  
12 prefer to go on with my witnesses and have  
13 Mr. Hehl's witnesses, if they want to, respond to  
14 those reports when they testify the next time. I'm  
15 trying to -- I want to get through. I know you're  
16 in a -- you're in a hurry. You have been very  
17 patient. I have three witnesses. I want to try to  
18 get through with these three witnesses tonight, if  
19 possible.

20 CHAIRPERSON SCHAEFER: And I

21 understand that and I'm fine with that. That's what  
22 we agreed to at our last meeting, but I just thought  
23 I would ask you. So your answer is no, so let's  
24 move on. Go present your next witness.

25 Yes, Mr. Hehl?

8

1 ATTORNEY HEHL: I just did want to  
2 clarify, though, that I did send the letter in. Two  
3 of the items we are not seeking relief on, the  
4 posting of the performance bonds and the hairpin, so  
5 I just want to clarify that. But we can proceed.  
6 And, yeah, we do have the witnesses to  
7 address those reports, and we do appreciate both  
8 your engineer and your planner providing those  
9 reports, and we'll move forward.

10 CHAIRPERSON SCHAEFER: Okay. Thank  
11 you, Mr. Hehl.

12 ATTORNEY BUTLER: Thank you, Mr. Hehl.

13 CHAIRPERSON SCHAEFER: Okay. Mr.  
14 Butler.

15 ATTORNEY BUTLER: Okay. Thank you.

16 Madam Chair, I would like to call as my  
17 first witness and have him qualify as a planner,  
18 Peter Steck. If he can be sworn, I'll start my  
19 questioning.

20 ATTORNEY LINNUS: Peter, where are  
21 you?

22 MR. STECK: I'm right next to

23 Mr. Butler. In the same window.

24 ATTORNEY LINNUS: Do you want to raise  
25 your right hand, please.

9

1 Do you swear or affirm that the  
2 testimony you are about to give will be the truth,  
3 the whole truth, and nothing but the truth.

4 PETER STECK: I do.

5 ATTORNEY LINNUS: All right. Do you



6 want to state your name and business address for the  
7 record?  
8 PETER STECK: Yes. Peter G. Steck,  
9 S-t-e-c-k, 80 Maplewood Avenue, Maplewood, New  
10 Jersey.  
11 ATTORNEY LINNUS: Your witness,  
12 Mr. Butler.  
13 ATTORNEY BUTLER: All right. Thank  
14 you, Mr. Linnus -- Mr. Linnus.  
15 E X A M I N A T I O N  
16 BY ATTORNEY BUTLER:  
17 Q. Mr. Steck, would you please advise the  
18 board of your education and professional background  
19 upon what you feel as though you can render opinion  
20 testimony to assist this board in deciding this  
21 application? And in your answer, would you indicate  
22 approximately how many towns you have qualified as  
23 an expert before either a board of adjustment or a  
24 planning board?  
25 A. Certainly. By way of education, I  
Steck - Direct  
10  
1 have a bachelor's degree in civil engineering from  
2 Marquette University and a master's in city and  
3 regional planning from Rutgers. I was licensed as a  
4 planner in 1976 and still hold that license.  
5 In terms of experience, I worked for  
6 two consulting firms in the past, Malcolm Kasler  
7 Associates and Alvin Gershen Associates. I'm a  
8 member of the League of Municipalities' Land Use Law  
9 drafting committee, and I was the planning director  
10 for the Township of Montclair for just short of ten  
11 years. For the last over 20 years, I have been  
12 self-employed as a community planning consultant.  
13 And I have testified in over 200  
14 municipalities, as well as in superior court and tax  
15 court and been accepted as an expert planner in  
16 those jurisdictions.  
17 CHAIRPERSON SCHAEFER: Mr. Steck, have  
18 you ever testified in front of this board?  
19 THE WITNESS: I believe I have. I  
20 don't recall the specific instance. I know I was  
21 involved with the early drafting of an ordinance for  
22 the BNE site, if you recall.  
23 CHAIRPERSON SCHAEFER: Okay. I think  
24 we can accept you. Right?  
25 ATTORNEY LINNUS: Mr. Steck, you  
Steck - Direct  
11  
1 currently hold your professionals planner's license;  
2 is that correct?  
3 THE WITNESS: That is correct.  
4 ATTORNEY LINNUS: Okay. Yes, you can  
5 accept him, Madam Chair.  
6 CHAIRPERSON SCHAEFER: Thank you.  
7 Okay, Mr. Butler.  
8 ATTORNEY BUTLER: Thank you.  
9 BY ATTORNEY BUTLER:  
10 Q. Mr. Steck, in preparation for rendering  
11 your testimony, just briefly -- be brief now -- let

12 us know -- give us a Reader's Digest as to what you  
13 did.

14 A. Yes.

15 Q. But very brief.

16 A. I certainly reviewed the application

17 materials both submitted by the applicant and the

18 review reports. I toured the property and the

19 surrounding area, reviewed your development

20 ordinance and master plan. I was -- reviewed prior

21 testimony either by video or by transcript, with

22 specific attention to the testimony presented by

23 Planner Rahenkamp on December 15th, 2020.

24 Q. All right. Now, Mr. Steck, you also

25 submitted to the board, electronically, exhibits,

Steck - Direct

12

1 certain exhibits. And they're marked OW for

2 Objector Weldon. They have numbers and they also

3 have slide numbers. I would like you, as

4 expeditiously as possible, to go through each one of

5 those exhibits, explain the exhibit. And in some

6 cases you cite statutes associated with the

7 exhibits, and I would like you to indicate to the

8 board what significances those statutes have

9 associated with the respective exhibit.

10 A. Yes. I am not skilled at this, but

11 may I share my screen and try to get the exhibit up,

12 or would someone from the municipality like to do

13 that?

14 CHAIRPERSON SCHAEFER: If you can

15 share your screen, please.

16 ATTORNEY LINNUS: And, Mr. Steck, when

17 you're ready to proceed, whenever you're ready to

18 proceed, we need you to identify the exhibit.

19 THE WITNESS: Right. Now --

20 ATTORNEY BUTLER: Absolutely.

21 THE WITNESS: -- I am clicking on --

22 it says "screen," and I get a window that appears.

23 It says, "Go to Meeting, needs to use accessibility

24 features." And I click on -- okay, we're getting

25 better here.

Steck - Direct

13

1 ATTORNEY BUTLER: Madam Chair, I

2 apologize.

3 CHAIRPERSON SCHAEFER: That's okay.

4 THE WITNESS: I'm going to try desktop

5 -- now, let's see.

6 CHAIRPERSON SCHAEFER: It's

7 technology, Mr. Butler.

8 ATTORNEY BUTLER: Mr. Steck's in my

9 generation so...

10 CHAIRPERSON SCHAEFER: We'll

11 definitely need this because we have public

12 participation.

13 (Zoom-related discussion.)

14 THE WITNESS: They were mailed to the

15 municipality, and if someone -- if the host can put

16 it on the screen, that would be helpful.

17 BOARD SECRETARY: All right. I can

18 probably do that. You've got to give me a moment  
 19 only because I have to log into the borough's server  
 20 to pull those off.  
 21 THE WITNESS: Yes. I apologize, but  
 22 for some reason, I can't automatically pick up my  
 23 screen.  
 24 ATTORNEY BUTLER: Theresa, I'm sorry.  
 25 And I apologize to the board, and Madam Chair, for  
 Steck - Direct  
 14  
 1 your patience.  
 2 MEMBER PENNETT: If I can interrupt?  
 3 Do you have a little circle at the bottom of your  
 4 screen where it says "mic," and one's camera, and  
 5 there's also a share circle. Click on that share  
 6 circle. Does that --  
 7 THE WITNESS: I don't have it. The  
 8 bottom of my screen has four icons, none of them  
 9 being a share icon.  
 10 MEMBER PENNETT: Okay.  
 11 THE WITNESS: I have mic, camera,  
 12 screen and leave. When I push on "screen," it says  
 13 -- I get a "not now" button to click on, and then I  
 14 get an "open system preferences," and I'm having  
 15 trouble putting my screen in my preference because I  
 16 don't see an alternative to click on.  
 17 MEMBER PENNETT: Okay. Yeah, because  
 18 I have mic, camera and share, so just a different --  
 19 THE WITNESS: Now, maybe it's because  
 20 I'm not a host I don't have that.  
 21 MEMBER PENNETT: It might be the  
 22 system you're on. I don't know. Okay.  
 23 THE WITNESS: Thank you.  
 24 What I'll do is just briefly identify  
 25 the slides, and I may refer to them later in my  
 Steck - Direct  
 15  
 1 testimony, but I will identify each of the eight  
 2 slides and indicate what they're intended to convey.  
 3 ATTORNEY BUTLER: And don't forget the  
 4 statutes.  
 5 THE WITNESS: Yes.  
 6 (Exhibit OW-27, Photograph labeled  
 7 Slide No. 1, is marked.)  
 8 THE WITNESS: So OW-27, which is also  
 9 labeled Slide 1, is simply an aerial photograph from  
 10 the GEO website where I have superimposed the  
 11 property lines in yellow, as well as the zoning.  
 12 So as the board members are aware,  
 13 we're adjacent to the county line which is at the  
 14 centerline of the Green Brook. We're in a BB zone  
 15 that extends a couple lots to the north. Across the  
 16 road to the left or west is the Weldon Quarry.  
 17 And, let's see, if you can push up the  
 18 slide a little bit...  
 19 BOARD SECRETARY: Sorry.  
 20 THE WITNESS: Across Union Avenue --  
 21 so both New Providence Road and Union Avenue, as the  
 22 board is aware, are county roads. Across the  
 23 street, the BB zone continues. And, again, the

24 property is a corner property with a short frontage  
25 on New Providence Road, but the bulk of the frontage  
Steck - Direct

16

1 on Union Avenue. And then the abutting -- the  
2 parkland is partly in a P, public, zone in the  
3 adjacent municipality.

4 If we can go to the next slide,

5 please...

6 (Exhibit OW-28, Photograph labeled

7 Slide No. 2, is marked.)

8 BY ATTORNEY BUTLER:

9 Q. Identify it, please.

10 A. So --

11 Q. Peter, identify the slide.

12 A. This is OW-28, Slide Number 2. And as

13 you're aware, as part of the submission of the

14 applicant, there was an environmental impact

15 statement that included historic Sanborn insurance

16 maps. And what I did is superimpose the last map

17 that was in that impact statement, which was dated

18 1954, and that shows you that at least at that time,

19 much of the property was involved with water

20 features. The Green Brook is still there. There is

21 a tributary to the north. There are, as you know,

22 wetlands associated with it, but I superimposed the

23 lines from the Sanborn map that indicated that

24 apparently there was a pond on this part of the

25 property.

Steck - Direct

17

1 Now, carefully looking at the

2 topography, the existing topography, it's clear that

3 areas were filled in at some time. Again, we don't

4 know exactly when that occurred. We don't know the

5 quality of that fill, but this is simply part of the

6 history of the property.

7 The next slide, please.

8 BOARD SECRETARY: Sorry.

9 THE WITNESS: You're doing better than

10 I could do. Thank you.

11 (Exhibit OW-29, Photograph labeled

12 Slide No. 3, is marked.)

13 THE WITNESS: So the next slide is

14 O-29.

15 ATTORNEY BUTLER: OW.

16 THE WITNESS: OW-29, Slide 3. These

17 are just pictures of the subject property. They

18 were taken on April 5th of this year, and I believe

19 they accurately depict the conditions. There are

20 labels on each one, and I will just briefly describe

21 them.

22 The upper left is a view of the subject

23 property looking across New Providence Road. As you

24 can see, it's fairly heavily wood, and this is

25 obviously before the leaves have come out.

Steck - Direct

18

1 To the upper right is a view of the

2 midsection of the property on Union Avenue. And I

3 added some yellow markings there that are near the  
4 stormwater basin. That's where the bidirectional  
5 driveway is being proposed. And obviously since the  
6 catch basin is there, that's a somewhat low point of  
7 the property, at least as it connects with Union  
8 Avenue.

9 Lower left-hand side is a view on Union  
10 Avenue looking up to New Providence in a  
11 northwesterly direction. I also approximated with  
12 two yellow arrows the location of the proposed  
13 bidirectional driveway.

14 And then lower right is a photograph  
15 going -- looking across the street on Union Avenue  
16 where you see the nature of that intersection where  
17 the stop line is, the stop sign, the stop bar, and  
18 in the background you see some of the facilities on  
19 the Weldon Quarry concrete and asphalt operation.  
20 Next slide, please.

21 ATTORNEY LINNUS: All right. Before  
22 we leave OW-29, Peter, it says that photos were  
23 taken by you on April 3rd; is that correct?

24 THE WITNESS: April 5th. Let me just  
25 see. There may have been two different days.

Steck - Direct

19

1 April 3rd, correct.

2 ATTORNEY LINNUS: Of this year?

3 THE WITNESS: That's correct.

4 ATTORNEY LINNUS: Okay.

5 (Exhibit OW-31, Photograph labeled

6 Slide No. 4, is marked.)

7 THE WITNESS: The next page is

8 April 5th of 2021. This is OW-31, Slide Number 4.

9 Again, there are four pictures with labels on them.

10 Upper left-hand corner, I'm standing on the bridge

11 that spans the Green Brook and looking in a

12 northerly direction. And so the property line ends

13 approximately at the centerline of the brook.

14 To the upper right is the culvert for

15 the tributary that goes under New Providence Road.

16 That's not on the subject property. As the board

17 members are aware, water flows from the former

18 Weldon site underneath New Providence Road, and then

19 it eventually crosses the subject property, and

20 that's what feeds the tributary to the Green Brook

21 that has been talked about in the past.

22 Lower left-hand side is a view looking

23 across to the northwest across Union. It shows both

24 a van on New Providence and a -- actually, one of

25 the municipal dump trucks from -- I forget the

Steck - Direct

20

1 municipally -- that's turning right at the stop

2 sign.

3 Lower right is just simply another view

4 of that intersection where a truck at that time

5 happened to be coming out of one of the driveways of

6 the Weldon facility. You see a roof to the right.

7 There is a weigh station and then behind that is an

8 office component of the building.  
9 BY ATTORNEY BUTLER:  
10 Q. Mr. Steck, is there one or two  
11 buildings leaving the site in that picture -- one or  
12 two trucks leaving the site?  
13 A. Well, there's one truck -- there's a  
14 concrete truck that is orange that is poised to  
15 leave, and there's one truck that is exiting the  
16 site to go north on New Providence.  
17 Q. Thank you.  
18 A. Next slide, please.  
19 (Exhibit OW-32, Photograph labeled  
20 Slide No. 5, is marked.)  
21 THE WITNESS: This is OW-32 and it's  
22 Slide Number 5. And here on an exhibit that -- the  
23 base exhibit, I will say, was prepared by the  
24 objector's engineer, Al Lapatka, but I simply  
25 highlighted the 100-year floodplain, and it does  
Steck - Direct  
21  
1 show that that floodplain does involve the  
2 bidirectional driveway on Union Avenue, as well as  
3 obviously filling in order to construct that  
4 driveway.  
5 So this is the area that is -- where  
6 there is local jurisdiction, in addition to  
7 jurisdiction of NJDEP. On the -- I know it's hard  
8 to read, but on the right-hand side are two panels.  
9 The first panel is -- references Chapter 22, the  
10 borough's flood damage prevention ordinance, and  
11 Section 22-1.1 under "statutory authorization," I  
12 will read part of that:  
13 "The legislature of the state of New  
14 Jersey has in N.J.S.A. 40:48-1, et seq.,  
15 delegated the responsibility to local  
16 government units to adopt regulations  
17 designed to promote public health, safety and  
18 general welfare of the citizenry."  
19 So that's a clear indication that the  
20 state of New Jersey has granted some of its powers  
21 to the local municipality. So just in the  
22 introduction to that local ordinance there is an  
23 acknowledgement that the borough does have  
24 jurisdiction in operating -- in applying its  
25 ordinance.  
Steck - Direct  
22  
1 Below that, I have --  
2 BY ATTORNEY BUTLER:  
3 Q. Before you go below that, may I ask you  
4 a question?  
5 A. Yes.  
6 Q. You just read from part of Chapter 22,  
7 okay, which is our flood damage prevention  
8 ordinance. Now, Mark Healey, the planning board's  
9 planning consultant, did a report dated

10 February 12th, 2021. It says 2001, but that's a  
 11 typo. It's supposed to be 2021, and I think Mr.  
 12 Healey will confirm that.  
 13 A. That's my understanding.  
 14 Q. Okay. Yes, okay. Now, Mr. Healey  
 15 describes the flood hazard line pursuant to Chapter  
 16 22, which is our flood damage prevention ordinance;  
 17 is that correct?  
 18 A. Yes.  
 19 Q. And how does he define the special  
 20 flood hazard line as pursuant to Chapter 22?  
 21 A. Well, he refers to definitions in that  
 22 ordinance, and it's -- he quotes, (as read): An  
 23 area of special flood hazards shall mean the land in  
 24 the floodplain within a community subjected to a 1  
 25 percent or greater chance of flooding in any given  
 Steck - Direct  
 23  
 1 year, and in parenthesis, sometimes called the  
 2 100-year floodplain.  
 3 Also referenced is the flood insurance  
 4 rate map, and it indicates that that's the official  
 5 map on which the Federal Insurance Administration  
 6 has delineated both the areas of special flood  
 7 hazards and the risk premium zones applicable to the  
 8 community.  
 9 Q. Okay. Now, the objector is not taking  
 10 exception to Mr. Healey's interpretation of Chapter  
 11 22 regarding the flood hazard line. It's the  
 12 100-year storm, and the objector is not contesting  
 13 that fact; is that correct?  
 14 A. That is correct.  
 15 Q. Okay.  
 16 A. So on the -- again, the upper  
 17 right-hand panel it's clear that the Chapter 22 was  
 18 meant to stand independently of the state  
 19 regulations, and then I quoted -- it's the wrong  
 20 number. It's 22-1.1(d), but it reads:  
 21 "In order to accomplish its purpose,  
 22 this chapter includes methods/provisions for" -- and  
 23 (d) is -- "controlling, filling, grading, dredging  
 24 and other development which may increase flood  
 25 damage."  
 Steck - Direct  
 24  
 1 So clearly there is public interest in  
 2 regulating development in the 100-year floodplain,  
 3 and that the borough has clear authorization to do  
 4 that independent of any requirements of NJDEP.  
 5 Q. Now, what you just read, was that --  
 6 did you read that from OW-32?  
 7 A. Yes.  
 8 Q. Okay. Are you through discussing  
 9 OW-32?  
 10 A. No.  
 11 Q. Okay.  
 12 A. Below that is another rectangle, and

13 I've simply referenced a section of the development  
14 regulations, the zoning ordinance. That's under  
15 definitions in Section 28-203. It defines critical  
16 areas as wetlands, 100-year floodplain, or flood  
17 hazard areas and lands with topographic slope 15  
18 percent or greater.

19 Q. Okay. Now, let me interrupt. In your  
20 professional opinion, is the subject property a  
21 critical area?

22 A. Yes.

23 Q. Pursuant to that definition?

24 A. Yes.

25 Q. Okay. Go ahead.

Steck - Direct

25

1 A. I also reference another section of  
2 the zoning ordinance, 28-401, which, under Paragraph  
3 A, talks about floodplain development restrictions.

4 And this does reference the above Chapter 22 we just  
5 talked about, but it reads as follows:

6 "Floodplain development restrictions,  
7 no structure or use shall be moved, added to,  
8 enlarged and/or established, nor shall any  
9 fill be placed, nor shall the elevation of  
10 any land be substantially changed in the  
11 flood hazard area except in accordance with  
12 the floodplain, flood hazard ordinance of the  
13 Borough of Watchung or other applicable  
14 statute or regulation."

15 Q. All right. Now, Mr. Steck, having  
16 reviewed the site plan, has there been disturbance  
17 or adding of fill within the flood hazard area as  
18 defined in Chapter 22?

19 A. Yes.

20 Q. And where is that?

21 A. At the driveway entrance there clearly  
22 has to be fill and development occurring. Because  
23 there's not a finalized plan in terms of NJDEP  
24 requirements in terms of cuts and fills, we don't  
25 know, necessarily, the magnitude of other  
Steck - Direct

26

1 disturbances within the 100-year floodplain, but  
2 it's clear that the bidirectional driveway does  
3 involve disturbance, both fill and improvements  
4 within the floodplain.

5 Part of the application, as the board  
6 is aware, is also lifting the elevation of Union  
7 Avenue. So while that's not -- that's on the -- I  
8 guess it's on the tract because the tract is defined  
9 as the site plus halfway into the right-of-way, but  
10 there clearly are other disturbances that are within  
11 the flood hazard area but within the Union Avenue  
12 right-of-way. And, as the board is aware, the  
13 floodplain is actually -- the 100-year floodplain is  
14 actually more extensive on the other side of Union  
15 Avenue when it hits the park area.

16 Q. Are you through discussing OW-32?

17 A. I am.

18 ATTORNEY HEHL: Madam Chair, if I



19 may -- excuse me, Mr. Butler -- two things here.  
20 First, it's clear, and it's actually emphasized  
21 again in your engineer's review letter, that the  
22 applicant -- it's Paragraph 10 -- is not seeking  
23 relief from Chapter 22. We have acknowledged that  
24 that's --  
25 ATTORNEY BUTLER: Madam Chair --  
Steck - Direct  
27  
1 CHAIRPERSON SCHAEFER: Mr. Hehl, I --  
2 ATTORNEY HEHL: Mr. Butler --  
3 ATTORNEY BUTLER: -- Mr. Hehl can  
4 cross-examine Mr. Steck when he is through  
5 testifying.  
6 ATTORNEY HEHL: Mr. Butler --  
7 ATTORNEY BUTLER: He cannot interfere  
8 with the direct examination of Mr. Steck.  
9 ATTORNEY HEHL: I can raise --  
10 CHAIRPERSON SCHAEFER: All right.  
11 Both of you, both of you stop. I don't want to  
12 start on a bad foot like we did last time. I'm  
13 reading what you're reading, Mr. Hehl. That was  
14 going to be a question for me once Mr. Butler was  
15 done. Okay?  
16 I acknowledge what you're saying. Let  
17 Mr. Butler finish doing his thing. You can  
18 cross-examine. Planning board will cross-examine.  
19 I have the report right here. I'm with you. I had  
20 it. I was ready to ask.  
21 So let's let Mr. Butler -- Mr. Steck  
22 finish. Mr. Butler, go on.  
23 ATTORNEY BUTLER: Thank you.  
24 ATTORNEY HEHL: Okay.  
25 BY ATTORNEY BUTLER:  
Steck - Direct  
28  
1 Q. Are you through discussing OW-32?  
2 A. Yes.  
3 Q. Okay. Would you move to your next  
4 exhibit?  
5 A. If you could put up OW-33.  
6 Q. Which is slide what?  
7 A. Slide Number 6.  
8 (Exhibit OW-33, Photograph labeled  
9 Slide No. 6, is marked.)  
10 THE WITNESS: Again, I'm going to  
11 return to these when the exhibits are put down, but  
12 this is a day care facility that must be licensed by  
13 the state of New Jersey. On the left-hand panel, I  
14 have an excerpt from the Municipal Land Use Law,  
15 Section 40:55D-66.6.  
16 BY ATTORNEY BUTLER:  
17 Q. Is that a statute?  
18 A. Yes. That's the state statute  
19 authorizing municipalities to do zoning.  
20 Q. Okay.  
21 A. And that is titled "Childcare Centers  
22 Located in Nonresidential Municipal Districts;

23 Permitted." And it starts out by saying, "Childcare  
24 centers for which common, upon completion, a license  
25 is required from the Department of Human Services  
Steck - Direct

29

1 pursuant to -- then it talks about -- references the  
2 law.

3 The important issue here is that the  
4 statute says that a license is required upon  
5 completion. So that's after site plan approval  
6 occurs. And that makes sense when you look at  
7 Chapter 52, where I have experts on the right-hand  
8 side of that panel. 3A:52-1.1 of that Chapter 52  
9 has an introductory statement, (a), that reads as  
10 follows:

11 "This chapter is promulgated pursuant  
12 to the Childcare Center Licensing Act,  
13 N.J.S.A. 30:5B-1, et seq."

14 And, first of all, I thoroughly read  
15 Chapter 52, which is the licensing requirement, and  
16 it is clear that it's a licensing requirement. They  
17 license the provider. They have requirements for  
18 who gets hired. So background checks are done.  
19 They talk about personnel, how children are handled.  
20 It's a licensing statute that does not have the word  
21 "site plan" in it.

22 So while this facility needs licensing  
23 upon completion, this statute, as a licensing  
24 statute, does not preempt any of the considerations  
25 of Watchung in terms of site plan approval.

Steck - Direct

30

1 Q. Okay. Mr. Steck, is it your testimony  
2 that that manual, Chapter 52 -- when we think of  
3 site plan, we think of parking, ingress, egress, the  
4 traffic, flooding, typical site plan issues; is it  
5 your opinion testimony that no site plan issues  
6 whatsoever are contained within that manual?

7 A. That's my opinion after reading the  
8 manual.

9 Q. Okay. And, basically, what does the  
10 manual do? What's it for?

11 A. Well, it's to protect the clients, the  
12 children that are cared for by these day care  
13 centers. And, again, it certifies a level of  
14 expertise and a level of care that is required to  
15 run a day care center.

16 Q. Okay. And you emphasized, when you  
17 read 40:55D-66.6, the words "upon completion" --

18 A. Yes.

19 Q. -- did you not?

20 A. Yes.

21 Q. You find that significant?

22 A. Yes. Because it means that -- upon  
23 completion, which means after it's constructed, and  
24 you can't construct it without site plan approval.

25 So it clearly is, number one, after the fact in  
Steck - Direct

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1 terms of site plan review, but similarly, there are  
2 no site plan standards as a planning board typically  
3 looks at this in the licensing statute.

4 Q. And "upon completion" would also  
5 reflect any particular site that required DEP  
6 approval. It would be after it obtained that  
7 approval; is that correct?

8 A. Yes. Because you need DEP approval in  
9 order to construct the facility.

10 Q. Okay. Are you through? I'm sorry.

11 A. I'm not through yet.

12 Q. I'm sorry. I'm sorry.

13 A. Okay.

14 Q. Please forgive me.

15 A. Okay. When I read that subparagraph  
16 (a), it ended up saying, "This chapter is  
17 promulgated pursuant to the Childcare Center  
18 Licensing Act, N.J.S.A. 30:5B-1, et seq." That  
19 reference is to the enabling legislation, and I  
20 similarly reviewed that, and that also does not have  
21 any site plan standards, nor does it authorize  
22 Chapter 52 to contain site plan standards.

23 So not in Chapter 52 or in the enabling  
24 legislation is there any indication that the state  
25 meant to preempt the local authority of reviewing  
Steck - Direct

32

1 site plans.

2 Q. Okay. Anything else you want to add to  
3 OW-32?

4 A. No. 33.

5 Q. 33. Okay, would you go to your next  
6 exhibit?

7 (Exhibit OW-34, Photograph labeled  
8 Slide No. 7, is marked.)

9 THE WITNESS: So the next exhibit is  
10 OW-34. It's Slide 7, and it's in -- kind of color  
11 coded, the items of relief that are needed. In red  
12 are the variances that the applicant needs, and in  
13 an orange color are the exceptions. The Municipal  
14 Land Use Law talks about them as exceptions  
15 technically, but a lot of people refer to them as  
16 waivers.

17 So just to identify them -- and I'll  
18 talk about them later -- in the diagram lower  
19 left-hand corner, there's the issue of frontage.  
20 This is a corner lot with two street frontages. The  
21 frontage on New Providence is only 40.28 feet in  
22 lieu of the required 150 feet. There is a use  
23 variance in terms of the parking setback. There are  
24 six parking spaces that intrude on the setback from  
25 the front property line. They're supposed to be  
Steck - Direct

33

1 20 feet back. The applicant is proposing 5 feet  
2 back.

3 BY ATTORNEY BUTLER:

4 Q. Is that along Union Avenue?

5 A. Yes.

6 Q. Okay.

7 A. Flipping to the rear of the parking

8 area, there are two more variances. The ordinance  
9 requires a separate loading area, and there is no  
10 separate loading area shown on the proposed site  
11 plan. Also, the ordinance, because the parking  
12 section of the ordinance -- because it doesn't have  
13 a specific standard, or day care centers refers to  
14 the industry standard, and on its face and as  
15 identified in the public notice, there is an  
16 industry standard of 54 spaces for this type of land  
17 use. The applicant is proposing 31 spaces.  
18 Consequently, that is a -- another variance that is  
19 needed.

20 The orange color signifies exceptions,  
21 and there are two exceptions adjacent to the dual  
22 entrance and exit driveway, as well as the singular  
23 exit driveway. These have very narrow green islands  
24 that are only 4.77 feet wide in lieu of 9 feet.

25 There is a center island, which has at its narrowest  
Steck - Direct

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1 point about 1.7 feet in lieu of 9 feet, and it has a  
2 square footage of only 3.7 percent of the land -- of  
3 the parking lot, interior parking lot area, in lieu  
4 of a minimum of 5 percent. So those last items are  
5 -- are exceptions.

6 Although I know it's difficult to read  
7 on the screen, at the bottom of the OW-34, Slide 7,  
8 I have selected quotes from the Municipal Land Use  
9 Law, and I do that to emphasize the difference  
10 between a variance request and an exception request.

11 As the board, I'm sure, is fully aware,  
12 a variance request can either be -- a bulk variance  
13 request can either be under a c(1), hardship or  
14 practical difficulties scenario, or a c(2) where the  
15 public benefits substantially outweigh the  
16 detriments. In either of those instances, whether  
17 c(1) or c(2) is argued, independently, the applicant  
18 has to prove that the negative criteria are  
19 satisfied, and that's the classic no substantial  
20 detriment to the public good and no substantial  
21 impairment to the zone plan and zoning ordinance.

22 The panel to the right has the standard  
23 for exceptions or waivers, and it parallels the  
24 c(1). It talks about practical difficulties or  
25 hardship. What is significant is that there is no  
Steck - Direct

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1 benefits that outweigh the detriments argument to

2 justify the granting of an exception or a waiver.  
3 And also, there is not the formal negative criteria  
4 proof that is associated with exceptions or waivers  
5 as is associated with a request for variances.  
6 Q. All right. Now, Mr. Steck, before you  
7 leave OW-34, that statute 40:55D-51, it sets forth  
8 criteria, does it not, that the applicant must prove  
9 in order to get a waiver; is that correct?  
10 A. That's correct.  
11 Q. And would you read to us the relevant  
12 section of the ordinance that has to be proved by  
13 the applicant before the board can grant a waiver?  
14 A. Okay. I'll read the entire paragraph  
15 that's encircled there:  
16 "The planning board, when acting upon  
17 applications for preliminary site plan  
18 approval, shall have the power to grant such  
19 exceptions from the requirements for site  
20 plan approval as may be reasonable and within  
21 the general purpose and intent of the  
22 provisions for site plan review and approval  
23 of an ordinance adopted pursuant to this  
24 article if the literal enforcement or one of  
25 more provisions of the ordinance is  
Steck - Direct  
36  
1 impractical or will exact undue hardship  
2 because of peculiar conditions pertaining to  
3 the land in question."  
4 So that's the standard. As the board  
5 is aware, the burden of proof is on the applicant,  
6 and that's the standard that the applicant must  
7 demonstrate that is satisfied in order to warrant a  
8 waiver or an exception.  
9 Q. All right. Do you have any other  
10 comments on OW-34?  
11 A. I do not.  
12 Q. Okay. May we move to the next exhibit,  
13 please?  
14 (Exhibit OW-35, Photograph labeled  
15 Slide No. 8, is marked.)  
16 THE WITNESS: So the next exhibit is  
17 OW-35, Slide 8. And I'm going to just kind of  
18 categorically talk about what this is, and I'm going  
19 to refer to it in detail later.  
20 Lower left-hand corner, we already  
21 addressed that. I repeated the issue of what are  
22 the proofs needed for an exception or a waiver, so  
23 we can ignore that.  
24 Upper left-hand corner, I reference  
25 what I would consider are major deficiencies in the  
Steck - Direct  
37  
1 first submission. And I know that the application  
2 has been modified over time, but what I want to  
3 emphasize is that it required this review process  
4 both, I guess, by the municipality and by the  
5 objector in order to identify things that were not

6 identified on the initial plans. The initial plan  
7 referred to the drainage course toward the north of  
8 the property as a ditch, and we have -- it is now  
9 identified as a tributary to Green Brook --

10 BY ATTORNEY BUTLER:

11 Q. Let me -- now, you say that it's the  
12 obligation of the applicant or the objector?

13 A. No. I was saying that it's the  
14 obligation of the applicant to accurately describe  
15 their case, but it took, in my opinion, the review  
16 and the analysis of the objector to expose these  
17 environmental factors which were not on the initial  
18 plan that was submitted.

19 Q. Okay. Go ahead.

20 A. So, again, we have -- there's an issue  
21 that the board is currently aware of is the drainage  
22 area to that tributary to the Green Brook. The  
23 first plan did not show riparian buffers, and indeed  
24 a corner of the building, as well as the parking  
25 area and the play area is in that riparian buffer.

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1 There was an easement from a prior  
2 approval in terms of a transition area. That was  
3 never shown on the plans.

4 And the initial plans did not propose  
5 to change the elevation of Union Avenue, but as this  
6 went through the review process, the answer is the  
7 plans have been amended to address some of these  
8 issues.

9 On the right-hand side -- and I'll  
10 return to this later -- there are a host of  
11 submission requirements that are required in the  
12 local ordinances of Watchung, and there are  
13 engineering issues that were raised by Mr. Lapatka.  
14 There is not, as the board is aware, a full -- a  
15 stormwater management plan. There is -- Mr. Lapatka  
16 referenced that raising the elevation of Union  
17 Avenue will require access changes to get to the  
18 parkland across the street.

19 And Mr. Simoff will talk about this  
20 later, but there's going to be, obviously,  
21 discussions about circulation of trucks and vehicles  
22 within the parking area. I'll talk about that  
23 later. There were no stormwater -- there was no  
24 analysis of -- no recent analysis of soil borings in  
25 terms of how the stormwater detention system needs

Steck - Direct

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1 to be designed and operated.

2 So there are a number of issues that,

3 in my opinion, are still outstanding.

4 Q. Have you completed enumerating those  
5 deficiencies, or what you haven't talked about are  
6 enumerated on OW-35?

7 A. They are enumerated, and I will return  
8 to them later. And if you want to take down the  
9 exhibit, I'm happy to reappear. Well, not happy to  
10 reappear but I'll reappear.

11 Q. Okay. Would you describe the

12 application?

13 A. Okay. Again, I know the board members  
14 are fairly familiar with this, but I want to just  
15 lay a foundation for my conclusions.

16 This is indeed a corner lot. Both  
17 roads are county roads. The property is substantial  
18 in size, 2.21 acres. As indicated, there's a small  
19 amount of frontage on New Providence Road. There  
20 are no sidewalks on either street in the area, and  
21 there is no on-street parking. Unlike a more  
22 suburban location or an urbanized location where if  
23 there's overflow parking, you can park on the  
24 street, that is not the case here.

25 This site is currently vacant. It's

Steck - Direct

40

1 wooded. This property does have a history in terms  
2 of in 2007 and 2008 the very same applicant applied  
3 for and received an approval for a car wash on the  
4 property. And the Weldon Industries did not object  
5 at that time to that -- that proposed use.

6 We also know, just historically from  
7 photographs, that there are instances where  
8 stormwater actually flows across New Providence and  
9 down toward the subject property. So there are  
10 occasions when the stormwater is not held back,  
11 doesn't flow through the box culvert toward the  
12 north end of the property, but indeed overflows New  
13 Providence Road.

14 So the site can be characterized as  
15 having a lot of lands that are affected by  
16 environmentally sensitive features. We have a  
17 floodway, which is where the water moves during the  
18 flood event at the Green Brook. We have two  
19 watercourses, the Green Brook and the tributary to  
20 the Green Brook. We have wetlands. We have a  
21 wetlands buffer. And we have, as I mentioned  
22 earlier, a filled-in pond and, again, that we can't  
23 track. We don't know what materials were used or  
24 when it was filled in, but it's clear from the  
25 topographic lines that there was filling of the

Steck - Direct

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1 pond.

2 Q. As you testified before, we also have a  
3 flood hazard line as pursuant to Chapter 22, right?

4 A. Yes. We have both a local flood  
5 hazard line that parallels the FEMA map of 2007, and  
6 we also have state regulations having to do with the  
7 wetlands, wetland buffers and the riparian buffer.

8 There are defects in the plan that have  
9 been observed over time. Yes, initially, the  
10 100-year floodplain was shown, as well as the  
11 wetlands were delineated, but initially what became  
12 apparent is that DEP has a -- in some cases, a more  
13 restrictive standard in terms of determining what  
14 area floods. As the board is aware, they add  
15 25 percent of volume on top of the 100-year flood,  
16 and that causes the flood hazard area to be larger  
17 than the 100-year flood.

18 The riparian boundaries were not shown  
19 initially. Again, the compensation easement for --  
20 that had to do with property developed on the other  
21 side of Green Brook was not shown and appeared in a  
22 deed restriction. Those are normally things that  
23 ought to be on the plan and the responsibility of  
24 the applicant to demonstrate them.

25 Q. Now, now, now, before you go on, you've  
Steck - Direct

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1 just described again our Chapter 22 flood hazard  
2 line and the DEP flood hazard line, right?

3 A. Yes.

4 Q. Okay. And you said that the DEP flood  
5 hazard line covers a larger area, right?

6 A. Yes.

7 Q. Okay. Now, I want to talk to you about  
8 activities. Activities --

9 A. Okay.

10 Q. -- okay? Are there more restricted  
11 activities in the local flood hazard line than there  
12 is in the DEP flood hazard line?

13 A. Yes.

14 Q. And I direct your attention to Article  
15 28-401(A).

16 A. Yes. As indicated -- and Mr. Lapatka  
17 also referenced this -- that while the DEP has a  
18 larger area of jurisdiction because they add  
19 25 percent to the top of the flood waters, that  
20 doesn't negate the provisions in Watchung's local  
21 ordinance, Chapter 22. That ordinance, for example,  
22 does not have a compensating fill area. It  
23 regulates fill, but it doesn't say that you can fill  
24 certain areas if you excavate other areas to  
25 compensate for the volume. That standard is not in  
Steck - Direct

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1 the local ordinance.

2 So what I want to emphasize is that in  
3 some aspects the local ordinances are more  
4 restrictive or can be more restrictive than the  
5 state standards, and there's nothing wrong with  
6 that. The applicant clearly has to comply with the  
7 state standards based on the 100-year plus  
8 25 percent volume. But even though our geographic  
9 area of concern is smaller, there is not necessarily  
10 -- to comply with the state requirements does not  
11 necessarily mean that you comply with the local  
12 requirements.

13 Q. All right. Now, did you --

14 ATTORNEY HEHL: Madam Chair, I'm going  
15 to have to object again, if I could, please. Two  
16 things.

17 First of all, Mr. Steck has been  
18 qualified as a professional planner, not an  
19 engineer. And his testimony is going far beyond  
20 that of a professional planner, and they have  
21 already had their engineer testify.  
22 Secondly, we talked about this before,  
23 we are not seeking relief, and your own engineer



24 qualified this, from Chapter 22. So we've been now  
25 going through this for an hour, and with all due  
Steck - Direct

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1 respect, Mr. Steck has his engineer's hat on without  
2 a degree in engineering, and I would object to  
3 testimony that is tantamount to that of an engineer  
4 and also focusing on Chapter 22 in the local  
5 ordinances where we're not seeking relief.

6 ATTORNEY BUTLER: Madam Chair, part of  
7 the testimony is a pickup on the report of the  
8 board's planner, Mark Healey, who defined a flood  
9 hazard area pursuant to Chapter 22. So your planner  
10 went into these issues, and Mr. Steck is basically  
11 just reading to you the ordinances that prohibit  
12 activities within the Chapter 22 flood hazard line.  
13 That's what he's letting you do. They're more  
14 strict than the DEP. They're different.

15 CHAIRPERSON SCHAEFER: Mr. Butler,  
16 Mr. Butler, I understand what you're saying. And I  
17 did almost interrupt you myself. In Bright View  
18 Engineering's report, it clearly states in Item  
19 Number 10 that they -- the applicant has agreed  
20 to -- is not seeking relief from Chapter 22. So I  
21 think we need to move on.

22 And this is why I really wanted these  
23 reports gone over prior to your testimony of your  
24 experts because everything that you are bringing up  
25 are in these reports that our own experts have  
Steck - Direct

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1 brought up that could have been answered and really  
2 cut back on your time with your experts and the  
3 cost, quite frankly, of Mr. Weldon having to pay  
4 these people.

5 You know, so what you are doing is  
6 really just duplicating what our people have already  
7 stated in their reports.

8 ATTORNEY BUTLER: Madam Chair, may I  
9 respond?

10 CHAIRPERSON SCHAEFER: Yeah. Go  
11 ahead.

12 ATTORNEY BUTLER: If the applicant is  
13 willing to comply with Chapter 22 as your  
14 engineering consultant tells you, why haven't they  
15 put the Chapter 22 flood hazard line along the  
16 tributary of the Green Brook? There has been  
17 absolutely no analysis of the Green Brook, and  
18 Chapter 22 requires it, and you should know it, for  
19 flooding purposes and for use purposes.  
20 So the engineer can say what he wants.

21 The applicant will say what he wants. You can look  
22 at the site plan, there's no flood hazard line  
23 associated with the tributary by the application,  
24 none whatsoever. He's completely ignored it.

25 CHAIRPERSON SCHAEFER: But, you know,  
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1 in going -- as you know, Mr. Butler, you know this  
2 board very well, as they -- as an applicant goes

3 over our experts' reports, they will say -- the  
4 expert says, "This is what needs to be done," and  
5 the applicant will say, "Okay, we will comply." And  
6 then they will place it on their site plan or  
7 whatever future paperwork they need to submit to  
8 this board in order to be considered for an  
9 approval.  
10 I understand where you're coming from,  
11 but I think we're both saying the same thing in two  
12 different ways. And this is just dragging on, and  
13 you're really -- I'm not stopping you, Mr. Butler.  
14 Please don't think that I am, but all I'm saying is  
15 that your testimony is really based on what could  
16 have been answered very quickly by going over these  
17 two reports.

18 ATTORNEY BUTLER: Madam Chair --

19 CHAIRPERSON SCHAEFER: I'm sure that  
20 Mr. Hehl is going to have some questions. And after  
21 you are done with Mr. Steck, I'm going to let  
22 Mr. Hehl first to go before I let our professionals  
23 and planning board because there are some things  
24 there that I know nothing about as far as day care  
25 and some of the statutes that you are -- that you're  
Steck - Direct  
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1 stating.

2 But I think we need to come to an  
3 agreement that they have already agreed. And it is  
4 not just in this report; I have notes from previous  
5 meetings, and we have transcripts from previous  
6 meetings that they have agreed to abide by the  
7 ordinance. So...

8 ATTORNEY BUTLER: Your engineer has  
9 handled the issue by just saying the applicant  
10 agrees to comply with 22. Kicks the can down the  
11 road. Kicks it down the road to the DEP. Now,  
12 that's not showing the flood hazard area associated  
13 with the tributary, none whatsoever.

14 CHAIRPERSON SCHAEFER: But that is  
15 something that needs to come from our engineer. As  
16 far as Mr. Matias --

17 Where are you, Mr. Matias?

18 BOARD ENGINEER: I'm here.

19 CHAIRPERSON SCHAEFER: Can you please  
20 comment on this?

21 BOARD ENGINEER: Yes. So as I pointed  
22 out in my review memo, there is no flood hazard area  
23 shown for the tributary. It's not mapped by NJDEP.  
24 They're not required, at this point, to show it.  
25 Once it goes into review at NJDEP, if  
Steck - Direct  
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1 NJDEP wants them to investigate it further, they  
2 can. The board can request additional information  
3 related to the tributary. That is up to the board's  
4 purview.

5 But it is an NJDEP issue. We do not  
6 have authority to -- we don't have a permitting  
7 process that necessarily supersedes a flood hazard

8 permit. There is only one municipality that I'm  
9 aware of in northern New Jersey that has that  
10 authority. We don't.  
11 ATTORNEY BUTLER: Well, in all due  
12 respect, you just can't disregard your local  
13 ordinance, Chapter 22. It requires a flood hazard  
14 ordinance associated with a tributary. You're just  
15 dismissing that. You're obligated to be bound by  
16 that. And you're obligated to ask the applicant to  
17 put in a flood hazard area for the tributary. And  
18 he refuses to do it, and we have our reasons why we  
19 think we know why he refuses to do it.  
20 CHAIRPERSON SCHAEFER: Mr. Hehl, are  
21 you refusing to do it?  
22 ATTORNEY HEHL: No. It's going to be  
23 part of our DEP process.  
24 ATTORNEY BUTLER: Well, wait a minute.  
25 Wait a minute.  
Steck - Direct  
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1 ATTORNEY HEHL: Mr. Butler, please,  
2 let me -- Mr. Butler, please.  
3 As indicated by Mr. Matias, we're not  
4 seeking relief from Chapter 22. We'll comply with  
5 all the requirements of Chapter 22. And if there is  
6 further studies required for the tributary by the  
7 DEP, we will do so. We don't think so. You saw  
8 from my letter, and we will have testimony that it  
9 was the previous DEP approval and expect that it  
10 will be consistent with it.  
11 So we're not seeking any relief on any  
12 of this. We're going to comply.  
13 ATTORNEY BUTLER: The applicant is  
14 completely avoiding Chapter 22, the local ordinance.  
15 If you agree that you're going to comply with 22,  
16 why don't you put it in now? Why don't you? You're  
17 supposed to. The ordinance requires it. This --  
18 ATTORNEY HEHL: That's not true.  
19 ATTORNEY BUTLER: Now let me finish.  
20 Now let me finish, please. I interrupted you and  
21 you correctly corrected me. Now let me talk.  
22 Chapter 22 -- and maybe Mark Healey  
23 wants to jump in on this. Chapter 22 requires a  
24 100-year screen encroachment flood and hazard line  
25 associated with the tributary. Okay? And if you  
Steck - Direct  
50  
1 won't do it -- and if you won't do it, the statute  
2 says that the engineer should do it. The engineer  
3 should do it if the applicant won't do it.  
4 Now, the engineer hasn't been asked to  
5 do it. The engineer hasn't volunteered to do it,  
6 and nobody has asked the engineer to do it.  
7 And let me just -- let me just cite for  
8 you, if I may -- and I'm going back to Mark Healey's  
9 memo of 2/12/21 in which he states this:

10 "Section 22-4.3B, uses of other base  
11 flood and floodway data indicates that when flood  
12 elevation and floodway data have not been provided  
13 in accordance with subsection 22.3.2, basis of  
14 establishing the area of special flood hazard, the  
15 Borough of Watchung shall" -- meaning mandatory --  
16 "shall obtain review and reasonably utilize and base  
17 flood elevation and floodway data upon federal,  
18 state and other sources in order to administer the  
19 ordinance."

20 It talks about Chapter 22. It says if  
21 the applicant doesn't do it, our engineer has to do  
22 it. It's a mandatory language. We don't know why  
23 the board hasn't asked the engineer to do it in  
24 light of the fact that the applicant refuses to do  
25 it.

Steck - Direct

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1 CHAIRPERSON SCHAEFER: Mark, do you  
2 want to chime in on this, please? Because this is  
3 what our last meeting was all about, was this  
4 Chapter 22, and we came to an agreement on -- that  
5 the applicant was going to -- he wasn't -- he was  
6 moving forward, and he was agreeing to Chapter 22.  
7 Mark, do you want to chime in since it  
8 was your report, please?

9 BOARD PLANNER: Sure. And, as  
10 Mr. Butler said, I was quoting from the ordinance.  
11 In the context of that section of the ordinance is  
12 it didn't -- when Mr. Butler was emphasizing the  
13 word "not," in the context of what the ordinance was  
14 talking about, it was not that whether the applicant  
15 did not provide the delineation; it was whether the  
16 existing mapping provided the delineation of that  
17 area of the tributary.

18 And I would have to re-read the  
19 ordinance to get the full context of it. My  
20 recollection of it is that in the absence of the  
21 area being delineated, the borough engineer may  
22 require -- may initiate a study of that area.

23 ATTORNEY BUTLER: Well, it says  
24 "shall." Now, here is the difference, Mark, the  
25 tributary and the Green Brook are regulated

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1 waterways, and only one is studied. The reason why  
2 we have the flood hazard line for the Green Brook is  
3 because it was studied. The tributary has not been  
4 studied. So, therefore, you have to put pen to  
5 paper and figure out what the flood hazard area is  
6 using the 100 storm associated with the tributary.  
7 And that's all it means.

8 CHAIRPERSON SCHAEFER: Mark?

9 BOARD PLANNER: Well, I mean, I would  
10 agree with what Rick said before. Well, first of  
11 all, my memo basically said that as far as the  
12 floodplain along Green Brook, that the 100-year  
13 floodplain was the area in question. And that

14 came -- that was in response to Mr. Lapatka saying  
15 that it was something else.

16 As far as the issue of the tributary, I  
17 quote from the ordinance and basically indicate  
18 that, frankly, the board may wish to seek the input  
19 from the borough engineer with respect to the  
20 tributary. And I think Rick said the same thing. I  
21 think it is something that could be studied. The  
22 ordinance does allow for it.

23 ATTORNEY BUTLER: The ordinance --

24 BOARD PLANNER: I don't offer an  
25 opinion on that because, as indicated in my memo,  
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1 I'm not an engineer. So I'm not opining about  
2 whether it should be applied or not; you have to get  
3 the input from an engineer.

4 ATTORNEY BUTLER: Mr. Healey, I find  
5 no fault with your reports. I thought they were  
6 both terrific, but the statute that you cite says  
7 the Watchung engineer "shall," doesn't say "may," if  
8 he feels like it, if he feels like it. It's  
9 mandatory.

10 BOARD ENGINEER: I would also just  
11 point out it says, "Borough of Watchung engineer  
12 shall obtain review and reasonably utilize,  
13 reasonably utilize, any base flood elevation and  
14 floodway data available from federal, state or other  
15 source.

16 "Reasonably utilize any base flood  
17 elevation and floodway data available from a  
18 federal, state or other source."

19 I'm just throwing that out there.

20 ATTORNEY BUTLER: Well, that's fine.

21 I read the same thing. But what do we do with  
22 Chapter 22, which is our local ordinance? It binds  
23 us. We can't ignore it. We can't ask the DEP to  
24 decide our obligations under Chapter 22. You have  
25 to do it.

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1 BOARD ENGINEER: We are -- we aren't  
2 confirming that the applicant is going to do what is  
3 proper by obtaining an NJDEP flood hazard permit.

4 CHAIRPERSON SCHAEFER: And, Rick, the  
5 NJDEP flood hazard permit, does that --

6 ATTORNEY BUTLER: I'm sorry. I didn't  
7 hear you, Madam Chair. I'm sorry.

8 CHAIRPERSON SCHAEFER: That's okay.

9 Rick, the permit you just described, is  
10 that more stringent than our ordinance 22?

11 BOARD ENGINEER: I believe it is, yes.

12 They are going to do an in-depth review, much deeper  
13 even than what I have done or what the borough  
14 engineer will do, in conjunction with the floodway  
15 data that they have available.

16 ATTORNEY BUTLER: Now, the area is  
17 greater. I agree with you, sir. But the local  
18 Chapter 22 is more restrictive on the activity  
19 within the flood hazard line, and I cited 28-401  
20 that says, "No structure or use shall be moved,  
21 added to, enlarged or established, nor shall any  
22 fill be placed, nor shall the elevation of any land

23 be substantially changed in the floodplain hazard  
 24 area." That's what it says.  
 25 Now, under New Jersey, you want to  
 Steck - Direct  
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 1 disturb fill, you can do a balancing act. You can  
 2 do a mitigation act --  
 3 MEMBER FIORILLA: Can I ask a question?  
 4 CHAIRPERSON SCHAEFER: Wait, Paul.  
 5 I'm going to stop you there, Mr.  
 6 Butler, because, quite frankly, Mr. Hehl has already  
 7 agreed that they will comply with ordinance 22. So  
 8 everything that you just read -- that last bit of  
 9 info that you just read to us, he has stated he is  
 10 going to comply with.  
 11 ATTORNEY BUTLER: Will he comply with  
 12 it before you decide the site plan application?  
 13 CHAIRPERSON SCHAEFER: It's going to  
 14 be a condition of the site plan. I mean, that is  
 15 going to be stated in the -- if he's approved, it's  
 16 going to be part of the approval process, that he  
 17 will comply with ordinance 22.  
 18 He's already stated it. We have  
 19 already gotten info from our engineer, Mr. Matias,  
 20 that the DEP is more stringent as far as, you know,  
 21 your wetlands lines, or the tributary or what have  
 22 you.  
 23 ATTORNEY BUTLER: No, no, the flood  
 24 hazard line.  
 25 CHAIRPERSON SCHAEFER: Thank you. The  
 Steck - Direct  
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 1 flood hazard line. And Mr. Hehl is not negating any  
 2 of that. He --  
 3 ATTORNEY BUTLER: The activities are  
 4 more stricter in, more strict.  
 5 CHAIRPERSON SCHAEFER: But he is going  
 6 to comply with ordinance 22. So if he's agreeing to  
 7 comply with it, what else -- how much more -- what  
 8 else can we say? He's agreeing to comply with it.  
 9 ATTORNEY BUTLER: Why doesn't he  
 10 comply with it before you decide the preliminary  
 11 site plan approval because it might show flooding?  
 12 It will show flooding.  
 13 CHAIRPERSON SCHAEFER: But if it's a  
 14 condition and it shows flooding, then he's got a  
 15 problem now, doesn't he? He still has these  
 16 conditions. If he gets approved, you know? If he  
 17 gets approved.  
 18 Yeah, Paul?  
 19 ATTORNEY HEHL: Madam Chair, we are  
 20 here to have Mr. Butler have Mr. Steck testify, and  
 21 now we're going through the same things that his  
 22 engineer testified to. This is supposed to be his  
 23 planner. We have now been going for an hour and  
 24 15 minutes, and, frankly, this is all rehashing the  
 25 same items, as you know, Madam Chairwoman, that we  
 Steck - Direct  
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 1 did at the last hearing and that's why we had these  
 2 reports. And we thought we were going to move on to

3 the planner and -- and wrap this hearing up at some  
4 point.

5 MEMBER FIORILLA: Shouldn't we be  
6 hearing testimony instead of legal -- I mean what  
7 we're hearing right now is the legal argument, the  
8 same legal argument over, and over and over again.  
9 Shouldn't we be -- you know, we have somebody that  
10 is testifying. Have him testify, and now let's move  
11 to the next witness.

12 We're doing the same thing and just the  
13 same words, the same argument, over, and over and  
14 over again. This doesn't make any sense to me.

15 CHAIRPERSON SCHAEFER: I'm absolutely  
16 in agreement. That's the problem. We have an  
17 applicant who has stated more than once -- not  
18 tonight, not at the last meeting, not at the meeting  
19 before, but since day one from 2021 he will comply.  
20 It would be part of the approval process if it gets  
21 approved. It will be contingent. I don't know what  
22 more, other than drawing blood from the man, that we  
23 can, you know, get from him.

24 But, Frank --

25 ATTORNEY LINNUS: Yes, that's correct,  
Steck - Direct

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1 Madam Chairperson. This board has a right to rely  
2 on its experts after hearing all the testimony. And  
3 as I understand the issue, and maybe Rick can  
4 clarify it, the DEP will ultimately establish the  
5 flood hazard area line, and if it's larger or more  
6 restrictive and then we revert back to Chapter 22,  
7 then so be it.

8 Any resolution of approval at this  
9 stage would be subject to the review and approval of  
10 the NJDEP, and if there's anything that would  
11 require an alteration of the site plan to comply  
12 with our ordinance, then it comes back to the board.  
13 ATTORNEY BUTLER: I have been heard.

14 I'm not going to say anything further. We have all  
15 had our arguments on the record. I'll let my  
16 witness move on.

17 CHAIRPERSON SCHAEFER: Thank you,  
18 Mr. Butler.

19 THE WITNESS: All right. The only  
20 thing I want to say from a planning point of view is  
21 that when a site is subject to flooding, that is  
22 intimately related with the site plan. The fact  
23 that a site floods, you want to know does it flood  
24 the parking area? Does it flood the building? Does  
25 it flood the play area? And the problem was -- some  
Steck - Direct

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1 things, in my opinion, are so fundamental to  
2 reviewing the site plan that they can't be handled  
3 by -- subject to the discussion of engineers off the  
4 record. That's like saying, I have a building I'm  
5 going to build. I don't know if I'm going to use  
6 public sewers or a septic system. Just make it  
7 "subject to." I'll figure it out later.

8 There are some things that are so

9 fundamental they need to be resolved now because  
10 they affect the site plan. I will now move on.  
11 The board is familiar with the nature  
12 of the application at the moment. The applicant is  
13 proposing a two-story building, 10,782 square feet  
14 for both stories together. The corner of the  
15 building is in the riparian area. Parking spaces  
16 are in both -- the driveway is in the 100-year flood  
17 hazard area. Six parking spaces are also in the DEP  
18 flood hazard area. The applicant, as I mentioned,  
19 has a business model. And apparently in arranging  
20 for the development on this site, even though he  
21 apparently was unaware of the tributary, the  
22 applicant wants to do their standard business model  
23 which is 154 children and 22 employees. That's the  
24 20 plus 2 administrative staff.  
25 There is a play area in the rear, and,  
Steck - Direct

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1 as the board is aware, part of this application,  
2 because of where the driveways are located, is in  
3 the flood hazard area. And as a consequence of  
4 that, the applicant not only has to improve the  
5 site, but the applicant has to elevate Union Avenue  
6 in order -- for at least someone to get to the  
7 property in a flood event. The two-way driveway  
8 would be blocked in a flood event. It's not clear  
9 how this would be handled with only an exit driveway  
10 at the time of the flood event.  
11 This illustrates how the position of  
12 the driveways and the scale of this use are related  
13 to the extent of flooding. We simply don't know  
14 what the 100-year floodplain would look like at the  
15 moment when the tributary is added.  
16 Part of my analysis was to look at the  
17 surrounding area. This is predominantly a  
18 nonresidential area. Across the county line there  
19 is an inclusionary housing project, but to the south  
20 is parkland that is county parkland. This is across  
21 the street from a quarry operation that also  
22 produces not only stone, but produces asphalt and  
23 concrete. There are a lot of trucks here.  
24 There are no single-family homes in the  
25 immediate area, and, in fact, by virtue of the  
Steck - Direct

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1 recent rezoning of the quarry, the single-family  
2 homes up on Bonnie Burn Road are all insulated from  
3 the impacts of the quarry. There are substantial  
4 buffers of 100 or more than 100 feet. There are  
5 no -- the only roadway connections there active are  
6 essentially right across from this site on New  
7 Providence Road.  
8 To the north there's a public works  
9 storage facility that happens to be on land leased  
10 from Weldon Industries.  
11 There has been extensive testimony



12 about the activity on the road system, and  
13 Mr. Simoff has commented on this, but every -- well,  
14 I think all the experts agree that at the  
15 T-intersection where this property abuts, there's an  
16 F level of service. And that is without even  
17 including the driveway to the quarry operation. And  
18 also, as you go to the south, to the major  
19 intersection, that also operates at a Level of  
20 Service F and has a fair accident rate associated  
21 with it.

22 Part of my analysis was to examine the  
23 master plan and --

24 BY ATTORNEY BUTLER:

25 Q. Before you go into the master plan, the  
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1 master plan is a document of the planning board; is  
2 that correct?

3 A. Yes.

4 Q. Okay. Go ahead.

5 A. And that has an older master plan, as  
6 well as a more recent re-examination report of 2011.  
7 It looks at some of the history of the property.

8 This site was recognized as having environmentally  
9 critical areas in the prior master plan. And what  
10 is important to me is that the master plan describes  
11 the rezoning that created the quarry use zone.

12 And, again, I will reference the  
13 importance of this later, but all of the homes are  
14 insulated from the impacts of the quarry by  
15 substantial buffers. And as you know, there was a  
16 restaurant that was also removed. But the land use  
17 impacts of this quarry are essentially all on New  
18 Providence Road. That's where the driveway  
19 connection is. That's where the trucks go. That's  
20 where the employees go. That's where the land use  
21 impacts occur.

22 So I already outlined zoning for the  
23 property. It's in the BB zone. I will note  
24 parenthetically that if you look at the list of  
25 principal permitted uses under 28-407(A) it lists  
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1 offices, which is, you know, the name of the zone,  
2 the professional and office zone. It also allows  
3 photo studios and funeral parlors.

4 In another section of the ordinance, it  
5 references the state statute which says that day  
6 care centers are allowed in any nonresidential zone.  
7 So, essentially, the fact that day care centers are  
8 allowed in the BB zone is not something that was  
9 necessarily studied by the governing body. The  
10 answer is they had to do that. The state, which  
11 authorizes municipalities to zone, said you have to  
12 have -- you have to allow day care centers in any  
13 nonresidential zone. So, for example, one could be

14 put in the quarry. That would be a permitted use in  
15 the middle of the quarry because it's a  
16 nonresidential zone.

17 The point that I'm raising is, number  
18 one, there are a lot of places to put day care  
19 centers because there are a lot of nonresidential  
20 zones.

21 And, number two, it is a permitted use;  
22 there's no doubt about that. But it doesn't  
23 necessarily mean that the governing body studied  
24 this and says this is a great site for this size day  
25 care center.

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1 I did already indicate the variances  
2 that were needed.

3 The next point I want to indicate is  
4 the burden of proof, as you know, is on the  
5 applicant. And the applicant's planning witness,  
6 Mr. Rahenkamp, testified on -- I believe it was  
7 December 15th -- about his basis for justifying the  
8 relief needed. And it has been a little while, and  
9 I'm going to just summarize what I thought he said  
10 from my point of view.

11 He described the property as  
12 odd-shaped. He said he relied on the testimony of  
13 other witnesses. He acknowledged the variances for  
14 the parking too close to Union Avenue. He  
15 acknowledged the deficient frontage on New  
16 Providence Road. He acknowledged the 4.77 green  
17 island rather than the 9-foot width, as well as the  
18 too small a green area in the center of the  
19 property.

20 He said that rather than -- there was a  
21 hardship, there were practical difficulties that  
22 justified the variances, as well as two purposes of  
23 the Municipal Land Use Law, presumably under a c(2),  
24 benefits substantially outweigh the detriments  
25 argument.

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1 He said that the variances and relief  
2 associated with the parking area were needed for  
3 circulation. They needed to have at least 31  
4 spaces. It's a tight fit, and that is what caused  
5 the setback variance for the parking. He justified  
6 the setback variance by saying, well, it's really  
7 the -- the 20-foot setback is really for aesthetic  
8 purposes, and I disagree with that. He also  
9 referenced --

10 CHAIRPERSON SCHAEFER: Mr. Steck, why  
11 are we constantly repeating testimony that we have  
12 gone over, and over, and over again by other expert  
13 witnesses with Mr. Butler?  
14 I'm going through all of my notes back  
15 as far as November, and everything from Mr. Lapatka,  
16 to Mr. Simoff -- everything you're bringing up I'm  
17 reading in my notes that have been discussed over,  
18 and over and over again month, after month, after

19 month.  
20 Can you bring some new light to us that  
21 we haven't heard?  
22 THE WITNESS: Yes. And his testimony  
23 was given back in December, and so I'm just briefly  
24 trying to bring it up to the board's recollection.  
25 He cited two purposes, Purpose G and M  
Steck - Direct  
66  
1 of the Municipal Land Use Law, saying that this was  
2 an appropriate location for a variety of uses, and  
3 presumably that variety includes a day care center.  
4 I leave it up to the board to decide -- well, I'll  
5 just tell you my opinion. Putting a day care center  
6 across the driveways from an active quarry, as well  
7 as on a site that floods is not an appropriate  
8 location for a day care center despite the fact that  
9 it's a permitted use.  
10 Mr. Rahenkamp also said that this  
11 encouraged more efficient use of the land, lessening  
12 the cost of development. Well, because of the  
13 flooding characteristics, the applicant has to now  
14 burden the expense of picking up the elevation of  
15 Union Avenue which is not cheap and would not have  
16 to be done if this were an office building. But  
17 because this is a critical use in the eyes of DEP,  
18 meaning either residential use or a day care center,  
19 that is what causes all of this expense. So the  
20 scale of the project --  
21 CHAIRPERSON SCHAEFER: What does that  
22 matter to us? If this is what the applicant wants  
23 to do, what does that matter to us?  
24 THE WITNESS: Because --  
25 CHAIRPERSON SCHAEFER: I want to move  
Steck - Direct  
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1 on here, Mr. Steck. In all due respect, I want to  
2 move on. Everything that you are bringing back  
3 recollection, we bring back every month, and it's  
4 really getting on -- to the point where it's -- I'm  
5 getting frustrated again. You're insulting our  
6 intelligence.  
7 We know what we're doing here. We know  
8 what we're doing. And to keep repeating it, and  
9 repeating it and repeating it, it just gets old.  
10 ATTORNEY BUTLER: Madam Chair, you  
11 heard from the applicant's planner. You're  
12 obligated to hear from the objector's planner, and  
13 that's what I'm trying to do.  
14 CHAIRPERSON SCHAEFER: It may be, but  
15 I'm hearing the same thing from your engineer, from  
16 your planner, from your traffic.  
17 Is there anything new that he can  
18 enlighten us on?  
19 ATTORNEY BUTLER: Well, let's find  
20 out. Let me ask him a couple more questions.  
21 CHAIRPERSON SCHAEFER: Okay.  
22 ATTORNEY BUTLER: Okay? We understand  
23 this is a permitted use. Our problem, and you're  
24 going to hear in my summation, is the scale of this

25 permitted use. Okay? That is important, how big it  
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1 is.

2 Now, with that in mind, I'm going to  
3 ask Mr. Steck to read part of the transcript of the  
4 applicant's planner. Okay? It's not long. It's  
5 not long. It's a --

6 CHAIRPERSON SCHAEFER: As long as it's  
7 something new, Mr. Butler. I don't want to -- as  
8 long as it's new information for us, not the same  
9 thing over and over again.

10 ATTORNEY BUTLER: It's colloquy  
11 between your planner, Mark Healey, and the  
12 applicant. I think it's very relevant. Okay? It  
13 starts on Page 37, Line 1, and it ends on Page 39:  
14 Line 3. It's not long.

15 ATTORNEY LINNUS: Excuse me, Mr.  
16 Butler. Mr. Butler, what is the date of the  
17 transcript?

18 ATTORNEY BUTLER: Okay. The date of  
19 the transcript is December 15th, 2000, which was  
20 when the applicant's planner testified.

21 CHAIRPERSON SCHAEFER: 2000? December  
22 15th, 2000?

23 ATTORNEY BUTLER: I'm sorry.  
24 December 15th, 2020.

25 CHAIRPERSON SCHAEFER: Okay.  
Steck - Direct

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1 ATTORNEY BUTLER: All right? Okay.

2 BY ATTORNEY BUTLER:

3 Q. Would you read that?

4 A. Yes. I'm going to paraphrase the  
5 question that was set up, and then I will say the  
6 response verbatim of Mr. Rahenkamp.

7 Q. Okay. All right. Okay.

8 A. So your planner talked about the  
9 applicant's reasons for justifying the variances  
10 having to do with the parking area variance, the  
11 number of spaces and the scale of the project. And  
12 your planner was saying, doesn't the scale of the  
13 project have something to do with your need to  
14 request these items of relief? And Mr. Rahenkamp  
15 responded on Page 38, Line 10 as follows:

16 "The issue, I think, is one of scale.

17 It is certainly true that one could eliminate  
18 the front row of parking and eliminate the  
19 space in the island, and this variance and  
20 design exception go away. The amount of  
21 parking you would have left wouldn't just  
22 marginally reduce the use; it would  
23 dramatically reduce the use. It's a  
24 substantial amount of the parking. It gets  
25 to a point where a facility such as this

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1 wouldn't open. It wouldn't be economically  
2 viable. It wouldn't make sense at half to  
3 three-quarters of its size. They are sized  
4 to meet a particular market, a particular  
5 operating pattern. So it's not something  
6 that one can tweak. It's not as if you would

7 lose one classroom and it would work. You're  
8 talking about a very significant reduction in  
9 the overall scale that I think would make the  
10 project nonviable."  
11 Q. All right. Now, what is the planner  
12 basically saying there?  
13 A. The response of the applicant's  
14 planner is we need these variances because that's  
15 the business model of The Learning Experience. That  
16 is what we want to do. It has nothing to do --  
17 there's no reference to characteristics of the  
18 property. The scale -- the variances are needed, in  
19 my opinion, in large part because the applicant has  
20 a certain predetermined scale. That scale is not in  
21 the state Municipal Land Use Law. It's not in the  
22 licensing statute of the state. It is a -- simply a  
23 business model that this applicant comes in. It's  
24 like Exxon coming in saying I made three signs and  
25 they're all bigger than your ordinance, so give me a

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1 variance for the signs.

2 Q. So is this all about money?

3 A. Essentially, it's all about money.

4 Q. Okay.

5 A. Now, what I would like to do is -- the  
6 applicant bears the burden of proof. I carefully  
7 listened to the testimony of Mr. Rahenkamp, and I do  
8 not believe that he presented substantial credible  
9 evidence that would justify the variances that are  
10 sought and, again, the scale of the project that is  
11 proposed. And I will just run through them as  
12 quickly as I can, but with a certain degree of  
13 thoroughness.

14 First of all, Mr. Rahenkamp cited the  
15 fact that the state of New Jersey likes these uses,  
16 and I agree. Like, 31 years ago, the Municipal Land  
17 Use Law was changed. But there is nothing in it  
18 that says there is a demand for 154 childcare  
19 spaces. There is no evidence of how the demand has  
20 changed. Just by chance, if you look at the state's  
21 website, within a 3-mile radius, there is 63  
22 licensed day care centers. So we don't know -- what  
23 that means to me is that the business model is the  
24 only rationale that is being offered, essentially,  
25 for this project.

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1 There was discussion -- Mr. Rahenkamp  
2 said, oh, don't worry about certain features; you  
3 know, you got to remember we got to go to the state  
4 to get licensed. Well, as I mentioned earlier, the  
5 state does not authorize, does not review site  
6 plans. This is a statute that looks at the  
7 operation after the project is completed. So to say  
8 that, don't worry about the site plan because the  
9 state will look over your shoulders, in my opinion,  
10 does not constitute any evidence that would justify  
11 the variances.

12 If you recall Mr. Rahenkamp's

13 testimony, he said, What's the problem with having a  
14 quarry across from a day care center? And then he

15 referenced houses on small streets that were up and  
16 intersected with Bonnie Burn. Those are thousands  
17 of feet away. They're insulated by the buffer.  
18 They are obviously not -- they have a completely  
19 different world than where this property sits at the  
20 mouth of the quarry. So to say that those houses on  
21 local, almost rural streets, separated by hundreds  
22 of feet of buffers, somehow says that there's no  
23 problem -- because those houses are there, there's  
24 no problem with a day care center being across from  
25 the quarry just doesn't make common sense.

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1 He also said you shouldn't worry about  
2 the trucks because once they leave the private  
3 property, the quarry, they're on the public street,  
4 and so you lose jurisdiction of them. Well, those  
5 trucks make the same amount of noise and vibration  
6 and have the same potential for accidents whether  
7 they're on private property or on the public street.  
8 In fact, when they're on the public street, there's  
9 much more traffic going on and turning movements.  
10 So to say that that issue of safety, position of  
11 driveways is not the concern of the board because  
12 they're on public streets makes no common sense to  
13 me.

14 Mr. Rahenkamp --

15 MEMBER FIORILLA: Are you saying that  
16 the quarry creates dangerous conditions? Is that  
17 your point?

18 THE WITNESS: I'm saying that any use  
19 that generates --

20 MEMBER FIORILLA: So maybe the problem  
21 is -- maybe the problem is the quarry?

22 THE WITNESS: I am saying that the  
23 applicant suggests that there, I guess, should be no  
24 concern with the quarry, and the example he gives is  
25 that the trucks -- the noise from the trucks,

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1 because they're on the public street, is not of  
2 concern to the board in reviewing the site plan, and  
3 I disagree. That quarry is a permitted use.

4 MEMBER FIORILLA: You said a couple of  
5 minutes ago that the quarry creates dangerous  
6 conditions, and that, therefore, there shouldn't be  
7 a childcare center across from the quarry. It  
8 sounds like what you're saying is that the quarry  
9 creates problems in the way it operates.

10 THE WITNESS: I'm saying that any use  
11 that involves truck traffic has a different level of  
12 concern than only passenger traffic. And it's a  
13 major traffic generator in the area. It happens to  
14 be a permitted use. It's authorized --

15 MEMBER FIORILLA: Because of what the  
16 quarry -- because of what the quarry produces, then  
17 the other site should not be developed? Is that  
18 your point?

19 THE WITNESS: No. I am saying that

20 Mr. Rahenkamp said don't worry about -- I'm

21 paraphrasing this, I'm shortening it -- he said  
22 don't worry about the truck traffic because once it  
23 leaves the quarry, it's on public streets. And the  
24 answer is that doesn't make any sense to me.  
25 There are complex turning movements.

Steck - Direct

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1 There is an F level of service. Trucks, by their  
2 very nature, create vibrations. They create noise.  
3 That is the nature of the use there. And if they  
4 could be mitigated by position of a building, by  
5 position of driveways, that's what the board ought  
6 to look at.

7 Like, one of the things that was raised  
8 by a board member is putting up a guardrail. Why  
9 would you think about a guardrail? Well, the answer  
10 is whether it's a normal traffic or a truck, there  
11 is a certain level of activity at that T  
12 intersection, and one of the board members  
13 recognized that maybe it's safer with a guardrail  
14 there. That illustrates the fact that there are  
15 impacts that ought to be considered by the board in  
16 reviewing the site plan.

17 If this site were larger and didn't  
18 have the environmental restrictions, potentially  
19 this building could be pushed further away, but it's  
20 right up at the corner.

21 The applicant said that the setback for  
22 the 6 parking spaces that are 5 feet away from the  
23 Union Avenue right-of-way rather than 20 feet is not  
24 a problem. It's justified because, first of all,  
25 the applicant needs the parking, and I would say

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1 that's because of the scale that has been -- the  
2 business model of the applicant. And Mr. Rahenkamp  
3 said it's an aesthetic issue. And, in fact, if you  
4 count the green space that's between the property  
5 line and the pavement, it's really more than 5 feet.  
6 Well, the answer is the ordinance measures it to the  
7 property line, the county right-of-way. The county  
8 may expand this further in the future, the width.  
9 You have no control over that.

10 In my opinion, the issue of the 20-foot  
11 setback is both aesthetic and safety. It creates a  
12 distance from both cars that might -- or trucks --  
13 cars or trucks that might leave the pavement  
14 surface, as well as someone that is on the site that  
15 happens to put their foot on the gas rather than the  
16 brake. It's a safety buffer area, so it's both  
17 aesthetic and safety.

18 Mr. Rahenkamp did not at all think that  
19 safety was related to that standard.

20 BY ATTORNEY BUTLER:

21 Q. Can I talk to you about traffic for a  
22 moment, or aren't you ready for that?

23 A. I can go on for a while or you can  
24 talk about --

25 Q. Well, do it the way you want, but

Steck - Direct

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1 eventually I want to get into Dunkin' Donuts.

2 A. Okay.

3 CHAIRPERSON SCHAEFER: Wait a minute.

4 Why are we doing traffic if you are a planner?

5 You have a traffic expert, Mr. Butler.

6 ATTORNEY BUTLER: Yeah. Well, I also  
7 have a case, and I want to ask this planner why,  
8 from a planning standpoint, he doesn't think it  
9 applies.

10 CHAIRPERSON SCHAEFER: Okay.

11 ATTORNEY BUTLER: This is a planning  
12 question, not a traffic question.

13 CHAIRPERSON SCHAEFER: Okay.

14 THE WITNESS: One of the items --

15 several items of relief are related to the  
16 configuration of the parking area. Not only does it  
17 intrude on the required setback from Union Avenue,  
18 but it has very narrow turning radiuses because,  
19 first of all, the applicant doesn't have a lot of  
20 room because of the wetlands buffer and because of  
21 the applicant's straining to get at least 31 spaces  
22 there.

23 If this site were not so restricted or,  
24 the other side of the coin, if the need for parking  
25 were not so large, if it was a smaller facility, you  
Steck - Direct

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1 wouldn't need as many parking spaces, and you could  
2 have the right amount of greenery. You will hear  
3 testimony later by Mr. Simoff because the dimensions  
4 are so constricted in the parking area, there is not  
5 the typical movement of vehicles passing one another  
6 or trucks loading that is convenient or safe within  
7 the area. So there are negative consequences to  
8 allowing so little greenery in the parking area.  
9 There has been a lot of debate about  
10 the number of parking stalls. And your ordinance  
11 says it's the industry standard that rules; that's  
12 the baseline. And first of all, the experience of  
13 learning -- The Learning Experience is -- is not the  
14 industry standard. That is specific to their types  
15 of use. Once this is approved, you're not approving  
16 the franchise. This could be a Tutor Time. They  
17 don't need any approvals from you to put a Tutor  
18 Time in or to put another day care operation in  
19 because you're approving the category of use, not  
20 the franchise.

21 In other situations where you're short  
22 on parking and you have land to work with, you could  
23 say, okay, you tell me you don't need those, all  
24 those parking spaces. You don't need -- whatever --  
25 53, 54 spaces, but at least have a green area that  
Steck - Direct

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1 you bank for future parking. So if it turns out  
2 another similar operation replaces yours, you can  
3 repave -- you can extend the pavement, and you have  
4 a safety zone.

5 In this case there is no area to have



6 one additional parking space, number one. Some of  
7 the parking spaces will be lost if there's a  
8 flooding event. And even if this, in the future,  
9 becomes an office building, which is not a great  
10 generator of parking spaces, you would need 44  
11 parking spaces just for converting this into an  
12 office use.

13 Here, you have 31 spaces. You have 22  
14 employees. You have two spaces that are  
15 handicapped. So, per chance, at a certain period of  
16 time, none of the employees are handicapped. Means  
17 you have seven spaces left to handle the pickups,  
18 the drop-offs and everything else. That does not  
19 make sense.

20 And the real problem here is that you  
21 don't have on-street parking, and you don't have any  
22 reserve areas that you could have additional parking  
23 in the future. Normally, someone picks the  
24 85th percentile, not the average, and in this case  
25 it's more important to have a greater comfort level,  
Steck - Direct

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1 a higher percentile in statistically providing the  
2 parking because there is no opportunity to create  
3 additional parking on the property, and there  
4 clearly is no parking on the street. In fact, the  
5 streets are hazardous because no sidewalks. I know  
6 that the applicant has volunteered to put any --  
7 some sidewalks in, but the board has not required  
8 that yet. But I do not think that the -- for that  
9 reason, both the dimensional standards associated  
10 with the parking lot or the number of parking spaces  
11 are satisfied.

12 There has been a number of, in my  
13 opinion, oversights as this program has progressed.  
14 So some people have voiced the opinion, oh, just  
15 send this off to DEP and they'll take care of  
16 anything having to do with flooding. Number one,  
17 that is not the way your ordinances read, Chapter  
18 22. But, number two, you have experience that the  
19 applicant has neglected to look at the ditch as  
20 really being a tributary. The applicant has  
21 calculated the drainage area based on U.S.G.S. maps  
22 with 20-foot intervals.

23 In my judgment, you should look  
24 carefully at Chapter 22, and someone should study it  
25 in a way that you are confident that it has been  
Steck - Direct

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1 studied correctly and the amount of acreage draining  
2 to that tributary is accurately determined because  
3 the 100-year line may be greater than what you think  
4 it is. And no one knows that at the moment, and  
5 that is such a fundamental issue with this sensitive  
6 land use that I think it's integral to your decision  
7 on whether the site plan deserves approval or not.  
8 The state has not preempted all of

9 these things. They have a larger flood hazard area,  
10 but they have different concerns. They want to  
11 protect the streams. They do not approve this site  
12 plan. You have two driveways that are going to be  
13 blocked.

14 BY ATTORNEY BUTLER:

15 Q. Now, what chapter are you referring to?

16 A. Well, this is Chapter 22 primarily,  
17 but Chapter 28, the zoning ordinance, also --

18 Q. What is Chapter 28?

19 A. 28 is the land development ordinance,  
20 essentially the zoning ordinance.

21 Q. But specifically, it's stormwater,  
22 isn't it?

23 A. It requires the applicant to address  
24 -- to have a stormwater plan, and the submission  
25 requirements are right in the ordinance. The  
Steck - Direct

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1 applicant is saying, don't worry, I'll do this  
2 later.

3 Q. Have they done it?

4 A. They have not. They have done some  
5 aspects, like a maintenance manual, but they haven't  
6 addressed the fact and there's evidence that the  
7 soils are poor based on the borings that were done  
8 when the car wash application was done before the  
9 board.

10 ATTORNEY HEHL: I'm going to have to  
11 object again. Mr. Steck is a planner, not an  
12 engineer, and he's -- he's testifying as an  
13 engineer.

14 CHAIRPERSON SCHAEFER: Frank?

15 ATTORNEY BUTLER: The objection is --

16 CHAIRPERSON SCHAEFER: Frank?

17 ATTORNEY LINNUS: Well, yes, he's  
18 overstepping his bounds on planning expertise. He  
19 is not qualified -- or has not been qualified as a  
20 professional engineer. And you have heard all the  
21 engineering comments from prior witnesses, including  
22 Mr. Butler's witnesses.

23 ATTORNEY BUTLER: Mr. Linnus, let me  
24 ask this witness a planning question regarding the  
25 applicability of Dunkin' Donuts.

Steck - Direct

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1 BY ATTORNEY BUTLER:

2 Q. This is a traffic case, okay. And this  
3 case, Dunkin' Donuts of New Jersey versus North  
4 Brunswick. It's 193 N.J. Super. 513. It's an  
5 appellate division per curiam case. Okay? On  
6 Page 515 it says, quote:  
7 "A planning board shall consider  
8 off-site traffic flow and safety in reviewing  
9 proposals for vehicular ingress to and egress  
10 from a site."

11 And it cites our site plan ordinance.  
12 Now, later it goes on and says if you  
13 have a permitted use the board should not take into  
14 consideration off-site traffic.  
15 Now, as a planner, do you have an  
16 opinion on the applicability of the Dunkin' Donuts  
17 case to this application?

18 A. I do.

19 Q. And what is it?

20 A. We are not saying that the board  
21 should not allow a day care center on this property.  
22 What we are saying is the scale -- the business  
23 model of this applicant is relevant. Because of its  
24 scale there is a certain limitation on parking,  
25 there is a certain limitation on turning movements.

Steck - Direct

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1 We know that this is an environment that is  
2 congested, that has adequates -- and in my opinion,  
3 the condition of the accessing road system, in  
4 conjunction with the characteristics of the property  
5 and the variances needed, suggests that it is a  
6 relevant consideration in determining is this  
7 business model simply supersized, too big? Is this  
8 a self-created hardship or practical difficulties?  
9 And does it negate any kind of benefit that would  
10 justify the relief that is being sought?

11 So, again, the conditions in the area I  
12 combine to the driveway layout, the fact that cars  
13 back up and block the driveway access points, as  
14 well as cars too close to the right-of-way. These  
15 considerations taken together, in my opinion, are  
16 relevant to this site plan review and to whether the  
17 variances and exceptions are justified.

18 Q. And would that include gridlock on  
19 Union Avenue backing up into New Providence Road?

20 A. Certainly. A smaller facility would  
21 produce less traffic. It would be less of a  
22 contributing factor. But I combined the off-site  
23 traffic situation with the characteristics of the  
24 site and the justification offered by the applicant.  
25 At the end of the day, it's the burden

Steck - Direct

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1 of the applicant to provide the proofs. The  
2 applicant has not submitted information that I think  
3 a reasonable planning board would use and, in fact,  
4 is required by your ordinances, specifically Chapter  
5 22. In my opinion, if there is fundamental  
6 information that is integral to the site plan and  
7 it's not being offered by the applicant at this time  
8 where the board can consider it and the public can  
9 consider it, that's a reason to deny the application  
10 because the applicant has the burden of those  
11 proofs.

12 Listening to the applicant's planner  
13 testify, he didn't say anything about the loading  
14 variance. He was silent about that. And in my  
15 opinion, his testimony was not substantial or

16 credible enough that would allow this board to grant  
17 the variance reliefs needed, as well as the  
18 exceptions.  
19 The one thing I will acknowledge is the  
20 frontage of 40-some-odd feet on New Providence Road,  
21 I'm fine with that variance. But the other  
22 variances and exceptions, in my opinion, are not  
23 supported by evidence, and, in fact, we will hear  
24 additional testimony from Mr. Simoff about the  
25 problems of circulation within the lot because the  
Steck - Direct  
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1 design is so constricted related to the fact the  
2 applicant doesn't have a big enough island in the  
3 middle to allow adequate turning radiuses.  
4 ATTORNEY BUTLER: Madam -- just about  
5 through, Madam Chair.  
6 Q. Did you also hear any -- read any  
7 testimony from the applicant's planner regarding its  
8 right to any of the waivers it's seeking?

9 A. The waivers were not addressed in his  
10 testimony.

11 Q. Now, do you have anything to add?

12 A. I'm afraid to say anything. No. I am  
13 through. I have nothing in mind to add.

14 ATTORNEY BUTLER: Oh, okay. At this  
15 point, Madam Chair, I have no further questions for  
16 Mr. Steck.

17 CHAIRPERSON SCHAEFER: Mr. Hehl, do  
18 you want to ask questions?

19 ATTORNEY HEHL: Yeah. I will be  
20 brief.

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

22 BY ATTORNEY HEHL:

23 Q. First of all, again, Mr. Steck, I think  
24 it has been stipulated that you are not a  
25 professional engineer and only hold a planner's  
Steck - Direct

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1 license, correct?

2 A. Correct.

3 Q. And that includes your review of OW-32,  
4 correct? You reviewed that as a planner and not as  
5 an engineer?

6 A. Yes.

7 Q. Okay. And you also acknowledge that  
8 this is -- and you said it on numerous occasions,  
9 this is a permitted use?

10 A. Yes.

11 Q. Okay. And the building itself meets  
12 all the setback? There's no FAR variances, no D  
13 variances associated with this application, correct?

14 A. Correct.

15 Q. Okay.

16 A. Just for the type of use. Although  
17 that doesn't address, obviously, the scale of the  
18 building.

19 Q. And then I was intrigued by your  
20 analysis of OW-33 -- isn't it a fact that the  
21 applicant has not sought site plan waiver, meaning

22 they did apply for full site plan approval,  
 23 preliminary and final, from this board, correct?  
 24 A. Well, my understanding --  
 25 Q. There's no question. They applied for  
 Steck - Cross  
 88  
 1 site plan. You were making it seem like they were  
 2 trying to avoid the site plan process citing to  
 3 40:55D-66 saying that that just covered the use,  
 4 they still had to go for site plan. They did go and  
 5 apply for site plan. That's why we're here,  
 6 correct?  
 7 ATTORNEY BUTLER: Can he answer your  
 8 question, please?  
 9 THE WITNESS: My understanding is that  
 10 you have amended the application to go for  
 11 preliminary site plan approval; is my understanding  
 12 correct?  
 13 ATTORNEY HEHL: That was the request  
 14 of the board, so we are applying for a site plan.  
 15 CHAIRPERSON SCHAEFER: We asked him --  
 16 THE WITNESS: My understanding is  
 17 preliminary site plan.  
 18 BY ATTORNEY HEHL:  
 19 Q. Yeah. So we would have to come back  
 20 for final, correct?  
 21 A. But the final is done -- if you  
 22 complied with the conditions of preliminary  
 23 approval, there's no notice to the public and  
 24 the -- this is the ball game tonight on preliminary  
 25 approval because if you comply with the conditions,  
 Steck - Cross  
 89  
 1 there is no more discretion of the board. The board  
 2 has to approve it. So this is the whole ball game  
 3 on preliminary approval.  
 4 Q. I'm still trying to understand your  
 5 analysis of OW-33.  
 6 The other item --  
 7 A. Well, may I respond since you don't  
 8 understand it?  
 9 Q. No. I'm just -- I have no further  
 10 questions on it.  
 11 And you did review, and I know it was  
 12 noted, Paragraph 10 of the board engineer's report  
 13 indicating that the applicant -- you have constantly  
 14 talked about this Chapter 22. You do acknowledge,  
 15 and the words were, that the applicant is not  
 16 seeking any relief from Chapter 22; you acknowledge  
 17 that statement?  
 18 A. I acknowledge that that statement was  
 19 made, but that does not address the requirements of  
 20 the ordinance.  
 21 Q. Okay. But we're not seeking relief  
 22 from that.  
 23 And then, finally, did you also review  
 24 the opinion and letter from the board's traffic  
 25 engineer indicating that he found the parking being  
 Steck - Cross  
 90  
 1 supplied acceptable?  
 2 A. I did read his review.  
 3 Again, in an area where you don't have

4 any on-street parking and you don't have any room to  
5 have banked parking, in my opinion, there are  
6 inadequate proofs -- and I'm going to dovetail that  
7 with the testimony of Mr. Simoff -- that would allow  
8 the board to approve 31 spaces as adequate.

9 ATTORNEY HEHL: All right. I have no  
10 further questions at this time.

11 CHAIRPERSON SCHAEFER: I'm going to go  
12 to my -- Mr. Matias and to Mr. Healey.

13 Do you have any questions for  
14 Mr. Steck?

15 BOARD PLANNER: Yes. I could go  
16 first, if you don't mind.

17 Mr. Steck, you had mentioned the 2011  
18 master plan re-examination. Did you examine the  
19 2020 master plan re-examination?

20 THE WITNESS: Yes. I will tell you  
21 all of the items I looked at. I looked at the 2011  
22 re-examination report. I looked at the 2006 open  
23 space and recreation plan. I looked at the 1994  
24 master plan update, the 1999 re-examination report  
25 and the 2020 re-examination report.

Steck - Cross

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1 The 2020 re-examination report --  
2 again, re-examination report is not the same as a  
3 master plan, but it said the same thing; it  
4 referenced the fact that the quarry area was rezoned  
5 with substantial buffers and, in my opinion, that  
6 makes the testimony of Mr. Rahenkamp that tried to,  
7 I guess, soothe the board that there were houses  
8 that were surviving next to the quarry without a  
9 problem -- I did not find that credible testimony in  
10 light of that policy recommendation in the 2020  
11 re-examination report.

12 BOARD PLANNER: Okay. So I'm going to  
13 just offer some clarification, at least as far as my  
14 opinion on a few of your comments on relief, and one  
15 of these is mentioned in my latest report.

16 I don't believe that the applicant  
17 needs a waiver for that middle island you had  
18 mentioned, that 1.7-foot dimension. The ordinance  
19 talks about the requirement being 9 feet when it's  
20 at the end of parking bays, and that is not at the  
21 end of a parking bay. So they do need it for the  
22 4.77 feet. I do not believe they need it for that  
23 middle island. That's my opinion.

24 As far as the interior landscaping of  
25 the 5 percent, I'm not exactly sure how you are

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1 delineating. I think your figure was 3.7 percent.  
2 I'm not sure why the other islands that protrude  
3 into the interior of the parking lot are being  
4 excluded. I think if you include those as well,  
5 that's probably at least over 10 percent, if not  
6 more. So I'm not exactly sure how you're drawing  
7 that.

8 ATTORNEY BUTLER: May he respond,  
9 Mr. Healey, on that?

10 BOARD PLANNER: Let me finish.

11 ATTORNEY BUTLER: Okay.

12 BOARD PLANNER: And then just two

13 clarifications, and one being parking, and one being  
14 loading.

15 Obviously, Mr. Steck is offering his  
16 opinion that relief is required with regard to  
17 parking and loading. The actual language of the  
18 ordinance is, at the end of the day, the board needs  
19 to make the determination. There's similar language  
20 in the ordinance on both. Basically that's, you  
21 know -- based on the examination of the plan, of the  
22 testimony that you hear from -- that you've heard  
23 already from your professionals, the objector's  
24 professionals, you will need to make a determination  
25 at the end of the day what is -- what should be the  
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1 required parking for the site and whether they have  
2 met that.

3 Similarly, there's language to that  
4 effect for loading. It doesn't specifically say for  
5 this exact use that a loading dock is required. It  
6 certainly is suggested that it could be. There is  
7 also language that you could require a smaller  
8 loading dock. Again, at the end of the day, when  
9 the board deliberates, you will need to go over  
10 those topics.

11 THE WITNESS: If I could respond.  
12 First of all, because the applicant put  
13 a parking spot in the middle island, it seems to me  
14 the intent of the ordinance is to have green framing  
15 of that. And because the framing is so narrow  
16 there, and Mr. Simoff will talk about this, the  
17 turning movements are unacceptably narrow.  
18 First of all, the applicant in their  
19 public notice acknowledged that they need a waiver  
20 for 3.7 percent in lieu of the 5 percent. I  
21 calculated it, and I came up with the same figure.  
22 And my recollection of the wording of the ordinance  
23 is in the interior of the parking area. So I know  
24 that you want to, like, rope in the perimeter  
25 landscaping, but, in my opinion, that's not what the  
94

1 ordinance reads.

2 With respect to the parking  
3 requirement, the ordinance does not, in my opinion,  
4 give, in a sense, freedom to the planning board to  
5 invent its own standard. It says it's the industry  
6 standard that applies, and there has been a lot of  
7 testimony about that, that the planning board can't  
8 make up its own standard. It is the standard for  
9 the industry which is the baseline to determine what  
10 is at least required by the ordinance. And then, of  
11 course, the applicant is free to try to argue that a  
12 variance might be needed, but the baseline is not to  
13 be determined by local determination; it's the  
14 industry standard.

15 BOARD PLANNER: Well, Mr. Steck, at  
16 the end of the day, the determination is made by the

17 board.  
18 THE WITNESS: The determination --  
19 BOARD PLANNER: It's based on industry  
20 standards, but at the end of the day the board makes  
21 a determination of what the required number of  
22 parking spaces should be.  
23 THE WITNESS: Acknowledging what the  
24 industry standard is. The ordinance doesn't say  
25 that the board gets to make up its own number. The  
95  
1 ordinance says if you're not listed, you use the  
2 industry standard.  
3 And it's up to the applicant and the  
4 board to decide whether the applicant justified a  
5 variance from that.  
6 BOARD PLANNER: And they'll have to  
7 determine, based on the testimony, what -- the most  
8 credible testimony that they've received on that  
9 topic.  
10 THE WITNESS: That's correct.  
11 And there was a final a fourth point  
12 that -- I can't read my writing on -- oh, the  
13 loading dock. The answer is the ordinance -- I  
14 guess it's 28:503(E)(1) -- specifically says that  
15 there has to be a loading area. I don't expect  
16 there to be a formal loading dock, but the answer is  
17 deliveries come to this building. There are food  
18 deliveries. There are supplies. And the ordinance  
19 requires a loading dock -- not a loading dock, a  
20 loading space. The applicant doesn't provide it.  
21 That's a variance.  
22 BOARD PLANNER: Okay. Well, I'm  
23 referencing Section 607(C) that has the language  
24 that I mentioned. It's quoted -- I quote the  
25 language in my report that's dated April 14th.  
96  
1 ATTORNEY BUTLER: Is there a question,  
2 Mr. Healey?  
3 BOARD PLANNER: I'm correcting  
4 Mr. Steck's testimony.  
5 ATTORNEY BUTLER: I'm sorry.  
6 BOARD PLANNER: He cited a different  
7 section of the ordinance.  
8 ATTORNEY BUTLER: I apologize.  
9 THE WITNESS: The way -- a provision  
10 of the ordinance requires a loading space the way I  
11 read it. There has been no testimony by the  
12 applicant's planner justifying the lack of a loading  
13 space. There is also an issue of circulation of  
14 such a truck, and you will hear testimony after me  
15 from Mr. Simoff regarding those circulation paths  
16 and the inadequacy of them.  
17 So it relates to the -- it relates, at  
18 a minimum, to the site plan, but, in my opinion, it  
19 also triggers a variance.  
20 BOARD PLANNER: Okay. And the purpose  
21 of my clarification is to make it -- (technical  
22 glitch).



23 CHAIRPERSON SCHAEFER: Mark, you  
24 froze.  
25 BOARD PLANNER: -- and the board has  
97  
1 to weigh your opinion versus that offered by  
2 Mr. Rahenkamp, as well as the engineer.  
3 CHAIRPERSON SCHAEFER: Mark --  
4 BOARD PLANNER: I'm not muted.  
5 CHAIRPERSON SCHAEFER: Mark, you need  
6 to repeat yourself. You actually froze right in the  
7 middle.  
8 BOARD PLANNER: Oh, okay. So what I  
9 was saying was -- I was trying to clarify that,  
10 Mr. Steck, what you were saying is, as far as  
11 parking and loading, that is -- what I'm trying to  
12 clarify for the board is that is what your opinion  
13 is, but it's not necessarily the -- the board is  
14 going to have to make a determination, at the end of  
15 the day, based on weighing your testimony, Mr.  
16 Rahenkamp's testimony, the input that I have  
17 provided, as well as the testimony that has been  
18 provided by the applicant's engineer and the  
19 objector's engineer, and at the end of the day,  
20 they'll have to make a determination on those  
21 topics.  
22 THE WITNESS: I understand.  
23 CHAIRPERSON SCHAEFER: Mr. Matias, do  
24 you have --  
25 BOARD ENGINEER: I really have more of  
98  
1 a comment, and I will just mention I believe the  
2 engineering matters as they relate to the flood  
3 hazard area, NJDEP approvals, we have covered those  
4 enough. So I'm going to spare the board from any  
5 further questions, but I think we have covered them  
6 in depth enough.  
7 CHAIRPERSON SCHAEFER: Thank you.  
8 Any questions from board members of  
9 Mr. Steck?  
10 Don, you've got to unmute yourself.  
11 VICE-CHAIRMAN SPEENEY: I do.  
12 Mr. Steck, you indicated issues around trucks,  
13 noise, vibrations and accidents being a problem for  
14 the scale of this particular proposal.  
15 THE WITNESS: It, in connection with  
16 other aspects of the site, in my opinion, relate to  
17 the site plan and the variances that are sought for  
18 this size of building.  
19 VICE-CHAIRMAN SPEENEY: Right. So how  
20 come -- how come a smaller-size building, in  
21 particular with the trucks, the noise, and the  
22 vibrations and the accidents, might work?  
23 THE WITNESS: Well, a smaller-size  
24 building would mean that you need less parking  
25 which, first of all, would mean that the circulation  
99  
1 within the site would be more efficient and safer.  
2 Perhaps both driveways, then, could be outside of  
3 the flood hazard area. It would produce less  
4 traffic, so there would be presumably fewer

5 instances where driveways are blocked on Union  
6 Avenue.  
7 VICE-CHAIRMAN SPEENEY: And would it  
8 mean a smaller building?  
9 THE WITNESS: Yes. I would assume  
10 that if -- I assume that if the business model  
11 weren't wedded to 154 students, it would be a  
12 smaller building.  
13 VICE-CHAIRMAN SPEENEY: Okay. Thank  
14 you.  
15 CHAIRPERSON SCHAEFER: Mr. Steck, I  
16 have a question, and you just brought up about  
17 accidents. Mr. Simoff, when he testified, did not  
18 talk about any accidents on the corner of Union or  
19 New Providence. He only talked about accidents at  
20 the corner of Bonnie Burn and New Providence.  
21 THE WITNESS: First of all, both  
22 intersections, as you know, are Level of Service F.  
23 And, yes, he did an accident study at the main  
24 intersection at Bonnie Burn. I didn't indicate that  
25 there were accidents at this T intersection, but the  
100  
1 answer is a portion of this traffic does go through  
2 that other intersection.  
3 CHAIRPERSON SCHAEFER: Understood.  
4 But there is no -- there is absolutely no evidence  
5 that we have been given to the corner of Union  
6 Avenue and New Providence Road.  
7 THE WITNESS: And I don't know whether  
8 there are --  
9 CHAIRPERSON SCHAEFER: You also spoke  
10 about flooding. And when was the last time that  
11 water overran New Providence Road onto this  
12 property?  
13 THE WITNESS: All I know, that there's  
14 evidence that in the last 100 years it has occurred  
15 more than once.  
16 CHAIRPERSON SCHAEFER: Okay. So we  
17 were told that it has happened three times, and the  
18 last time that it happened was, basically, when  
19 Mr. Weldon's wall fell. There was so much water  
20 that came, we had one of those microbursts or  
21 something, and 22 had flooded out and -- but there  
22 was no flooding on Union Avenue.  
23 On either end, yes, and on the end that  
24 is New Providence and Union it overflowed because of  
25 the wall falling, according to testimony that was  
101  
1 given back in February.  
2 THE WITNESS: Well, the wall didn't  
3 fall three times. And if there was at least one  
4 instance in the last 100 years, that's the  
5 definition of the 100-year flood. And as you're  
6 well aware, the floor level of this building is 5  
7 feet below the pavement elevation on New Providence.  
8 So it clearly is an issue of concern and public  
9 safety.  
10 CHAIRPERSON SCHAEFER: All right.  
11 That's all I have. Thank you.  
12 BOARD ENGINEER: Madam Chair, if I  
13 just may, on one issue. The definition of the  
14 100-year flood is not that it's only going to flood

15 one time in 100 years; it's that it has a one  
16 percent chance of flooding in any given year. So  
17 any site can flood 100 times in 100 years. It's a  
18 little bit confusing, and I understand it's a little  
19 bit of the engineering language, but any -- along  
20 any 100-year flood line, there can be a flood at one  
21 percent chance in one year.

22 CHAIRPERSON SCHAEFER: Thank you.

23 Any other questions from board members?

24 Councilman Martino.

25 COUNCILMAN MARTINO: Thank you, Madam  
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1 Chair. Bear with me because I have notes written  
2 all over the place. It has been kind of tough  
3 following this, so bear with me.

4 I would like a little bit of a  
5 clarification, and I may have misunderstood this,  
6 but I'm not sure how the removal of all the ratables  
7 from the east and north side of Bonnie Burn Road is  
8 relevant to this site. I mean, that -- I believe  
9 that was mentioned, correct?

10 THE WITNESS: Not by me.

11 COUNCILMAN MARTINO: Yes. You  
12 specifically said the restaurant was removed and  
13 houses were removed --

14 THE WITNESS: I wasn't talking about  
15 ratables. I was talking about the fact that the  
16 houses that were referenced by Mr. Rahenkamp off of  
17 the side streets up on Bonnie Burn Road were  
18 insulated from the impact of the quarry, and part of  
19 that was to establish buffers of, I believe, 100 to  
20 200 feet so that -- it had nothing to do with  
21 ratables. It had to do with the fact that the only  
22 real land use impacts of the quarry are right across  
23 the street from the subject property, nothing to do  
24 with ratables.

25 COUNCILMAN MARTINO: Well, any time a  
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1 piece of property is removed, it is a ratable that  
2 the borough doesn't get anymore. So I'm just  
3 using --

4 THE WITNESS: Oh, that's irrelevant.

5 It was not part of --

6 COUNCILMAN MARTINO: Yeah. I'm just  
7 using terminology that I can relate to.

8 THE WITNESS: I apologize if I

9 conveyed that. Ratables have nothing to do with  
10 this.

11 COUNCILMAN MARTINO: Well I think it  
12 does, but that's for another -- that's for another  
13 evening to discuss.

14 So I still, to that point, I really  
15 don't understand -- those houses across the street  
16 from where these were removed are still impacted by  
17 the quarry. So I still don't understand the  
18 relevance to this site which is at the bottom of the  
19 road, you know, a quarter of a mile away. To me,  
20 it's -- it's apples and oranges because the majority  
21 of the quarry operation is below those homes on  
22 Bonnie Burn.

23 So they're getting the smoke. They're  
24 getting the noise, and they're getting the exposure.  
25 Basically, the only exposure down below is the truck

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1 traffic, if I'm not mistaken.

2 ATTORNEY BUTLER: Let me just correct  
3 that, Councilman, because I represented Weldon, and  
4 I appeared before the planning board over 18 months  
5 12 times. There's no smoke. And they made us put  
6 in a buffer. The zoning was so messed up. The  
7 zoning map was different than the text of the zoning  
8 ordinance. Some lots were divided saying  
9 residential, and other was zoning. I brought out  
10 the problems. The mayor and council sent it over to  
11 the planning board. The planning board made me  
12 cross every I, cross every T, and finally we agreed  
13 on Bonnie Burn Road that we could do quarrying  
14 130 feet from the edge of Bonnie Burn Road, but we  
15 had to do a tremendous buffering plan and it  
16 included over 1,100 trees, and we're almost through  
17 with that.

18 But there was nothing about smoke. And  
19 1,100 trees this board found to be a sufficient  
20 buffer. And they made me go back 250 trees -- 250  
21 acres, including trees, where Colorado Cafe was  
22 because of the topography.

23 COUNCILMAN MARTINO: I'm still trying  
24 to wrap my head around how it doesn't affect the  
25 houses around. And just as the truck safety  
105

1 question came up before, I'm not sure what the  
2 difference is between this site and the overall  
3 traffic safety on Bonnie Burn and New Providence  
4 Road with truck traffic.

5 Again, this is a building. It's still  
6 an exposure to us, these vehicles. I understand  
7 there's going to be noise. I understand there's  
8 going to be exhaust. I understand there's going to  
9 be, you know, all kinds of stuff, you know,  
10 movement. But again, you know, if this is a safety  
11 issue, again, I got to sort of, like, jump on with  
12 Mr. Fiorilla. You know, this could be a bigger  
13 issue that we have to discuss. I'm not seeing it.  
14 I operate out of that quarry. I don't see any  
15 problem with the way the trucks enter and exit. I  
16 think it is a safe facility.

17 So, again, I'm not sure where we're  
18 going with this "unsafe." If there's something  
19 unsafe, then we really do need to address it  
20 further.

21 THE WITNESS: If I might, let me  
22 explain. The applicant said that one of the public  
23 purposes in a c(2) justification for the variances,  
24 he cited Purpose G of the Municipal Land Use Law  
25 that said that one of the purposes of zoning is to  
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1 provide sufficient space in an appropriate location  
2 for a variety of uses with respect -- according to  
3 their respective environmental requirements and  
4 according to the -- to meet the needs of all New  
5 Jersey citizens. And he said -- he's advancing that  
6 as one of the reasons why you should grant the  
7 variances that are being requested.

8 And he said, essentially, and the way I  
9 understood it is, What's the problem with the quarry  
10 being across the road from the subject property?  
11 You have houses that are near the quarry up on the  
12 side streets to Bonnie Burn Avenue. And, in my  
13 opinion, that's apples and oranges. We have a  
14 driveway, no buffer. Up there, you have 100-foot to  
15 200-foot setbacks. You have trees being planted.  
16 You have the buffer being better because the cafe  
17 was removed.  
18 So my point is by referencing those  
19 houses, it is not substantial evidence that Purpose  
20 G is advanced by the applicant. These are apples  
21 and oranges. And there may be some impact, but the  
22 answer is to have 100-foot buffer and a huge berm  
23 where you can't even see the quarry is a pretty good  
24 insulating factor, in my opinion. You have none of  
25 that on New Providence Road.

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1 COUNCILMAN MARTINO: Well how far back  
2 is the quarry operations from New Providence Road?  
3 THE WITNESS: Well, it's right there  
4 because that's where the building is, that's where  
5 the driveways are. But the houses that were being  
6 referenced by Mr. Rahenkamp are very remote. You  
7 know, they're probably a quarter mile up Bonnie Burn  
8 Road. And, again, they're in the new, improved  
9 buffer. So the answer is they might as well be in  
10 Kansas compared with the --  
11 COUNCILMAN MARTINO: Like I'm saying,  
12 the quarry processing center, how far is that from  
13 New Providence Road? That's a simple question.  
14 That's all I'm asking.

15 ATTORNEY BUTLER: Okay. Councilman,  
16 Bob Weldon will testify.  
17 COUNCILMAN MARTINO: Okay. We'll hold  
18 that -- we'll hold that for Mr. Weldon.  
19 ATTORNEY BUTLER: Can you ask him that  
20 question?

21 COUNCILMAN MARTINO: Absolutely. I'll  
22 hold -- I'll hold that one. I'll hold that one for  
23 later.

24 ATTORNEY BUTLER: Okay. But I want to  
25 make sure that we understand what you're asking.

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1 You want to know how far back quarrying starts  
2 from --

3 COUNCILMAN MARTINO: Correct, yes.

4 ATTORNEY BUTLER: -- New Providence  
5 Road into the quarry, right?

6 COUNCILMAN MARTINO: Yes, correct.  
7 Thank you.

8 ATTORNEY BUTLER: That's a fair  
9 question.

10 Bob, do we have the right question?

11 COUNCILMAN MARTINO: We can hold that  
12 until later. That's okay.

13 Mr. Steck, I got another question, and  
14 this has to do with this terminology with this ditch  
15 and this tributary. Okay? Again, is it opinion?

16 Is it fact? What is it listed as right now?

17 THE WITNESS: Well, the applicant  
18 initially labeled it as a ditch, but the applicant  
19 has subsequently, as I understand it, acknowledged  
20 that it is an unstudied tributary to the Green  
21 Brook. And so that depending upon the extent of the  
22 drainage area, first of all, DEP may require that it  
23 be studied or, in my opinion, Chapter 22 requires  
24 that it be studied so that the -- in reviewing the  
25 site plan, the board members know the extent of  
109  
1 flooding. Even with 100-year storm.  
2 COUNCILMAN MARTINO: Can you tell me  
3 how it was listed in the 2006? I think you said it  
4 was 2006 approval for the car wash?  
5 THE WITNESS: I only know the dates of  
6 that. I have not seen the plans or the resolution.  
7 COUNCILMAN MARTINO: Because from what  
8 I -- I've heard is that was not contested, correct?  
9 THE WITNESS: All I can say is that  
10 that the -- I don't know whether that tributary was  
11 acknowledged or not. The only thing that I know is  
12 that Weldon Industries did not object to the car  
13 wash on the property.  
14 COUNCILMAN MARTINO: Okay. Thank you.  
15 I got -- just real quick. You  
16 mentioned there's 63 day care centers within a  
17 3-mile radius of this site? Is that -- did I hear  
18 that correctly?  
19 THE WITNESS: 63 licensed centers,  
20 yes.  
21 COUNCILMAN MARTINO: How many of them  
22 are in Watchung?  
23 THE WITNESS: There are only a couple  
24 within Watchung. There are very --  
25 COUNCILMAN MARTINO: Do we have an  
110  
1 exact number?  
2 THE WITNESS: I recall there being at  
3 least -- there's at least one. There may be two.  
4 The point that I raised is that Mr. Rahenkamp was  
5 saying how this is a regional benefit, it's not just  
6 for the town, and that's why I just -- and the  
7 answer is the applicant's business model says they  
8 need 154 slots.  
9 The only evidence on the record of  
10 needing 154 slots is the applicant wants it.  
11 There's no measurement of demand, of a survey, other  
12 vacancies in other day care centers. There's no  
13 evidence on the record.  
14 So it doesn't relate to whether the use  
15 should be permitted or not; it relates to the scale  
16 of the operation. Does this -- for the public good,  
17 does this really need to be 154 kids.  
18 COUNCILMAN MARTINO: And finally, I'm  
19 going to make a comment. I was the person on this  
20 -- on this board that recommended the guardrails at  
21 the intersection of Union Avenue and New Providence  
22 Road. And I want to make this clear, that's because  
23 I'm also requesting sidewalks.  
24 I did make that request for many  
25 different reasons, but primarily the guardrail is  
111  
1 because most accidents occur in an intersection, and

2 many vehicles end up on the other side of the curb,  
 3 which could affect pedestrians.  
 4 So I just want to make that very clear  
 5 that that's what I was discussing when I mentioned  
 6 having guardrails at that intersection because of  
 7 that type of situation. So, again, I'm a proponent  
 8 of sidewalks for many reasons. Day care center, if  
 9 the place needs to be evacuated for a fire alarm  
 10 activation or any type of emergency, the children  
 11 need to use the sidewalks to exit in the direction  
 12 probably towards the brook and into that residential  
 13 development.  
 14 So thank you. I appreciate your input.  
 15 CHAIRPERSON SCHAEFER: Anyone else  
 16 have questions for Mr. Steck?  
 17 MEMBER POTE: Real quick question,  
 18 Chairwoman?  
 19 CHAIRPERSON SCHAEFER: Sure.  
 20 MEMBER POTE: On OW-34, real quick  
 21 question. We were talking about the spaces, and I  
 22 know we have the 31 spaces that are part of the  
 23 application. You said 31 spaces in lieu of 54  
 24 spaces, and then you said for this type of land use.  
 25 Can you just explain again where you  
 112  
 1 got that 54 from?  
 2 THE WITNESS: That's the industry  
 3 standard from ITE and Mr. -- first of all, that was  
 4 in the applicant's public notice. So the applicant  
 5 referenced 54 spaces in its public notice. That can  
 6 be viewed as the industry standard. There will be  
 7 other testimony by Mr. Simoff about the adequacy of  
 8 that. But in my opinion, without a doubt, the  
 9 applicant needs a parking variance.  
 10 I leave it up to you to decide whether  
 11 that's justified or not, but I just -- you know,  
 12 with other applications, it's common practice for  
 13 someone to come in and say, look, I only have a few  
 14 employees, I don't want to pave all this parking.  
 15 So there -- in many instances where boards say,  
 16 okay, pave half the parking, but at least, you know,  
 17 dot the land use -- your site plan so that in the  
 18 future if you need them or another tenant comes in,  
 19 you can pave them, and you have the code-compliant  
 20 amount of parking.  
 21 In this case, there's not enough room  
 22 to have one more parking spot on this property.  
 23 MEMBER POTE: Okay. Thank you.  
 24 CHAIRPERSON SCHAEFER: Any other  
 25 questions?  
 113  
 1 Okay. I do have a question. I'm  
 2 trying to figure out what my notes say here,  
 3 Mr. Steck, on the parking. When this --  
 4 ATTORNEY BUTLER: Madam Chair, take  
 5 your time.  
 6 CHAIRPERSON SCHAEFER: Yeah, right?  
 7 This was back in November that I have notes here  
 8 that the parking -- 31 parking spaces was based on  
 9 154 students and apparently that this was county  
 10 input. Do you know anything about this?

11 THE WITNESS: I don't think the county  
 12 determines parking spaces.  
 13 CHAIRPERSON SCHAEFER: Met with  
 14 county. Design based on county input.  
 15 THE WITNESS: I mean, the county --  
 16 CHAIRPERSON SCHAEFER: I'm sorry, that  
 17 has to do with a left-hand turn, but there was  
 18 testimony given, 31 parking spaces based on 154  
 19 students.  
 20 THE WITNESS: That's the applicant's  
 21 testimony. I mean, that's their site plan, but as  
 22 I -- the point I tried to make is that the ordinance  
 23 doesn't let the applicant say what the baseline is.  
 24 The ordinance gives guidance as to what is the  
 25 industry standard. That's the starting point. And  
 114  
 1 if there's something unusual that the applicant --  
 2 if there's a hardship, if there's a benefit that  
 3 outweighs the detriment.  
 4 My concern is that, you know, even if  
 5 you pick a number that is, like, the 85th  
 6 percentile, that means there are a number of  
 7 occasions where you're not going to have enough  
 8 parking on the property. Keep in mind we have 31  
 9 spaces, 22 employees, 2 handicapped spaces. That  
 10 means there's 7 spaces left for 154 kids being  
 11 dropped off, not necessarily 154 cars.  
 12 What happens during that 15 percent  
 13 event where the parking is filled? How do cars  
 14 circulate? How do they stack to get in and out of  
 15 the property? That is a legitimate planning concern  
 16 that has not, in my opinion, been addressed by the  
 17 applicant.  
 18 CHAIRPERSON SCHAEFER: Okay. And I  
 19 disagree with you. They gave a lot of testimony on  
 20 that. They have a seven-minute parking time  
 21 average. I mean, they went through a lot. You  
 22 know, and I know you're going to have Mr. Simoff  
 23 come up next, so I'm not going to ask anymore  
 24 questions in reference to circulation because we did  
 25 discuss circulation also. I don't even know what  
 115  
 1 month that one was.  
 2 But, Mr. Butler, if you want to  
 3 continue on?  
 4 ATTORNEY BUTLER: Excuse me. I'm  
 5 sorry.  
 6 ATTORNEY LINNUS: Madam Chairperson,  
 7 excuse me; how about the public? Any public  
 8 questions --  
 9 CHAIRPERSON SCHAEFER: Oh, I'm sorry.  
 10 Any questions from the public for  
 11 Mr. Weldon's planner, Mr. Steck?  
 12 Okay. Hearing none, Mr. Butler?  
 13 ATTORNEY BUTLER: Madam Chair, how  
 14 long do you think you will go on tonight?  
 15 CHAIRPERSON SCHAEFER: Usually, we --  
 16 truly, we have a bewitching hour of, like,  
 17 10 o'clock. You know that.  
 18 How much time do you think it's going



19 to take for Mr. Simoff?  
 20 ATTORNEY BUTLER: An hour and  
 21 45 minutes.  
 22 CHAIRPERSON SCHAEFER: Are you  
 23 serious?  
 24 ATTORNEY BUTLER: I am.  
 25 ATTORNEY HEHL: Madam Chair, I --  
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 1 Mr. Simoff has testified already. I don't -- I  
 2 mean, if he had something minor to add, but we have  
 3 had his testimony. First we had our traffic  
 4 engineer. Then he testified in response to that.  
 5 We have reports from your traffic engineer. What --  
 6 is he going to go through the same -- I looked at  
 7 this letter from April 12th, and it's the same --  
 8 same stuff he talked about when he last testified.  
 9 CHAIRPERSON SCHAEFER: Yeah, I have to  
 10 agree with that, Mr. Butler. I mean, what is it  
 11 that is so different that he has to testify once  
 12 again?  
 13 ATTORNEY BUTLER: If you want to start  
 14 with him, let's start with him. I have no  
 15 objection --  
 16 CHAIRPERSON SCHAEFER: I'm not going  
 17 to start with someone and -- because I know exactly  
 18 what's going to happen -- we're going to stop him  
 19 midstream, and then we're going to start all over  
 20 again at our next meeting from the very beginning.  
 21 That's how it's going to work. I know that.  
 22 Frank, what do we do?  
 23 ATTORNEY LINNUS: Well, you heard that  
 24 Mr. -- you asked Mr. Butler a question as to how  
 25 long he projects the testimony of Mr. Simoff, and  
 117  
 1 that's an hour and 45 minutes. You also indicated  
 2 to Mr. Butler that the usual bewitching hour -- and  
 3 he knows it -- is about 10 o'clock, so the time does  
 4 not fit.  
 5 Notwithstanding that, if Mr. Simoff is  
 6 going to merely repeat what he's testified to  
 7 previously, then the board does not have to listen  
 8 to that. If there's something new or something that  
 9 has been generated by other testimony or reports  
 10 that have been filed after the last meeting or after  
 11 -- at the last meeting or after the last meeting,  
 12 then you have to hear it. But if it's repetitive,  
 13 you do not have to hear it. We don't know that.  
 14 We haven't heard any proffer of proof  
 15 from Mr. Butler as to whether his intention is to  
 16 have Mr. Simoff repeat what he previously stated or  
 17 whether he has new information for the board which  
 18 may be relevant to this application.  
 19 So I would like to hear from Mr. Butler  
 20 before I inform the board.  
 21 ATTORNEY BUTLER: All right.  
 22 ATTORNEY LINNUS: What's going to take  
 23 an hour and 45 minutes, Mr. Butler?  
 24 ATTORNEY BUTLER: Excuse me?  
 25 ATTORNEY LINNUS: What is going to  
 118  
 1 take one hour and 45 minutes?  
 2 ATTORNEY BUTLER: Well, that's an  
 3 estimate. One of the first things he's going to

4 testify is the Bright View report, okay, which is a  
 5 traffic report, which he's going to critique that,  
 6 and it should be critiqued.  
 7 The other thing he's going to testify  
 8 -- and he can tell you what he's going to testify  
 9 about.  
 10 Hal, what are you going to testify  
 11 about?  
 12 MR. SIMOFF: I'm going to testify  
 13 about the need for a loading dock that was submitted  
 14 by Mr. Hehl in his March 10th submission.  
 15 I'm going to testify to the site  
 16 distance measurement that was submitted by the  
 17 applicant in the -- I don't have the exact reference  
 18 of the exhibit.  
 19 I'm going to testify to the --  
 20 ATTORNEY BUTLER: Sorry.  
 21 MR. SIMOFF: I'm going to testify to  
 22 the sight distance.  
 23 I'm going to testify to the loading and  
 24 the trucking.  
 25 I'm going to testify to the critique of  
 119  
 1 the Bright View report.  
 2 And I'm going to testify to the  
 3 inadequate internal circulation.  
 4 ATTORNEY LINNUS: Did you or did you  
 5 not testify as to those issues in prior testimony?  
 6 MR. SIMOFF: No.  
 7 CHAIRPERSON SCHAEFER: You didn't  
 8 testify about Bright View's report?  
 9 MR. SIMOFF: The Bright View report  
 10 was written after I testified. It is dated, I  
 11 believe, February 22nd.  
 12 CHAIRPERSON SCHAEFER: John, when was  
 13 your traffic report done? John Jahr.  
 14 MR. JAHR: I'm looking that up right  
 15 now.  
 16 ATTORNEY BUTLER: February 22nd, 2021.  
 17 MR. JAHR: That appears to be correct.  
 18 CHAIRPERSON SCHAEFER: Okay. You know  
 19 what? This is -- we're not going to start with  
 20 Mr. Simoff tonight because I know what's going to  
 21 happen; we'll get midway through, and then you're  
 22 going to end up starting with the complete testimony  
 23 all over again at our next meeting.  
 24 But this is what we're going to do. At  
 25 our next meeting I'm going to have, Mr. Hehl, you  
 120  
 1 respond to the memorandum from Mark Healey and from  
 2 Bright View Engineering. Okay? Those are the last  
 3 two reports; Mark's on April 14th, as well as Bright  
 4 View's. That's where we're going to begin, have you  
 5 respond to those.  
 6 Then, Mr. Butler, you can have  
 7 Mr. Simoff come on and only -- the only testimony I  
 8 want from --  
 9 ATTORNEY BUTLER: Madam Chair, will I  
 10 be able to respond to the reports of Mr. Healey and  
 11 the engineer?  
 12 CHAIRPERSON SCHAEFER: Right now I  
 13 just want Mr. Hehl to respond. You will be able to

14 respond at a later date. You already have responded  
 15 tonight to a lot that was on the Bright View report.  
 16 I said that to you before. I said to you  
 17 specifically --  
 18 ATTORNEY BUTLER: We didn't do  
 19 anything with the Bright View report tonight,  
 20 nothing.  
 21 CHAIRPERSON SCHAEFER: Yes, you did.  
 22 ATTORNEY BUTLER: Not one thing.  
 23 CHAIRPERSON SCHAEFER: The specifics  
 24 in this Bright View report that you -- and I even  
 25 made the comment to you, if we had let this report  
 121  
 1 been gone over, you would have seen a lot of what  
 2 you brought up had been answered in this report or  
 3 would have been answered for you by Mr. Hehl in this  
 4 report.  
 5 So at this point I'm going to allow the  
 6 applicant to reply to these two reports. You then  
 7 can take on with Mr. Simoff, because I'm sure that  
 8 you are going to answer a few other items that are  
 9 in these reports. Then you can bring on Mr. Weldon,  
 10 and then you can, you know -- whatever is left in  
 11 those reports that haven't been testified on, you  
 12 can testify on, and then do your closing argument.  
 13 Because we have to --  
 14 ATTORNEY LINNUS: Madam Chairperson, I  
 15 would also like to caution Mr. Butler and Mr. Simoff  
 16 that the board is not interested in hearing any  
 17 testimony from Mr. Simoff that was previously  
 18 delivered. So when you prepare for the next  
 19 meeting, I hope you take that into account.  
 20 ATTORNEY BUTLER: Now -- now, from  
 21 what the Madam Chair said, after I conclude my  
 22 testimony, then Mr. Hehl is not going to have the  
 23 ability to call any other witnesses?  
 24 ATTORNEY LINNUS: I don't think she  
 25 stated that at all, and I don't think we could  
 122  
 1 preclude Mr. Hehl from providing any rebuttals.  
 2 ATTORNEY BUTLER: Well, I thought  
 3 that's what she said, that's all. Maybe I  
 4 misunderstood her.  
 5 CHAIRPERSON SCHAEFER: I did not say  
 6 that.  
 7 ATTORNEY BUTLER: Okay.  
 8 CHAIRPERSON SCHAEFER: What I said --  
 9 ATTORNEY BUTLER: I'm wrong, then,  
 10 Madam Chair. Sorry.  
 11 CHAIRPERSON SCHAEFER: That's okay.  
 12 What I said was that we're going to start with  
 13 Mr. Hehl next month. He's going to respond to the  
 14 two -- the planner -- to Mark Healey's report or  
 15 memorandum and to Bright View's memorandum. We're  
 16 then going to go on with you with Mr. Simoff.  
 17 Mr. Simoff will testify to anything that he hasn't  
 18 testified to already. Okay?  
 19 Then you're going to be able to  
 20 respond -- or then you will have Mr. Weldon because  
 21 you said you did have Mr. Weldon that you wanted to

22 present as well.  
 23 After Mr. Weldon, you will have -- you  
 24 will have the ability to then go over these last two  
 25 reports from Mr. Healey and from Bright View, as you  
 123  
 1 had asked to do. And then once that's done, you can  
 2 do your closing argument.  
 3 And then Mr. Hehl can come back with  
 4 anybody that he so desires. I have given you ample  
 5 opportunity with several --  
 6 ATTORNEY BUTLER: I think Mr. Linnus  
 7 will agree that I don't give my summation until the  
 8 applicant rests. I don't give a summation in the  
 9 middle of a case.  
 10 ATTORNEY LINNUS: That's correct. We  
 11 would then give the opportunity to Mr. Hehl to  
 12 provide any rebuttal. And then after the rebuttal,  
 13 then you would make your closing arguments, and Mr.  
 14 Hehl would follow that up with his closing  
 15 arguments.  
 16 CHAIRPERSON SCHAEFER: You're correct,  
 17 Mr. Butler.  
 18 ATTORNEY LINNUS: How much time does  
 19 the board have to act on this application?  
 20 CHAIRPERSON SCHAEFER: Well, that's  
 21 the other thing.  
 22 Mr. Hehl, we need to extend, and I  
 23 apologize but -- I'm going to say to you let's go to  
 24 the end of June, because it's not going to happen by  
 25 the time we finish with what we need to finish with.  
 124  
 1 I'm trying to give you latitude as well  
 2 by allowing you to go over these reports and answer  
 3 whatever we can answer so that it will shorten  
 4 whatever Mr. Butler has.  
 5 ATTORNEY HEHL: We'll send a letter in  
 6 to that effect to Theresa. Remind me.  
 7 ATTORNEY LINNUS: June 30th; is that  
 8 the letter you're sending?  
 9 ATTORNEY HEHL: Yeah.  
 10 ATTORNEY BUTLER: To the end of May.  
 11 That's what he said at the last meeting.  
 12 CHAIRPERSON SCHAEFER: That is  
 13 correct. They are extending it to the end of June  
 14 because I know we're not going to end this next  
 15 month.  
 16 ATTORNEY HEHL: We'll do our best.  
 17 CHAIRPERSON SCHAEFER: Okay.  
 18 ATTORNEY BUTLER: Now, when will the  
 19 meeting be next month?  
 20 ATTORNEY HEHL: It's May 18th.  
 21 ATTORNEY BUTLER: Well, no. I -- and  
 22 is it going to happen May 18th?  
 23 CHAIRPERSON SCHAEFER: What do you  
 24 mean?  
 25 ATTORNEY BUTLER: Well, because I have  
 125  
 1 been contacted, you know -- I can't say off the  
 2 record because I'm talking to you on the Internet,  
 3 but I have been contacted by -- by people that own  
 4 the property across the street from Bonnie Burn

5 Road. And I have a letter from them saying that you  
6 wanted to do -- you wanted to hear them early March,  
7 and they wanted May 18th.  
8 CHAIRPERSON SCHAEFER: No. That's  
9 incorrect information, Mr. Butler. What we offered  
10 them was May 4th, which the planning board does not  
11 know at this point, and that is not happening  
12 because they have opted out of that meeting.  
13 ATTORNEY BUTLER: Right.  
14 CHAIRPERSON SCHAEFER: So we're now  
15 trying to come up with another date. At this point,  
16 as you know, as I'm sure you're very well aware,  
17 that our settlement agreement with them was that we  
18 would offer them a special meeting every month, and  
19 if we had additional time during our regular  
20 meeting, we would give that to them. We can't give  
21 them additional time at our regular meetings because  
22 this application is taking up the entire meeting.  
23 So we're dedicated to giving them one  
24 special meeting a month. I just don't know what  
25 that next date will be.  
126  
1 ATTORNEY BUTLER: Then May 18th.  
2 Would you tell me what hour the meeting is going to  
3 start?  
4 CHAIRPERSON SCHAEFER: May 18th, our  
5 meeting is going to, again, start at 6:30 because --  
6 ATTORNEY BUTLER: 6:30. Okay.  
7 CHAIRPERSON SCHAEFER: But -- but  
8 wait, Mr. Butler. That's because we're doing an  
9 ethics training, so we'll be in executive session.  
10 And then we'll go immediately into our regular  
11 meeting after that. But we're just doing ethics  
12 training, a standard ethics training for board  
13 members.  
14 ATTORNEY BUTLER: I will put it down  
15 for 6:30.  
16 CHAIRPERSON SCHAEFER: Okay. But know  
17 you might wait until 7:30. I don't know how long  
18 ethics training takes.  
19 ATTORNEY BUTLER: Oh, oh. I thought  
20 you said it was a short -- I'm sorry. I  
21 misunderstood you.  
22 CHAIRPERSON SCHAEFER: Yeah. I don't  
23 know when it will be over, but we'll go directly  
24 into our regular meeting once the ethics training is  
25 done. Frank is actually doing the ethics training,  
127  
1 so Frank, I'm sure, can give us an idea of how long  
2 it should take.  
3 ATTORNEY LINNUS: Well, my  
4 presentation will be approximately 15 minutes, but  
5 I'm sure the board will have some questions that  
6 need to be answered or addressed that I did not  
7 cover. So I can't answer it fully, but an hour is a  
8 good estimate on the outside.  
9 ATTORNEY BUTLER: Can I put down that  
10 the case will start at 7:30 or --  
11 ATTORNEY LINNUS: Well, for purposes  
12 of the public, we don't know when this -- when this  
13 will start. So the meeting -- we have to announce  
14 tonight that the meeting starts at 6:30.  
15 ATTORNEY BUTLER: Okay.

16 ATTORNEY LINNUS: Now, that doesn't  
 17 mean you're going to be reached at 6:30, Mr. Butler,  
 18 because you've heard we're going to have an ethics  
 19 training.  
 20 ATTORNEY BUTLER: Okay.  
 21 ATTORNEY LINNUS: Okay.  
 22 All right, if that's been established,  
 23 then, a continuation of this public hearing will be  
 24 at the regular board meeting of May 18th. The  
 25 meeting will commence at 6:30. It will be a virtual  
 128  
 1 meeting. This is the notification to the public.  
 2 There is no requirement on the applicant to provide  
 3 any additional newspaper notice or service of  
 4 notice, personal service of notice, to the  
 5 neighbors, et cetera, under the statute. This is  
 6 your notice.  
 7 VICE-CHAIRMAN SPEENEY: Mr. Linnus,  
 8 what approvals for extensions do we have from the  
 9 applicant?  
 10 ATTORNEY LINNUS: The applicant has --  
 11 it's my understanding, and I'll let Mr. Hehl restate  
 12 it, it's my understanding that the applicant has  
 13 extended the time within which the board has to act  
 14 on this particular application through June 30th,  
 15 2021. And Mr. Hehl, I believe, will be sending a  
 16 confirmatory letter to the board.  
 17 VICE-CHAIRMAN SPEENEY: Thank you.  
 18 ATTORNEY LINNUS: Is that correct?  
 19 ATTORNEY HEHL: Yes, that's correct.  
 20 VICE-CHAIRMAN SPEENEY: I understand.  
 21 CHAIRPERSON SCHAEFER: All right. So  
 22 you all know what our -- well, Mr. Hehl, Mr. Butler,  
 23 you all have our game plan for next week -- or for  
 24 next month. And again, we're starting with Mr. Hehl  
 25 asking questions of the reports from our -- our  
 129  
 1 professionals. Then, Mr. Butler, you will have  
 2 Mr. Simoff testify on things that he has not  
 3 testified on before. Then you will bring on  
 4 Mr. Weldon.  
 5 And, Mr. Butler, I'm going to give you  
 6 a heads-up; if I start hearing testimony repeated  
 7 over and over again, I'm going to stop you and ask  
 8 you to move on. Okay? I'm just making it clear up  
 9 front.  
 10 ATTORNEY BUTLER: You have done that  
 11 in the past, ma'am. We have had no problem at all.  
 12 CHAIRPERSON SCHAEFER: Okay. And  
 13 that's where we're at. So we'll see The Learning  
 14 Experience next month.  
 15 Planning board members, we still have a  
 16 little bit of discussion, so don't go anywhere,  
 17 please.  
 18 ATTORNEY BUTLER: Thank you.  
 19 CHAIRPERSON SCHAEFER: Thank you,  
 20 Mr. Butler. Thank you, Mr. Hehl.  
 21 ATTORNEY HEHL: Thank you. Have a  
 22 great night, everybody. Stay safe.  
 23 ATTORNEY LINNUS: You too.

24 CHAIRPERSON SCHAEFER: You too.

25 (Hearing adjourned at 9:47 p.m.)

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

2

3 I, ANGELA C. BUONANTUONO, a Notary Public  
4 and Certified Court Reporter of the State of New  
5 Jersey and Registered Professional Reporter, do  
6 hereby certify that prior to the commencement, the  
7 witness was duly sworn to testify the truth, the  
8 whole truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing is a  
10 true and accurate transcript of the deposition as  
11 taken stenographically by and before me at the time,  
12 place and on the date hereinbefore set forth.

13 I DO FURTHER CERTIFY that I am neither a  
14 relative, nor employee, nor attorney, nor counsel of  
15 any of the parties to this action, and that I am  
16 neither a relative, nor employee of such attorney or  
17 counsel, and that I am not financially interested in  
18 the action.

19

20

21

22

23 Angela C. Buonantuono, CCR, RPR, CLR

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